

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION DE SC 22-04

Date Issued: April 14, 2022 REVISED: April 29, 2022

On February 15, 2022, the Delaware Department of Education (DDOE) received a complaint filed by REDACTED (Parent1) on behalf of REDACTED (Student) against the REDACTED (School1) and the REDACTED (District1). The complaint alleges School1 and District1 violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).¹ The alleged deprivation of FAPE occurred from November 17, 2022 to February 17, 2022. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to Department regulations at 14 DE Admin Code § 923.51.0 to 53.0.

The investigation included review and examination of records, as well as email and text message communications provided by Parent and District. The Investigator interviewed School1 and District1 staff, as well as Parent. The decision includes findings of fact that are relevant and material to addressing the complaint issues.

COMPLAINT ALLEGATIONS

The Complaint alleges that School1 and District1 violated Part B of the IDEA and corresponding state and federal regulations as follows:

1. School1 and District1 failed to provide Student with appropriate special education services between November 17, 2021 and February 17 2022, due to multiple ongoing issues which included verbal and physical bullying, removing Student's work from Schoology, changing Student's status from taking the Delaware System of Student Assessments Alternate Assessment (DeSSA-Alt) assessment to taking the regular state assessment without parental knowledge, and changing Student's educational placement without parental knowledge.
2. Staff members shared information regarding Student with Parent2 without informing Parent1.
3. Staff members cyberstalked Parent1's social media, threatening Parent1 on social media, and insulting Parent.

FINDINGS OF FACT

¹ The complaint decision identifies some people and places generally, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the complaint decision is released as a public record.

1. Student is a REDACTED -year-old REDACTED grader who receives special education services as a student with an educational classification of Autism. Student receives separate special education in an integrated setting.
2. On July 14, 2021, District1 sent notice, entitled “Learning Commitment Response.” It stated “...It is our intention to provide a high-quality virtual option for families who decide to keep their children at home. We will NOT be providing hybrid instruction...”
3. Parent1 chose virtual option for Student.
4. On August 24, 2021, Parent1 was informed virtual learning was not an option for Student and the July 14, 2021 notice was sent in error to families of School1. According to Principal and Teacher, Parent agreed to in-person learning.
5. District1 Supervisor of Special Services (Supervisor2) stated in an interview with Investigator, the information Parent1 received in July 2021 was a district-wide survey distributed to help inform District1’s ultimate decisions regarding potential options for delivering education to students District1 during the 2021-22 school year. However, Supervisor2 stated that programming for students in School1 was determined to be best delivered in-person due to the needs of the student population. The survey had been distributed in error to students attending School1. Supervisor2 also stated that homebound services were described, with limitations of hours and requirements of documentation were explained.
6. On August 25, 2021, Parent1 sent email to Assistant Principal requesting meeting about concerns for Student’s general well-being in school physically since Parent1 was under impression Student would be learning virtually.
7. Student began in person learning at the start of the 2021-2022 school year on September 7, 2021.
8. Between September 17, 2021, and November 8, 2021, four internal incident reports documented the Student as the victim or target of a classmate’s aggressions. On September 17, 2021 am, another student threw pencil at Student’s head. On the same day shortly thereafter, the same student threw hand sanitizer at Student and hit Student’s hand with it and was verbally aggressive. On October 6, 2021, same student threw headphones at Student. On November 8, 2021, the same student threw a breakfast pack at Student and an orange hit Student in the head. Nurse was called to check and clear Student in each incident.
9. On October 14, 2021, Parent1 sent a text message to Student’s teacher regarding an incident with another student that occurred on October 14, 2021, as reported by Student. In the text, Parent1 references a previous bullying incident by another student in the class and inquires if Teacher was made aware of the latest incident, since Teacher was not present and questioned why Parent1 was not informed of the incident.
10. Teacher responded, the same day, that Teacher was not made aware of the incident as the staff felt it had been handled appropriately. Teacher told staff to notify Teacher of any future incidents involving Student. Teacher also offered to meet with Parent1 and administration regarding the incident.

