

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 06-08
(February 15, 2006)**

On November 25, 2005, Parents filed a complaint with the Delaware Department of Education on behalf of their son (“Student”). The complaint alleges that Student’s rights under state and federal laws relating to children with disabilities have been violated by the Appoquinimink School District (“District”). More specifically, Parents state that the School did not follow their son’s Behavior Support Plan and that they had to attend numerous IEP meetings over eight months before Student was appropriately placed.

Investigation of the complaint has been conducted as required by existing federal regulations at 34 C.F.R. § 300.660 to 300.662¹ 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 Parents and the Special Education Director of Student’s school district of residence. The investigation also included reviewing Student’s Individualized Education Program (“IEP”) and IEP meeting minutes (starting May, 2004).

Findings of Fact

1. Student is 15 years old and is eligible for special education and related services.
2. Student is a resident of District. Student was receiving services in District until March 2005, when Parents removed him from school.
3. Parents’ letter of complaint states that Student’s Behavior Support Plan (“BSP”) was not properly implemented from October 2004 until they removed him from school in March 2005. It also states that a “one on one aid that was provided was not assisting our son as was stated verbally in the IEP meeting ...”
4. Parents are also concerned that they “had to sit through 13 IEP meetings” over eight months. Parents feel this was too many meetings to come to a decision regarding placement of Student.

¹ 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.

5. Minutes of a May 4, 2004 meeting indicate that problem behaviors included lack of “attention, learning problems, anxiety, depression, and at risk for aggression.” The minutes indicate that there was lengthy discussion about Student’s eligibility for special education and related services. The meeting ended with a decision that more information was needed before eligibility could be determined.
6. Student was determined eligible for special education services on May 11, 2004. Minutes of the IEP meeting that day do not mention behavior concerns.
7. At least nine additional IEP meetings were held in the 2004-2005 school year. Some were convened at District’s request and some at Parents’. Behavioral concerns were addressed at nearly every meeting.
8. For example, IEP minutes from the September 2, 2004 meeting indicate a concern about lack of attention and Student being “really distracted by all talking around him.” Decisions included having Student sit with “quiet workers and peers” and “frequent check-ins” to make sure he is keeping up.
9. In October 2004, Parents requested a meeting to discuss having Student evaluated by the Delaware Autism Program (“DAP”). Minutes state that Parents had a referral from a doctor requesting DAP evaluation. Parents also state that the DAP had requested a referral as well. The team agreed to refer Student to DAP for evaluation. The team also discussed Student’s fear of doing presentations in front of the entire class. The team accommodated this need by allowing Student to present to the teacher alone, with a plan to gradually work up to presenting to small groups and eventually the entire class again.
10. A functional behavior assessment was done, and a BSP developed, for Student during a November 5, 2004 meeting, based on Student’s increasing “fear factor” around test taking, work load and leaving class.
11. A meeting was held on November 22, 2004 to again review Student’s IEP and BSP, as well as discuss Student’s progress in classes. As a result of this meeting and Student’s continued concerns with test taking, his team decided that Student would be allowed to stay after school to complete assignments and tests.
12. Student’s team met on December 20, 2004 to discuss the results of DAP’s evaluation. DAP staff concluded that Student’s behaviors were not the result of autism. They provided suggestions for District to consider as part of Student’s services.
13. IEP minutes from an additional IEP meeting, held later in the day on December 20, 2004, indicate that this meeting was called to “discuss parent/team concerns.” Behavior concerns were addressed and further accommodations were created as part of the IEP to reduce stressful situations for Student. District members of the team ended the meeting by saying that another meeting would be needed in early January to “develop/finalize the [Student Behavior] contract.”
14. Additional meetings were held in January and March 2005. Parents requested several times that the Student’s placement be changed to homebound services; other members of the team felt this placement was not appropriate. District agreed to provide one-on-one paraprofessional support for 1 ½ to 2 months for Student to collect further data. The team discussed further accommodations to the Student Behavior Contract and other supports within classrooms. Notes indicate that “the team agrees to adopt changes made to the IEP.”

