

# **Delaware Department of Education Exceptional Children Resources**

## **State Complaint Decision DE SC 26-07**

**Date Issued: December 18, 2025**

On October 23, 2025, REDACTED (Parents), filed a complaint with the Delaware Department of Education (Department). The complaint alleges the Charter School (Charter School) 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 DE Admin. Code §§ 923.51.0–923.53.0.

The investigation included a review of Student’s educational records, interviews with Parents, and Intermediate Charter School personnel: Principal, Assistant Principal of Academics, School Psychologist, Supervisor of Special Education, and Special Education 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 DE Admin. Code § 923.53.2.4. In this case, the Department received the complaint on October 23, 2025. Therefore, the Department’s findings address violations from October 23, 2024, to October 23, 2025.

### **Complaint Allegations**

Parents allege the Charter School violated Part B of the IDEA and implementing regulations, by the following:

1. Failing to develop an appropriate Individualized Education Program (IEP) based on Student’s needs,
2. Failing to appropriately implement Student’s IEP,
3. Failing to appropriately evaluate and identify Student under IDEA,
4. Expelling Student inappropriately, and
5. Failing to provide appropriate services while suspended and expelled.

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<sup>1</sup> 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 is currently REACTED years old. During the 2024-2025 school year, Student attended Charter School for REDACTED grade. Student received special education and related services as a student with the primary educational classification of Other Health Impairment (OHI) and a secondary educational classification of Specific Learning Disability (SLD) in written expression. Currently, Student is expelled and is receiving special education services through homebound services.

## **Background Information**

2. Parents reported Student was identified at birth with a delay and received services from Child Development Watch through Birth to Three. At age REDACTED, Red Clay Consolidated School District (District 1) conducted an evaluation and found Student eligible to receive special education and related services under the educational classification of Developmental Delay (DD). Student attended REDACTED in District 1.
3. After family moved, Student attended REDACTED in Colonial School District (District 2). On October 18, 2019, District 2 conducted a reevaluation to gather further information regarding Student's behavior and Occupational Therapy (OT) needs within District 2. At this time, the IEP Team determined Student was ineligible for special education and related services as Student performed age appropriately in all areas of development except for social/emotional functioning. Student demonstrated difficulties with behavior at home according to Parent; however, demonstrated age-appropriate behaviors in the school setting. Student, also, did not meet the eligibility requirements for OT or speech services.
4. Student attended REDACTED as a REDACTED where Parents report he experienced bullying. On February 25, 2022, District 2 conducted an initial evaluation at Parent request. At the time of the referral, Parent indicated the following areas of concern: impulsivity behavior, difficulty with inattention, home behavior, and hyperactivity. After reviewing all evaluation data, including testing and assessment scores, teacher and psychologist input, as well as previous history, the Team determined that Student did not meet the eligibility criteria for special education services at this time. However, it was discussed and noted that Student should be evaluated by the primary care physician or pediatrician to identify deficits that may be increasing levels of hyperactivity as it appears Student shows signs of impulsivity.
5. On September 22, 2023, Student enrolled in Charter School as a REDACTED grader. Parents reported making a request for a special education evaluation at that time due to concerns of impulsivity, behaviors at home, inattention, and hyperactivity.
6. On January 24, 2024, Charter School sent Parent a Permission to Evaluate (PTE) and Prior Written Notice (PWN) to conduct an psychoeducational evaluation for special education. Parents signed and returned the form that day granting permission.
7. On February 17, 2024, Charter School issued the first Notice of Meeting (NOM) for an IEP meeting on March 12, 2024, to determine eligibility for special education and related services and to develop an IEP if Team found Student eligible.

8. On March 12, 2024, the IEP Team met to review the evaluation results due to parent concerns with handwriting, impulsivity, ability to focus, and impulse control. The IEP Team found Student eligible for special education and related services under the educational classification of Other Health Impairment (OHI) due to a medical diagnosis of Attention Deficient Hyperactivity Disorder. At this time, Student also qualified for Occupational Therapy (OT) services.
9. On March 12, 2024, the IEP Team developed an IEP to address the following areas of need: math fluency, reading comprehension, writing, visual motor skills, and self-regulation. Student qualified for both group and consultative OT services to address writing and visual motor skill deficits. The IEP Team considered and approved that Student needed positive behavior interventions, supports and strategies due to behavior that impedes learning.
10. On March 14, 2024, Parent signed the Consent for Initial Provision of Special Education and Related Services.
11. On June 19, 2024, Charter School issued a NOM for an IEP meeting scheduled for June 24, 2025. On June 24, 2024, the IEP Team held a revision meeting to add "attention to task" to the IEP as an area of need based on data from the March Evaluation Summary Report (ESR). Charter School issued a PWN that same day indicating the addition to the IEP.

