

**Delaware Department of Education  
Exceptional Children Resources**

**State Complaint Decision**

**DE SC #26-08**

**Date Issued: January 9, 2026**

On November 12, 2025, REDACTED (Parent), filed a complaint with the Delaware Department of Education (Department) on behalf of REDACTED (Student). The complaint alleges the Red Clay Consolidated School District (District) violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).<sup>1</sup> The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151–300.153 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, as well as interviews and email correspondence with Parents, Director of Special Education, Principal, and classroom teachers.

**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 November 12, 2025. Therefore, the Department’s findings address violations from November 11, 2024, to November 11, 2025.

**Complaint Allegations**

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

1. Failing to provide a FAPE due to not reviewing Student’s IEP to address Parent’s concerns for Student’s safety.

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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. On January 11, 2024, Delaware Health and Social Services Birth to Three Early Intervention Program (Program) evaluated Student. The IEP Team determined Student was eligible to receive special education services as a child with a Development Delay.
2. Student is currently REDACTED years old. Student received special education and related service as a child with Autism through the Red Clay Early Years Program (EYP). However, Parent removed Student from school on May 10, 2025, through May 22, 2025, and on November 5, 2025, to present due to Parent's concern for Student's safety. Student's IEP contains goals in the following areas: Expressive and Receptive Language, Peer Interactions, Social Communication, Cognitive, as well as Following Classroom Routines and Sensory Processing. Student has identified needs in the areas of Safe Eating and Swallowing and Positive Behavior Supports.
3. On November 6, 2024, Parent responded to Teacher1's inquiry via email, concerning marks seen on Student. Parent wrote, "REDACTED." Teacher responded via email, stating, "REDACTED."
4. On November 13, 2024, Teacher1 informed Parent, via email, that Student threw a car that hit Teacher in the face. Teacher1 also stated that the incident would have to be reported to the Board-Certified Behavior Analyst (BCBA).
5. On February 14, 2025, Parent emailed Teacher1 to voice concern over Parent's personal information, which she shared in a recent conversation with Teacher, being shared with other staff during a recent parent meeting.
6. On February 24, 2025, Parent messaged Teacher1 and asked if Student had an issue going to the bus during dismissal because bus staff reported that Student had a rough day. Teacher1 informed Parent that Student has been upset during dismissal on a few occasions but had a great day overall. Teacher1 also let Parent know that Student will hit staff and/or fall to the ground during incidents while going to the bus. Teacher1 also let Parent know that the classroom staff were going to show Student Parent's picture with the bus picture to help with dismissal and to inform Student that Parent was going to be seen after the bus ride. Teacher1 also stated that BCBA would be asked to assist with walking Student to bus to see if there was anything else the classroom staff could do to support Student. Parent responded by letting Teacher1 know that Student gets excited when getting off the bus at home and that Student does not hit the bus driver anymore. Teacher1 let Parent know that classroom staff would be taking more data, supporting Student emotionally and offering more visual supports as they worked through the transition.
7. On March 21, 2025, the IEP Team met for Student's annual IEP meeting. The Team proposed Student continue to receive education in a C1 setting. Student has goals in the areas of Expressive and Receptive Language, Peer Interactions, Social Communication,

Cognitive, as well as Following Classroom Routines and Sensory Processing. Student has identified needs in the areas of Safe Eating and Swallowing and Positive Behavior.

