

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 19-02 (September 21, 2018)**

On July 23<sup>rd</sup>, 2018, Student’s legal guardians (“Guardian”) filed a complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the School District (“District”) violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student under the Individuals with Disabilities Education Act (“IDEA”).<sup>1</sup> The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the DDOE’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, staff correspondence, and documents provided by Guardian and the District. Interviews were conducted with Guardian and the District and school staff.

**ONE YEAR LIMITATIONS PERIOD**

In accordance with the IDEA and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the DDOE receives the complaint. *See*, 34 C.F.R. § 300.153(c); 14 DE Admin Code § 923.53.2.4. In this case, the Department received the complaint on July 23, 2018. Therefore, the Department’s findings address alleged violations from July 23, 2017 to the current.

**COMPLAINT ALLEGATIONS**

Guardian alleges the District failed to provide FAPE to Student in violation of Part B of the IDEA and implementing regulations. Guardian also specifically alleges:

1. The District failed to provide direct speech and language therapy services to Student.
2. The District failed to provide direct occupational therapy services to Student.
3. Student’s educational placement in “Setting B” is not appropriate to address Student’s academic needs in reading, math, and writing.
4. Student should be transferred from School 1 to School 2 for additional supports.

**FINDINGS OF FACT**

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<sup>1</sup> The complaint decision identifies some people and places generally, 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 complaint decision is released as a public record.

Based upon the information provided by the District and Guardian, the DDOE makes the following findings of fact:

1. At the start of the 2016 - 2017 school year, Student attended the X (X) grade in the Previous School District and received special education and related services under the primary disability category of “other health impairment” as defined in 14 DE Admin Code § 925.6.14, and the secondary disability category of “learning disability” as defined in 14 DE Admin Code § 925.6.11.
2. Student’s IEP from the Previous School District was dated May 16, 2016, and provided for Student’s educational placement in “Setting B,” wherein Student was served inside the regular classroom between 40% and 79% of the day. The IEP also provided for Student to receive consultative occupational therapy services and consultative and group speech and language therapy services.
3. While Student had an IEP in the Previous School District, Guardian removed Student from school on or about October 26, 2016 and provided home schooling to Student until the following school year, when Student began attending school in the District in January 2018.

**Relevant Facts from the 2017 - 2018 School Year  
X (X) Grade**

4. On December 15, 2017, Guardian registered Student at School 1 in the Appoquinimink School District. Guardian had previously given copies of Student’s records to the educational diagnostician in November 2017, including Student’s most recent IEP. On January 8, 2018, the signed Affidavit of Residency was submitted to complete Student’s registration in the District.
5. Following Student’s registration, School 1 sent a request for Student’s educational records to the Previous School District. Guardian signed a release for disclosure of records on January 22, 2018, the records were requested on January 24, 2018, and received by School 1 on February 1, 2018.
6. For students with IEPs who transfer from one Delaware school district to another, state and federal regulations require the student to be temporarily placed in the educational setting that appears to be most suited to the student’s needs based on mutual agreement of the parents or guardians and the receiving school district. The agreement must be documented by signatures of the parent or guardian and the receiving district on a temporary placement form, or the cover page of the IEP. Within sixty (60) days of the student’s initial attendance, the receiving school district then must adopt the child’s IEP from the previous district at an IEP Team meeting, or develop, adopt, and implement a new IEP. *See*, 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1.
7. In this case, the District and Guardian agreed Student’s temporary placement would be “Setting B” within a small group setting with the special education teacher serving as

case manager, reflecting a pull-out for math and ELA with the special education teacher, and push-in for team-taught science and social studies with the general education teachers. The instructional pattern and temporary placement decision were consistent with the May 16, 2016 IEP from the Previous School District.

