

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 06-05
(February 6, 2006)**

On November 9, 2005, the Disabilities Law Program¹ filed a complaint with the Delaware Department of Education (“DDOE”) on behalf of its client, a student in the Red Clay Consolidated School District (“Student”) and other similarly situated students.² The complaint alleges that the District has violated state and federal laws relating to children with disabilities. The complaint asserts that the District has failed to provide Student, and other children with disabilities similar to Student, the speech and language required by their individualized education programs (“IEPs”) during part of this school year (2005-2006).

The complaint has been investigated as required by existing 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 Student’s mother and father (together, “Parents”); with Student’s DLP attorney; and the principal of the program Student attends (“Principal”). It also included a review of Student’s IEP, of other educational records of Student and other children with disabilities in the District, of correspondence between Parent and District staff and of other administrative documents provided by the District. Our investigation substantiates most of Student’s concerns and a corrective action plan is entered as part of this Report.

FINDINGS OF FACT

¹ The Disabilities Law Program (“DLP”) is a unit of the Community Legal Aid Society, Inc. and is part of Delaware’s protection and advocacy system. Student’s parents confirmed that DLP is authorized to represent their child’s interests in this matter and that information about their child may be released to DLP. In addition, “any organization or individual” may file an administrative complaint with the Delaware Department of Education and the Department may investigate such complaints. (34 CFR §§300.660 and 300.662). Here, DLP represents Student directly and also brings the complaint on behalf of other students facing Student’s situation.

² 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 is to be removed before the Final Report is released as a public record.

1. Student attends elementary school within the District (“Elementary School”) and is eligible for special education and related services. Student’s education is administered and supervised by an approved special program for children with disabilities within the District (“the Program”).
2. Student’s IEP team developed his current IEP in February 2005. Among other services, the current IEP provides that Student receive thirty minutes of individual speech and language³ services twice per week; fifteen additional minutes of consultative speech services once per month; thirty minutes of occupational therapy (“OT”) services twice per week; and fifteen additional minutes of consultative OT services once per month.
3. The first day of school for students in the District this school year was August 29, 2005.

Speech and Language Therapy Services

4. The District acknowledges that the Program has not had sufficient personnel this school year to provide Student and others all of the speech services required by their IEPs.
5. The District and the Program did not immediately inform families about staffing shortages. Rather, Parents first learned that Student was not receiving speech services during open house at Elementary School during the third week of the school year, when they specifically asked.
6. Principal explained that the shortage of speech therapists the Program experienced was the result of unexpected increases in the number of students in the Program, the amount of speech services needed by those new students, and the difficulty of recruiting new speech therapists to meet the increased need.
7. Approximately sixteen students with varying degrees of speech service needs entered the Program between early spring 2005 (when staffing estimates were made) and the end of September 2005. Most of these new students were in grades PK to 5.
8. Principal also confirmed that in the spring of 2005, the Program determined that it would need fewer contractual speech service “vendors” for the 2005-2006 school year. Accordingly, the District did not renew the contract of one speech therapist that had been providing services to students in the Program for several years.
9. The decision to reduce the number of speech therapists was partly influenced by the District’s decision to move 3rd, 4th and 5th grade students in the Program from another elementary school in the District to the one they now attend. Principal anticipated that the Program would need fewer speech therapists for 2005-2006 because of efficiencies associated with the change in schools and based on his projected enrollment for the upcoming year.
10. Principal originally planned to divide speech service duties for its elementary students between two therapists, assigning students in PK and grade 5 to one

³ For simplicity, the Report will use the term “speech services” to refer to all speech and language services and therapy unless further distinction is important.

therapist and students in grades K-4 to another therapist. Principal estimated that this would produce caseloads of between 19 to 23 students per therapist, a ratio Principal believed was consistent with that maintained in other special programs.