8. On April 15, 2025, Parent and Assistant Principal (AP), spoke via phone and Parent voiced concerns with communication regarding Student's day. Parent stated that classroom staff and transportation staff have given different updates on Student's behavior across the school day. Parent and AP agreed to meet to discuss Parent's concerns.
9. On April 16, 2025, AP emailed Parent to follow up on the phone conversation. AP stated that classroom staff's account of Student's day would be a more accurate reflection given transportation staff has limited time with Student each day. AP also asked Parent for a mutually agreeable time to meet with Transportation staff, Principal and Teacher to discuss home-school communication practices.
10. On April 28, 2025, Teacher informed Parent, via email, that Student had a mark on his elbow. Additionally, Parent emailed AP to clarify the reasoning behind the request to meet with Teacher1, AP and Principal. Parent shared that transportation staff reported Student was left on the ground during an incident that occurred while walking to the bus. Parent stated that it felt as if Teacher was retaliating against Student due to an exchange where Parent asked Teacher1 to not share Parent's personal "business" with other staff. Parent also stated that Parent wondered if Student would be treated better if Student was not a REDACTED child and stated that it was uncomfortable sending Student to school each day.
11. On April 29, 2025, Parent emailed Teacher1 to ask if Student had fallen because Parent noticed a mark on Student's knee. Teacher1 replied that Student had not fallen but Teacher1 did notice a mark on his knee and elbow. Parent responded by saying Student had fallen while running after a basketball at the park and while walking on stairs but asked if Teacher1 noticed any new marks. Teacher1 informed Parent that classroom staff would let Parent know if/when any marks were seen moving forward.
12. On May 1, 2025, Teacher1 emailed Parent a picture of a mark on Student and asked if mark happened the previous night. Parent replied by saying that Parent had not noticed a mark on Student and that it was concerning because [this] was the third incident in 3 days. Parent also asked if anyone was monitoring Student while on the playground. Teacher1 informed Parent that Student was monitored but there were times when Student had fallen while running. Teacher1 also let Parent know that Student liked to stand at the bottom of the sliding board while other students were sliding down. Additionally, Teacher1 stated that Student runs into other students while riding in a toy car. Teacher1 let Parent know that no one has harmed or hurt Student at school and staff helps Student make good choices by modeling and praising good behavior and offering visual supports. Teacher1 let Parent know that the classroom staff discusses Student's behaviors with the behavioral specialist too. Teacher1 told Parent that Student's shoe does not stay on his foot when he is running, which is why Student fell and scraped his right knee. Lastly, Teacher1 asked if Parent wanted Student to wear long

pants while on the playground. Additionally, AP responded to Parents' April 29th email by offering and requesting meeting times across the day.

13. On May 6, 2025, Parent responded via email, and requested that the staff member who escorted Student to the bus during the February 24th bus incident to clarify what happened.
14. On May 8, 2025, Parent responded to the May 1st email from Teacher1. Parent agreed to Student wearing pants on the playground and let Teacher1 know that she would have Student wear more sturdy shoes. Parent also informed Teacher that Student watches a tv show where cars crash into each other. Parent let Teacher1 know that Student was no longer allowed to watch the show. Parent also stated that Student has been smashing cars together or pushing them off the table, as well as smashing the cars into Parent or Parent's hands at home. Student would also walk in front of Parent and not move on purpose. Parent let Teacher1 know that she really appreciated knowing what Student's behavior was like at school because changes could be made at home to help with behaviors at school. Teacher1 thanked Parent for the update and added that the cars would be removed from the playground so that students were safe.
15. On May 9, 2025, School Nurse (Nurse) contacted Parent via phone, because another student scratched Student on his neck and shoulder during play time. Additionally, AP emailed Parent dates and times to meet to discuss concerns.
16. On May 10, 2025, Parent responded, via email, and confirmed availability to meet to discuss the February 24<sup>th</sup> bus incident on May 13, 2025.
17. On May 13, 2025, AP emailed Parent to offer May 21, 2025, as an alternate day to meet. AP thanked Parent for being patient and added that a representative from transportation would participate via Zoom.
18. On May 14, 2025, Parent emailed AP to voice frustration over not receiving a clear explanation of how Student was scratched on May 9th. Parent added that when Teacher1 was asked for more information, she informed Parent that Teacher1 would speak with her mentor and get back to Parent at a later day/time. Parent also requested to meet in person and added that Student would not return to school until she received a clear detailed account of what happened.
19. On May 15, 2025, AP informed Parent, via email, that Nurse would address Parent's concerns regarding Student being scratched at the upcoming May 21st meeting.
20. On May 21, 2025, AP informed Parent, via email, that Teacher1 would not be attending the meeting due to being absent from school. AP stated that the school staff still wished to meet. AP also lets Parent know that another meeting would take place when Teacher1 returned.
21. On May 29, 2025, Parent thanked AP, via email, for meeting on May 21st. Parent also asked AP when Teacher1 would be returning to work. AP responded, via email, that

Teacher1's return date was unknown at that time, and that information would be shared when available.