8. However, the agreement to the temporary placement was not formally documented by signature of Guardian on a temporary placement form, or cover page of the IEP. Rather, the District reported during interviews, Guardian verbally agreed to the temporary placement in “Setting B.”
9. Student’s first day of attendance at School 1 was January 10, 2018.
10. Because Student was a new student to the District and had been home schooled the previous year, the District sought the reevaluation of Student’s educational needs and eligibility for special education and related services. On January 8, 2018, the District sent Guardian prior written notice proposing to reevaluate Student’s educational needs, including a psychoeducational assessment, classroom observations, speech and language skills assessment, occupational skills assessment, physical therapy assessment, and behavior and adaptive behavior assessment. Guardian provided written consent for the reevaluation on January 8, 2018.
11. On February 15, 2018, the District sent timely written notice of a March 6, 2018 IEP Team meeting to Guardian describing the purpose of the meeting to determine Student’s continued eligibility for special education services, and review and/or revise Student’s IEP.
12. A gross motor evaluation was subsequently completed on January 29, 2018 finding Student demonstrates age appropriate gross motor skills and abilities in all school settings.
13. A speech and language evaluation was completed on January 26, February 7, and February 26, 2018 finding Student presents with average expressive, receptive, and social language skills.
14. An occupational therapy reevaluation was completed on February 1, 2018 finding Student does not present with deficits in fine motor or handwriting skills to warrant occupational therapy services, but Student would benefit from the trial and use of hand fidgets for improved attention, and verbal and visual prompts during the day.
15. Student’s teachers reported the classroom accommodations and services in the IEP were adequate to meet Student’s educational objectives, and assistive technology was not necessary. In addition, Student has open access to low-tech assistive technology in the classroom, including an iPad and calculator.

16. In addition, an autism evaluation report was completed on March 5, 2018 finding Student has many features of an autism spectrum disorder, and eligibility under the autism disability category should be considered by the IEP Team.
17. Student's continued eligibility for special education and related services was decided at the March 6, 2018 IEP Team meeting. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent also attended and participated in the March 6, 2018 IEP Team meeting.
18. The IEP Team reviewed multiple sources of information, including classroom based and state assessments, teacher observations, information provided by Guardian, and the results of evaluations, including the District's March 6, 2018 psychoeducational evaluation completed by the school psychologist.
19. The March 6, 2018 psychoeducational evaluation states, in relevant part:
  - (a) Student has a medical history of attention deficit hyperactivity disorder, social and separation anxiety disorders, autism spectrum disorder, nonverbal learning disorder, and a specific learning disability.
  - (b) Student's overall cognitive abilities are in the very low range with weaknesses in spatial skills.
  - (c) Student met grade level performance on the DIBELS and MAP assessments for reading, and does not require participation in a response to intervention (RtI) group for reading. Student's overall basic reading skills fell in the average range on the WIAT-III, including sight word recognition, comprehension, decoding, and fluency.
  - (d) Student similarly functions on grade level in writing and math calculation.
  - (e) Student's math problem solving skills fell in the below average range.
  - (f) Significant concerns were noted regarding Student's anxiety, and at risk concerns regarding withdrawal and adaptability across the home and school settings. Student's guardians reported severe concerns regarding social communication, interaction, and restrictive interests and repetitive behaviors.
20. The IEP Team found Student eligible for special education and related services under the primary disability category of "autism" as defined in 14 DE Admin Code § 925.6.6, and the secondary disability category of "learning disability" as defined in 14 DE Admin Code § 925.6.11.
21. The March 6, 2018 Evaluation Summary Report states Student demonstrates qualitative impairments in the areas of communication and reciprocal social interactions, as well as

some evidence of restricted interests and repetitive behavior, in addition to a pattern of strengths and weaknesses in math problem solving that negatively impact Student's academic performance.

22. Guardian signed the Evaluation Summary Report in agreement with the eligibility decision.
23. Student's IEP was also developed at the March 6, 2018 IEP Team meeting. Parent participated in the meeting and provided information about Student's needs to the IEP Team.
24. Student's IEP, dated March 6, 2018, has annual goals focused on demonstrating appropriate response inhibition, and completing math one-step word problems and multi-step word problems, and socially staying on topic when a peer initiates a verbal social interaction with Student.
25. The IEP describes Student's educational needs as small group for testing, rereading directions, use of charts and tables, use of graphic organizers for word problems, reference page for key words, use of extra lined graph paper for showing calculations, prompts to stay focused, gestural prompting, visual reminders and prompts, teaching modeling, positive reinforcement, and breaks.
26. The IEP Team further determined Student requires behavior interventions, supports, and strategies due to behaviors which impede Student's learning as described in the IEP.
27. At the March 6, 2018 meeting, the IEP Team concluded Student does not require extended school year services for the summer of 2018. The IEP Team also notified Guardian Student is eligible for twelve (12) month programming pursuant to 14 Del. C. § 1703.
28. For related services, the IEP Team determined Student would benefit from counseling services for improvement of social skills four (4) times a marking period in a group setting for thirty (30) minutes.
29. Because the speech language evaluation results demonstrated average expressive, receptive, and social language skills, speech language therapy services were not continued in Student's IEP as a related service.
30. In addition, occupational therapy services were not recommended by the IEP Team because the occupational therapy reevaluation found no deficits in fine motor, or handwriting skills to warrant occupational therapy services.
31. The IEP Team further determined Student's educational needs could be met in "Setting B" inside the regular classroom between 40% and 79% of the day, noting Student

requires a lower student teacher ratio and small group setting for math and behavior to make meaningful progress in the general education curriculum.