### **Current Information**

12. Progress reports of November 1, 2024 (Marking period 1, benchmark #3) indicate Student is making satisfactory progress on math fluency and writing and mastered comprehension goal.
13. On December 20, 2024, Charter School issued a NOM for an IEP meeting on January 22, 2025 to develop, review and/or revise the IEP.
14. Progress reports of January 17, 2025 (marking period two, benchmark #4) indicate that Student is making satisfactory progress on math fluency and writing goals and mastered comprehension goal.
15. On January 22, 2025, the IEP Team held a meeting to discuss current issues. The IEP Team proposed to collect data to address Student's needs in the area of Social/Emotional learning, to conduct check-ins with general education teacher and special education teacher when needed to reinforce self-advocacy, to conduct a speech screening, and to check-in with OT to discuss organization. Charter School issued a PWN on January 22, 2025, to document proposals.
16. After a telephone conference with Parents and staff on February 6, 2025, Charter School issued a PWN to reflect a homeroom change for Student, effective February 11, 2025, due to conflicts with the class, as well as a change in a case manager. The PWN notes parental agreement with the class change. The PWN states that the data supports that the change will be beneficial and will provide Student with a fresh start.

17. On February 14, 2025, Charter School issued a PWN to reflect Parent request for an Autism evaluation, which will include an ADOS-2 conducted by two psychologists, a speech and language evaluation, an Occupational Therapy (OT) evaluation, and Autism rating scales completed by teachers and parents. Parents both signed the PTE on February 14<sup>th</sup> and February 26<sup>th</sup> agreeing to conduct this evaluation.
18. On February 14, 2025, Charter School issued a NOM for Student's annual IEP meeting scheduled for March 4, 2025. Parents both signed the NOM on February 14<sup>th</sup> and February 26<sup>th</sup> agreeing to attend the annual IEP meeting.
19. On March 4, 2025, the IEP Team conducted the annual IEP. The IEP addressed the following areas of need: visual motor skills - handwriting, sensory processing, task initiation/organization, writing conventions and behavior/managing impulsivity. In addition to OT related services being continued, counseling services were added to the IEP.
20. It was noted on the IEP of March 4, 2025, answering the question as to how Student's disability affects the Student's involvement and progress in the general education environment, that Student acts impulsively with both words and actions. This causes Student to struggle to maintain relationships with peers. This concern was addressed through a behavior goal of refraining from inappropriate interactions with peers (verbally and physically to include people and belongings) on 4/5 days. Accommodations include a calming down area in the classroom, structured movement breaks, seated next to a strong peer model, visual schedule, scheduled bathroom breaks, noise cancelling headphones to reduce auditory stimuli, to name a few. The specially designed instruction for behavior was recorded in the Services, Aids and Modifications for 5 minutes a day, 5 days a week, and instructed by regular and special education staff. The IEP also stated that Student will be provided counseling services for 15 minutes, once a month.
21. On March 17, 2025, Charter School issued a NOM for reevaluation/eligibility determination scheduled for April 17, 2025. Parent signed on March 17<sup>th</sup> agreeing that Parent will be in attendance.
22. On April 16, 2025, Charter School issued a NOM for reevaluation/eligibility determination scheduled for April 29, 2025.
23. On April 18, 2025, Parent sent an email to REDACTED (Special Education Coordinator) expressing concern and feeling of being upset after finding out that Student was lost on a field trip to the Philadelphia Zoo. Parent expressed that Charter School did not provide Parent notification of the incident. Special Education Coordinator reported to Investigator that Student had mistakenly moved to another student group while walking around. Both group leaders communicated immediately that that student was not lost but just relocated to another group.
24. On April 29, 2025, the IEP Team met to review the results of the Autism evaluation. The ESR contained documentation that Student was currently having behavioral difficulties. Administration moved Student to a different class due to conflicts with the class challenges with regulating verbal interactions with others, making inappropriate comments that were sexual in nature at times, struggling with social skills and displaying a threatening verbal interaction with another student. Student received a medical diagnosis of Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder and possibility of "conduct disorder" in 2022.

