

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 25-04

Date Issued: December 20, 2024

On October 23, 2024, REDACTED (Parent) and REDACTED (Parent 2), filed a complaint on behalf of REDACTED (Student) with the Delaware Department of Education (Department). The complaint alleges the REDACTED 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).¹ The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151–300.153 and according to the Department’s regulations at 14 DEL. ADMIN. CODE §§ 923.51.0–923.53.0.

The investigation included a review of Student’s educational records, artifacts provided by Parents and District, as well as email correspondence and interviews with Parent, Director of Special Services (Director), Supervisor of Special Services (Supervisor) and Special Education Coordinator (Coordinator).

ONE YEAR LIMITATIONS PERIOD

In accordance with 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 Department receives the complaint. See, 34 C.F.R. § 300.153(c); 14 *Del. Admin. Code* § 923.53.2.4. In this case, the Department received the complaint on October 23, 2024. Therefore, the Department’s findings address events from October 23, 2023, through October 23, 2024.

COMPLAINT ALLEGATIONS

Parents allege District violated Part B of the IDEA and implementing regulations by:

1. Failing to implement child find obligations.
2. Failing to conduct complete and adequate assessments.
3. Predetermining eligibility.
4. Failing to develop and implement an Individual Education Plan (IEP).
5. Failing to provide accommodations based on medical recommendations.
6. Failing to address social-emotional needs.
7. Failing to provide FAPE.
8. Failing to respond to Family Educational Rights and Privacy Act (FERPA) requests.

¹ To protect personally identifiable information about the student from unauthorized disclosure, this complaint decision identifies people and places generically. The temporarily attached index lists the name corresponding to each generic role exclusively for the benefit of the individuals and education agency in the investigation. The index must be removed before the complaint decision is released as a public record.

FACTUAL FINDINGS

1. Student attended REDACTED grade at REDACTED (School) during the 2023-2024 school year.
2. On November 7, 2023, Parent requested special education testing, via email, for Student due to concerns with attention and other learning issues.
3. On November 9, 2023, District responded stating an in-house team meeting would occur that morning regarding Student and Parent would be contacted later in the day regarding conversation.
4. On November 12, 2023, Parent responded asking for a written response regarding request for testing, a prior written notice (PWN) and permission to evaluate (PTE) be sent.
5. On November 13, 2023, District sent Parent an email requesting a meeting to discuss Parent concerns regarding Student so that proper procedures regarding evaluation were followed.
6. Also, on November 13, 2023, Parent responded stating collaboration with District would occur once a PWN and PTE were sent and signed.
7. On November 16, 2023, District sent Parent an email with a copy of the Procedural Safeguards and official notice of meeting (NOM) for a meeting to be held on November 21, 2023, to discuss Parent concerns.
8. On the same date, Parent responded that attendance at a meeting should not be necessary because written request (email) for testing was sent on November 7, 2023. Parent also stated having such a meeting would be considered pre-determination and the District was not following Child Find procedures. Parent requested special education testing again and stated that if paperwork for testing was not received by November 22, 2023, Parent would execute their parental Procedural Safeguards.
9. On November 17, 2023, District responded that purpose of meeting was to determine what evaluations would be necessary based on the information shared at meeting. District stated that Student was considered, "one of the brightest students in the class" and wanted to come together to help Student.
10. Also, on November 17, 2023, Parent sent email requesting the following evaluations:
 - a. Formal speech and language including pragmatics;
 - b. Sociological testing;
 - c. Emotional/behavioral and psychological evaluations;
 - d. IQ and cognitive evaluation in all areas;
 - e. Adaptive behavior evaluation;
 - f. Formal achievement testing;
 - g. Written expression testing;
 - h. Sensory testing; and
 - i. Need for counseling.