11. By the first week of school, Principal recognized that the Program would need at least twenty additional speech therapist hours per week to meet the needs of all of its students.
12. Principal contacted a number of speech service providers and vendors within Delaware and regionally, beginning in early September and into October 2005. One vendor tentatively agreed to begin providing services by October 11, but later withdrew. None of the other providers Principal contacted was able to provide the services the Program needed.
13. Principal also attempted to acquire speech services from therapists in other schools in the District. None were available.
14. In mid-October, Principal began negotiations with the therapist whose contract the District had not renewed for the 2005-2006 school year. These negotiations ultimately resulted in the District extending a multiyear contract to this therapist, to begin January 2006 (the earliest therapist could conclude the other professional commitments accepted since the District released her prior contract).
15. The Program's speech staffing shortages affected students in 3rd, 4th and 5th grades. Students in the 5th grade classroom did not begin receiving speech services until September 19, 2005. The Program has already provided hour-for-hour compensatory speech services for these students for the services they missed at the beginning of the school year.
16. Because of their small numbers, 3rd and 4th grade students in the Program are grouped into one classroom (usually referred to as the 3rd grade classroom). The eight students in the 3rd grade classroom did not begin receiving speech services until September 19. They received services from then until approximately the third week of November. Services to the 3rd grade were then discontinued pending the start of the "new" contractual therapist in January 2005.
17. The Program has begun to identify the speech services missed by students in the 3rd grade classroom because of staffing shortages. On approximately November 18, 2005, Principal wrote to the families of the affected students, advising them that missed speech services would be made up once the new speech therapist began in January. The Program plans to limit the new therapist's caseload so that she has time to provide compensatory services to students owed them.
18. Student primarily communicates via an augmentative communication device. Many of the objectives in his IEP related to the use of this device. Traditionally, a speech therapist has been responsible for overseeing the use of the device, including working with Student and training other staff members. Parents are thus particularly concerned about the loss of speech services Student has experienced and the impact on Student and other parts of his

education from not being able to fully access Student's main communication modality.

19. Parents arranged private speech services for Student beginning in December 2005. Parents have incurred out of pocket expenses for these services and Student has missed some (minimal) classroom time to travel to the private sessions. The District has declined to reimburse Parents for their expenses.

Occupational Therapy Services

20. As noted, Student's IEP also includes OT services. During the investigation, Parents clarified that they were also concerned that Student had missed some OT services at the beginning of the year.
21. The Program agrees that Student missed approximately three occupational therapy sessions at the start of the school year. One was the result of the therapist attending a professional development activity. The others were the result of the occupational therapist (who was new to Student for the 2005-2006 school year) not having an updated IEP related service page which reflected that Student's hours of OT had increased from prior years. This problem was discovered and corrected promptly and Parents agree that the services have since been made up.

CONCLUSION and CORRECTIVE ACTION PLAN

State and federal regulations governing the education of children with disabilities require that public agencies receiving assistance under the IDEA offer a free, appropriate public education to children with disabilities, including providing special education and related services "in conformity with an individualized education program...." (*AMSES* Section 1.0; 34 CFR §§ 300.17, 300.300 and 300.350(a)(1)).⁴

Here, the District acknowledges that it has delivered only some of the speech services required by Student's IEP this school year. It also acknowledges that other students in the Program, namely, those in the 3rd and 5th grade classrooms, did not receive all of the services to which they were entitled in a timely way. I am satisfied that the District's recruitment efforts were extensive and timely in the sense that the Program moved quickly after the beginning of this school year to locate and acquire the services of an additional therapist. Nor did the investigation reveal that the District had trouble recruiting an additional therapist because it was reluctant to pay "market rate." Instead, the various vendors and therapists that Principal contacted in September and October

⁴ Most of the provisions of the *Individuals with Disabilities Education Improvement Act of 2004* became effective on July 1, 2005 and new federal implementing regulations have been proposed. Those statutory and proposed regulatory changes do not significantly change the provisions pertinent to this investigation. Accordingly, for ease of reference, citations in this Report continue to be to state and federal regulations promulgated as part of the 1997 reauthorization of the IDEA.

consistently replied that they were otherwise obligated or simply not able to provide services.

On the other hand, the District and the Program's staffing shortage was largely self-created. The Program's planning for the 2005-2006 was optimistic at best. The Program has for several years required the services of one more speech therapist than it chose to provide for the 2005-2006 school year. The District and Program were aware of the nationwide shortage of speech therapists available to serve schools: the Program mentioned this as one of the reasons their students went without services. While historical levels of staffing are not always good indicators of current need, past experience should be a significant consideration before releasing staff, particularly staff with expertise that the District knows may be hard to replace.