22. On June 11, 2025, AP informed Parent, via email, that Teacher1 would not be returning for the 2024-2025 school year.
23. On September 24, 2025, Parent emailed Teacher2 to ask if Student was injured in school because there was a red mark on Student's arm. Teacher2 let Parent know that classroom staff did not see Student get hurt but that Student was playing with cars on the hard floor.
24. On September 25, 2025, Parent responded, via email, to let Teacher2 know that Student seemed different upon arrival home the day before. Parent also asked if Teacher2 heard Student apologize during the school day because Student says, "Sorry" when he hits or drops to the floor. Teacher2 let Parent know that the classroom staff had not heard Student say, "Sorry" but Student had said, "Oh no" when he threw objects.
25. On October 23, 2025, Parent emailed Teacher2 to ask how Student was doing in class. Teacher2 let Parent know that Student was progressing and getting used to classroom routines, but that Student was still learning to keep hands to himself when things do not go as planned.
26. On October 28, 2025, Parent emailed Teacher2 to ask if Student had gotten hurt during the day because Parent noticed marks on Student. Teacher2 let Parent know that Student had not been hurt at school. Teacher2 also let Parent know that Student had gotten hold of a red marker. Parent responded that the marks were not from a marker because the mark was still on Student after Parent tried to wash off the mark. Parent let Teacher2 know that sending Student to EYP made her uncomfortable. Teacher2 let Parent know that the Nurse is always called when students get injured and when there are visible marks. Teacher also offered to speak with Parent by phone.
27. Additionally, Parent emailed Principal to voice concerns regarding Student's safety and well-being at school. Parent stated that Student had come home with visible bruises. Parent also stated that an incident occurred on May 21, 2025, that was not properly documented and that staff involved in the incidents were not disciplined. Parent requested formal investigation into all incidents that resulted in injuries to Student, written copies of all reports, assurance that steps are being taken to prevent further harm to Student and confirmation of staff supervision and safety protocols in place for Student. Lastly, Parent informed Principal that the matter would be escalated to the Delaware Department of Education (DDOE) and Child Protective Services if District did not take immediate and thorough action.
28. On October 29, 2025, Principal emailed Parent to report that a message was left with Principal's office phone number so that Parent and Principal could discuss Parent's concerns. Principal asked Parent to let Principal know when Parent was available for a phone call. Parent emailed Teacher2 and stated, "Good Morning, right now I'm just

thinking about what's best for [Student]. Also, this school is the best choice. I am upset despite still allowing him back today. I just want a few days to think about this and contact you on Monday. I just want a clear mind and to have a better approach towards this situation." Teacher2 let Parent know that Student was seen rubbing his chin on the carpet while playing with cars and asked if Parent noticed the behavior at home. Teacher2 also let Parent know Principal was attempting to get in touch via phone.

29. On November 3, 2025, Parent replied to Principal's email stating, November 4, 2025, between 9am-10am would work for a phone call. Additionally, Parent removed Student from EYP.
30. On November 4, 2025, Principal called Parent, who was not available, to state that a voicemail was left and that Principal would be available until 10:15 am and then again after 2:00 pm to talk. Parent replied that a call would be made at 10:15 am. Parent also emailed Principal after the phone call and thanked Principal for talking but stated that the conversation left more concern due to inconsistencies and the overall tone of the exchange. Parent also stated that Student would not be returning to school until an investigation was completed and until Parent was confident Student would be safe at school. According to Parent, Principal stated that children are not checked for marks or bruises unless an incident occurs. Parent reported that that information contradicted the information Teacher gave. Parent pointed out a Remind message received from Teacher, dated September 15, 2025, that said, "As teachers we check our children when they arrive, and if we notice unfamiliar marks, we send them to the nurse. The same process applies when children leave."