11. On the same date, District provided Parent with PWN and PTE, via Adobe Sign.
12. On November 20, 2023, Parent signed PTE via Adobe Sign.
13. On November 20, 2023, District conducted a physical therapy evaluation. PT assessed Student in the areas of Passive Range of Motion. Strength, Tone, Balance, Coordination, Motor Planning and Movement Patterns, Posture, Core, Transitions/Developmental Sequence, Transfer, Functional Mobility and Higher-Level Gross Motor Skills.
14. On November 23, 2023, District conducted speech and language evaluation. SLP evaluated Student in the areas of articulation, voice and fluency, expressive and receptive language, sentence comprehension, word structure, word classes, following directions, formulated sentences, recalling sentences, understanding spoken paragraphs, pragmatic profile. Student was administered four tests of the Clinical Evaluation of Language Fundamentals®-Fifth Edition (CELF®-5) which included scores for core language, receptive language index, expressive language index, language structure index, receptive language, and pragmatic/social language.
15. On December 18, 2023, December 21, 2023, and January 10, 2024, District conducted psychoeducational evaluation. The evaluation consisted of a review of records, questionnaires and interviews which consisted of background history and parent report, teacher report, student interview, parent interview, social history, teacher interview, behavior observations, standardized tests, which included the Wechsler Intelligence Scale for Children Fifth Edition (WISC-V) which assessed cognitive domain, the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ IV ACH) which assessed the academic domain and the Behavior Assessment System for Children, Third Edition (BASC-3) which assessed the emotional and behavior domain.
16. On December 21, 2023, District conducted audiology evaluation. The District's Audiologist evaluated Student on December 21, 2023. In the evaluation report Audiologist wrote, "On 12/20/2023, Student had an Audiologic evaluation at REDACTED School District's Hearing Clinic. Otoscope examination of the ears was conducted. Tympanometry demonstrated normal middle ear function for both ears. Oto-acoustic emissions (OAEs) were suggestive of normal cochlear function for both ears. Audiometric testing in the sound-booth demonstrated hearing within normal limits for both ears for the frequency range of 250 Hz to 8000 Hz.
17. On January 5, 2024, District conducted an occupational therapy evaluation. OT utilized the assessments of Developmental Test of Visual Integration (VMI), which included the subtests of visual perception and motor coordination.
18. On January 18, 2024, District sent NOM for an initial eligibility meeting for January 29, 2024, via Student and email.

19. On January 19, 2024, after reading the draft psychoeducational evaluation report, Parent learned that Student had not worn glasses during parts of the evaluations and requested, via email, Student be re-evaluated wearing glasses. Parent indicated the testing was not valid due to Student not having appropriate access to the testing materials. Parent stated that once District completed a new evaluation, District would schedule a new meeting date.
20. Parent reported Student's Ophthalmologist recommended preferential seating closer to the front of the classroom and ensuring Student wear glasses.
21. On January 30, 2024, District sent NOM for an initial eligibility meeting for February 5, 2024, via Student and email.
22. On February 5, 2024, IEP Team met and reviewed psychosocial/emotional, functional, academic, speech language-including language and pragmatic, IQ/cognition, occupational therapy (OT), and physical therapy (PT) evaluations to determine eligibility for special education and related services. IEP Team determined Student was not eligible for special education and related services.
23. On February 5, 2024, the PWN indicated District proposed to provide a sound field system to alleviate negative effects from background noise and to reduce vocal strain of the teacher. The team discussed the possibility of a 504 plan for Student due to Parent concerns regarding executive functioning skills. Parent rejected the 504 plan due to wanting an IEP. Parent did not agree with IEP Team's decision. IEP Team scheduled another meeting on February 14, 2024, to continue discussion.
24. On February 8, 2024, Parent requested an Independent Educational Evaluations (IEE).
25. On February 13, 2024, Parent communicated via email that, "I do not believe an agreement can be reached without unbiased additional information to present for a case study. Like your PWN states, "The School District proposed that based on the results of the evaluation, that Student does not qualify for special education services.", therefore I do not feel this will be productive and as I stated at the end of the last meeting, I believe we are at an impasse. As REDACTED stated to me on 2/7/24, the purpose of the next meeting and a new PTE for a case study is to "simply acknowledging that we have been over the reports previously and for the purpose of the meeting on 2/14 may reference information on those reports to assist us in making decisions about Student's educational program." What I believe I heard repeatedly during the last meeting and have seen throughout this school year, is the District is unable to meet the educational needs that my REDACTED requires, and the evaluations had several factual discrepancies as well as inconsistencies which require a second opinion through independent verification from an independent evaluator."
26. The IEP Team did not meet as scheduled on February 14, 2024.
27. On February 25, 2024, Parent sent Director a follow-up email regarding request for IEE.

