

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION
BRANCH**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 05-11
*September 8, 2005***

On June 20, 2005, Parent filed a complaint with the Delaware Department of Education on behalf of her son (“Student”).¹ The complaint alleges that the Marion T. Academy violated state and federal laws relating to children with disabilities. Parent is concerned that Marion T. did not fully implement Student’s IEP and did not timely convene an IEP meeting requested by Parent to address behavioral concerns. The investigation has revealed additional issues with the school’s method of reporting progress toward IEP goals and for reviewing the existing IEPs of its new students.

The complaint has been investigated as required by federal 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 Parent; with Student’s Special Education Teacher¹; and with the administrative head of the Marion T. Academy, Mr. John Taylor. Documents reviewed included IEPs, report cards, discipline referrals and correspondence between Parents and Marion T. representatives.

FINDINGS OF FACT

1. Student was first identified as eligible for special education services in June 2002. Student has special education needs in the areas of written expression, including written expression in math, and behavior.
2. Student enrolled in 5th grade at the Marion T. Academy (Marion T.” or “the Academy”) in August 2004. He attended the Academy for most of the 2004-2005 school year.

¹ The Final Report identifies some people and places generically, 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 Final Report is released as a public record.

3. The Marion T. Academy is a charter school operating under a charter issued by the Delaware Department of Education with the approval of the State Board of Education. It is a local educational agency (“LEA”) for purposes of the *Individuals with Disabilities Education Act* and implementing state law.

The Christina IEP

4. Before enrolling at Marion T. Academy, Student attended school in the Christina School District.
5. Student’s Christina IEP team held a meeting to review, revise and develop Student’s IEP for 5th grade in February 2004.
6. Parent participated in the February meeting and agreed to the program developed for Student for 5th grade. Parent reported she was generally satisfied with the IEP developed by the Christina team (“the Christina IEP”), but did anticipate that the Christina IEP might need revisions to address behavior once Student transitioned to 5th grade.
7. The Christina IEP included goals for written expression (including written explanations of math processes and solutions), for task completion and for classroom self-management (reducing random classroom comments, improving Student’s ability to constructively handle frustration and increasing the times Student asked for help during independent activities).
8. Under the Christina IEP, Student was to receive a total of 12.5 hours of special education instruction each week in the areas of math, written expression and behavior. Student was to be served in the regular classroom setting most of the day, that is, he would be served outside his regular classroom less than 21% of the day.
9. Among other supports and accommodations, the Christina IEP included small group instruction, one-to-one supervision to help Student stay on task and set time limits for class assignments, a self-manager system (a red and green card that Student could use to communicate the need for an “in-seat” time out) and scribing when Student was fatigued or overwhelmed. An Alpha Smart was also to be tried during 5th grade and Student was to have access to a designated time out area when he was frustrated within the classroom.

Implementation of the Christina IEP (Academics)

10. Student enrolled at Marion T. Academy just as the 2004-2005 school year began.
11. Marion T. did not hold an IEP meeting to review, revise or adopt Student’s Christina IEP. Mr. Taylor confirmed that the Academy’s practice has been to have its special education coordinator and assigned teachers review the existing IEP of transferring students and consult with each other to determine whether the existing IEP could be implemented as written. The IEPs of most transferring special education students were adopted in this informal way.
12. Special Education Teacher reported she reviewed Student’s Christina IEP during the third week of school. Special Education Teacher concluded that Marion T. could implement the Christina IEP as written.

13. During 5th grade at Marion T., Student received special education services in the areas of language arts, writing and math in a classroom of seven other students, all of who received special education services. Special Education Teacher reported that Student was working near grade level in language arts and math and made good progress in these areas. Student earned As and B+s on his report card in these areas.
14. Written expression remained challenging for Student. Special Education Teacher reported that his progress in writing during the year was limited and that writing observably frustrated Student.
15. An Alpha Smart trial was conducted from mid-October to late November. Special Education Teacher reported that the Alpha Smart was discontinued because Student used it more for play than for academics. After the Alpha Smart was discontinued, Special Education Teacher scribed for Student as necessary.
16. Student received science and social studies instruction in a regular education classroom of some 20 to 22 students. Student's grades in science and social studies declined over 5th grade. He failed science concepts in the second trimester and received a D in social studies, for example.

