

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

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 07-10
(August 31, 2007)**

On May 31, 2007, Parent filed a complaint with the Delaware Department of Education on behalf of his son (“Student”).¹ The complaint alleges that the Brandywine School District (“District”) through the county based program for children with autism managed by the Christina School District (“Program”) violated state and federal laws relating to children with disabilities. Parent’s written complaint alleges that District and Program have not provided an appropriate education for Student and specifically cites an independent evaluation done in August 2006. Parent is requesting out of state residential placement as a remedy to the alleged violations.

Extension of 60-Day Timeline

Within sixty (60) days of receiving a written complaint, the Department must conduct an investigation and issue a written decision to the complaining party. 14 DE Admin Code §923.52.1. In this case, the complaint contains numerous, detailed allegations and refers to events involving various school staff and time periods. Given the breadth of Parent’s allegations, the Department determined exceptional circumstances warrant an extension of the sixty (60) day timeline. 14 DE Admin Code § 923.52.2.

Scope of Department’s Investigation and Findings

Administrative complaints must allege violations that occurred not more than one (1) year prior to the date the Department receives the complaint. 14 DE Admin Code § 923.53.2.4.; 34 C.F.R. § 300.153(c). In this case, the Department received Parent’s complaint on May 31, 2007. Therefore, Parent’s complaint must allege violations that occurred between May 31, 2006 and May 31, 2007. However, Parent’s complaint cites several allegations and events which arose before May 31, 2006. In a phone conversation, the Department explained to Parent that the current IDEA statute limits complaint investigations to alleged violations occurring one (1) year from the date that the complaint is received by the Department. The Department initially agreed to investigate Parent’s allegations beyond the one (1) year limitation period. After researching it further, the Department reconsidered its position, and informed Parent its investigation would be limited to the one (1) year limitation period consistent with federal and

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.

state regulations. To the extent Parent's complaint alleges violations arising before May 31, 2006, the Department has not investigated them.

The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department of Education's regulations and procedures. Specifically, the investigation included interviews with Parent, Teacher for school year 2006-2007, email correspondence with an Assistant Principal of Program, Transition Coordinator of Program, Principal of Program and District of residence administrator. The investigation also included a review of many of Student's educational records, including recent IEPs, an independent education evaluation, meeting minutes, and numerous documents received from Parent.

1. Student is an eighteen (18) year old student with autism eligible for special education services in the Brandywine School District and served in the county autism program administered by the Christina School District.
2. Parent's complaint includes numerous allegations regarding education and services, including parent training. Parents claims the Program has been inadequate in addressing Student's needs and Parent requests residential private placement as the remedy.
3. Parent states that Student was placed in a classroom with students who all had significant behavior problems.
4. Parent states Student was not taught by his "primary educator."
5. Parent states the District ignored and failed to follow the recommendations of the August 2006 Independent Education Evaluation.
6. Parent refers to behavioral issues on outings such as Special Olympics, or complains that Student missed outings because of safety concerns.
7. Parent refers to behavioral issues that occurred in the home.

IEPs covering May 2006 through May 2007

1. There are two IEPs that were implemented during the time period relevant to this complaint (i.e., May 31, 2006 through May 31, 2007).
2. The first IEP is dated June 2, 2005 and was in place through approximately June 20, 2006.
3. The cover page indicates that several meetings were held to discuss Student's educational program.
4. Parent attendance was indicated on cover pages by signature or by initials and dates.

5. The second, or current IEP, was developed on June 1, 2006 and June 20, 2006 with an initiation date of June 21, 2006.
6. Parent attended IEP meetings held June 1, 2006 and June 20, 2006.
7. Numerous needs are identified on the IEP including in the areas of behavior, communication, community, domestic, gross motor, leisure, school based and vocational.
8. Student's needs were being addressed through the Program, including the group home and parent training curriculum.
9. Student's placement is in the Program which is county wide and a separate public school for children with autism.
10. Parent signed in agreement with both IEPs, including Student's placement.

Behavior and Classroom Teacher

1. Progress reports in April 2006 indicated that Student met targets for behavioral objectives and had reduced or maintained the frequency of self injurious behavior, temper tantrums and inappropriately touching while at the same time he has increased his ability to wait.
2. Progress notes in June 2006 indicate Student met his target on all but one (1) of his behavioral objectives. It was noted while the frequency of Student's temper tantrums increased to three (3) per week, the intensity of each tantrum had decreased.
3. Progress notes in November 2006 indicate that Student was making sufficient progress in all behavioral objectives, except for self injury. It was noted that the team would meet and make any needed to changes to Student's behavior support plan.
4. The team met December 5, 2006. Program reports that a particular incident of self-injury on the bus was discussed and Teacher described changes made to Student's reinforcement schedule.
5. Progress notes in February 2007 indicate Student had not made much progress and noted that Student had a seizure half way through the marking period and was put on medication. A quick increase in inappropriate behavior was noted after medication.
6. Student's primary teacher was injured in February 2007 and was unable to return to the classroom for the remainder of the school year.
7. Substitute teachers and familiar paraprofessionals staffed the classroom.
8. Progress notes in April 2007 note that adjustments have been made to provide Student more staff stability and support for next marking period.