28. On February 25, 2024, Parent formally requested educational records via email to Director, Supervisor, Coordinator, and School.
29. On February 26, 2024, Director sent email stating request for IEE was approved and a list of providers would be sent.
30. On February 27, 2024, Parent sent email to District confirming Communication Associates would complete a speech and language and occupational therapy evaluation.
31. On February 27, 2024, Director responded to Parent indicating that District Special Education Liaison (Liaison), would obtain and send records.
32. On March 1, 2024, Parent responded to Liaison, via email, requesting that nursing, counseling, and administration records be shared with Parent.
33. On March 1, 2024, Liaison sent Parent all evaluation reports (OT, Speech, PT, Psychoeducational, Audiological), PTE, PWN's, and Evaluation Summary Report.
34. On March 8, 2024, Liaison provided nurse visit records electronically.
35. On July 3, 2024, Parent withdrew Student from District.
36. On August 23, 2024, Parent sent email to District confirming Developmental Neuropsychology Associates would conduct a Neuropsychology evaluation.
37. On August 26, 2024, staff member from Developmental Neuropsychology Associates confirmed Student's IEE for August 27, 2024.
38. On September 24, 2024, District received IEE completed by an Occupational Therapist.
39. On October 20, 2024, District received IEE completed by a Speech Language Pathologist.
40. On November 4, 2024, District received IEE completed by a Neuropsychologist.
41. Sometime after District received the IEE results and Student transferred to another school, the new local education agency (LEA) did review the District's evaluations, as well as the IEE's, and found Student not eligible according to Director.

LEGAL CONCLUSIONS

Complaint Allegation #1: Failing to implement child find obligations.

According to 14 *Del. Admin. Code* § 932.11.0, Child Find and Identification of Eligible Individuals regulations, identification has two purposes: 1. to identify those individuals who require special education; and 2. to identify individuals who need general education interventions. Except as noted in subsection 14 *Del. Admin. Code* § 932.11.1.1 regarding parentally placed private school children, each local education agency (LEA) and any other public agency responsible for the education of children with disabilities, shall establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate all children residing within the confines of the LEA or other public agency, including children with disabilities who are homeless children or are wards of the State, regardless of the severity of their disability, and who are in need of special education and related services.

Each LEA or other public agency shall further establish and implement ongoing evaluation procedures consistent with this section to identify, locate and evaluate children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the school district served by the LEA in accordance with this section and Section 31.0 (Child Find for Parentally Placed Private School Children with Disabilities).

In this case, the District completed an evaluation and conducted a meeting to determine eligibility. The IEP Team met on February 5, 2024, and found the Student not eligible for special education services and related service. Parent requested an IEE, which indicates disagreement with the evaluations and determination of non-eligibility.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations. The District fulfilled their Child Find obligation.

Complaint Allegation #2: Failure to conduct complete and adequate assessments.

According to 14 *Del. Admin. Code* § 922 3.0, a “Child with a Disability” means a child or student evaluated in accordance with 14 *Del. Admin. Code* §§ 925.4.0 through 925.6.0 and determined to be eligible for one (1) or more of the following educational classifications: Autism, Developmental Delay, Deaf-Blind (also referred to as “Dual Sensory Impairment”), Emotional Disability, Hearing Impairment (also referred to as “deaf” or “hard of hearing”), Specific Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, Speech/Language Impairment, Traumatic Brain Injury, and Visual Impairment Including Blindness, and who, by reason thereof, needs special education and related services.

An appropriate evaluation must assess all areas related to the suspected disability, including, if needed, health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor ability. *See*, 14 *Del. Admin. Code* § 925 5.0.

Evaluations must be conducted by qualified evaluators using a variety of assessments which provide the school with the necessary information to determine if the student is eligible for special education and related services or to help determine an appropriate program or placement for the student. A qualified evaluator is a person who holds the required state certification and/or licensure for conducting the specific type of evaluation in question.

A valid evaluation must:

- Assess the student's educational strengths and areas of need;
- Be conducted according to the standards set by the manufacturer of the evaluation (if using a test or instrument);
- Be nondiscriminatory, with no cultural bias; and
- Be valid for the purpose for which it is being utilized.

