

On February 4, 2005, Ms. XXXXXXXXXXXXXXXX ("Parent") filed a complaint on behalf of her daughter ("Student") against the Cape Henlopen School District ("District"). The complaint alleges that the District has violated state and federal laws relating to children with disabilities. Specifically, Parent states that she is in disagreement with a change in the IEP in which Student's Behavior Intervention Plan was removed and Student was to adhere to the standard code of conduct.

Investigation of the complaint has been conducted as required by the Individuals with Disabilities Education Act (IDEA) Regulations at 34 C.F.R. § 300.660 to 300.662 and according to the Department of Education's regulations and procedures, including Sections 15.12 to 15.14 of the Administrative Manual for Special Education Services ("AMSES"). Specifically, the investigation included interviews with Ms. XXXXXXXXXXXXXXXX Parent and Ms. Liz Joynes, Special Education Supervisor, Ms. XXXXXXXXXXXXX, Principal [of] XXXXXXXX Elementary, Ms. XXXXXXXXXXXXXXXX, General Education Teacher, Ms. XXXXXXXXXXXXXXXX, Special Education Teacher, Ms. XXXXXXXXXXXXXXXX, Special Education Teacher, Cape Henlopen School District. Documents reviewed included IEP, IEP minutes, evaluations submitted by Parent, evaluations in Student's cumulative folder, and observation and data submitted by school psychologist.

Findings of Fact

1. Student is a fifth grade student receiving special education services as learning disabled in her local elementary school.
2. Parent states in her letter of complaint that she is in disagreement with an IEP decision to remove Student's Behavior Intervention Plan and place Student under the regular code of conduct.
3. An IEP meeting was held June 2, 2004, in which the IEP team agreed Student had behaviors that interfered with task completion and noted under concerns and needs "task completion rate" and "positive behavioral support."
4. The June 2, 2004 IEP indicates team agreed that Student would not adhere to the Student Code of Conduct and that a Behavior Intervention Plan was being developed.
5. A Behavior Intervention Plan dated September 9, 2004 was developed and attached to the IEP.
6. The IEP team never met and agreed to this Behavior Intervention Plan.
7. IEP meeting minutes of October 28, 2004 indicate that the meeting was held to continue the review of evaluation, "clarify issues with the behavior plan, discuss changing classes, and plans for the [functional behavioral assessment (FBA)]."
8. Meeting minutes indicate Parent felt an FBA was not needed and that Parent would be taking Student for a psychological in an out-of-state hospital where Parent felt staff was familiar with Student.
9. Teacher indicated that she felt an FBA was needed because "[Student] has grown and she feels behavior plan does not take into account growth Student has made.

10. Meetings indicate District supervisor of special education "discussed need for FBA in planning for the future. She asked [Parent] to think about it, and it will be discussed at the next IEP meeting."
11. IEP meeting minutes of November 3, 2004 indicate that school team continued to request an FBA and discussed the need for appropriate consequences for Student.
12. Minutes indicate that School staff felt that current Behavior Plan restricts the growth Student could make.
13. Minutes indicate that Parent does not agree to Student following code of conduct.
14. Minutes indicate further discussion with the school staff reveal their belief that the school code of conduct was appropriate.
15. Minutes indicate that Parent was willing to modify the Behavior Plan but was not in agreement with adhering to the school code of conduct.
16. Minutes indicate team agreed to meet again on November 29, 2004, to look at how the school code of conduct and current behavior plan can be integrated.
17. Minutes indicate that School staff asked Parent which parts of the code of conduct Student could comply with.
18. In interviews, Staff reiterated that Parent had been requested to review the code of conduct so there could be a discussion regarding which parts she felt Student could not comply with.
19. Interviews with the teaching staff and school administrator indicate agreement that Student can perform similarly to requests or demands as other students her age.
20. School staff state that they believe Student will at times avoid work by behaving in a way in which she believes teachers will use the "1,2,3, Magic" method with eventual removal to time out.
21. School staff expressed concern about time away from instruction when Student engages in behaviors which Student believes may remove her to time out.
22. Teachers stated in interviews that when comparing data taken of students in the classroom, this Student's behaviors are typical.
23. Teachers express further concern regarding a lack of consequences when Student does not complete work.
24. A re-evaluation dated January 5, 2005, and directed to Department of Education staff from a licensed clinical social worker who has seen Student intermittently from 1999 through 2002, was submitted by Parent.
25. This report generally states that Student has made significant progress and that her prognosis is excellent.
26. The report states that, if "[Student] experiences the classroom setting as a place of trauma, fear and failure, her prognosis could be lower in measurable terms."
27. School staff who were interviewed stated that this re-evaluation has not been shared other than Parent reading excerpts.
28. An audiological report dated November 9, 2004, was submitted by Parent. School staff state that this report has not been shared.

Conclusion

Parent and school staff disagrees regarding whether or not Student should adhere to the school code of conduct and whether the Behavior Plan dated September 9, 2004,

should be included as part of the IEP. School staff are concerned that Student is learning to avoid some instructional time or time on task by trying at times to get to a "3" in the 1, 2, 3 magic system that is used to cue student to stay on task. Teachers said in interviews that they will maintain Student on a "2" as long as possible so that she will not miss instructional time.

Although consent has been requested for a functional behavioral assessment which would be a useful tool for the IEP team and Parent to identify whether Student is learning to avoid instructional time or non-preferred work by engaging in behaviors which may remove her to time out, Parent has not agreed.

Although asked, by staff, Parent has not specified which parts of the code of conduct she feels Student cannot comply with because of her disability.

The current IEP identifies many positive behavioral strategies to address Student's needs such as "classroom environment that provides frequent reinforcement, prompt feedback and error correction," "frequent reinforcement and redirection", or "individual and group reward system."

Although the Behavioral Intervention Plan has been a part of past IEPs, there is no regulation that requires that it must continue to be a part of the IEP. Indeed, it is reasonable that the IEP team would work to reduce the amount of external support needed as Student matures and becomes more independent and capable of monitoring her own behavior.

I find that the identified needs of Student are being addressed through the current IEP and there is an appropriate emphasis on positive behavioral supports, a suggestion in the evaluation shared with the Department of Education, but not with the school team. Given that Parent will not give consent for a functional behavioral assessment in the classroom or identify which parts of the code of conduct she has concerns about, I find that the school IEP team has developed an IEP that is addressing Student's needs.

District is complying with state and federal regulation.