

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL STUDENT RESOURCES**

**STATE COMPLAINT DECISION**

**DE SC # 25-14**

**Date Issued: June 24, 2025**

On April 25, 2025, REDACTED (Parent) filed a complaint with the Delaware Department of Education (Department). The complaint alleges the Indian River 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).<sup>1</sup> 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 complaint also alleges the District violated 14 DE Admin. Code § 610, Limitations on Use of Seclusion and Restraint, regarding improper and undocumented physical restraint.

**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 April 25, 2025. Therefore, the Department’s findings address violations from April 25, 2024, to April 25, 2025.

The investigation included a review of Student’s educational records provided by District, as well as email correspondence and interviews with REDACTED (Parent), REDACTED, Director of Special Education (Director), REDACTED, Supervisor of Special Education (Supervisor), REDACTED, Principal of REDACTED (Principal), REDACTED Assistant Principal (AP), REDACTED School Counselor (School Counselor), REDACTED, Paraprofessional (Paraprofessional), REDACTED, Board Certified Behavior Analyst (BCBA), REDACTED, School Psychologist (Psychologist), REDACTED, School Psychology Intern (SPI), and REDACTED, District Mental Health Professional (MHP).

**COMPLAINT ALLEGATIONS**

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

1. Failure to report and document a restraint.
2. Failure to follow Procedural Safeguards regarding parent notification.
3. Failure to use proper Crisis Prevention Institute (CPI) compliant restraint techniques.
4. Failure of school leadership in following legal procedures.

---

<sup>1</sup> 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.

## **FACTUAL FINDINGS**

1. Student is a REDACTED-year-old REDACTED grader who attends an REDACTED school in District and receives special education and related services as a student with a primary educational classification of Developmental Delay. Student is currently receiving Homebound services.
2. On April 23, 2024, the Individual Education Program (IEP) Team met to review the results of Student's recent reevaluation. IEP Team determined that Student was eligible to receive special education and related services as a student with a cognitive and social emotional Developmental Delay. At this meeting, IEP Team developed goals to support reading, math, self-regulation, articulation and expressive language needs.
3. On June 11, 2024, Student's progress report indicated Student was making satisfactory progress toward annual math, reading, self-regulation, articulation /s/ blends, and receptive language goals. However, Student was not making satisfactory progress toward annual articulation: phonological processes goal.
4. 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.
5. On January 28, 2025, the IEP 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 IEP 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.
6. 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.
7. 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 this meeting the FBA would be reviewed.

8. On January 29, 2025, Parent emailed District and requested a meeting to discuss concerns with Student's behavior and the IEP because the January 28th meeting was shorter than expected.
9. On February 3, 2025, Parent signed Permission to Evaluate (PTE) for FBA.
10. On February 5 and 7, 2025, District's Mental Health Provider (MHP) observed Student in classroom.
11. On February 6, 13, 19, and 21, 2025, SPI observed Student in classroom. The FBA report indicated many interactions between staff and student trying to get Student engaged in lessons. Student preferred to sit away from group even when prompted to join. Behaviors were observed but none resulted in restraint. Student walked around room, put head on desk, threw some classroom items, and inappropriately touched smartboard and computers in room.
12. On February 11, 2025, MHP met with IEP Team and discussed proactive strategies, de-escalation strategies, use of visuals, and how to recognize non-verbal signs of dysregulation.
13. On February 14, 2025, Parent was picking up Student for early dismissal, when a staff member escorted Parent to School Counselor's office. Parent reported observing Student being held in a restraint from doorway. Parent reported AP implemented a restraint. Parent reported, AP was standing behind [Student] holding [Student's] wrist while [Student's] arms were in an upward cross position against [Student's] chest. AP let go once AP seen me walk in the room. AP claimed the intervention was not a "restraint," and I quote "because a restrain is when the arms are crossed and AP's hands would be securing Student's wrist underneath Student's armpits."
14. On February 18, 2025, Parent contacted Principal via phone requesting restraint paperwork from February 14, 2025. Principal referred Parent to AP.
15. On February 21, 2025, MHP facilitated a professional development opportunity that covered limit setting, support during transitions and de-escalation strategies with the Team.
16. On February 24, 2025, AP returned phone call to Parent reiterating that a restraint did not occur, but Student's arms were flaying in the air and Student was seeking sensory input by trying to apply pressure to staff. AP was trying to prevent harm to self, School Counselor and Student, by blocking Student's hands and arms in a crossed motion. Prior to Student approaching AP, several objects in room (three-hole punch, markers, and charts) were thrown, and Student was attempting to hit, kick and punch both staff members.
17. On March 11, 2025, the IEP Team met for Annual IEP, to review FBA and develop Behavior Intervention Plan (BIP). According to the FBA, target behaviors included the

following:

- Aggression: Aggression includes any behavior that may cause physical harm to [Student], others, or property. Aggression may include a range of actions such as punching, hitting, grabbing, pushing, kicking, poking/stabbing with pencils, directed throwing of items, breaking classroom items, or flipping chairs.
- Noncompliance: Noncompliance may include the refusal or failure to follow a given directive, instruction, or request within a reasonable timeframe. This behavior may manifest as ignoring instructions or actively refusing to engage in the requested task or activity. For example, [Student] may refuse to begin a task when asked or ignore a request. Non-compliance may also involve leaving an activity or area when asked to remain or taking an extended amount of time to comply with a simple instruction.