11. Further, Teacher's text message response to Parent1 indicated that the other student had a behavior plan that might need to be modified. Supervisor of Special Education in District 1 (Supervisor2) also stated to the Investigator the other student was new to the program and the team was still getting to know the other student and adjust to student's needs
12. On October, 18, 2021, an IEP meeting was held. Bullying was not discussed. It was Student's annual IEP meeting. Text messages between Parent1 and Teacher indicated Parent2 had been contacted and would like to attend the meeting. Parent1 then stated Parent1 would prefer separate meetings with each parent. Parent1 indicated Parent1 was not invited to any meetings Parent2 may have requested².
13. Notice of Meeting was sent to Parent 1 (October 4, 2021), via phone (October 6, 2021), via Student (October 7, 2021) as noted on Invitation to Meeting form. Parent1 confirmed attendance on October 17, 2021.
14. On October 18, 2021, an IEP meeting was held via Zoom with Parent1 in attendance. The PWN indicated the following was to be discussed:
 - a. ...all information from [Student's] team was to be duplicated to both parents."
 - b. The School District discussed the newly released appendix B-3 DeSSA-Alternate Decision-Making Tool. The team discussed how given the new criteria, Student seemed to no longer qualify for the DeSSA-Alt. Parent1 wanted 10 days to think about this.
 - c. The IEP team discussed Student getting more opportunities at grade level curriculum and inclusion opportunities. Parent1 voiced concerns with transition being too quick and drastic. School1 proposed a least restrictive environment of setting "C."
15. Notes reflect, based on Student performance and new state guidelines regarding the state assessment, the Principal stated the ultimate goal was for Student to be on Typical Diploma track. Student placement in "C" setting was also discussed with the idea of including Student more in another classroom and Principal addressed Parent's concerns regarding a transition period. It was decided Student would remain in a "C" setting at the current time with increasing opportunities for access to general education classes. Parent decided not to waive the 10-day period and instead to take the 10-days to review this information and forms before the IEP was to be implemented. Notes reflected IEP start date would be changed to reflect Parent1's request.
16. Although the PWN indicated Parent1 wanted to take 10 days to review the information and forms discussed at the October 18th IEP meeting, a document entitled Appendix B-3 DeSSA Decision Making Tool was signed by Parent1 on October 21, 2021. Although the IEP team reviewed the decision-making tool and Student1 did not qualify for the alternate assessment, the form was incomplete as it did not indicate agreement or not agreeing with Student participating in the alternate student assessment.

² Teacher stated there had been a Restraining Order for the past four years and the reason separate IEP meetings had been held. However in Fall 2021, Parent1 reported to Teacher that Restraining Order had been lifted and parents were co-parenting. The Teacher invited both parents based on this verbal information from Parent1. Parents have joint custody of Student.

