

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL STUDENT RESOURCES**

STATE COMPLAINT DECISION

DE SC # 25-10

Date Issued: April 14, 2025

On February 13, 2025, REDACTED (Parent) filed a complaint 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 REDACTED (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, therapist’s notes, evaluation results and interviews.

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 February 13, 2025. Therefore, the Department’s findings address violations from February 13, 2024 to February 13, 2025.

COMPLAINT ALLEGATIONS

Parent alleges District violated Part B of the IDEA and implementing regulations by the following:

1. Failure to implement Student’s Individual Education Plan (IEP);
2. Failure to reevaluate Student and modify the IEP due to behavior incidents; and
3. Failure to train staff.

FACTUAL FINDINGS

1. Student is a REDACTED -year-old REDACTED grader who attends an elementary school in District and receives special education and related services as a student with a primary educational classification of Developmental Delay.
2. On February 21, 2024, the IEP Team conducted Student’s annual meeting. At this time, Student was receiving services under the educational classification of Speech or

¹ To protect personally identifiable information about 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.

Language Impairment. During the meeting, Parent voiced concern about Student's behavior and need for sensory input. The Team also reviewed progress data that showed Student was not making progress toward the annual speech goal. The Team agreed to continue to work on the same speech goal and Student would continue receiving group speech therapy services. Due to Parent concerns, the Team agreed that Student should have a reevaluation sooner than the required three- year reevaluation due to autism concerns. Parent signed Permission to Evaluate (PTE).

3. On February 22, 2024, District issued a Prior Written Notice (PWN) proposing Student continue to receive speech services. Additionally, District issued a second PWN requesting permission from Parent to conduct a full autism evaluation due to Student's inconsistent progress. However, it did not reflect Parent's concern with Student's behavior.
4. On March 1, 2024, Student met individually with Counselor to address Student's behavioral concerns. During the session, Counselor reviewed using words and coping skills with Student.
5. On March 4, 2024, Student met individually with Counselor. During the session, Counselor reviewed listening skills and following directions with Student.
6. On March 12, 2024, Student met individually with Counselor. During the session, Counselor reviewed de-escalation strategies with Student due to breaking objects in art class.
7. On March 13, 2024, Student met individually with Counselor to address Student's behavioral concerns. During the session, Counselor reviewed using words and coping skills with Student after a behavioral incident.
8. On March 26, 2024, Student met individually with Counselor. During the session, Counselor reviewed listening and following directions because Student was not engaging or following directions.
9. On March 27, 2024, Student's progress report showed satisfactory progress toward the annual speech goal.
10. On April 10, 2024, Student met individually with Counselor. During the session, the Counselor discussed how to be a good friend after a behavioral incident.
11. On April 17, 2024, Student met individually with Counselor to watch *Clark and the Shark* and discuss good listening skills.
12. On April 23, 2024, the Team met to review the results of Student's recent evaluations. The Team determined that Student was eligible to receive special education and related services as a student with a cognitive and social emotional Developmental Delay. The Team added goals to support reading, math, self-regulation, articulation and expressive

language and proposed that Student receive individual and group counseling services, and group speech services. The Team also added a self-regulation goal along with fourteen accommodations to support student's behavior needs.