18. On March 12, 2025, The Psychologist provided professional development on Student's BIP to Assistant Principal, Special Education Coordinator, and three school counselors.
19. On March 17, 2025, the IEP Team met with Special Education Partnership for the Amicable Resolution of Conflict (SPARC) from the University of Delaware for mediation due to Parent filing a State Complaint. No resolutions occurred during meeting; therefore, an additional meeting was scheduled for April 4, 2025.
20. On March 26, MHP and BCBA provided professional development to Paraprofessional regarding the BIP.
21. On April 4, 2025, the IEP Team met again with SPARC for IEP facilitation. Parent was not satisfied with results of the discussion.
22. On April 7, 2025 the IEP team met "...to increase [Student's] specially designed instruction around behavior with a picture exchange system which will remove [Student] from the general education classroom for 40%-79% which classifies [Student] as a Setting B Student." The District also requested permission to conduct an FBA.
23. On April 9, 2025, District provided Parent with a consent to evaluate form to conduct an FBA "...as a result of [Student] displaying head-banging behaviors to determine if edits need to be made to [Student's] behavior intervention plan."
24. On April 15, 2025, Parent signed consent to evaluate.
25. On April 28, 2025, Parent decided to remove Student from school due to additional restraints that occurred despite BIP being put in place.

26. On May 12, 2025, the IEP Team met to change placement to Homebound, determine compensatory education awarded from State Complaint 25-10, discuss Extended School Year (ESY) services and proposed conducting a reevaluation as well as an Assistive Technology (AT) evaluation.
27. A document labeled Functional Behavior Assessment and dated May 12, 2025 stated, "Given that [Student was present in school for only three days following the signing of the Permission to Evaluate (PTE) on April 15, 2025, and with spring break occurring from April 18<sup>th</sup> to April 27<sup>th</sup>, there was insufficient time to conduct satisfactory behavioral observations related to the concern of [Student] banging [Student's] head. Therefore, only one data point was collected during this period, limiting the ability to analyze behavioral patterns and preventing identification of the function of this behavior within the school setting."

### **LEGAL CONCLUSIONS**

#### **Allegation # 1: Failure to report and document a restraint.**

According to Restraint and Seclusion regulations, 14 Del. Admin. Code § 610.5.0

##### **5.0 Parental Notification of Use of Physical Restraint**

5.1 Except as provided in subsection 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.

5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.

5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department of Education. The written report shall contain, at a minimum, the information required under Section 6.0.

26 DE Reg. 472 (12/01/22)

The IDEA does not address restraint. Furthermore, Parent reported observing a restraint from the doorway, AP and School Counselor reported a restraint was not implemented but an effort to block student from hitting and harming self or others. There are opposing views regarding whether an actual restraint was implemented on February 14, 2025. As such, this Investigator cannot conclude whether a restraint occurred.

Although the IDEA does not address restraint, the IDEA does require the local education agency to

address and document behavior concerns and necessary supports in the IEP, FBA, and BIP. The FBA/BIP document created on March 11, 2025, after the alleged restraint in question occurred, does not document the incident nor indicate restraint as one of the outlined behavioral interventions.

**Therefore, I find that there was a procedural violation of IDEA and Delaware regulations (14 Del. Admin. C. §925-7.0).**

**Allegation # 2: Failure to follow Procedural safeguards regarding parent notification.**

According to Delaware State Special Education Regulation, 14 DE Admin Code § 926.3.0 Prior Notice by the Public Agency: Content of Notice

3.1 Notice: Written notice that meets the requirements of subsection 3.2 shall be given to the parents of a child with a disability no less than 10 school days before the public agency:

3.1.1 Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

3.1.2 Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; and

3.1.3 In cases involving a change of placement for a disciplinary removal, written notice shall be provided no less than 5 school days before the public agency proposes to change the child's placement.

