

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**ADMINISTRATIVE COMPLAINT
LETTER OF FINDINGS**

DE AC 17-1 (September 16, 2016)

On July 20, 2016, Parent filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the Red Clay Consolidated School District (“District”) violated state and federal regulations under Part B of the Individuals with Education Act (“IDEA”) with respect to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.151 to 300.153 and according to the DDOE’s regulations at 14 DE Admin Code § 923.51.0 to 53.0. The investigation included a review of Student’s educational records, staff correspondence, and documentation provided by Parent. Interviews were conducted with Parent and District staff.

COMPLAINT ALLEGATIONS

The complaint alleges the District violated the IDEA and implementing regulations by: (1) failing to protect the confidentiality of Student’s personally identifiable information and records; and (2) failing to provide a timely reevaluation of Student’s educational needs.

FINDINGS OF FACT

1. Student is x years of age and enrolled in the x grade. Student has been identified as a student with a disability under the classification of “Speech and/or Language Impairment” as defined in 14 DE Admin Code § 925.6.15. Student receives speech and language services at (“School”) pursuant to the IDEA and 14 Del. C. § 3101 *et seq.*
2. Student’s current Individualized Education Program (“IEP”) was developed at an IEP meeting held on February 18, 2016. Student’s IEP is dated February 18, 2016 through February 17, 2017.

Confidentiality of Student’s Information

1. The 2015-2016 District calendar indicates Elementary Open Houses were scheduled on September 10, 2015 and Elementary Parent Conferences were scheduled on October 8 and 9, 2015, and December 10 and 11, 2015.
2. Both teachers and Parent concurred that Parent did not attend the Open House on September 10, 2015 or the Parent Conference days in October 2015. Teachers and Principal agreed that the person they thought to be Student’s Parent (“Parent B”) did attend one of the Parent Conference days in December 2015.

3. School staff were not expecting Parent to attend the December Parent Conference because Parent was not invited to attend. However, Parent B attended the December Parent conference, and school staff mistakenly discussed Student's academic progress and educational needs with Parent B.
4. At the February 18, 2016 IEP meeting, Parent then discovered there had been a December Parent Conference and the child's academic progress and educational needs were mistakenly discussed with Parent B. Student's Teachers and Principal admitted to not knowing a different child's parent attended the December Parent Conference.
5. School staff admitted the confusion was due to a mix up.
6. Finally, Parent provided the School with court records. Parent claims the School breached confidentiality by failing to place the records in Student's file, or otherwise not being able to account for the records. However, the Director of Special Services ("Director") and the Principal confirmed the information provided by Parent was recorded in eSchool Plus. On September 1, 2016, the District's Educational Diagnostician ("District ED") confirmed the records were also in Student's cumulative file. As a result, Parent's allegation related to the School's handling of the court records could not be substantiated.

Evaluation

1. On February 18, 2016, an IEP meeting was held to conduct an annual review of Student's speech/language progress.
2. At the meeting, Parent requested that Student be reevaluated for academic concerns. Parent provided a letter from Student's Language teacher that supported Student was having academic difficulties.
3. The IEP Team agreed to conduct the reevaluation, as documented in the February 18, 2016 IEP Team Meeting Notes, the February 18, 2016 Prior Written Notice ("PWN"), and the July 14, 2016 PWN.
4. A Permission to Evaluate ("PTE") form was not signed by Parent at the February 18, 2016 IEP meeting. The PTE is the form used by the School to obtain written parental consent to conduct an evaluation.
5. During the interviews, School staff reported that Educational Diagnostician ("ED") sends out the PWN and PTE to parents, and Principal stated, and the February 18, 2016 IEP Meeting Notes confirmed, that the Speech Therapist would notify the ED about the reevaluation request. Speech Therapist confirmed this fact.
6. All of the required participants attended the February 18, 2016 IEP meeting, including the Principal who served as the administrative designee. ED did not attend the meeting.

7. A day or two after the February 18, 2016 IEP Meeting, Speech Therapist spoke with ED and requested that PTE and PWN be sent to Parent. Speech Therapist sent two E-mails to ED to follow up on the request.
8. According to an interview with ED, PTE and PWN were mistakenly sent to Parent B at the end of April 2016. School staff were not aware the records were sent to the wrong person. The PTE was also not signed and returned.
9. In the beginning of May 2016, Speech Therapist sent a third E-mail to ED inquiring about the status of the evaluation. ED responded that paperwork had been sent, and consent had been requested.
10. According to an interview with ED, in mid-May, another language speaking staff member made a follow-up phone call to Parent B, not knowing that Parent B had no relationship to Student. A message was left for Parent B, but not returned. ED reported Parent would be contacted at the start of the 2016-2017 school year.
11. On July 5 and 12, 2016, the advocate sent E-mails on behalf of Parent to Principal asking about the status of Student's reevaluation from the prior school year. Principal did not reply to the E-mails. Rather, Principal reported he/she was contacting the District Office ("DO") to schedule a bilingual psychologist to complete Student's reevaluation. The advocate then called the Principal to again ask about the reevaluation, and was informed Principal had called the DO.
12. On July 20, 2016, Parent filed this complaint with the DDOE.
13. School staff received a copy of Parent's complaint a few days earlier, on July 14, 2016, and then realized that ED mistakenly sent the PTE and PWN to Parent B, and the records were sent to the wrong individual.
14. On July 14, 2016, District ED sent PTE and PWN to Parent. Parent signed PTE on July 20, 2016.
15. According to the Director, on July 25 and August 1, 2016, Student's reevaluation was conducted. The Psychologist has collected behavior raters and will be observing Student during the first week of school. An IEP meeting has not yet been scheduled to review the reevaluation.