Implementation of the Christina IEP (Behavior)

17. Special Education Teacher reported Student exhibited few, if any, disruptive behaviors while in her class and was generally able to complete work with minimal prompting or one-on-one supervision.
18. Special Education Teacher did not routinely give Student time limits for his work because she found that doing so increased his frustration. Teacher did use a timer to help the class identify time intervals and other transitions.
19. Special Education Teacher reported that her classroom had a designated time out area (a desk in one corner); but that Student's frustration level never reached the point that he used it.
20. Parent reports that Student was not given time limits on his regular education work and there was no designated time out area in the regular education classroom for Student to use.
21. Special Education Teacher confirmed that Student was not provided the self-manager system while at Marion T.
22. Special Education Teacher reported she specifically concentrated on improving Student's ability to ask for help from her or, when appropriate, classmates. Student became more sociable and energetic in the early spring; Teacher and Parent both attribute this to a change in Student's medication. Special Education Teacher reported that Student's ability to ask for help also improved in this time frame.
23. Student's report card reflects he earned many unsatisfactory or barely satisfactory marks in personal and social growth during 5th grade, including the areas of finishing required tasks, following directions, working independently and working cooperatively.

Progress Reports

24. Marion T. reports progress of all of its students on a trimester basis, three times per regular school year.
25. Student received regular report cards. Parent received no written reports about Student's progress toward his IEP goals.
26. Special Education Teacher reports that she updated Student's IEP with progress reports and generally discussed Student's progress with Parent at parent-teacher conferences.
27. Marion T. staff confirmed that the school's practice has been to provide only regular report cards for special education students. Progress reports on IEP goals, when they were prepared, have been retained in the students' files and have not been routinely provided to families.

Response to Behavior Needs

28. Student was suspended from school for one day in early December 2004 for physically retaliating against a classmate in health class. Parent wrote to the school about the incident on December 2, 2004 and requested that Student's IEP be revised to avoid further problems. No IEP meeting was convened in response to this request.
29. On approximately December 14, 2004, Parent wrote a note in Student's daily communication log asking that an IEP meeting be held after the winter break. Special Education Teacher responded in the log that Student's annual IEP date was in February and that a meeting could be scheduled in January. Special Education Teacher does not recall Parent's request, but confirms that she attempted to schedule the annual review of Student's IEP for January or early February.
30. On approximately January 5, 2005, Regular Education Teacher reported to Parent that Student pushed a classmate and noted that she and Parent needed to talk. No meeting was scheduled.
31. Parent sent a note via the communication log on approximately January 21, 2005 requesting a "set" date for an IEP meeting.
32. Two IEP meetings were scheduled in February 2005. One was cancelled because Special Education Teacher was directed by her supervisors to attend a professional meeting away from the school. One was cancelled because of inclement weather.
33. Parent reports that on February 9, 2005, Student became frustrated in his regular education classroom. He banged on a desk with his hands and slammed computer parts around. Regular Education Teacher approached Student, pushing over a desk as she did so. In a subsequent meeting with Parent, Regular Education Teacher explained she had mirrored Student's behavior to help him understand its inappropriateness. During the meeting, Regular Education Teacher also reported that Student was often off task and that prompting him to complete his work was not effective.

34. Parent had a routine parent-teacher conference with Regular Education Teacher and Special Education Teacher on March 4, 2005. They discussed Student's declining academic performance.
35. Student's first IEP meeting at Marion T. Academy was held on April 8, 2005, some five weeks after his Christina IEP expired. Among other changes, goals related to frustration tolerance and calling out in class were removed; accommodations for abbreviated assignments and tests were added; and student's placement became more restrictive. Parent reported that she learned for the first time at this meeting that Student's present performance on some of the goals from his Christina IEP were lower than when the Christina IEP was written.
36. On May 27, 2005, while in art class, Student slammed a pencil on his desk and made a loud, racially offensive statement. He explained to Parent that he was angry because a classmate had pulled his pencil from his hand several times.
37. After the May 27th incident, Parent decided that Student should not return to Marion T. At Parent's request, the school provided home assignments for Student and excused his attendance for the last several days of the regular year.
38. Parent did not re-enroll Student at the Marion T. Academy for the 2005-2006 school year.