9. Parent reported that by his calculations, Program data sheets indicate 256 behaviors as temper tantrums or 2.11 per day in contrast to Program's report of 2.9 to 3.7 per week.
10. Parent provided daily sheets that Teacher used identifying instances of targeted behavior as part of a daily communication record.
11. Parent stated that he counted all behaviors on these sheets to make his calculations.
12. However, Teacher who created the communication data sheet for her classes stated that Parent is seeing raw data on the daily communication sheet. Teacher stated that she reports all of the behaviors in a single episode when reporting on the daily communication sheet. However, when reporting the episode in which all of the various behaviors occurred, the episode would be counted as a single temper tantrum.
13. Progress notes in June 2007 indicate Student made good progress on goals regarding self injurious behavior and temper tantrums and met the targets 1.2 and met targets on goals regarding inappropriate touching and silly behavior. It was noted that more focus was needed for waiting appropriately and turn taking.

Group Home Services

1. Student entered the Program's group home in the Fall of 2006.
2. Progress notes in November of 2006 state Student was adjusting nicely.
3. Notes in February 2007 state Student improved on four (4) behaviors with nose picking and silly behavior increasing slightly.
4. Notes in April 2007 state Student improved in all behaviors.
5. Notes in May 2007 state improvement on all but two (2) behaviors. Increases were attributed to one (1) difficult evening when Student had high rates of behavior.
6. Two (2) training sessions occurred in the group home, one on January 17 and one on January 25, 2007. A March 7, 2007 meeting scheduled to discuss residential progress and parent training and goals was cancelled due to an ice/snow storm.
7. A meeting was rescheduled for April 18 to discuss resident progress and parent training on May 23 for the IEP.
8. On April 16, Parent informed Program he was filing a complaint and would not be available for further meetings.
9. Program Principal sent Parent a letter stating that he regretted that the meeting had been cancelled and restated the wish to meet and review and plan future opportunities "to help you and your family work with [Student] at home."

Parent Training

1. Student's IEP was revised March 24, 2006 to include "1. home training: DAP staff member working with [Student] in his home 3X/week. 2. Parent training: formal training session developed by DAP staff all to occur before May 25, 2006."
2. District records show that parent trainer visited February 28, 2006 and March 6, 7, 21, and 23 to assess needs.
3. Parent records indicate home trainer began January 28, 2006. There are notations on many dates which state "cancelled or abbreviated" thus it is unclear if home training occurred on many dates.
4. Parent states that only twenty-nine (29) of forty-four (44) parent training sessions occurred.
5. Parent states that training in the group home was denied.
6. Program agrees that training in the group home was not scheduled because Student was not a resident in the group home at the time. Parent training was, however, provided in Student's home. But as mentioned, the number of training sessions provided to date is not clear.

Independent Education Evaluation

1. Parent requested and received an independent education evaluation ("IEE").
2. The IEE was reviewed by the IEP team at a meeting September 22, 2006. IEP minutes reflect that the results of the IEE were generally consistent with evaluations done by Program.
3. For example, the IEE included various assessments and found Student met the diagnostic criteria for Autistic spectrum disorder and mental retardation.
4. Student's current educational classification on his IEP is Autism.
5. IEP meeting minutes noted the IEE and the Program's evaluations were consistent concerning the diagnosis of autism and that the achievement tests and adaptive behavior test results were consistent on both evaluations.
6. Additionally, School Psychologist noted that the educational recommendations of the IEE were consistent with the services already being provided through Program.

7. Parent signed agreement with program changes made at this IEP meeting which included the addition of residential services.

Conclusions

As noted, Parent detailed numerous allegations in his complaint that exceed the one (1) year time limitation of this investigation. Otherwise, Parent's concerns generally regard Student's behaviors at home, in the community, the Program, and the group home. Parent claims the current program is inadequate to address Student's needs. Parent seeks a specific residential private placement in a school identified by Parent as the remedy to this complaint.

IEPs

Student's IEPs were appropriately developed based on Student's needs with required team members, including parents. Parent's agreement with the IEP was indicated. When Student did not make adequate progress on all goals and objectives, the team responded by making appropriate adjustments and holding numerous meetings to address concerns. In addition, Parent indicated agreement with the IEPs developed and indicated agreement with Student's placement in the separate school setting. **I find District was compliant with requirements for the development, review and revision of the IEP at 14 DE Admin Code § 925.24.0 and 34 C.F.R. § 300.324.**

Behavior, Group Home Services, Parent Training, and Primary Teacher

Student's behaviors are well documented as is the plan addressing his behaviors. Although targets were not always met, Student did show improvement in various areas. In addition, adjustments were made and more services offered, such as the public school group/training home, to continue to address Student's needs. Student is in a program that is a separate public school program because of his complex and intense needs, including behavioral needs. Parent complains that Student is in a classroom with other students who have significant behavioral needs. However, there is no violation when students with similar needs are grouped together in an educational setting.