17. On October 23, 2021, Parent1 sent an email to Principal and other school staff and district administration, referencing a follow up meeting to IEP where communication with both parents was discussed. There was no mention of bullying being discussed.
18. On October 25, 2021, Parent1 sent email to Superintendent that states Student had been assaulted and bullied throughout the entire school year. The Superintendent confirmed receipt of the email on October 25, 2021 and indicated Supervisor of Special Services2 would be in contact with Parent 1.
19. On October 27, 2021, District Educational Diagnostician sent email to Parent1 and attached a PDF of DeSSA Alternate Assessment Decision Making tool. Educational Diagnostician stated REDACTED was getting Student's IEP ready for parent signature and wanted to know "your thoughts about the two different diploma tracks."
20. Additionally, on October 27, 2021, Supervisor2 emailed Parent 1 to set up a phone conversation for the following day. Parent1 sent Superintendent an email stating REDACTED had cc'd Assistant Superintendent on email to School staff and requested a meeting with Assistant Superintendent the next day following a meeting they would both be attending.
21. On November 8, 2021, Assistant Superintendent responded to above email and agreed to meet.
22. On November 9, 2021, Parent1 emailed Principal and indicated Parent1 would be at the School1 for a meeting on the -following Monday regarding previous email since Principal said "we can have meeting anytime..."
23. On November 10, 2021, Parent1 emailed Principal indicating Parent1 had not received a response regarding a meeting. Parent1 stated Student "was attacked again today." There was no incident report regarding this alleged incident. Parent also stated that prior to beginning of the school year, a Zoom meeting was held regarding Parent1's concerns about Student returning to in person learning in School1. Supervisor of Special Services at the time (Supervisor1), stated that Parent1 and Parent2 were to receive "the EXACT information" (including phone calls) and cited a notice Parent2 had just received addressed to "Parents of (Student1)" that had not been sent to Parent1. Parent1 also stated a call from Teacher regarding math struggles had been made to Parent2 but not to Parent1.
24. On November 10, 2021, current Supervisor of Special Services (Supervisor2) sent an email to Principal stating School1 could go to one parent communication or both via email if current status described by Supervisor1 was not working.
25. On November 10, 2021, Principal responded to above email to supervisor and asks someone from District share that information.
26. On November 10, 2021, Principal sent Parent1 meeting invitation via Outlook for Monday November 15, 2021, at 8:45 am.
27. On November 10, 2021, Parent1 sent email to Principal asking why REDACTED had not been notified that if Student did not qualify for DeSSA- Alt Achievement, it would change the classroom placement of the Student. In the prior written notice (PWN) of Student's annual IEP meeting on October 18, 2021, the team determined Student no longer qualified for DeSSA-Alt due to Student progress and new state guidelines. Team agreed Student will remain in "C" setting and

transition to more inclusive opportunities would be “at Student’s pace” but does not state a recommendation for a classroom placement change or that the transition to Typical Diploma track necessitated a classroom placement change.

28. On November 10, 2021, Parent1 sent email to Assistant Superintendent stating Parent was not made aware that if Student no longer qualified for DeSSA, there was the potential to be moved to a different class. Parent1 also stated Parent1 did not want Student moved further into inclusion because Student was struggling recently with math, as noted at home and by the Teacher.
29. On November 10, 2021, Assistant Superintendent responded to above email stating regret Parent1 was not made aware of potential change in classroom. Assistant Superintendent also stated REDACTED had included Principal on email for Principal to address next steps regarding further inclusion.
30. On November 11, 2021, an IEP meeting with held with Parent2. Parent2 agreed with the changes to Student’s DeSSA status and ultimate goal of Typical Diploma track for Student. Parent2 did not raise any concerns regarding increased inclusion experiences. The parent signature page was not completed or signed. Only the date of November 11, 2021 was printed.
31. On November 15, 2021, a follow-up meeting was held with Principal, Assistant principal, Parent1, Parent1’s REDACTED and Teacher to discuss the change in DeSSA status for Student, previously discussed at the IEP meeting on October 18, 2021. Notes or Notices for this meeting were requested by Investigator. Principal stated to Investigator there were no notes; however, attendants could verify the Parent1 was in attendance and agreement after this meeting. No Notices of Meeting were submitted.
32. On November 17, 2021, Parent1 sent an email informing Principal that Student would not be physically returning to school. Parent1 alleges School had not addressed countless unresolved situations including Parent1 allegedly being threatened on social media by a District1 staff member from a different school, who is the spouse of a staff member in Student’s sibling’s classroom. Parent1 stated Student had not been safe the entire school year and staff had not protected Student from being bullied and assaulted on multiple occasions. Parent1 stated to School1 that Student did not want to come to school because of the bullying from classmate.
33. On November 17, 2021, Parent1 emailed Assistant Superintendent requesting confirmation from Principal that classwork, homework, Schoology work and visual instructions for Student’s IEP goals be available for Parent1 to pick up at School. Additionally, Parent1 requested confirmation absences would be excused.
34. Schoology is a cloud-based learning management system for schools that enables its users to create, manage, and share assignments and resources. The platform provides tools to manage classrooms or blended learning.
35. Also, on November 17, 2021, Parent1 sent email to Supervisor2 requesting referral to School 2 be made. Parent1 cited the deteriorating relationship with School and District 1 and concern for Student safety in classroom with staff member associated with alleged social media harassment.