CONCLUSIONS

Parent raised two concerns, namely, that Marion T. Academy failed to fully implement Student's IEP and then failed to convene an IEP meeting to address behavioral issues. Investigation has revealed additional concerns about the Academy's practices regarding the review and adoption of IEPs for transferring special education students and IEP progress reporting.

1. Adoption of Existing IEP.

State regulations provide specific protections for children with disabilities who transfer from one educational agency to another. Such children "must be temporarily placed in an educational setting which appears to be most suited to the child's needs based on a decision mutually agreed upon by the parents and representative of the receiving school district or other public agency." (Delaware Department of Education's *Administrative Manual for Special Education Services*, Section 5.2.1 ("AMSES"))²

² References are to regulations in effect during the 2004-2005 school year. The *Individuals with Disabilities Education Act of 2004* largely became effective on July 1, 2005. New federal regulations have recently been proposed to implement the requirements of the *Improvement Act*. In any event, the results of this investigation would be the same under prior law, existing regulations or the *Improvement Act*.

The IEP developed by the sending school district may be used for the temporary provision of special education services. Parents' agreement to the temporary use of the existing IEP must be documented by parents' signature, and by the signature of the receiving principal, on a temporary placement form or on the cover page of the IEP. (AMSES Section 5.2.3).

State regulations also require that "[a] review of the IEP shall be instituted and completed within thirty (30) calendar days from the date of initial attendance of the child in the receiving agency.... The receiving school is responsible for ensuring that all requirements concerning evaluation, IEP development, placement, and procedural safeguards shall be applied in determining the provision of special education and related services for transferring children." (See AMSES Section 5.2.4).

These State requirements are important to assure that transferring students continue to be appropriately educated within the structure and resources of their new school and that parents are able to coherently provide information to, and receive suggestions from, staff in the new setting. Few of these rules were followed when Student transferred to Marion T. Academy. While Parent was generally satisfied with the Christina IEP and with Marion T.'s decision to implement it, neither her agreement nor the building principal's was appropriately documented.

Much more importantly, the Academy failed to review the Christina IEP as required by State Regulation 5.2.4. Instead, and consistent with school practices, staff informally reviewed the IEP and then determined that it could be implemented at Marion T. without a properly constituted IEP meeting. These practices denied Parent the ability to participate in Student's education. They also effectively denied school staff important information about Student's needs and the meaning of certain parts of the Christina IEP.

I conclude that the Academy violated AMSES Section 5.2.3 and 5.2.4 by informally adopting Christina's IEP for use during the 2004-2005 without a detailed review in an IEP meeting held within 30 days of Student's enrollment.

2. Implementation of Student's IEP.

The effects of the Academy's "informal" adoption of the Christina IEP became evident as staff began to actually implement it. The IEP called for special education services in math and writing and to address behavior issues; Marion T. provided special education services in all language arts and provided them in a more restrictive setting than contemplated in the Christina IEP.

Important supports and accommodations identified in the Christina IEP were not delivered at all (the self manager and time limits for classroom assignments, for example) or were delivered inconsistently (a designated time out area was not available in all classrooms, for example, and one-on-one supervision was not always available in all settings). Teachers adopted their own methods for addressing Student's behavior needs,

some of which were inconsistent with approaches implicit in the IEP (mirroring Student's behavior, for example, instead of encouraging him to ask for help when frustrated).

State and federal regulations require agencies to provide special education and related services "in accordance with the child's IEP." (See AMSES Section 1.1 and 34 CFR §300.350(a)(1)). Some of the supports, accommodations and special education services provided by the Academy's staff might have been more effective for Student than what was in his Christina IEP. Some were clearly less effective. By failing to consistently implement the IEP as written, however, Marion T. denied Student an appropriate education for at least some portion of his enrollment there.

I conclude that the Academy violated AMSES Section 1.1 and federal regulation 34 CFR §300.350(a)(1) by failing to consistently implement parts of the IEP adopted for him when he enrolled.

3. Revision of IEP.

LEAs are responsible for initiating and conducting meetings to review and revise IEPs as appropriate to address lack of expected progress toward annual goals; information provided by the child's parents; and the child's needs, among other things. (See AMSES Section 1.1 and 34 CFR §300.343(a) and (c)(2)). IEP meetings are the way in which services and the student's needs remain aligned.