15. At a March 22, 2005 meeting, Parents were concerned that Student's "grades [were] dropping ... not being understood." District members of the team stated during the meeting that the one-on-one paraprofessional support was working well, with no disagreement from Parents. District also discussed other possible placements for Student.
16. Parents again requested homebound services at a May 6, 2005 meeting. A doctor working with Student and his family suggested that the most appropriate placement for Student was at a particular, specialized Private School ("Private School") "for high functioning autism to focus on Sensory integration/pragmatics/ social skills." The team began discussing the new IEP that needed to be created for Student and his previous progress on goals and objective. The minutes do not indicate parental concerns about lack of progress in respect to behavior. After 3 ½ hours, District staff concluded the meeting, over Parents' objection, with a commitment to reschedule.
17. The team reconvened on May 27, 2005 to complete work on the IEP. District members of the team suggested that Student's BSP be revised in the fall of 2005 once placement has been made. Minutes state that "the team agreed to adopt the IEP."
18. In August 2005, Student's placement was changed to the Private School recommended by the doctor working with Student.

Conclusion

Special education regulations require that school districts make special education and related services "available to [an eligible] child in accordance with an IEP." (34 C.F.R. § 300.433 (b)(ii)). When a student's behavior impedes his learning, the IEP team must "consider, if appropriate, strategies and supports to address that behavior." (34 C.F.R. § 300.346(a)(2)(i)). In addition, IEP teams must meet and revise the IEP to address information about the student provided by his parents and to respond to the student's anticipated needs, specifically including his ongoing behavioral needs. (34 C.F.R. §§ 300.343(c)(2) and 300.346(b)). The regulations do not limit the number of meetings the district may convene to address a student's needs and "[t]he legislature history of [the IDEA] makes it clear that there should be as many meetings a year as any one child may need." (Appendix A to Part 300, "Notice of Interpretation," Question 20.)

IEP meetings were convened to address concerns from both the Parents and the District. The only additional meeting that the Parents appear to have complained about was the May 27, 2005 meeting. Meeting minutes and Parents' own concerns demonstrate that Student's behaviors were imposing a significant impediment to his learning. The team's discussions and revision to the IEP and BSP were directed at addressing these concerns. The meetings were reasonably spaced to permit observations, evaluations and data collection about the accommodations, supports and services provided to address Student's behaviors. There is no indication that the meetings were oppressive and certainly not excessive for Student's level of need. Therefore, I find no violation to the IDEA in respect to Parents' complaint about excessive meetings.

IEP meeting minutes also show the District's attempts to appropriately address behavior concerns in his classroom before moving Student to a more restrictive placement. This is precisely what special education regulations required the District to do to ensure that Student was educated in the least restrictive environment. Regulations require that each agency ensure that "special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature of severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 34 C.F.R. § 300.550(b)(2). The District made appropriate adjustments to Student's accommodations and services in a timely manner in respect to addressing behavior concerns. The appropriate amount of time was given between each meeting to determine if programming and services were working and meeting minutes document the District's implementation of behavioral services. Therefore, I find no violations of special education laws and regulations with respect to the complaint that District was not appropriately implementing the Behavior Support Plan or that the District took "too long" to move student to a more restrictive setting.

Having found no denial of services or systemic regulatory violation, no corrective action plan is appropriate or required.

By: _____

Brian Touchette
Education Associate, ECEC Branch
Assigned Investigator

INDEX OF NAMES

Student	<i>xxxxxxxxxxxx</i>
Parents	<i>xxxxxxxxxxxxxxxxxxxxxxxx</i>
District	<i>Appoquinimink School District</i>
Private School	<i>xxxxxxxxxx</i>
Special Education Director of District	<i>MaryAnn Mieczkowski</i>