36. On November 17, 2021, Special Investigator with the Family Division of the Department of Justice (DOJ) emailed Principal requesting a call regarding a bullying complaint filed with DOJ by Parent1.
37. On November 17, 2021, Assistant Superintendent emailed DOJ to set up a phone conference with Principal, Supervisor2 and Assistant Superintendent.
38. On November 17, 2021, Special Investigator stated in follow-up email to Assistant Superintendent that Special Investigator had called Parent1 to share options discussed and spoke initially with Parent1's REDACTED . Special Investigator then received a call from Parent1, whom Special Investigator described as "angry." Parent1 was yelling and Special Investigator stated REDACTED disconnected the call. A follow-up text was received by the Special Investigator in which Parent 1 stated Student "will NOT be moving to a B setting" in the school and declined the option. Special Investigator stated case had been investigated and allegations unsubstantiated and case had been closed.
39. Parent1 would have received the official findings concerning the bullying complaint filed with DOJ. Parent1 did not submit this information with this Complaint filed with DDOE.
40. On November 17, 2021, Parent1 emailed Supervisor2 requesting Student be referred to School2, a special school in another district (District2). Supervisor2 responded indicating receipt of referral forms for School2 from District2 and Supervisor2 stated Supervisor2 was working on having them completed.
41. On November 18, 2021, Parent1 emailed School Board President regarding ongoing issues with Student throughout school year, in addition to issues around staff accessing social media of Parent1.
42. On November 19, 2021, Supervisor2 sent Parent Referral Packet from School2 to complete and sign parent section.
43. On November 29, 2021, Parent1 returned Referral Packet and Supervisor2 responded it would be reviewed for completeness and forwarded to District2 for review.
44. On December 10, 2021, Supervisor2 sent an email to District2 to inquire regarding the status of Student transfer referral.
45. On December 10, 2021, District2 responded that Student was not on a life skills track and requires grade level instruction, possibly on modified pacing. Student would be more appropriate for an Academic Level IV, which was not a school choice program and only serves students living in the district's attendance area, therefore District 2 denied the referral.
46. On December 17, 2021, Supervisor2 forwarded referral for Student's sibling to District2 and suggested waiting for District2 to do their review of that referral and set a meeting to share District2's perspective and decision on both referrals.
47. On December 21, 2021, Supervisor2 sent email to Parent1 stating District2 had reviewed referral of Student and wanted to set up a meeting to discuss.