Parent first requested an IEP meeting on December 2, 2004, after Student was suspended. She repeated her request at least twice more. School staff initially seemed to believe that a meeting could not be scheduled until near the annual review of Student's IEP. Meetings were attempted in February, but cancelled. An IEP meeting was finally held on April 2005, four months after Parent's first request and a few weeks after Student's IEP had expired.

In the interim, Student had a number of minor, but concerning, behavior incidents. His academic performance had declined significantly in several areas and Regular Education Teacher expressed a need to discuss Student's behavior with Parent. By the time a meeting was actually held, Student's level of performance on several of his existing annual goals had dropped below where it was when the goals were written the previous year.

The Academy's failure to convene an IEP meeting to review and possibly revise Student's IEP for four months and under these circumstances violated AMSES Section 1.1 and federal IDEA regulations at 34 CFR §300.343(a) and (c).

4. Reporting progress on IEP goals.

State and federal regulations require that an IEP describe how parents will be informed of their child's progress toward his annual goals and whether that progress is sufficient to permit the child to reach his goals by the end of the year. Such reports must

be provided “at least as often as parents are informed of their nondisabled children’s progress.” (See state regulations at AMSES Section 1.1 and federal regulations at 34 CFR §300.347(a)(7)).

The Christina IEP used by Marion T. Academy included a schedule for evaluating Student’s progress. Special Education Teacher reported she updated this schedule each trimester, when report cards were issued for all Marion T. students. The progress reports, however, were not delivered to parents. The Academy’s practice or policy of not issuing progress reports on IEP goals deprives parents of information they need to fully participate in their child’s educational planning and to assure that any lack of expected progress is promptly addressed.

I conclude that the Academy violated AMSES Section 1.1 and federal IDEA regulations at 34 CFR §300.347(a)(7) by failing to report progress toward IEP goals to parents at least each trimester.

CORRECTIVE ACTION PLAN

To its credit, the Marion T. Academy has recognized and acknowledged that many of its existing practices, including lack of IEP progress reporting and the informal adoption of existing IEPs for new students, are deficient and is already taking steps to correct and improve its procedures. It has also recently added more staff, including a building principal, with experience in the education of children with disabilities and the requirements of state and federal law.

Still, Marion T. Academy violated several state and federal requirements in serving children with disabilities. Having found such violations, and a failure to provide appropriate services to this Student, the State Department of Education must address how to remedy the denial of services and assure the appropriate future provision of services to all children with disabilities. (See federal regulations at 34 CFR §300.660(b)).

Accordingly, Marion T. Academy shall:

1. Within 15 calendar days of the receipt of these findings, meet with Parent to determine what additional educational services the school will provide to compensate Student for failing to fully implement his IEP during the 2004-2005 school year, and to develop a plan to deliver those services during the 2005-2006 school year.
 - a. Because Student is no longer enrolled at the Academy, this meeting does not have to be noticed or conducted as an IEP meeting. The Academy must nonetheless secure the attendance of at least one staff member familiar with Student’s needs.

- b. Parent and the Academy are urged to be flexible and creative in the delivery of such services to Student and to consider where and how such services may be most effectively delivered to remedy Student's partial loss of educational opportunity.
 - c. The Academy shall send written documentation of the compensatory education plan developed for Student to the Director of the Exceptional Children and Early Childhood Education Group of the Delaware Department of Education within 10 calendar days of the meeting with Parent.
2. Within 45 calendar days of the receipt of these findings, develop written policies and procedures for:
- a. Temporarily adopting the IEPs of transferring students and for completing a timely review of the temporary IEP as provided in AMSES Section 5.2.4.
 - b. Assuring that IEPs are fully implemented for each student.
 - c. Assuring that IEP meetings are conducted when parents or staff members determine that revisions to the IEP should be considered.
 - d. Informing parents of their child's progress toward IEP goals at least as often as report cards are issued to all students (currently, each trimester).
3. The written procedures required in paragraph 2 shall:
- a. Identify responsible staff members for each policy.
 - b. Include a designated supervisory structure and timeline for the implementation and enforcement of the policies.
 - c. Include a schedule for initial and regular staff training on the policies and on applicable state and federal requirements.
 - d. Be sent to the Director of the Exceptional Children and Early Childhood Education Group of the Delaware Department of Education within 60 calendar days of the receipt of these findings.

By: _____

Louann Vari
Education Associate, ECECE Branch
Assigned Investigator

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