32. Because Student demonstrates average and grade level skills in ELA with no deficits in reading, spelling, or sentence building, the IEP Team did not continue pull-out instruction for ELA.
33. Given Student's weaknesses in math problem solving, the IEP Team included goals for single and multi-step problem solving, and specific supports and accommodations, including the pull-out small group instruction for math.
34. The District sent Guardian prior written notice dated March 6, 2018 proposing the IEP and Student's continued eligibility for special education and related services in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
35. On April 10, 2018, Guardian requested an independent educational evaluation based on disagreement with the results of the District's March 6, 2018 psychoeducational evaluation. Guardian disagreed with the determination Student did not require direct therapy services for occupational therapy and speech language therapy, and continued pull-out instruction for ELA. Guardian disagreed with the behavior supports as the IEP did not include a plan to address Student's elopement.
36. However, the IEP Team observed no elopement behaviors, but only threats of elopement, with no actual running away. There are also no documented elopement actions during Student's enrollment at School 1.
37. The District agreed to provide the independent educational evaluation, and sent Guardian a letter dated April 13, 2018 with a list of local providers who provide independent evaluations.
38. On April 13, 2018, the District also sent Guardian prior written notice proposing to complete a functional behavior assessment ("FBA") to address supports and services for behavior. Guardian provided written consent for the FBA on April 16, 2018, and the FBA was completed on May 21, 2018.
39. On May 14, 2018, the District sent written notice of a May 21, 2018 IEP Team meeting to Guardian describing the purpose of the meeting to develop the FBA and behavior support plan, and review and/or revise Student's IEP. The notice of meeting was not sent to Guardian ten (10) school days prior to the scheduled meeting, and Guardian did not waive the right to ten (10) school days prior notice.
40. The FBA was presented and reviewed at the May 21, 2018 IEP Team meeting.
41. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Parent also attended and participated in the May 21, 2018 IEP Team meeting.

42. The FBA identifies Student's problem behaviors as preservations on specific ideas impacting Student's ability to engage in the classroom, and disruptions that direct attention away from teachers or instructional materials.
43. A behavior support plan was also reviewed at the May 21, 2018 IEP Team meeting and identifies Student's problem behaviors, and provides appropriate replacement behaviors, antecedent strategies, alternative skills for teaching, reinforcement strategies, and consequences for problem behaviors.
44. Student's behavior supports include the provision of a wiggle seat and giving Student a job to help with anxiety.
45. The IEP Team revised the IEP to adopt Student's behavior support plan and additional supports and accommodations. The IEP Team also reconsidered Student's eligibility for extended school year services, and found Student met the criteria. The IEP Team agreed Student would receive fifteen (15) additional instructional hours targeting math goals, and be invited to participate in a social skills group over the summer.
46. The District sent Guardian prior written notice dated May 21, 2018 proposing the IEP revisions in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.
47. On May 31, 2018, the District sent timely written notice of a June 14, 2018 IEP Team meeting to Guardian describing the purpose of the meeting to review and/or revise Student's IEP and discuss Guardian's concerns.
48. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Guardian also attended and participated in the June 14, 2018 IEP Team meeting.
49. The June 14, 2018 IEP revision, and prior written notice states, in relevant part:
  - (a) Student's IEP and behavior plan were further revised to include accommodations and supports in Student's areas of need.
  - (b) Student would be dropped off at 8:20 am and given a job to address anxiety with morning drop off.
  - (c) The frequency of social skills counseling services for social skills would be changed to three (3) times a month for thirty (30) minutes in a group setting.
  - (d) At Guardian's request, the prior speech and language evaluation was reconsidered reflecting Student has average range skills for receptive language, expressive language, and pragmatics. The IEP Team continued to find Student does not meet the criteria to qualify for speech and language therapy services, whereas Guardian contends services are warranted.