Parent reports incidents of behavioral aggression at home and in the community and complains that Student could not always attend community outings, such as Special Olympics. It is not unreasonable that the Program may at times need to curtail participation in extra curricular events, such as Special Olympics, because of safety concerns. Although it is understandable that Parent is concerned about this behavior, the Program was addressing these concerns through parent training and offering group home residential support. Therefore, I find no violation regarding how the District was addressing Student's behavioral needs through the IEP.

Pursuant to an IEP revision of March 24, 2006, parent training was included in the IEP for three (3) times a week. As mentioned, the amount of parent training that was actually delivered is not clear. The District appears to owe some parent training that was an IEP required service. **Thus, I am finding a violation of 14 DE Admin Code § 925.20 and 34 C.F.R. § 300.320 as an IEP service was not fully provided.**

Student's primary teacher was injured in February 2007, and did not return to the classroom for the remainder of the 2006-2007 school year. Program appropriately secured substitute teachers and familiar paraprofessionals to staff the classroom in primary teacher's absence.

Independent Education Evaluation (IEE)

Parents have the right to obtain an IEE at public expense if the parent disagrees with an evaluation obtained by the school district. 14 DE Admin Code § 926.2.1; 34 C.F.R. § 502(a). If a parent requests an IEE at public expense, the school district must, without unnecessary delay, either: (1) file a due process complaint to request a hearing to show that its evaluation is appropriate; or (2) ensure that an IEE is provided at public expense. 14 DE Admin Code § 926.2.4.1; 34 C.F.R. § 502(b)(2). Parent requested and District agreed to pay for an IEE. The IEP team reviewed the results and the recommendations of the IEE. The results of the District's evaluation and the IEE were similar in many ways. For example, there were no discrepancies regarding Student's eligibility for special education between the District's evaluation and the IEE. Parent also signed agreement to the IEP developed and placement. Although the IEE recommended that District consider Student's placement at the private residential school Parent is requesting, minutes indicate that District considered the IEE's recommendations and concluded that placement in the Program was appropriate for Student. A school district is not required to adopt every recommendation dictated by an IEE, especially when the IEP team determines a particular recommendation is not in the student's best interest or otherwise not warranted. **I find no violation of 14 DE Admin Code § 926.2.0 or 34 C.F.R. § 300.502 regarding independent education evaluations.**

FAPE

Parent's allegations concerning the provision of a free appropriate public education ("FAPE") are broad, and include many examples that occur beyond the school day. Parent identifies a residential private placement as a remedy to what he believes is an inadequate school program. I find, however, the District was providing FAPE to Student. Parent had the opportunity to participate in the development of numerous revisions to Student's IEPs, including the detailed behavior support plan, and the addition of services, such as parent training and Student's residence in the group home. The IEPs were addressing Student's needs and in general, Student made educational progress. Given Student's complex needs identified both in District evaluations and the IEE, there is no violation simply because Student did not make progress on every goal each time. The District was promptly responsive to Student's needs as reflected by the number of meetings held to address Student's needs and Parent's concerns. In addition, Student's placement in Program is a less restrictive placement than the one sought by Parent. District is correct in considering the LRE provisions of the IDEA. **I find District provided special education and related services in conformity with Student's IEPs thus meeting the requirements of providing FAPE as described in 14 DE Admin Code § 922.30 and 34 C.F.R. § 300.17 .**

Corrective Action Ordered Regarding Parent Training

The Brandywine School District violated state and federal regulation by failing to ensure that all IEP required parent training was implemented. Having found such violation, the Department of Education must address how to assure the appropriate future provision of services to all children with disabilities. 14 DE Admin Code § 923.51.2; 34 C.F.R. § 300.151(b)(2).

Accordingly, the Department orders the following corrective action concerning the provision of parent training services:

1. By October 1, 2007, using school records and considering input from Parent, District and Parent, in consultation with the Program, shall arrive at an amount of parent training that is owed to Parent and determine a mutually agreeable schedule for delivering such training.
2. District and Parent shall submit the schedule and the number of hours to be provided to me within thirty (30) days of receiving this order.
3. If Parent declines to participate in parent training, the District shall notify me within (30) thirty days of Parent's refusal.
4. If Parent and District cannot agree on the number of hours of parent training owed, each party shall submit their own proposal to the Department within thirty (30) days of receiving this order, and the Department will determine the number of hours for the District to offer to Parent. If Parent and District cannot agree on a schedule for delivering the parent training, each party shall submit their own proposed schedule to the Department within thirty (30) days of receiving this order, and the Department will decide the schedule for delivery of the parent training.

By: _____

Martha Toomey, Director
Exceptional Children & Early Childhood Education
Assigned Investigator