13. On June 11, 2024, Student's progress report indicated Student was making satisfactory progress toward annual math, reading and self-regulation, articulation /s/ blends, and receptive language goals. However, Student was not making satisfactory progress toward annual articulation: phonological processes goal.
14. On October 3, 2024, Teacher called Parent to report that Student was not following directions while going to buses. Teacher also stated that the behavior was becoming a safety concern.
15. On October 17, 2024, Student received a discipline referral due to refusing to return to the building after recess.
16. On November 4, 2024, Student's progress report indicated Student was making satisfactory progress toward annual math, self-regulation, articulation /s/ blends and receptive language goals. However, Student was not making satisfactory progress toward annual reading and articulation: phonological processes goals. Additionally, Student received 14 group and 8 individual counseling sessions during the progress period.
17. On November 14, 2024, Teacher called Parent to report that Student was being unsafe by not following directions and grabbing "teacher things" in the classroom. Teacher added that Student was being "defiant and kind of disrespectful."
18. On November 20, 2024, Student received a discipline referral after running into the woods during recess. As a result, Student received cuts to Student's face and body.
19. On November 22, 2024, Student received a discipline referral after throwing items in class, hitting and kicking staff. Student was restrained and suspended from school.
20. On November 26, 2024, family's doctor saw Student because Parent expressed discipline concerns. Family doctor counseled Parent about self-help groups, emotional impulsivity, and hyper behavior. Family doctor also gave Parent behavioral questionnaires for school to complete.
21. On December 2, 2024, Parent texted Teacher to inform that there were questionnaires, family doctor provided for school staff to completed Teacher replied by thanking Parent and said that the documents would be completed and returned to Parent that day.
22. On December 6, 2024, Student received a discipline referral after running down the hall. Student was escorted to the "reflection room." While in the reflection room, Student hit and kicked Assistant Principal (AP) and was restrained and suspended from school according to a discipline referral and restraint report.

23. On December 9, 2024, Student received a discipline referral for hitting and kicking staff members who tried to help Student evacuate the building during a fire drill. Parent was told that Student should not have been in school due to the incident that occurred on December 6th. Parent responded by saying that Parent was unaware of the suspension.
24. On December 12, 2024, family's physician diagnosed Student with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).
25. On December 13, 2024, Parent informed Teacher, via text, that family's physician diagnosed Student with ADHD and ODD. Teacher replied by thanking Parent for letting the Team know.
26. On December 16, 2024, Parent received a text message from Family Crisis Therapist (FCT) showing a picture of Student being calm and cleaning up a mess Student made in art. However, Parent later received a phone call reporting that Student was being combative and had to be restrained. During the phone call, Parent expressed concern with Student having to be restrained. Additionally, Parent emailed AP and requested a detailed report on the incident that led to Student being restrained. Parent wanted to know what was happening before Student became upset, what was said to Student during the moment, who was in the classroom with Student before and after the incident, the exact reason for the restraint and who restrained Student.
27. On December 16, 2024, AP emailed the discipline referral and restraint letter generated by the incident that occurred earlier in the day. Parent responded to the email by letting AP know that the codes on the referral form did not give details of the incident. Parent also added that the incident was handled improperly. Additionally, Parent informed AP that family physician diagnosed Student with ADHD and ODD and that Parent made classroom staff aware 3 days prior. Parent also requested that Student's educational classification be changed to reflect the new diagnoses. Parent called Coordinator to schedule an IEP and Behavior Intervention Plan (BIP) meeting but had to leave a voicemail. In addition, Parent contacted Director, via email, to communicate that Student's "personal needs and accommodations" were not being handled appropriately.
28. On December 17, 2024, Parent sent another email to AP requesting all of Student's discipline referrals and injury reports. Principal emailed Parent the documents requested in the December 16th email to AP. Principal also let Parent know that hard copies of the documents were available in the main office. Additionally, Principal informed Parent that Special Education Coordinator (Coordinator) would be reaching out to schedule a meeting at the first of the year. Parent thanked Principal and also confirmed that, with the exception of the main office, there were no cameras in the school. Principal responded by letting Parent know that the only cameras were located on the outside of the building and that there is a viewing screen in the main office.