48. On December 21, 2021, Supervisor2 sent an email to Parent1 with available days and times for the meeting with District2 regarding outcome of referral(s), per Parent1's preference.
49. On December 21, 2021, Supervisor2 sent email to Assistant Superintendent stating an IEP meeting should be set to clarify Parent1's request and stated several potential options, as keeping the Student out of school indefinitely without instruction was not an option.
50. On January 4, 2021, several emails were exchanged regarding coordination of dates for meeting among District1 and District2, School1, School2, and Parent1 to address District2 review and decision regarding referral of Student. The meeting was set for January 11, 2022.
51. On January 12, 2022, Supervisor2 sent email to Parent1 referencing meeting described above took place and if School2 is open to accepting Student District1 was willing to pay tuition to ensure Student would be in attendance at school. However, while waiting for further observation and response from District2, Student absences would no longer be excused as of January 17, 2021. Supervised stated he would inform Principal all absences from November 17, 2021 through January 14, 2021 would be excused. Supervisor2 stated Schoology was not a viable or district supported method to provide long-term education for Student.
52. On January 12, 2022, Parent1 responded to above email from Supervisor2 suggesting Student could attend school via Zoom as Student had done so on snow days.
53. On January 12, 2022, Parent 1 sent email to School Board President stating School1 had verbally agreed absences of Student would be excused due to ongoing issues with School1. Parent1 stated Parent1 was in the process of trying to transfer.
54. On January 13, 2022, Supervisor2 sent email to Parent1 stating District1 had other programming options to present and explore and requested a meeting. Supervisor2 also included mediation resources.
55. On January 13, 2022, Parent1 emailed Supervisor2 to allege other parent (Parent2) had again been privy to information ahead of Parent1 regarding a decision Parent2 had made for Student to return to school on January 11, 2022, prior to notice of truancy. Parent1 stated Student would not be returning to in-person learning because none of the issues had been resolved.
56. January 13, 2022, Assistant Superintendent sent email to Supervisor2 requesting a description of the situation to date with Parent1.
57. January 13, 2022, Supervisor2 sent an email to Assistant Superintendent and Superintendent of District1 describing Parent1 complaints and District1 responses.
58. January 13, 2022, Parent1 sent email to School Board President regarding attendance dispute and recapping other issues with School1 staff. On January 13, Parent1 sent email to Supervisor2 stating Parent2 had received information regarding Student absences no longer being excused prior to REDACTED knowledge and stating Principal had verbally agreed to excuse absences.
59. On January 13, 2022, Supervisor2 responded to Parent1's email regarding Student absences no longer being excused as originally agreed upon by Principal. Supervisor2 stated the information could not have been shared with Parent2 as Supervisor2's decision regarding

absences had not yet been made at the time Parent1 noted in above email. Supervisor2 requested a meeting to discuss other educational options for Student.

60. January 20, 2021, Parent1 sent email to District1 School Board President describing incident of School staff “stalking” Parent1 social media and subsequent alleged threat by spouse of staff member, who is also a District employee.
61. On January 26, 2022, Parent1 emailed Supervisor2 regarding Supervisor2 informing Parent 1 Schoology could no longer be single means of education for Student. Parent1 inquired about the status of referral of Student to School 2. Parent1 indicated Parent1 had contacted School 2 and School 2 told Parent1 School 2 was waiting on paperwork from School1/District1. Parent 1stated the “other options” for providing education for Student mentioned multiple times in previous emails had not been shared to date.
62. On January 27, 2022, Supervisor2 invited Parent1 to an administrative meeting via Zoom. Parent1 requested the meeting be rescheduled, as Parent1 was awaiting a call from an advocate. Parent1 requested all information or links to be discussed at the meeting be sent to Parent1.
63. On January 31, 2022, Superintendent emailed Principal and Assistant Superintendent to convene an administrative meeting regarding Parent1’s recent letter to Board President regarding stalking, suggesting dates of February 1 and February 4, 2022.
64. On February 11, 2022, Supervisor2 requested meeting with Parent1 to discuss educational options for Student.
65. On February 15, 2022, Parent1 responded to email from Supervisor2 and requested the meeting to discuss educational options via Zoom on Thursday, February 17, 2022 at 12:00 p.m.
66. Also on February 15, 2022, Parent1 filed this State Complaint with the Delaware Department of Education.
67. On or about February 17, 2022, Principal and Teacher stated Parent1 informed them Parent1 had relocated the family to a different District. Parent1 relocated family to District 3. Parent1 had thought new residence was within District 2 however, discovered it was District 3.
68. District1 indicated that District1 was the Student’s Local Education Agency (LEA) until February 17, 2022. District1 stated an IEP meeting was held on that date and Parent1 informed IEP team Parent1 had relocated family to another District3.
69. District1 stated that the allegations made in the state complaint are without merit and led to Parent1 unilaterally “physically withdrawing” Student. District1 further stated ..."At all times our doors were open and welcoming to the student and we were offering the Student a Free and Appropriate Education.
70. In response to the bullying allegation, District1 cited investigation by DOJ that found no concern with the School1’s follow-up and response to the bullying complaint. District1 further contends that Parent1 kept Student home to learn virtually due to bullying that was not substantiated by a third party (DOJ).