The District's Physical Therapist (PT) assessed Student on November 20, 2023. PT assessed Student in the areas of Passive Range of Motion, Strength, Tone, Balance, Coordination, Motor Planning and Movement Patterns, Posture, Core, Transitions/Developmental Sequence, Transfer, Functional Mobility and Higher-Level Gross Motor Skills.

The District's Speech and Language Pathologist (SLP) evaluated Student on November 23, 2023. SLP evaluated Student in the areas of articulation, voice and fluency, expressive and receptive language, sentence comprehension, word structure, word classes, following directions, formulated sentences, recalling sentences, understanding spoken paragraphs, pragmatic profile. Student was administered four tests of the Clinical Evaluation of Language Fundamentals®-Fifth Edition (CELF®-5) which included scores for core language, receptive language index, expressive language index, language structure index, receptive language, and pragmatic/social language.

The District's School Psychologist performed an initial psychoeducational evaluation on December 18, 2023, December 21, 2023, and January 10, 2024. The evaluation consisted of a review of records, questionnaires and interviews which consisted of background history and parent report, teacher report, student interview, parent interview, social history, teacher interview, behavior observations, standardized tests, which included the Wechsler Intelligence Scale for Children Fifth Edition (WISC-V) which assessed cognitive domain, the Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ IV ACH) which assessed the academic domain and the Behavior Assessment System for Children, Third Edition (BASC-3) which assessed the emotional and behavior domain.

The District's Audiologist evaluated Student on December 21, 2023. In the evaluation report Audiologist wrote, "On 12/20/2023, Student had an Audiologic evaluation at Capital School District's Hearing Clinic. Otoloscopic examination of the ears was conducted. Tympanometry demonstrated normal middle ear function for both ears. Oto-acoustic emissions (OAEs) were suggestive of normal cochlear function for both ears. Audiometric testing in the sound-booth demonstrated hearing within normal limits for both ears for the frequency range of 250 Hz to 8000 Hz.

The District's Occupational Therapist (OT) assessed Student on January 5, 2024. OT utilized the assessments of Developmental Test of Visual Integration (VMI), which included the subtests of visual perception and motor coordination.

On February 5, 2024, the IEP Team met for Student's eligibility meeting. Based on the evaluation data shared, the IEP Team determined Student did not qualify for special education and related services.

The District's evaluators did complete the appropriate assessments in suspected areas of need in accordance with 14 *Del. Admin. Code* § 925.4.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations.

Complaint Allegation #3: Predetermined eligibility.

Parent alleged that IEP Team predetermined eligibility for Student due to statements made regarding Student being bright. According to Director, District follows state Multi-Tiered Systems of Support (MTSS) and evaluation procedures. The Student was never referred to the MTSS team for any concerns. The District did not deny Student's right to an evaluation but wanted to meet with Parent to determine what assessment tools to use. There is no evidence presented that shows predetermination.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations.

Complaint Allegation #4: Failure to develop and implement an IEP.

Under IDEA, it is legally required to develop and implement an IEP when a student has been found eligible for special education services. In accordance with 14 *Del. Admin. Code* § 923.12.0 (IEP's), each public agency shall ensure that an IEP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with 14 *Del. Admin. Code* §§ 925.20.0 -24.0, except as provided in 14 *Del. Admin. Code* § 925.1.2.3.

In this case, IEP Team determined Student was not eligible for special education and related services based on the evaluation results from February 2024. Therefore, an IEP was not required to be developed. Parent alleges that despite overwhelming evidence from the independent evaluation, the District failed to develop an IEP. Parent withdrew Student from District on July 3, 2024. District did not receive the IEE's until after Student withdrew and the new school year began. Student was enrolled in another LEA at that point. During this investigation, Director reported that the new LEA did review the District's evaluations, as well as the IEE's, and found Student not eligible.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations.

Complaint Allegation #5: Failing to provide accommodations based on medical recommendations.

Parent alleges that despite Student's Ophthalmologist recommending preferential seating closer to the front of the classroom, and ensuring Student wear glasses, the school failed to consistently implement these accommodation recommendations.