25. The Autism Diagnostic Observation Schedule, Second Edition was administered by REDACTED, an Autism Interdisciplinary Team Nationally Certified School Psychologist and REDACTED, a school psychologist and ADOS-2 certified, administered as the 2<sup>nd</sup> observer. REDACTED, OTR/L, a Pediatric Occupational Therapist, and REDACTED, COTA/L, a Certified Occupational Therapy Assistant completed the Occupational Therapy evaluation. REDACTED CCC-SLP, a Speech and Language Pathologist completed the Speech and Language evaluation
26. After reviewing all evaluation results, the IEP Team determined that Student did not meet the eligibility criteria for an Autism educational classification. “Although Student is demonstrating some sensory difficulties, Student does not meet the criteria for persistent impairments in social communication or social interactions across multiple contexts. Student is very social, wants to share information, understands social relationships, utilizes appropriate eye contact, has friends, can engage in back and forth conversations, asks for information, offers information and identifies emotions well in other people.” The IEP Team determined a primary educational classification of OHI, with a secondary educational classification of SLD in written expression, best captures Student’s needs. The IEP Team also determined that Student did not qualify for Speech/Language services.
27. On April 29, 2025, the IEP Team revised Student’s IEP to reflect the additional data resulting from the evaluation and to finalize the IEP. The IEP addressed the following areas of need: visual motor skills, handwriting, sensory processing, task initiation/organization, behavior management/impulsivity, writing conventions. Counseling and OT services were to continue.
28. On April 30, 2025, Charter School called Parents to pick Student up immediately due to a serious allegation of an incident that was sexual in nature. Charter School informed Parents that an investigation of the incident would be conducted. Charter School placed Student on homebound pending the results of the investigation.
29. During the official investigation of the April 30<sup>th</sup> incident, the victim reported that another incident of sexual nature occurred on April 28<sup>th</sup>. After reviewing video footage of both April 28<sup>th</sup> and April 30<sup>th</sup> and interviewing the victim and Student, Charter School determined that the allegations of sexual harassment, as defined by the Code of Conduct, were substantiated based on *Under 12: Unlawful Sexual Contact III*.
30. Based on the substantiation of the Code of Conduct infraction Under 12: Unlawful Sexual Contact III, the Charter School implemented the following procedures: (1) Student was placed on homebound instruction with services during the investigation, (2) Student was given an Out of School Suspension for 10 days with services, (3) Student was to remain on homebound instruction throughout the expulsion process, and (4) Recommendation for Expulsion was processed.
31. On May 1 and May 2, 2025, Charter School issued three NOMs for a manifestation determination meeting on May 7, 2025. The NOM also indicated that the IEP Team will determine whether the recent behavioral incident was a manifestation of Student’s disability and, also, discuss a change of placement for Student. In addition, on May 1, 2025, Charter School sent a Title IX Alleged Perpetrator Notification letter to Parents.

32. On May 7, 2025, the IEP Team conducted a Manifestation Determination meeting to determine if the recent behavioral incidents of April 28<sup>th</sup> and 30<sup>th</sup> were a manifestation of Student's disability.
33. During the Manifestation Determination meeting, the IEP Team reviewed Student's discipline records. Between October 23, 2024 and April 17, 2025, Student had 12 behavioral incidents reported. These included offensive touching, inappropriate behavior, inappropriate verbal behavior, disruption on the school bus, disruption in the classroom, disrespect toward a student, a safety violation, and terroristic threatening. Parents shared that Student is seeing a therapist for Center for Child Development (CCD) weekly at school. REDACTED (General Education Teacher) shared that Student is easily distracted and sometimes shows impulsiveness with peers but can easily be redirected. REDACTED (Special Education Teacher) shared that Student has a respectful relationship with peers and teacher; however, Student's impulsiveness is seen in completing assignments. IEP Team reviewed Student's evaluation data and IEP.
34. The IEP Team determined that the Student's behavior was **not** a direct result of the Charter Schools failure to implement the Student's IEP **nor** was the conduct in question caused by or had a direct and substantial relationship to the Student's disability. Therefore, based on the data in the ESR, which had been thoroughly reviewed by the IEP Team on April 29<sup>th</sup>, including a review of the goals and supports in the IEP, classroom and school data, and parent and teacher input, the IEP Team determined the violation was **not** a manifestation of Student's disability. Further information described Student's disability manifests itself in impulsiveness with tasks within the educational environment. Student is identified as needing special educational services for OHI for diagnosis of ADHD and ODD with a secondary classification of SLD in the area of written expression.
35. The Manifestation Determination document also explained that a Title IX investigation was concurrently being conducted. It was explained that Student was placed on homebound instruction as of May 1, 2025.
36. On May 7, 2025, Charter School issued a PWN to reflect the IEP Team's decision that the violation of the code of conduct was **not** a manifestation of the Student's disability and the violation of the code of conduct was **not** a result of the Charter School's failure to implement the Student's IEP. The PWN also reflected the IEP Team's decision to change the Student's Least Restrictive Environment (LRE) to reflect homebound services.
37. On May 12, 2025, Charter School provided Parents with written notice informing them of the Charter School's recommendation to proceed with an expulsion hearing due to the substantiated infraction of Under 12: Unlawful Sexual Contact III Student Victim. Notice of the expulsion hearing was set for May 22, 2025. Charter School also determined that Student will be provided homebound services until June 12, 2025.
38. Through an email dated May 15, 2025, Parents waived the timeline for the waiting period of the expulsion hearing.
39. On May 22, 2025, REDACTED an Independent Hearing Officer (IHO), held the expulsion hearing. Based upon the record presented, the IHO recommended Student be expelled for one year.