29. On December 17, 2025, Director responded, via email, letting Parent know that Coordinator was not at work and was unable to respond to Parent's voicemail on December 16th. Director also stated that Director was aware that Principal contacted Parent to discuss concerns.
30. On December 18, 2024, Parent emailed Principal and requested a detailed report for the December 6th and December 16th discipline incidents. Parent also requested to see the room that Student was placed in during both incidents. Principal responded, via email, telling Parent that the documents were emailed to Parent on December 17th and that there were no other reports available specific to the two dates requested. Principal also let Parent know that School would be happy to schedule a tour of the Student Success Suite on either December 19th or December 20th at 3:45pm. Parent responded, via email, stating that the forms did not contain enough information. Parent also let Principal know that December 19th at 3:45pm was the chosen time to "see the room where Student was placed in a hold." Principal thanked Parent and confirmed the December 19th tour date. Parent responded, via email, saying Principal neglected to respond regarding Parent receiving additional information from the two incidents. Principal did not respond to Parent's request for additional information. Parent added that the lack of response would be taken as a refusal to have AP add additional information in writing.
31. On December 19, 2024, Parent emailed Principal and requested all of Student's kindergarten discipline referrals. Principal responded, via email, letting Parent know that the documents were being gathered and would be available to Parent at the time of the scheduled tour later that day. Parent emailed Principal after the tour and stated that there was not a discipline referral for an incident on February 7, 2024, that led to Student being restrained. Principal responded, via email, stating that the restraint was documented through a restraint form and added that the staff did not document the incident as a referral because it was Student's first incident. Principal also stated that Parent or guardian was notified for each restraint as noted on each restraint form provided to Parent.
32. On December 20, 2024, Parent emailed Superintendent, Director and Board Member to express concerns regarding Student's IEP not being followed. Parent also voiced concern around restraints that involved AP. Parent requested an IEP meeting and asked that a Behavior Intervention Plan (BIP) be implemented as soon as possible. Director informed Parent, via email, that an investigation into the concerns expressed would occur after the holidays. Parent responded asking if a phone call could be had later that day. Director confirmed availability and a 2:30 pm time was agreed upon.
33. On December 20, 2024, Parent spoke with Director, via phone, who informed Parent that an investigation would take place. During the phone call, Parent requested Student's 1st marking period progress report and information about the type of restraints used on Student.

34. On December 20, 2024, Coordinator emailed Parent another copy of Student's marking period 1 progress report at Director's request.
35. On January 2, 2025, Director emailed Parent to confirm that the investigation into Parent's concerns was starting and that a written report would be shared at the conclusion of the investigation. Parent thanked Director but added that the investigation should cover all restraints performed by AP.
36. On January 3, 2025, Director emailed the results of investigation to Parent. Director found that Student's behavior was unsafe and required the use of restraints. Director also found that AP followed protocols for de-escalation prior to using the restraints that were in alignment with the training AP received from the Crisis Prevention Institute (CPI).
37. On January 3, 2025, Parent emailed Director and asked if Director would be attending the January 7, 2025 IEP meeting. Director responded no but added that Supervisor of Special Education (SSE) would be in attendance.
38. On January 10, 2025, Parent contacted the state of Delaware's Ombudsman office to voice concern with the District.
39. On January 12, 2025, Parent emailed Director and requested a copy of the investigation report with all the facts that made the investigation complete.
40. On January 14, 2025, Coordinator emailed Parent an updated Notice of Meeting (NOM) with a rescheduled date of January 21st because the previously scheduled January 7th IEP meeting was cancelled due to school closing. Coordinator also told Parent that a copy would be sent home to sign and return. Additionally, Student received a discipline referral for refusing to use the bathroom when asked and for flipping desks and chairs in the classroom. In addition, Director responded to Parent's January 12th email letting Parent know that an in-person meeting or phone call could be held if Parent wanted to discuss the report. Parent replied by requesting to speak in person.
41. On January 15, 2025, Director emailed Parent and offered to meet on January 21st at 3 pm but Parent declined because Student's IEP meeting was schedule for that day and time. Director offered to meet on January 22nd at 4 pm and Parent accepted the date and time.
42. On January 16, 2025, Parent emailed Coordinator and asked that Student's Art teacher be invited to the IEP meeting to discuss the December 6th incident. Coordinator emailed Parent an updated NOM that included Student's Art teacher. Additionally, Student received a discipline referral for refusing to leave the classroom during lunch, pushing and knocking over desks, and kicking and punching staff.