Accommodations are legally provided for students who are eligible for special education services and written in an IEP, or for students eligible for Section 504 of the Rehabilitation Act of 1973 (504 plan). At the February 5, 2024 meeting, after the IEP Team decision that Student was not eligible for special education and related services, the IEP Team discussed the possibility of a 504 plan for Student due to Parent concerns regarding executive functioning skills. Parent rejected a 504 plan due to wanting an IEP. The Student did not have either of those plans.

504 Plans do not fall under the purview of IDEA or associated Delaware regulations regarding special education. Therefore, I find there was not a denial of FAPE or violations of IDEA or Delaware regulations.

Complaint Allegation #6: Failure to address social-emotional needs.

Under IDEA, when a student has been found eligible for special education, the LEA is legally required to develop and implement an IEP. In accordance with 14 *Del. Admin. Code* § 923.12.0, each public agency shall ensure that an IEP that meets the requirements of section 636(d) of the Act, is developed, reviewed, and revised for each child with a disability in accordance with 14 *Del. Admin. Code* §§ 925.20.0 - 24.0, except as provided in 14 *Del. Admin. Code* §925.1.2.3.

Parent and teachers were given the Behavior Assessment System for Children – Third Edition (BASC-3) to complete as a part of the evaluation. The BASC-3 uses a comprehensive set of rating scales and forms to provide a complete picture of a child's or adolescent's behavior and emotions. According to the School Psychologist, "Student did not exhibit elevated levels regarding her emotions, social activity, and behavior in the classroom. The results show Student demonstrates more difficulty with emotionality and behavior, specifically with anxiety and hyperactivity in the home setting."

Since the Student was found not eligible for special education and related services, there was no legal obligation to formally address social-emotional needs under IDEA.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations.

Complaint Allegation #7: Failure to provide FAPE.

IDEA ensures, "...all children with disabilities have available to them a free and appropriate public education that emphasizes the special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." *See*, 20 U.S.C. § 1400(d)(1)(A).

A "free appropriate public education" is defined within the IDEA as specially designed instruction and related services as may be required to assist a student with a disability to benefit from an education that: (a) is provided at public expense, under public supervision and direction, and without charge; (b) meets the standards of the State Educational Agency; (c) includes an appropriate preschool, elementary school, secondary school, or vocational school in the State; (d) is provided in conformity with the individualized education program designed to meet the student's unique needs; (e) provides significant learning; and (f) confers meaningful educational benefit that is gauged to the student's potential. *See*, 20 U.S.C. § 1401(9) and 14 Del. C. § 3101(5).

In this case, the February 5, 2024 PWN indicated after review of the assessments, the IEP Team found that Student did not qualify for special education and related services. Since the District followed policies and procedures, according to IDEA and Delaware regulations, there is no evidence of a denial of FAPE.

Therefore, I find there was not a denial of FAPE or violation of IDEA or Delaware regulations.

Complaint Allegation #8: Failure to respond to Family Educational Rights and Privacy Act (FERPA) requests.

On February 25, 2024, Parent formally requested educational records via email to Director, Supervisor, Coordinator, and School Principal.

On February 27, 2024, Director responded to Parent indicating that District Special Education Liaison (Liaison), would obtain and send records. Liaison shared records electronically with Parent. On March 1, 2024, Parent responded to Liaison, via email, requesting that nursing, counseling, and administration records be shared with Parent. On March 8, 2024, Liaison provided nurse visit records electronically.

According to 14 *Del. Admin. Code* §926.1.2.1., Procedural Safeguards and Opportunity to Examine Records and Educational Programs, parents of a child with a disability, either personally or through representative, shall be afforded an opportunity to inspect and review all relevant education records with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. Parent was provided with all special education records from the District.

Therefore, this allegation is out of the purview of this investigator and cannot be addressed through IDEA complaint process.

CORRECTIVE ACTIONS

The Delaware Department of Education is required to ensure that corrective actions are taken when violations of the requirements are identified through the complaint investigation process. *See*, 14 DE Admin. Code § 923.51.3.3. In this case, no violation of Part B of the IDEA was identified. Therefore, no further action by the Department shall be taken.

Respectfully submitted,

REDACTED
Investigator