40. Charter School held a board meeting in July, 2025 to review and approve the expulsion with services.
41. On September 8, 2025, Charter School issued a PWN to propose the following action: Due to Student's expulsion with services status, Charter School proposed the following plan for the 2025-2026 school year (until April 30, 2026, when expulsion window ends):
- FlexPoint Virtual School provides 5 hours per week of tutoring to support progress in the general education courses of English Language Arts (ELA), Math, Social Studies and Science. FlexPoint Virtual School uses an asynchronous model with an at-home adult serving in the role as coach. While the core content is asynchronous, courses feature live interactive lessons, direct instruction, collaboration with classmates and teachers spending time one-on-one with students as they progress through the course. Parent will serve as the learning facilitator.
  - Two 30 minute special education sessions per week to support progress toward IEP goals.
  - 30 minutes per week of Occupational Therapy to address OT needs identified in the IEP.
  - Charter school offered one virtual, 15 minute counseling session per month; however, Parent declined.
  - Five hours a week of homebound tutoring provided to support FlexPoint courses provided by REDACTED (Tutor).
42. In addition to documenting the proposed service plan, the PWN also reflected that the Charter School offered to provide counseling services as specified on Student's current IEP, noting Parent declined counseling services by phone on August 14, 2025. Parent communicated that Student currently receives private therapy from an outside therapist.
43. Special education service logs document REDACTED (Special Education Staff) provides instruction virtually on Mondays and Fridays from 1:00 to 1:30 addressing task initiation/organization and behavior/managing impulsivity. During September and October 2025, services were provided twice each week totaling 8 hours of instruction.
44. Progress reports for May 7, 2025, through November, 2025 indicate Student begins tasks within one minute 100% of the time with minimal or no prompts from staff. Data was not collected for behavior/managing impulsivity due to limited opportunities to observe targeted behavior because Student is receiving individualized services through virtual homebound. Therefore, it was noted, progress toward this benchmark cannot be determined at this time.
45. Service logs for OT document REDACTED (OTR/L) provides instruction virtually 30 minutes three times a month addressing writing/letter formation/spacing and consult 30 minutes one time per month to collaborate with team members to incorporate sensory-based strategies and accommodations that support self-regulation. OT provided services during September and October 2025 totaling approximately 4 hours.
46. Progress for written expression regarding copying 3-5 sentence paragraph indicate Student can consistently place all letters on the line, demonstrating adequate spacing between words and form letters correctly 65 % of the time with frequent verbal cues. Since Student does not often have paper available to do writing, sessions involve more typing over zoom. Student does need verbal prompts to stay on task, generate thoughts, and sentence formation when typing.

47. Tutor documented services for September through October 2025 in homebound tutoring logs for approximately 70 hours of service. The Homebound Instruction Reports indicate date of service, hours taught per subject, an instructional summary of each subject area, assignments issued, and date work is returned.
48. Parents filed the State Complaint on October 23, 2025.

### **Legal Conclusions**

#### **Allegation #1 Failing to develop an appropriate IEP based on Student's needs**

According to IDEA 20 U.S.C. § 1401 (14) and 14 DE Admin. Code §§ 925 7.0 -11.0, In developing each child's IEP, the IEP Team shall consider (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial evaluation or the most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child. IDEA regulations further define the IEP as follows: The term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes: (a) a statement of the child's present levels of academic achievement and functional performance, (b) a statement of measurable annual goals, including academic and functional goals, designed to - (aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and (bb) meet each of the child's other educational needs that result from the child's disability; (c) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided; (d) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—(aa) to advance appropriately toward attaining the annual goals;(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph; an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc); (f) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 1412(a)(16)(A) of this title; and (bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child. (g) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services.