CONCLUSIONS

A. Failure to Ensure Confidentiality of Student Information

The IDEA and its implementing regulations set forth requirements for school districts to protect the confidentiality of students' personally identifiable data, information, and records collected or maintained by the districts. *See*, 34 C.F.R. § 300.610; 14 DE Admin Code § 927.10.0. Unless an exception applies, parental consent must be obtained before any personally identifiable information about a student can be disclosed to third parties. *See*, 34 C.F.R. § 300.622(a); 14 DE Admin Code 927.22.1.

In this case, no consent was provided. Rather, School staff erroneously disclosed confidential information related to Student's academic progress and educational needs to an individual who was not related to Student. School staff admitted they were unaware of the mistake because of the mix up. There was extensive confusion at the February 18, 2016 IEP meeting when the Student's actual Parent attended the meeting and the School staff did not recognize Parent from the December Parent Conference. The disclosure of Student's confidential information, and mistaken identification of Parent, was a grievous error committed by District. **For the reasons stated, I find a procedural violation of IDEA and corresponding state and federal regulations regarding ensuring the confidentiality of personally identifiable information for students.**

B. Evaluation Timelines

The IDEA and implementing state and federal regulations set forth the requirements for reevaluations. A school district must ensure that a reevaluation of a child with a disability is conducted if the school district determines the educational or related services needs of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise, and must occur at least once every 3 years, unless the parent and the district agree that a reevaluation is unnecessary. *See* § 34 CFR 300.303(a); 14 DE Admin Code § 925.3.1-925.3.2.

In this case, Student had been evaluated in February 28, 2014 and was identified as a student with a Speech and/or Language Impairment under IDEA, and the required services had been determined by the IEP Team. At the February 18, 2016 meeting, Parent requested a reevaluation of Student due to concerns with Student's academic progress, and the IEP Team agreed a reevaluation would be conducted. Due to the District repeatedly confusing the identity of Parent with another individual, the reevaluation process was not started until July 25, 2016, approximately five months later. **As a result, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of a timely reevaluation of Student's educational needs.**

Parent consent is required prior to conducting any reevaluations for a child with a disability, unless the parent refuses or does not respond. See 34 C.F.R. § 300.300(c)(1)(i); 14 DE Admin Code § 925.1.3. In addition, districts must provide notice to the parents of a child with a disability that describes any evaluation procedures the district proposes to conduct. See 34 C.F.R. § 300.304(a); 14 DE Admin Code § 926.3.0. District complied with both these requirements by sending out the PTE and PWN on July 14, 2016 although their attempts were delayed from the February 18, 2016 IEP meeting date.

CORRECTIVE ACTION

To address the regulatory violations noted in this decision, the DDOE directs the District to take the following corrective actions:

1. The District shall convene an IEP Meeting before September 30, 2016 while following the regulations, providing the Parent with their 10 days notice. A copy of the IEP shall be provided to the Director of Exceptional Children Resources for the Delaware Department of Education.
2. If the child is found eligible for additional special education services, the child must be provided these compensatory services. The District will calculate the compensatory services owed beginning from May 2, 2016 until the date of the IEP meeting. The District will submit their calculation of the services owed and the plan for the provision of these services to the Director of Exceptional Children Resources for the Delaware Department of Education by October 14, 2016.
3. By November 16, 2016, District shall provide a detailed corrective action plan to the Director of Exceptional Children Resources, for the Delaware Department of Education to address the regulatory violations identified in this decision. The plan shall set forth specific procedures to:
 - (a) ensure that student confidentiality is properly implemented according to state and federal regulations. The plan shall include specific procedures to ensure confidential records are shared and/or sent to the correct parents. The District shall provide this plan to the Director of Exceptional Children Resources for the Delaware Department of Education by November 16, 2016.
 - (b) ensure that evaluations and reevaluations of students are provided in a timely manner and consistent with state and federal regulations when such evaluations are requested by parents and/or recommended by students' IEP teams. The District shall provide this plan to the Director of Exceptional Children Resources for the Delaware Department of Education by November 16, 2016.
 - (c) The District shall provide professional development to all staff within the school to ensure confidentiality of student information according to federal regulations. The District shall also provide professional development to all special education specialists within the school regarding timely evaluations.

- (1) The trainings should be provided to staff and copies of training materials, agendas, and attendance rosters submitted to the Director of Exceptional Children Resources for the Delaware Department of Education by January 9, 2017.

By:

Assigned Investigator