3.2 Content of notice: The notice required in subsection 3.1 shall include:

3.2.1 A written description of the action proposed or refused by the agency; and

3.2.2 A written explanation of why the agency proposes or refuses to take the action; and

3.2.3 A written description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; and

3.2.4 A written statement that the parents of a child with a disability have protection under the procedural safeguards of state and federal regulations and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

3.2.5 Sources for parents to contact to obtain assistance in understanding the provisions of these regulations, including contact information for parent assistance programs, legal assistance programs, and the Delaware State Bar Association; and

3.2.6 A written description of any other options the IEP Team considered and

the reasons why those options were rejected; and

3.2.7 A written description of other factors which are relevant to the agency's proposal or refusal; and

3.2.8 A written summary of procedural safeguards must be available to the parents under state and federal law and regulations.

3.2.8.1 A full copy of the procedural safeguards under state and federal law and regulations shall be provided to the parents at the IEP meeting.

3.3 Notice in understandable language: The notice required in subsection 3.1 shall be:

3.3.1 Written in language understandable to the general public; and

3.3.2 Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

3.4 If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure that:

3.4.1 The notice is translated orally or by other means to the parent in his or her native language or other mode of communication; and

3.4.2 The parent understands the content of the notice; and

3.4.3 There is written evidence that the requirements in subsections 3.4.1 and 3.4.2 have been met.

(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1)); 14 Del.C. §3110, 14 Del.C. §3130, 14 Del.C. §3133, 14 Del.C. §3134)

14 DE Reg. 1065 (04/01/11)

15 DE Reg. 354 (09/01/11)

19 DE Reg. 1018 (05/01/16)

26 DE Reg. 847 (04/01/23)

As stated above, the IDEA requires parental notification when the local education agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. I did not find an IDEA violation for failure to provide notice as required. There is no indication from the complaint or this investigation that shows the LEA failed to provide notice as required.

The procedures under Restraint and Seclusion (14 DE Admin Code § 610) are not contained in the IDEA and such obligations are not required by Delaware special education regulations.

**Therefore, this allegation does not fall under the purview of the Investigator's authority.**

### **Allegation # 3: Failure to use proper CPI compliant restraint techniques.**

According to Restraint and Seclusion regulations, 14 Del. Admin. Code § 610.4

#### **4.0 Training of Personnel**

4.1 Except as provided in 14 Del. C. §702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have completed training in physical restraint procedures.

4.1.1 Such personnel shall receive annual training in the use of crisis prevention and intervention techniques consistent with nationally-recognized training programs, which shall meet the following minimum requirements:

4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;

4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and

4.1.2 Each public school, private program, and alternative program shall maintain written or electronic documentation of each training provided, which shall include a list of all personnel who participated in the training.

There are opposing views regarding whether an actual restraint was implemented on February 14, 2025. Parent reported observing a restraint from the doorway, Asst. Principal and School Counselor reported a restraint was not implemented but an effort to block student from hitting and harming self or others.

**As stated previously, this Investigator cannot definitively conclude if a restraint occurred. Therefore, this Investigator cannot determine if the District failed to follow legal procedures as outlined in § 610.4. Furthermore, as stated previously, § 610.4 is not a requirement of Federal or State IDEA regulation and falls outside of the authority of this Investigator. As such, I find no violation of the IDEA or Delaware special education regulations.**

### **Allegation # 4: Failure of School leadership in following legal procedures.**

According to Restraint and Seclusion regulations, 14 Del. Admin. Code § 610.4

#### **4.0 Training of Personnel**

4.2 Any public-school personnel responsible for reporting the physical restraint of a student to the Department of Education shall complete training on the reporting process approved by the Department of Education and any additional training that the Department of Education may prescribe.



4.2.1 The approved training shall be provided using a web-based platform through the Department of Education's Professional Development Management System (PDMS) or similar system. The training will be provided on an annual basis and made available throughout each school year.

4.2.2 Such personnel responsible for reporting the physical restraint of a student shall complete the approved training at least once every 3 years and during any year in which reporting procedures were changed from the previous year as indicated by the Department of Education.

26 DE Reg. 472 (12/01/22)

This allegation is in reference to Principal and Assistant Principal not following procedures for restraint reporting. There are opposing views regarding whether an actual restraint was implemented on February 14, 2025.

**As stated previously, this Investigator cannot definitively conclude if a restraint occurred. Therefore, this Investigator cannot determine if the District failed to follow legal procedures as outlined in § 610.4. Furthermore, as stated previously, § 610.4 is not a requirement of Federal or State IDEA regulation and falls outside of the authority of this Investigator. As such, I find no violation of the IDEA or Delaware special education regulations.**

### **CORRECTIVE ACTIONS**

#### **District Level**

1. The District shall review its policies, procedures, and practices related to documenting students' challenging behaviors and how they are addressed within special education documents such as the IEP, FBA, and BIP and make clarifications/revisions as needed. Evidence of this review shall be submitted to the Director of Exceptional Children Resources by **July 25, 2025**.

Respectfully Submitted,

*REDACTED*

State Complaint Investigator