- (e) Guardian requested direct social skills pragmatics instruction, and the District rejected the request on the basis Student does not qualify for speech and language therapy services.
  - (f) The sensory break provision would be enlarged including daily jump breaks, extension of social and coping skills instruction (five (5) minutes first thing in the morning, ten (10) minutes mid-morning, ten (10) minutes afternoon), thirty minutes (30) three (3) times a month of group social skills instruction.
  - (g) At Guardian's request, an elopement plan would be included in the IEP to address elopement behaviors or threats of elopement, even though Student had not yet attempted to elope from the building or classroom while at School 1.
  - (h) An accommodation of daily communication between home and school would be added to the IEP.
  - (i) At Guardian's request, the occupational therapy evaluation was reconsidered, and the IEP was revised to include an occupational therapy goal and consultative services for handwriting, visual motor, and visual perception skills.
  - (j) A math goal was added to address Student's skills in telling time, elapsed time, and counting money.
  - (k) The twelve (12) month programming was again proposed, in addition to fifteen (15) hours of direct instruction in math to target specific math gaps, preview X (X) grade math curriculum, and building foundational skills. Guardian declined the targeted math instruction, but agreed to the twelve (12) month programming.
50. The District proposed Student would continue in the same educational placement with the same service delivery pattern for the 2018-2019 school year at School 1. However, Student would attend School 2 during the summer months from July 10 to August 9, 2018.
51. Guardian requested independent evaluations for speech and language and occupational therapy based on disagreement with the District's evaluations. Guardian disagreed with the determination Student did not require direct therapy services for speech and language and occupational therapy.
52. The District agreed to provide the independent evaluations, and sent Guardian a letter dated July 3, 2018 with a list of local providers who provide independent evaluations.
53. Based on progress reports, Student made progress in academic areas with the support of her general education and special education instruction and interventions. Student received passing scores in Student's inclusively-provided instruction (reading, writing, social studies, science, physical education, art, computers, and music). In addition, based on the



third (3<sup>rd</sup>) marking period IEP progress report, Student surpassed the IEP benchmark levels in math (single and multi-step math problem solving) and social skills (response inhibition and appropriate peer interaction).

54. Student received instructional services at School 2 over the summer from approximately July 10 to August 9, 2018. Guardian requests Student's transfer to School 2 because: (a) it has a small group pull-out classroom closely adjacent to the general education classroom that will reduce Student's anxiety; (b) it has a fence that would prevent Student's elopement risk; (c) it has a separate sensory break room; and (d) it has supports for students with autism. The District denied Guardian's request to transfer Student to School 2 on the basis Student's needs can be met through implementation of the IEP at School 1.
55. Parent filed this complaint with the DDOE on July 23, 2018 alleging the denial of FAPE to Student.
56. Near the end of the sixty (60) day complaint investigation timeline, the District convened an IEP Team meeting on September 12, 2018 and made further revisions to Student's IEP, including the review of the independent evaluations. The status of these recent IEP revisions are not addressed in the findings because the scope of the investigation was limited to the allegations in Guardian's complaint, and accordingly, FAPE was provided to Student.

## CONCLUSIONS

### ***A. Direct Speech and Language Therapy Services Not Required to Provide Student With FAPE.***

Guardian claims Student was denied FAPE by the District's failure to provide direct speech and language therapy services to Student. Guardian refers to Student's previous IEP from the Previous School District that provided for Student to receive a combination of group and consultative speech language therapy services. But shortly after Student's enrollment at School 1, the District's speech and language pathologist completed a comprehensive speech and language evaluation on January 26, February 7, and February 26, 2018 finding Student presents with average expressive, receptive, and social language skills. The evaluation was subsequently reviewed and considered at the March 6, 2018 eligibility meeting and the IEP Team found Student did not require speech and language therapy services to receive FAPE. The evaluation was conducted by a licensed speech and language pathologist using multiple sources of assessment and information. In addition, Student made academic progress and achieved meaningful educational benefit without speech and language therapy services. **As a result, I find no denial of FAPE related to the provision of speech and language therapy services to Student.**

