

**DELAWARE DEPARTMENT OF EDUCATION**

**EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT**

**STATE COMPLAINT RESOLUTION**

**DE SC 20-05 (December 19, 2019)**

On October 31, 2019, Parent filed a complaint with the Delaware Department of Education (Department). The complaint alleges the School District (District) denied Student a free, appropriate public education by failing to permit Student's enrollment in the District for the 2019 – 2020 school year. The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.151 to 300.153 and according to the Department's regulations at 14 DE Admin Code § 923.51.0 to 53.0. The investigation included a review of the complaint and the attached documents, and the District's written response to the complaint and the attached documents. Interviews were conducted with Parent and the District's administrative staff. Parent was given the opportunity to submit additional information to the investigator related to the complaint. Parent confirmed the complaint and attached documents covered all the information Parent deems essential to the complaint.

The complaint investigation and decision are limited to the issues raised by Parent in the complaint. Parent's complaint centers upon a residency dispute with the District and Parent's contention Student has the right to attend school in the District. However, the residency dispute involves state statutes related to school attendance, provisions of the McKinney-Vento Homeless Assistance Act, and specific District policies related to enrollment and residency. The facts related to the residency dispute are not discussed in this decision because the facts are not relevant or material to whether the District violated Part B of the Individuals with Disabilities Education Act (IDEA) and implementing state and federal regulations.

**RELEVANT FINDINGS OF FACT**

1. Student is an X year old and is eligible to receive special education and related services pursuant to the disability category of moderate intellectual disability outlined in 14 DE Admin Code § 925.6.12.1.2.
2. During the 2018 -2019 school year, Student was enrolled in the School District and served by the X School.
3. Parent is designated as Student's educational representative pursuant to 14 DE Admin Code § 926.20.
4. The complaint alleges, in relevant part, Parent attempted to enroll Student in the District prior to the start of the 2019 – 2020 school year, and the District declined Student's enrollment because Parent did not provide sufficient proof of residency consistent with the District's policy.

5. As a result, Student was administratively withdrawn from the District.
6. The District promptly advised Parent, verbally and in writing, to enroll Student in the School District 2 to enable Student to receive special education and related services.
7. Parent declined to enroll Student in School District 2 as Parent believed the program is not appropriate for Student. Parent also continued to advocate that Student was entitled to attend school in the District. Parent sought and received assistance from the Parent Information Center, and eventually filed the complaint against the District.
8. Student has not attended school or received educational services since on or about August 28, 2018.
9. Parent alleges Student was denied FAPE because Student was not permitted to enroll in the District.
10. During the investigation, Parent confirmed the complaint centers upon the contention Student was wrongfully denied enrollment in the District.
11. During the investigation, Parent did not raise or reference any specific allegation that implicates Part B of the IDEA or implementing state and federal regulations and focused solely on the residency dispute.
12. The documents attached to Parent's complaint solely relate to the residency dispute.
13. The complaint alleges violations of the McKinney-Vento Homeless Assistance Act in the complaint and seeks remedies under the Act. The special education state complaint process does not address claims or remedies under the McKinney-Vento Homeless Assistance Act, nor does it address state statutes involving residency and school enrollment.
14. During the investigation, Parent stated Student and Parent are currently residing in (Delaware town name is redacted), Delaware within the School District 2 and Parent has not enrolled Student in school.
15. The District's written response to the complaint denies Parent's allegations on the grounds there is no evidence Student was homeless or a resident of the District at the start of the 2019 – 2020 school year. The District contends it has no obligation to provide FAPE to Student because the District is not Student's district of residence, and the complaint allegations do not invoke Part B of the IDEA and corresponding state and federal regulations.

### **CONCLUSION**

State and federal regulations require a state complaint to include a statement that a public agency violated a requirement of Part B of the IDEA or corresponding state regulations. While the complaint alleges a denial of FAPE in general terms, the underlying issues involve a residency dispute and Parent's contention Student has the right to attend school in the District. The

residency dispute is addressed by state statutes involving school attendance, provisions of the McKinney-Vento Homeless Assistance Act, and specific District policies related to enrollment and residency. The complaint does not involve Part B of the IDEA and implementing state and federal regulations. Accordingly, **I find no violations of Part B of the IDEA and corresponding state or federal regulations.**

**CORRECTIVE ACTION**

The Department is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. In this case, no violations of Part B of the IDEA and implementing state or federal regulations were identified. Therefore, no further action by the Department shall be taken.

By: /s/  
Assigned Investigator