As the IEPs of March 12, 2024, March 4, 2025, and April 29, 2025, were developed, the IEP Teams did consider, utilize, and document the Student's strengths, Parent concerns, the results of the most recent Student evaluations, as well as Student's academic, developmental, and functional needs. The IEP Teams utilized all current Student classroom data to document the present levels of performance. In addition, the IEP Teams developed goals and benchmarks that would allow the Student to make progress appropriate in light of the Student's circumstances.

In addition, considering the decision in *Endrew F. v. Douglas County School District* case, each child's educational program must be appropriately ambitious considering his or her circumstances, and every child should have the chance to meet challenging objectives. The IEP Teams, who developed both IEPs, considered the general education curriculum, gathered data from classroom performance and educational testing to determine the goals, benchmarks, and present levels of performance. The goals and benchmarks were "reasonably calculated" utilizing the expertise of IEP Team members, Student's, Student's potential for growth, and Parent input.

**Therefore, regarding the allegation of failing to develop an appropriate Individualized Education Program (IEP) based on Student's needs, I find no violation of Part B of the IDEA or state regulations.**

## **Allegation #2 Failing to appropriately implement Student's IEP**

According to IDEA 20 U.S.C. § 1401 (9) and 14 DE Admin. Code § 923-3.0. "Free Appropriate Public Education" or "FAPE" means special education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the Department of Education, including the requirements of these regulations; include an appropriate preschool, elementary school, or secondary school education in Delaware; are provided in conformity with an individualized education program (IEP) that meets the requirements of 14 DE Admin. Code §§ 925.7.0 through 925.11.0; provide significant learning to the child with a disability; and confer meaningful benefit on the child with disability gauged to the child with a disability's potential. (Authority: 20 U.S.C. 1401(9); 14 Del. C. § 3110)

The Office of Special Education Programs (OSEP) has further defined local education agencies' (LEAs') responsibility for providing FAPE through an OSEP Dear Colleague Letter on Free and Appropriate Public Education (FAPE) of November 16, 2015, stating: "The cornerstone of the IDEA is the entitlement of each eligible child with a disability to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. 20 U.S.C. § 1400(d)(1)(A). Under the IDEA, the primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. An IEP must take into account a child's present levels of academic achievement and functional performance, and the impact of that child's disability on his or her involvement and progress in the general education curriculum. IEP goals must be aligned with grade-level content standards for all children with disabilities. Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum." 20 U.S.C. § 1414(d)(1)(A) and DE Admin. Code §§ 925.7.0-11.0.

Under IDEA, a district or charter school is legally required to develop and implement an IEP when a student has been found eligible for special education services. In accordance with 14 DE 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 DE Admin. Code §§ 925.20.0 -24.0, except as provided in 14 DE Admin. Code § 925.1.2.3.

On March 12, 2024, Charter School conducted an evaluation due to parent concerns with handwriting, impulsivity, ability to focus, and impulse control. The IEP Team found Student eligible for special education and related services under the educational classification of Other Health Impairment (OHI) due to a medical diagnosis of Attention Deficient and Hyperactivity Disorder. At this time, Student also qualified for Occupational Therapy (OT) services. On that same day, the IEP Team developed an IEP to address the following areas of need: math fluency, reading comprehension, writing, visual motor skills, and self-regulation. Student qualified for both group and consultative OT services to address writing and visual motor skill deficits. The IEP Team considered and approved that the Student needed positive behavior interventions, supports, and strategies due to behavior that impedes learning. Parent signed the Consent for Initial Provision of Special Education and Related Services on March 14, 2024. In addition, on June 24, 2024, the IEP Team revised Student's IEP to add "attention to task" based on data from the March 2024 ESR.

Progress reports of November 1, 2024 (Marking period 1, benchmark #3) indicate Student is making satisfactory progress on math fluency and writing and mastered comprehension goal. Progress reports of January 17, 2025 (marking period two, benchmark #4) indicate that Student was making satisfactory progress on math fluency and writing goals and mastered comprehension goal.