Also, while the Program did gain students between March and the end of September 2005, staff projections typically include some capacity for growth. Also, the increase in the Program's population was gradual over six months and *in total* represented just 16 students—about half the caseload the Program planned for its other elementary therapist. This calculation suggests that the District's margin of error in planning for population increases was unrealistically narrow. The Program's belief that moving the 3rd, 4th and 5th grade students to Elementary School would create enough additional efficiency to release speech staff also proved unrealistically optimistic.

The District compounded the staffing problem by waiting for almost one-quarter of the school year to pass before alerting the families of affected students about the loss of services. Promptly advising the parents of affected students would have permitted them to make other arrangements for services or to exercise the procedural safeguards available to them. It also may have helped foster the trust and cooperation between the school and families that is so important to successful outcomes for children.

The Program's decision to eliminate all services to a particular classroom of students is also questionable, particularly in light of its failure to notify families of the decision. While the District's approach minimized the number of children disrupted by the staffing shortage, it concentrated the loss for the students in the 3rd grade classroom and did so without attempting to prioritize their needs against the other students in the Program.

Finally, while Student did miss some OT services near the beginning of the school year, these appear to have been caused either by professional development activities or by the District's failure to provide a corrected IEP service page to the occupational therapist. The District is reminded of its obligation to assure that each person responsible for delivering services under the IEP is aware of their obligation. The mistake here was promptly identified and corrected. There is no indication that was the result of a systemic problem in the Program's procedures or practices. The District also promptly provided Student compensatory OT for services he did miss. Accordingly, no violation is found with respect to missed OT services.

In summary, Student and the other children in the Program's 3rd grade classroom have been denied many of the speech services required by their IEPs and to that extent, denied the free, appropriate public education to which they are entitled. Accordingly, through its general supervisory responsibility and its authority at 34 CFR §300.660(b), the Department of Education must address: (1) how to remediate the denial of those services; and (2) the appropriate future provisions of services.

The Department directs the District take the following corrective actions:

- 1. Within ten (10) school days of the date of this report, the District shall:**
 - a. Determine the number of hours (or partial hours) of speech and language services required by Student's IEP, but not delivered, during the period August 29, 2005 to January 31, 2006); and**
 - b. Notify Parents of its specific plan for delivering those missed services to Student, such that all missed services are provided by May 31, 2006. If the District's plan includes the delivery of services outside the regular school day, it shall also include an offer of transportation.; and**
 - c. Send the Department* a written summary of its calculations and compensatory service plan, specifically including a copy of the communication provided to Parents.**

- 2. Within thirty (30) calendar days of the date of this Report, the District shall:**
 - a. Identify all other students in the Program in the 3rd and 5th grade classrooms who did not receive the speech and language services required by their IEPs, during the period August 29, 2005 to January 31, 2006;**
 - b. Determine the number of hours (or partial hours) of speech and language services that each such student did not receive, based on the frequency and duration of services in each student's IEP and offsetting for any services actually provided;**
 - c. Notify the parents of each such student of:**
 - i. (i) the entry of this Report and of their ability to contact the Disabilities Law Program for further information and assistance in understanding their and their child's rights; and**
 - ii. the District's calculation of compensatory hours due and its specific plan for delivering those missed services to the students, such that all missed services are provided by May 31, 2006. If the District's plan includes the delivery of services outside the regular school day, it shall also include an offer of transportation.; and**
 - d. Send the Department* a written summary of its efforts and calculations, specifically including the number of affected students and the total hours of undelivered services, and a copy of the communication provided to the affected families.**

- 2. Not later than June 30, 2006, send the Department* a final report:**
- a. Confirming the completion of its compensatory education plan and the delivery of all compensatory services accepted by affected students;**
 - b. Briefly summarizing the number of hours of compensatory services delivered to students and the manner in which those services were actually delivered; and**
 - c. Describing the status of its retention and recruitment planning for speech-language providers for the 2006-2007 school year.**

** Reports to the Department of Education should be sent to the Director of the Exceptional Children and Early Childhood Education Group.*

By: _____
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Assigned Investigator