43. On January 18, 2025, Director informed Parent that the meeting would be held in the Assistant Superintendent's (AS) office. Director also included the address of the AS's office.
44. On January 21, 2025, Parent emailed Coordinator to confirm that all supporting data regarding Student's self-regulation goal would be brought to the IEP meeting. Parent also stated that the main focus would be on the self-regulation portion of the IEP. However, Parent cancelled the IEP meeting on the advice of the Ombudsman. Additionally, Student received a discipline referral for throwing objects, knocking over desks and chairs, kicking staff and stabbing FCT in the leg with a pencil. Coordinator emailed a NOM invitation for a January 23rd IEP meeting but Parent was not available on that date and declined the invitation.
45. On January 22, 2025, Parent met with Director and AS to discuss the investigation. Parent voiced concern with the results of the investigation and asked for more information about how the IEP was being implemented. Director shared that SSE would be attending the upcoming IEP meeting where Parent's concerns would be addressed. Additionally, Coordinator emailed Parent a NOM for January 28th and Parent accepted the invitation.
46. On January 23, 2025, Director thanked Parent, via email, for meeting and let Parent know that the concerns discussed at the meeting were shared with the SSE who would be in attendance at the upcoming IEP meeting. Parent responded by letting Director know that it was disappointing that the investigation only covered the incident that occurred in the art room. Parent also stated that the concerns surrounding Student's IEP not being implemented were not addressed during the investigation.
47. On January 24, 2025, Director emailed Parent to let Parent know that Director would be attending the upcoming IEP meeting. Director also stated that Parent's concerns would be addressed then.
48. On January 28, 2025, Director emailed Parent and stated that a scheduling conflict arose so Director would not be attending the meeting.
49. On January 28, 2025, the Team met to review Student's IEP. During the meeting, the Team reviewed and discussed how Student's accommodations were implemented in the classroom. The Team also reviewed Student's progress report that documented progress toward the self-regulation annual goal. Additionally, the Team discussed counseling services that Student was receiving and requested permission to conduct a Functional Behavior Assessment (FBA) due to Student's behavior. During the meeting, the Team scheduled a date and time to review the results of the FBA. The Team also identified a day and time for Student's annual IEP meeting.
50. On January 28, 2025, Student's progress report indicated Student was making satisfactory progress toward annual self-regulation, articulation: /s/ blends articulation: phonological processes and receptive language goal. However, Student was not

- making satisfactory progress toward annual reading and math goal. Additionally, Student received 11 group and 9 individual counseling sessions during the progress period.
51. On January 29, 2025, Coordinator contacted Parent, via email, to inform that the paperwork discussed at the January 28th meeting would be at school for pick up. Coordinator also informed Parent that an annual IEP meeting would be held on March 11, 2025 during the FBA review.
 52. On January 29, 2025, Parent emailed District and requested a meeting to discuss concerns with Student's behavior and IEP because the January 28th meeting was shorter than expected.
 53. On January 30, 2025, Parent emailed Coordinator and requested another IEP meeting because there was not enough time during the January 28th meeting. Parent also requested that Student's Counselor attend the meeting so that Student's self-regulation progress could be explained. Parent also requested that "Parent request" be added to the information sources used for the proposed action section of the PTE. Coordinator responded to the email and informed Parent that the requested change would be made. Coordinator also told Parent that an IEP meeting would have to be held if Parent wanted to discuss the IEP further. Additionally, Coordinator included SSE as a contact on the email. Parent responded by asking SSE to schedule a meeting.
 54. On January 30, 2025, Parent emailed Director and requested another meeting. SSE, spoke with Parent, via phone, and Parent expressed concerns again about Student being restrained and wanted the staff to be held accountable. In that discussion, SSE told Parent that staff accountability was not SSE's responsibility. During the conversation, SSE committed to observing Student and to providing additional mental health support to the Team to ensure Student was being successful in the classroom.
 55. On February 2, 2025, Assistant Principal 2 (AP 2) observed Student in the classroom.
 56. On February 5 and 7, 2025, District's Mental Health Provider (MHP) observed Student in the classroom.
 57. On February 11, 2025, MHP met with the Team and discussed proactive strategies, de-escalation strategies, use of visuals, and how to recognize non-verbal signs of dysregulation.
 58. On February 13, 2025, MHP met with Principal to discuss the February 11th Team meeting.
 59. On February 13, 2025, Parent filed a State Complaint.