### ***B. Direct Occupational Therapy Services Not Required to Provide Student With FAPE.***

Guardian similarly claims Student's IEP is inappropriate because it fails to provide Student with direct occupational therapy services. However, the District's occupational therapist completed a comprehensive occupational therapy reevaluation on February 1, 2018 finding Student did not

present with any deficits for fine motor, or handwriting skills in the classroom, but would benefit from the trial and use of hand fidgets for improved attention, and verbal and visual prompts during the day. The evaluation was subsequently reviewed and considered at the March 6, 2018 eligibility meeting and the IEP Team found Student did not require direct occupational therapy services to receive FAPE. Student proceeded to make academic progress based on the supports and services in the IEP. At Guardian's request, the occupational therapy evaluation was reconsidered at the June 14, 2018 IEP Team meeting, and based on concerns at that time, Student's IEP was revised to include an occupational therapy goal and consultative services, with additional accommodations to support Student. While Student was determined eligible for occupational therapy services, the nature of the need could be met through consultative intervention, and direct services were not necessary. **Therefore, I find no denial of FAPE related to the provision of direct occupational therapy services.**

***C. Student's IEP Provides FAPE and Addresses Student's Unique Needs.***

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education to students with disabilities ("FAPE"). *See*, 20 U.S.C. § 1401(9): 34 C.F.R. § 300.101(a): 14 DE Admin Code § 923.1.2. FAPE is special education that is specially designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- (b) Meets the standards of the Department of Education;
- (c) Includes elementary, secondary or vocational education in the State;
- (d) Is individualized to meet the unique needs of the child with a disability;
- (e) Provides significant learning to the child with a disability; and
- (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential.

*See, 14 Del. C. § 3101(5).*

In this case, the IEP Team developed Student's IEP based on comprehensive evaluation and assessment data, teacher observations, and detailed information from Guardian related to Student's needs and history. Student's IEP appropriately includes detailed services, supports, and accommodations to address Student's unique needs, including social skills counseling and goals in social skills and math problem solving skills. The IEP Team revised Student's IEP when necessary, promptly responded to Guardian's concerns and requests, and ensured Guardian's full participation in program and placement decisions at IEP Team meetings. In addition to academic special education services, Student received appropriate behavioral supports and services enabling Student to receive FAPE. Based on the recognition of Student's emotional and behavioral needs, the District completed an FBA and developed a behavior support plan with specific interventions to reduce Student's anxiety, preservation on specific subjects, and disruptive behaviors. With the support of general education and special education instruction and interventions, Student received

passing scores in class subjects of reading, writing, social studies, science, physical education, art, computers, and music. In addition, based on the third (3<sup>rd</sup>) marking period IEP progress report, Student surpassed the IEP benchmark levels in math (single and multi-step math problem solving) and social skills (response inhibition and appropriate peer interaction). **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation related to the appropriateness of Student's IEP and the provision of FAPE.**

Guardian contends Student's educational placement in "Setting B" is not appropriate to meet Student's academic needs in reading, math, and writing. However, the evidence supports Student is appropriately placed within "Setting B" as outlined in the IEP based on Student's meaningful educational progress. Upon Student's initial attendance at School 1, the District and Guardian agreed Student's temporary placement would be "Setting B" with pull-out services for math and ELA, and push-in services for team-taught science and social studies. The instructional pattern and temporary placement decision were consistent with the May 16, 2016 IEP from the Previous School District. Following the District's comprehensive reevaluation on March 6, 2018, it was subsequently determined Student demonstrates average and grade level skills in ELA with no deficits in reading, spelling, or sentence building, and pull-out instruction for ELA was no longer necessary. The evidence supports the IEP Team's decision Student requires a lower student teacher ratio and small group setting for math and behavior to make meaningful progress in the general education curriculum. Student made progress behaviorally and academically pursuant to the supports in the IEP, and the educational placement within "Setting B" is therefore appropriate and provides FAPE. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation related to the appropriateness of Student's educational placement.**

Guardian also contends Student's transfer to School 2 is necessary to meet Student's educational needs because: (a) it has a small group pull-out classroom closely adjacent to the general education classroom that will reduce Student's anxiety; (b) it has a fence that would prevent Student's elopement risk; and (d) it has supports for students with autism.

However, (a) there is no evidence closer proximity between the special education and regular education classroom is necessary to provide FAPE to Student; (b) there is no evidence Student had elopement behaviors at school to require a fence; (c) School 1 also has a fully equipped sensory room if necessary for Student; and (d) the evidence of Student meeting academic and behavioral goals demonstrates the support at School 1 is adequate and does not necessitate transfer to another school for a direct autism support program.