On January 22, 2025, the IEP Team held a meeting to discuss current issues. The IEP Team proposed to collect data to address Student's needs in the area of Social/Emotional learning, to conduct check-ins with general education teacher and special education teacher when needed to reinforce self-advocacy, to conduct a speech screening, and to check-in with OT to discuss organization. Charter School issued a Prior Written Notice on January 22, 2025, to document proposals in preparation for annual IEP meeting. The IEP Team considered classroom data and the progress from the Student's IEP when developing the March 4, 2025, IEP.

The Homebound Instruction Reports indicate date of service, hours taught per subject, an instructional summary of each subject area, assignments issued, and date work is returned. Tutor documented services for September through October 2025 in homebound tutoring logs for approximately 70 hours of service. Special education service logs document REDACTED (Special Education Staff) provides instruction virtually on Mondays and Fridays from 1:00 to 1:30 addressing task initiation/organization and behavior/managing impulsivity. During September and October 2025, services were provided twice each week totaling 8 hours of instruction. Progress reports for May 7, 2025, through November, 2025 indicate Student begins tasks within one minute 100% of the time with minimal or no prompts from staff. Data was not collected for behavior/managing impulsivity due to limited opportunities to observe targeted behavior because Student is receiving individualized services through virtual homebound. Therefore, it was noted, progress toward this benchmark cannot be determined at this time.

Service logs for OT document REDACTED (OTR/L) provides instruction virtually 30 minutes three times a month addressing writing/letter formation/spacing and consult 30 minutes one time per month to collaborate with team members to incorporate sensory-based strategies and accommodations that support self-regulation. OT provided services during September and October 2025, totaling approximately 4 hours.

Progress for written expression regarding copying 3-5 sentence paragraph indicate Student can consistently place all letters on the line, demonstrating adequate spacing between words and form letters correctly 65 % of the time with frequent verbal cues. Since Student does not often have paper available to do writing, session involve more typing over zoom. Student does need verbal prompts to stay on task, generate thoughts, and sentence formation when typing.

**Therefore, regarding the allegation of failing to appropriately implement the Student's IEP, I find no violation of Part B of the IDEA or state regulations.**

### **Allegation #3 Failing to appropriately evaluate and identify Student under IDEA**

According to 14 DE Admin. Code § 922 3.0, a "Child with a Disability" means a child or student evaluated in accordance with 14 DE 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 DE 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.

On September 22, 2023, Student enrolled in Charter School as a REDACTED grader. Parents reported that a request for a special education evaluation was made at that time due to concerns of impulsivity, behaviors at home, inattention, and hyperactivity. On January 24, 2024, Charter School sent Parent a Permission to Evaluate (PTE) and Prior Written Notice (PWN) to conduct a psychoeducational evaluation for special education. Parents signed and returned the form that day granting permission. On February 17, 2024, Charter School issued the first NOM for an IEP meeting on March 12, 2024, to

determine eligibility for special education and related services and to develop an IEP if Student was found eligible. On March 12, 2024, Charter School conducted an evaluation due to parent concerns with handwriting, impulsivity, ability to focus, and impulse control. The IEP Team found Student eligible for special education and related services under the educational classification of Other Health Impairment (OHI) due to a medical diagnosis of Attention Deficient Hyperactivity Disorder. At this time, Student also qualified for Occupational Therapy (OT) services.

On February 14, 2025, a PWN was issued to reflect a Parent request for an Autism evaluation which will include an ADOS-2 conducted by two psychologists, a speech and language evaluation, an Occupational Therapy (OT) evaluation and Autism rating scales completed by teachers and parents. Parents both signed the Permission to Evaluate (PTE) on February 14<sup>th</sup> and February 26<sup>th</sup> agreeing to conduct this evaluation.

On April 29, 2025, the IEP Team met to review the results of the Autism evaluation. It was noted in the ESR that Student was currently having behavioral difficulties. Administration moved Student to a different class due to conflicts with the class, demonstrated challenges with regulating verbal interactions with others, made inappropriate comments that were sexual in nature at times, struggled with social skills and displayed a threatening verbal interaction with another student. Student had a medical diagnosis of Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder and possibility of "conduct disorder" in 2022. After reviewing all evaluation results, the IEP Team determined that Student did not meet the eligibility criteria for an Autism educational classification. Although Student is demonstrating some sensory difficulties, Student does not meet the criteria for persistent impairments in social communication or social interactions across multiple contexts. Student is very social, wants to share information, understands social relationships, utilizes appropriate eye contact, has friends, can engage in back and forth conversations, asks for information, offers information and identifies emotions well in other people. The IEP Team determined OHI, with a secondary educational classification of Specific Learning Disability in Written Expression, best captures Student's needs. The IEP Team also determined that Student did not qualify for Speech/Language services.