71. District1 also addressed allegations by Parent1 regarding staff harassment and stated it "...had been investigated and managed appropriately."³ In District1's written response to the state complaint, District1 stated failure to send minors to school due to unsubstantiated allegations was not an exemption of compulsory attendance requirements. District1 also stated despite Parent1 "difficult demeanor" District1 continued to offer meetings to discuss options and impediments to Student's return to School1.
72. On March 10, 2022 Parent1 attempted to enroll Student in School3 in District3. However, District3 needed to request files and paperwork from District1.
73. On or about the week of March 14, 2022, Parent1 visited School3 and determined Student would attend School3.
74. On March 17, 2022, the Principal and Teacher stated Schoology was loaded for the student as agreed upon with the Parent1. Both indicated the school staff uploads and Student downloads of work are available for review. The Principal and Teacher also stated that the Student had a separate folder in Schoology until the date absences would be no longer excused, January 17, 2022. After that date; however, general classroom work was still posted and available to the Student. The teacher also stated that the week before and the week after the December holiday break, due to a Covid-19 surge, District1 was on full virtual learning for all students. Parent1 was notified and had full access to instruction.
75. Student postings of completed work were inconsistent. This would suggest limited or inadequate information to determine and evaluate Student's "meaning progress" toward IEP goals. Schoology postings were cited as source of progress reporting in the IEP
76. On March 21, 2022 Student was officially enrolled and began physically attending School3.

³ This allegation of staff harassment is a District1 personnel matter and beyond the purview of this investigation. Specifics of this allegation are only referenced as it relates to provision of FAPE for Student.

CONCLUSIONS OF LAW

A. Provision of FAPE between November 17, 2021 and February 17, 2022

School1 failed to address Parent1's concerns regarding Student's safety and acquiesced to a virtual program which School1 knew would not provide Student with FAPE.

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education (FAPE) to students with disabilities. See, 20 U.S.C. § 1401(9): 34 C.F.R. § 300.101(a): 14 DE Admin Code § 923.1.2.

"...FAPE is special education that is specialty designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
 - (b) Meets the standards of the Delaware Department of Education;
 - (c) Includes elementary, secondary or vocational education in the State;
 - (d) Is individualized to meet the unique needs of the child with a disability;
 - (e) Provides significant learning to the child with a disability; and
 - (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential."
- See, 14 Del. C. § 3101(5).

"Bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of a free appropriate public education (FAPE) under the IDEA that must be remedied." U.S. Dep't of Educ., Office of Special Education and Rehabilitative Services, *Dear Colleague: Bullying of Students with Disabilities* 1 (Aug. 20, 2013)" The key determination that must be made is whether the bullying resulted in the student not receiving a meaningful educational benefit.

The IDEA also requires States to provide parents with the "opportunity to participate in the decision making process regarding the provision of a [FAPE] to the parents' child." 20 U.S.C. § 1415(f)(3)(E)(ii). Failure to provide parents with the opportunity to participate in the decision-making process regarding the provision of FAPE to their child is a procedural violation of the IDEA. "[A] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents." *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66–67 (3d Cir. 2010) (internal citations omitted). Substantive harm may be found where a procedural violation "results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits." *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (internal citations omitted). A school's failure to discuss bullying with parents despite their reasonable concerns, may result in a failure to allow meaningful parental participation. See, *T.K. v. New York City Dep't of Educ.*, 810 F.3d 869, 874 (2d Cir. 2016) (The 2nd Circuit Court of Appeals held that the LEA denied plaintiff a FAPE by refusing to discuss an issue that the LEA acknowledged may substantially interfere with a child's learning opportunities.)