In effect, Guardian is requesting Student be transferred to a different school or site, but within the same "Setting B" designated by the IEP Team. The IDEA requires school districts to include parents and guardians as part of the group of persons who makes educational placement decisions. *See*, 34 C.F.R. § 300.116(a)(1); 14 DE Admin Code § 923.16.1. "Educational placement" means educational program, and not the particular school where the program is implemented. *White v. Ascension Parish School Board*, 343 F.3d 373 (5<sup>th</sup> Cir. 2003). The IDEA does not require school districts to include parents and guardians in site selection. A change in site or schools is solely an administrative decision within the discretion of the school district provided the IEP is appropriately implemented.

In this case, Guardian actively participated in Student’s IEP Team meetings and the group decision to place Student in “Setting B”. The District administratively denied Guardian’s request to transfer Student to School 2 because Student’s educational needs could be met through implementation of the IEP at School 1, and the evidence supports FAPE was provided to Student. **Therefore, I find no violation of the IDEA and corresponding state and federal regulation related to Guardian’s request to transfer Student to Old State Elementary School.**

***D. Written and Timely Notice of IEP Team Meetings***

State and federal regulations require schools to ensure one or both parents are afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of a child with a disability, and the provision of FAPE to the child. *See*, 34 C.F.R. § 300.501(b)(1); 14 DE Admin Code § 926.1.3. To ensure adequate parent participation, schools must provide notice at least ten (10) school days prior to an IEP Team meeting, and describe in a written notice the purpose, time, and location of the meeting, and who will be in attendance. *See*, 34 C.F.R. § 300.322(b)(1); 14 DE Admin Code § 925.22.1.

In this case, Parent attended and meaningful participated in every IEP Team meeting. However, the IDEA and implementing regulations require the written notice of meeting to be provided ten (10) school days in advance of the meeting.

On May 14, 2018, the District sent written notice of a May 21, 2018 IEP Team meeting to Guardian. While the notice contained the information required by required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22, the notice of meeting was not sent to Guardian ten (10) school days prior to the scheduled meeting. **For the reasons stated, I find a violation of Part B of the IDEA and state and federal regulations related to the provision of written and timely notice of IEP Team meetings.**

***E. Procedural Violation Regarding Agreement for Temporary Placement***

For students with IEPs who transfer from one Delaware school district to another, state and federal regulations require the student to be temporarily placed in the educational setting that appears to be most suited to the student’s needs based on mutual agreement of the parents or guardians and the receiving school district. The agreement must be documented by signatures of the parent or guardian and the receiving district on a temporary placement form, or the cover page of the IEP. Within sixty (60) days of the student’s initial attendance in the receiving school district, the receiving school district then must adopt the child’s IEP from the previous district at an IEP Team meeting, or develop, adopt, and implement a new IEP. *See*, 34 C.F.R. § 300.323(e); 14 DE Admin Code § 925.23.4.1.

In this case, the District and Guardian agreed Student’s temporary placement would be “Setting B” consistent with the May 16, 2016 IEP from the Previous School District. However, the agreement to the temporary placement was not formally documented by signature of Guardian on a temporary placement form, or cover page of the IEP. Rather, the District reported during interviews, Guardian verbally agreed to the temporary placement in “Setting B.” **For this reason,**

**I find a violation of the IDEA and corresponding state and federal regulations related to documenting the temporary placement decision for a transfer student.**

**CORRECTIVE ACTION**

School Level Corrective Action

1. On or before **October 30, 2018**, the District shall provide a corrective action plan to the Director of the Exceptional Children Resources Work Group to address the regulatory violation identified in this decision.
2. The District shall develop a procedure for ensuring temporary placement decisions are properly documented between parents/guardians and the District for students who transfer to the District with an IEP and consistent with 34 C.F.R. § 300.323(e) and 14 DE Admin Code § 925.23.4.1.
3. The District shall further provide professional development to all relevant special education staff and administrators to ensure compliance with:
  - (a) Documenting temporary placement decisions in the manner required by 34 C.F.R. § 300.323(e) and DE Admin Code § 925.23.4.1
  - (b) Providing timely written notice of IEP Team meetings ten (10) school days in advance of meetings as required by 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.

The professional development shall be completed, and copies of memos or training materials provided to the Director of the Exceptional Children Resources Work Group, on or before **October 30, 2018**.

By: -----

Assigned Investigator