The Autism Diagnostic Observation Schedule, Second Edition was administered by REDACTED, an Autism Interdisciplinary Team Nationally Certified School Psychologist and REDACTED, a school psychologist and ADOS-2 certified, administered as the 2<sup>nd</sup> observer. REDACTED, OTR/L, a Pediatric Occupational Therapist, and REDACTED, COTA/L, a Certified Occupational Therapy Assistant completed the Occupational Therapy evaluation. REDACTED, CCC-SLP, a Speech and Language Pathologist completed the Speech and Language evaluation.

The Charter School's certified evaluators did complete the appropriate assessments in suspected areas of need in accordance with 14 DE Admin. Code § 925.4. for both evaluations on March 12, 2024, and April 29, 2025.

**Therefore, regarding the allegation of failing to appropriately evaluate and identify Student under IDEA, I find no violation of Part B of the IDEA or state regulations.**

#### **Allegation #4 Expelling Student inappropriately**

A manifestation determination review must be conducted when school personnel propose to change the placement of a child with a disability because of a violation of the school's code of student conduct. The manifestation determination review also must take place when the LEA is deemed to have knowledge that the child is a child with a disability, even if the child has not yet been found eligible for special education and related services at the time the discipline is proposed. The manifestation determination review must occur within 10 school days of the decision to change the placement of the child because of a violation of the school's code of student conduct. 34 C.F.R. § 300.530(e)(1). A manifestation determination review is a review conducted by the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) of all relevant information in the child's file to determine if the conduct that gave rise to the violation of the school's code of student conduct was caused by, or had a direct and substantial relationship to, the child's disability, or if the behavior in question was the direct result of the LEA's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1); 71 Fed. Reg. 46748 (Aug. 14, 2006).

For disciplinary changes in placement that would exceed 10 consecutive school days when the conduct that gave rise to the violation of the school code is determined *not* to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. 34 C.F.R. § 300.530(c). However, a child with a disability who is removed from the child's current placement when the conduct in question is determined *not* to be a manifestation of the child's disability must continue to receive educational services as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. Further, the child must receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

34 C.F.R. § 300.530(d)(1). While in some instances the conduct in question may not have a direct and substantial relationship to the child's disability, the child may benefit from an FBA and additional behavioral supports to address the underlying behavior. 34 C.F.R. § 300.530(e)(1)(i)-(ii).

On May 7, 2025, the IEP Team conducted a Manifestation Determination meeting to determine if the recent behavioral incidents of April 28<sup>th</sup> and 30<sup>th</sup> were a manifestation of Student's disability. During the Manifestation Determination meeting, the IEP Team reviewed Student's discipline records. Between October 23, 2024, and April 17, 2025, Student had 12 behavioral incidents reported. These include offensive touching, inappropriate behavior, inappropriate verbal behavior, disruption on the school bus, disruption in the classroom, disrespect toward a student, a safety violation, and terroristic threatening. Parents shared that Student is seeing a therapist from Center for Child Development (CCD) weekly at school. REDACTED (General Education Teacher) shared that Student is easily distracted and sometimes shows impulsiveness with peers but can easily be redirected. REDACTED (Special Education Teacher) shared that Student has a respectful relationship with peers and teacher, however, Student's impulsiveness is seen in completing assignments. IEP Team reviewed Student's evaluation data and IEP.

The IEP Team determined that the Student's behavior was **not** a direct result of the Charter Schools failure to implement the Student's IEP **nor** was the conduct in question caused by or had a direct and substantial relationship to the Student's disability. Therefore, based on the data in the ESR, which had been thoroughly reviewed by the IEP Team on April 29<sup>th</sup>, including a review of the goals and supports in the IEP, classroom and school data, and parent and teacher input, the IEP Team determined the violation was **not** a manifestation of Student's disability. Further information described Student's disability manifests itself in impulsiveness with tasks within the educational environment. Student is identified as needing special educational services for OHI for diagnosis of ADHD and ODD with a secondary educational classification of SLD in the area of written expression. The Manifestation Determination document also explained that a Title IX investigation was concurrently being conducted. It was explained that Charter placed Student on homebound instruction as of May 1, 2025.