Finally, the IDEA requires a PWN be sent to parents whenever the local education agency (LEA) “proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.” 20 U.S.C.A. § 1415(b)(3). Failure to do so is considered a procedural violation.

In this matter, Parent1 notified District1 staff and voiced concern multiple times in writing, phone calls, and conversation with classroom staff that Student was being physically and verbally “assaulted” by same classmate. Parent1 repeatedly indicated concern for Student’s mental and physical health and safety. Evidence supporting this claim includes School1 incident reports and staff reporting identifying Student as victim of repeated bullying by same classmate on no less than five occasions between September 7, 2021, and November 10, 2021. Student reported not wanting to come to school due to the incidents.

Despite notification of Parent1 at time of incidents and assessment of Student by School1 nurse (in four incidents), as well as follow- up text messaging, emails and phone calls with School1 staff, School1 did not adequately respond to Parent1’s concerns. School1 could have requested someone to observe the classroom and classroom management techniques e.g the school psychologist. School1 could have brought Student to the Multi-Tiered Systems of Support (MTSS) problem solving team to discuss intervention strategies and data collection procedures to progress monitor. School1 could have considered revisions to Student’s IEP to perhaps include coping goals or counseling goals. Finally, School1 could have contacted their DDOE special education liaison for problem solving support. Most importantly, the IEP team did not discuss Parent1’s concerns about bullying during Student’s IEP meeting on October 18, 2021, nor did School1 issue any formal Invitations to Meeting or PWN describing a plan to address the Student’s safety and well-being to assure Student’s meaningful educational benefit in the Student’s current classroom. As a result of the inaction, on November 17, 2021, Parent1 removed Student from School1 and requested School1 provide instructional and curricular materials and use of Schoology until there was resolution to the bullying issues.

School1 agreed to provide Student specific instructional materials to address Student IEP goals via Schoology until the issue of bullying and stalking allegations, and participation in the Delaware System of Student Assessments Alternate Assessment (DeSSA-Alt) assessment were resolved. There was no evidence of a PWN identifying a change in placement when Schoology was implemented as sole source of educational services for Student. School1 staff regularly posted instructional materials to Schoology from November 18, 2022, until January 17, 2021, when absences were no longer excused by District1 as evidenced by Schoology records submitted to Investigator.

District1 acknowledged using Schoology was not a long- term solution to provide Student education. As further evidence of the inadequacy of Schoology, Student’s postings of completed work were inconsistent.

District1 violated the IDEA by acquiescing to Parent1’s request to provide Student with education through Schoology even though District1 knew doing so would not provide Student with FAPE. Additionally, District1 failed to allow Parent1 to meaningfully participate in the decision-making process regarding Student by failing to address Parent1’s concerns and documenting the steps taken, and as such, committed a procedural violation of IDEA. This procedural violation rises to the level of a denial of FAPE because Schoology did not provide the Student with FAPE. **For these reasons, I find School1/District1 in violation of the IDEA and corresponding state and federal regulation related to the provision of FAPE, from November 17, 2021 through February 17,**

2022 exclusive of December 17-23, 2021 and January 3-7, 2022 when all District students had access to virtual learning due to surge in Covid-19.

B. Parent Participation

Parent1 alleged that staff members shared information regarding Student with Parent2 without informing Parent1. The IDEA and Delaware regulation require LEAs to “take steps to ensure that one (1) or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate...” 14 *Del. Admin. C.* 925.9.1. Parent1 and Parent2 share joint custody of Student.