60. On February 21, 2025, MHP facilitated a professional development opportunity that covered limit setting, support during transitions and de-escalation strategies with the Team.
61. When asked for evidence of IEP implementation, the following were provided: On December 4, 2024, Student completed a math worksheet with teacher support. On December 13, 2024, during the school day Student worked in a small group, had questions read aloud, was given preferential seating and received extended time while completing a math worksheet. On January 14, 2025, Student worked in a small group, had questions read aloud, was given preferential seating, and received extended time and 1on1 teacher support while completing a math worksheet.

LEGAL CONCLUSIONS

Allegations # 1: Failure to implement Student's Individual Education Plan (IEP)

According to 14 DE Admin. Code § 923.1.2, A Free Appropriate Public Education (FAPE) shall be available to all children with disabilities residing in Delaware beginning no later than the child's third birthday, or an earlier age as otherwise provided in these regulations, until the receipt of a regular high school diploma or until August 31st of the school year in which the child attains the age of 22, whichever occurs first. FAPE shall also be available to children with disabilities who have been suspended or expelled from school, as provided for in this section and 14 **DE Admin. Code** 926, subsection 30.4.

1.2.1 Each public agency receiving funds under part of the Act, or receiving state funding for the education of children, shall ensure that FAPE is made available to each eligible child beginning no later than the child's third birthday, or an earlier age as otherwise provided in these regulations; and that an IEP is in effect for the child by that date, in accordance with 14 **DE Admin. Code** 925, subsection 23.1.

1.2.3 Children advancing from grade to grade: Each public agency shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

The IEP Team developed an IEP that Parent agreed with on April 23, 2024. During the April 23, 2024 IEP meeting, a self-regulation goal was added to Student's IEP due to behaviors. However, the Team did not conduct an FBA and a BIP was not developed to support the behaviors that warranted the self-regulation goal. The IEP was implemented at the beginning of the school year without incidence until the October behavioral incidents. In December, Parent had concerns around whether the IEP was being implemented because staff restrained Student multiple times. Parent reached out to school administration and teachers, and requested an IEP meeting because Student received multiple disciplinary referrals. Student's November progress report documented that Student was making satisfactory progress toward annual self-regulation, goal. However, Student received multiple discipline referrals and was restrained due to behaviors. District administrators met with Parent to discuss concerns with Student's behavior and restraints being used by AP. Additionally, the Team met with Parent to discuss behavior concerns and whether Student's accommodations were being implemented. However, during the meetings, neither

District administrators nor school were able to show documented evidence of accommodation implementation. During the course of this investigation, District submitted 33 math and reading worksheets Student completed. However, Student's math worksheets, dated December 4, 2024, December 13, 2024 and January 14, 2025 were the only documents that include the accommodation(s) implemented and the date the worksheet was completed. The District had its Family Crisis Therapist (FCT) observe Student and collaborate with classroom staff to develop supports to ensure provision of Student support. The FCT also provided school staff with professional development opportunities that addressed Student's areas of need. However, District did not provide these resources and/or professional development until after Parent filed a complaint. Additionally, the District was not responsive to Student's educational needs in a timely manner. An IEP meeting to discuss Parent's concerns should have taken place before the January 28th meeting when a PTE for an FBA was discussed. **Therefore, I find there was a violation of IDEA and state special education regulations and a denial of FAPE regarding procedures for ensuring that specific accommodations, modifications, and supports were provided to the child.**