On May 12, 2025, Charter School provided Parents with written notice informing them of the Charter School's recommendation to proceed with an expulsion hearing due to the substantiated infraction of Under 12: Unlawful Sexual Contact III Student Victim. Notice of the expulsion hearing was set for May 22, 2025. Charter School also determined that Student will be provided homebound services until June 12, 2025. Parents provided email dated May 15, 2025, waving the timeline for the waiting period of the expulsion hearing. On May 22, 2025, REDACTED, an Independent Hearing Officer (IHO), held the expulsion hearing. Based upon the record presented, the IHO recommended Student be expelled for one year. Charter School held a board meeting in July 2025 to review and approve the expulsion with services.

**Therefore, regarding the allegation of expelling Student inappropriately, I find no violation of Part B of the IDEA or state regulations.**

#### **Allegation #5 Failing to provide appropriate services while suspended and expelled.**

For disciplinary changes in placement that would exceed 10 consecutive school days when the conduct that gave rise to the violation of the school code is determined *not* to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. 34 C.F.R. § 300.530(c). However, a child with a disability who is removed from the child's current placement when the conduct in question is determined *not* to be a manifestation of the child's disability must continue to receive educational services as provided in 34 C.F.R. § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. Further, the child must receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d)(1). While in some instances the conduct in question may not have a direct and substantial relationship to the child's disability, the child may benefit from an FBA and additional behavioral supports to address the underlying behavior.

On September 8, 2025, Charter School issued a PWN to propose the following action: Due to Student's expulsion with services status, Charter School proposed the following plan for the 2025-2026 school year (until April 30, 2026, when expulsion window ends):

- FlexPoint Virtual School provides 5 hours per week of tutoring to support progress in the general education courses of English Language Arts (ELA), Math, Social Studies and Science. FlexPoint Virtual School uses an asynchronous model with an at-home adult serving in the role as coach. While the core content is asynchronous, courses feature live interactive lessons, direct instruction, collaboration with classmates and teachers spending time one-on-one with students as they progress through the course. Parent will serve as the learning facilitator.
- Two 30 minute special education sessions per week to support progress toward IEP goals.
- 30 minutes per week of Occupational Therapy to address OT needs identified on the IEP.
- Charter School offered one virtual, 15 minute counseling session per month. However, Parent declined.
- Five hours a week of homebound tutoring provided to support FlexPoint courses provided by REDACTED (Tutor).

In addition to documenting the proposed service plan, the PWN also reflected that the Charter School offered to provide counseling services as specified on Student's current IEP, noting the parent declined counseling services by phone on August 14, 2025. Parent communicated that Student currently receives private therapy from an outside therapist.

Special education service logs document REDACTED (Special Education Staff) provides instruction virtually on Mondays and Fridays from 1:00 to 1:30 addressing task initiation/organization and behavior/managing impulsivity. During September and October 2025, services were provided twice each week totaling 8 hours of instruction.

Progress reports for May 7, 2025, through November, 2025 indicate Student begins tasks within one minute 100% of the time with minimal or no prompts from staff. Data was not collected for behavior/managing impulsivity due to limited opportunities to observe targeted behavior because Student is receiving individualized services through virtual homebound. Therefore, it was noted, progress toward this benchmark cannot be determined at this time.

Service logs for OT document REDACTED (OTR/L) provides instruction virtually 30 minutes three times a month addressing writing/letter formation/spacing and consult 30 minutes one time per month to collaborate with team members to incorporate sensory-based strategies and accommodations that support self-regulation. During September and October 2025, services were provided totaling approximately 4 hours.

Progress for written expression regarding copying 3-5 sentence paragraph indicate Student can consistently place all letters on the line, demonstrating adequate spacing between words and form letters correctly 65% of the time with frequent verbal cues. Since Student does not often have paper available to do writing, session involve more typing over zoom. Student does need verbal prompts to stay on task, generate thoughts, and sentence formation when typing. Tutor documented services for September through October 2025 in homebound tutoring logs for approximately 70 hours of service.

The Charter School developed an appropriate homebound service plan, based on Student's IEP and general curriculum. Documentation of services provided include general curriculum tutor, special education staff, OTR/L and FlexPoint Virtual School Program.

Therefore, regarding the allegation of failing to provide appropriate services while suspended and expelled, I find no violation of Part B of the IDEA or state regulations.

### **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. The Department will make itself available to the Charter School to provide technical assistance regarding topics (i.e. parent participation in the IEP process, communication regarding evaluations, notification protocols, manifestation determinations, etc.)

Respectfully submitted,

*REDACTED*

REDACTED