School1/District1 followed the IDEA and Delaware regulation requirement to ensure that one or both parents are present at each IEP team meeting – or that they were afforded the opportunity to participate. IDEA and Delaware regulations do not limit participation in certain cases, for example, in a divorce to only one parent or the other. In this instance, School1/District1 satisfied the IDEA and Delaware regulations relating thereto. Matters as to whether one parent can have the other parent excluded from IEP team meetings are determinations for the Family Court, which will ascertain what is in the best interest of the child. **For this reason, I find School1/District1 did not violate the IDEA or corresponding state and federal regulations related to the “parent participation” in the IEP process with respect to one parent being notified of something related to education prior to the other parent.**

C. Participation in DeSSA

DeSSA is the statewide system of assessments used to measure student achievement. 14 *Del. Admin. C.* 101.2.0. There are two types of Alternate Assessments available – Selected Response Alternate Assessment (SRA) and Portfolio Alternate Assessment (PAA). 14 *Del. Admin. C.* 101.4.1.

SRA

Delaware regulations require the IEP team to make the decision about whether a student should participate in SRA, through consideration of the criteria outlined in the *Alternate Assessment Participation Guidelines*. 14 *Del. Admin. C.* 101.4.3. With respect to SRA, School1 did address Student’s ineligibility to participate in the DeSSA- Alternate Achievement Assessment, based on Student’s progress and performance and the DeSSA Decision-Making Tool at the time of the October 18, 2021, IEP meeting and in a second IEP meeting on November 15, 2021. Parent1 attended both meetings. Parent1 was issued a PWN after the October 18th IEP meeting.

Parent1’s claim is not that the IEP team failed to properly consider the criteria outlined in the Alternate Assessment Participation Guidelines, and there are no facts in evidence to show otherwise. Moreover, there is no evidence that the IEP team improperly applied the criteria for eligibility. Therefore, because the IEP team followed the regulations regarding Student1’s **eligibility to participate in SRA, there is no procedural violation and therefore no denial of FAPE.**

PAA

PAA requires a parent submit a written request by October 15 of the school year. 14 *Del. Admin. C.* 101.4.4.1. There is no evidence that either Parent1 or Parent2 submitted a written request by October 15, 2021 stating that they believe Student1 would not produce valid results on the SRA and were therefore seeking the PAA. **Therefore, because Parent1 did not follow the regulation**

requirements for requesting PAA, there is no procedural violation by School1 and therefore no denial of FAPE.

D. Least Restrictive Environment Placement

To the extent that Parent1 believed that School1 intended to change Student’s placement from a “C” setting to a “B” setting and disputed the change in setting, the point is moot because School1 did not change the Student’s setting.

**This allegation of staff harassment is a District 1 personnel matter and beyond the purview of this investigation. Specifics of this allegation are only referenced as it relates to provision of FAPE for Student.

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the Department directs District1 to take the following corrective actions:

Student Level Correction Actions

1. Based on the time period from November 17, 2021 through February 17, 2022, exclusive of December 17 through December 23, 2021 and January 3 through January 7, 2022 (when all District students had access to virtual learning due to surge in Covid-19), as well as District1 days off and holidays, the Investigator has calculated those 41 days of compensatory education services are owed to Student. District1 shall provide these services to Student by **December 15, 2022.**

District1 can meet this obligation in a number of ways such as reimbursing Parent1 for outside services/tutoring, paying fee to another LEA to provide additional services to Student, etc.

District1 must communicate with Parent1 (and other LEA if decided upon) and develop a plan to provide all compensatory days to Student by ~~October 15, 2022~~ **December 15, 2022.** District1 shall provide this plan and timeline to the Director of Exceptional Children Resources by **May 31, 2022.**

District Level Corrective Action

1. **On or before May 31, 2022** District1 shall review the regulations related to notice of meeting and prior written notice. District1 shall provide professional development to all special education staff and administrators who work for District1. The related documentation (sign in sheet, agenda, copy of handouts and/or PowerPoint, etc.) shall be provided to the Department’s Director of Exceptional Children Resource Workgroup **on or May 31, 2022.**

By: /s/ Assigned Investigator