Allegation #2: Failure to reevaluate and modify the IEP due to behavior incidents

According to 14 DE Admin. Code § 925.5.1, Review of existing evaluation data: As part of an initial evaluation (if appropriate) and as part of any re-evaluation under these regulations, the IEP team and other qualified professionals, as appropriate, shall review existing evaluation data on the child, including:

5.1.1 Evaluations and information provided by the parents of the child;

The Student's progress reports documented satisfactory progress toward the annual self-regulation goal. However, Parent voiced concerns regarding Student's inappropriate behavior that led to restraints and discipline referrals during the months of October, November, December and January. Parent also gave School notice that family physician diagnosed Student with ADHD and ODD. Parent requested an IEP meeting to review the physician's evaluation and to develop a behavior plan. In addition, Student had multiple discipline referrals and restraints from October through January. However, District did not conduct an FBA so that a behavior plan could be developed. A meeting should have been held and the IEP should have been revised to appropriately address Student's behavior. **Therefore, I find that there was a violation of IDEA, state special education regulations and a denial of FAPE regarding procedures for reevaluating student based on reviewing existing evaluation data Parent provided, as well as failure to revise the IEP based on needs.**

Allegation #3: Failure to train staff.

Regulation 34 CFR §300.156 speaks to ensuring that teacher, related service and paraprofessional personnel are appropriately and adequately prepared and trained.

In order to properly implement Student's IEP and in order to comply with Delaware regulations surrounding restraint and seclusion, District is required to provide de-escalation training. District's failure to do so prevented its ability to implement Student's IEP. District was unable to show that less restrictive interventions were ineffective before a restraint was imposed on Student. On February 21, 2025, MHP facilitated a professional development opportunity that covered limit setting, support during transitions and de-escalation strategies with the Team. Behaviors that

caused Student to be restrained have occurred since April 2023. It was not until Parent filed the state complaint that staff were trained. **Therefore, I find that there was a violation of IDEA and state special education regulations regarding appropriate staff training to implement the IEP, as well as use of interventions to deescalate prior to using restraint. Failure to create a BIP when evidence suggests it is necessary is in itself evidence of a lack of proper training.**

CORRECTIVE ACTIONS

Student Level

1. School shall schedule an IEP meeting with Parent to discuss Student's progress and Parent concerns. The School shall contact SPARC to request IEP Facilitation services for this meeting. School shall also request permission to conduct a Functional Behavior Assessment (FBA) and develop a Behavior Intervention Plan (BIP). In addition, School shall hold an eligibility meeting to discuss the family doctor's evaluation and redetermine eligibility if needed. During the meeting, the IEP Team, including Parent, will determine what compensatory education is warranted regarding educational and related services for the date range of September 1, 2024 through February 13, 2025. Together, the IEP Team, including Parent, will calculate the compensatory education. All compensatory education must be completed by **November 14, 2025**. Student's ESR, IEP, BIP, a Prior Written Notice (PWN) from the meeting, and documentation outlining the agreed upon amount of compensatory education and a plan for the provision of services shall be provided to Parent and a copy shall be sent to the Director of Exceptional Student Resources by **May 30, 2025**.

District Level

1. District shall conduct professional development with all District special education and related service staff regarding the following:
 - Procedures for ensuring that a student's IEP is implemented with fidelity,
 - Procedures for ensuring that an IEP Team periodically reviews the child's IEP to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate.
 - Procedures for collecting data that provides evidence of accommodation implementation.
 - Procedures for when and how to conduct a Functional Behavior Assessment (FBA) and how to develop a Behavior Intervention Plan (BIP).
 - Procedures for reviewing outside evaluations provided by a parent and/or guardian.

This professional development must take place by **May 15, 2025**. All materials, as well as staff sign-in sheets must be sent to the Director of Exceptional Children Resources by **May 30, 2025**.

Respectfully submitted,

REDACTED