Parent stated, "When I asked that Student be visually checked before dismissal or after playground time to have documentation if a mark appears later, you asked if I meant only the visible area or the whole body." Parent added that the question felt dismissive and sidestepped the main concern which was consistent documented checks for injuries. Lastly, Parent attached dated photos of Student's injuries.

31. On November 7, 2025, Principal emailed Parent to say that additional information was gathered from Student's classroom staff and Nurse. Principal addressed concerns and further clarified information Parent received prior to the November 4th phone call.

32. On November 7, 2025, Principal stated, “Staff only checks students for injuries if an injury has occurred at school or if a student reports that an injury occurred outside of school. If a staff member notices a concerning mark/bruise/injury on a student, they contact the school nurse for further evaluation. Staff do not routinely evaluate students upon arrival and dismissal. If there is a question about a visible injury or illness, the staff bring the student to the school nurse. If the nurse has concerns about an injury, she contacts the parent and documents the information in the health accounting record for the student. Teacher1 stated that when she referred to “checking” students, she meant that if she noticed any visible injuries/marks upon arrival or dismissal she would notify you and the school nurse. She did not mean to imply that she conducts thorough physical assessments of each child upon arrival and dismissal, as this would be unwarranted, inappropriate and upsetting to the children.”
33. Also on November 7, 2025, Principal stated, “There are no cameras in any of our classrooms. Cameras are in common areas such as hallways, main offices, entry/exits, playgrounds, and buses. Teacher1 reported that she did not state that there were cameras in the classrooms. Camera footage is only stored for 30 days. Given that the bus incident that you are referencing occurred in May 2025, there would not be footage available to review.”
34. On November 7, 2025, Principal informed Parent that the health records requested would be sent in a follow-up email and that the dates of the photos Parent shared corresponded with Student’s health records. Nurse saw Student for a variety of reasons on the following dates:
- October 9, 2024, Skin / Pain/discomfort
  - October 15, 2024, EENT-Ears / Discharge
  - October 28, 2025, Skin / Abrasion/Scratch, Skin / Redness
  - October 30, 2024, Respiratory / Cough
  - December 9, 2024, EENT-Nose / Rhinitis,
  - February 5, 2025, Mouth/Dental / Bitten Lip/Tongue
  - March 11, 2025, Neuro / Head Bump,
  - March 21, 2025, Skin / Redness
  - April 2, 2025, Skin / Abrasion/Scratch
  - April 14, 2025, EENT-Nose / Congestion,
  - April 30, 2025, Mouth/Dental / Other, Mouth/Dental / Bleeding
  - May 1, 2025, Skin / Abrasion/Scratch
  - May 1, 2025, Skin / Abrasion/Scratch
  - May 6, 2025, Skin / Redness
  - May 9, 2025, Skin / Abrasion/Scratch
  - May 21, 2025, General Health / Other Staff conference,
  - June 5, 2025, Neuro / Head Bump
35. On November 9, 2025, Parent emailed Principal and District level staff and reiterated that the repeated inconsistencies and lack of transparency experienced over the past year had damaged trust in the District and EYP. Parent added that Student had been

hurt 18 times since enrolling in the program, and that there were no consistent or transparent answers about how the incidents occurred.

36. On November 10, 2025, District Superintendent responded to Parent's email with confirmation that Parent's email had been received, thanked Parent for bringing the concerns to District's attention and added that Student's safety, well-being, and successful return to school are priorities, and District was committed to addressing Parent's concerns thoroughly and working together to rebuild trust.
37. On November 11, 2025, Parent filed a State Complaint against District.

### **Legal Conclusions**

***Allegation #1*** Failing to provide a FAPE due to not reviewing Student's IEP to address Parent's concerns for Student's safety.

According to *14 DE Admin. Code § 925.11.0*, Each public agency shall ensure that the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP, as appropriate, to address:

11.7.1 Any lack of expected progress toward the annual goals described in subsection 7.1.2, and in the general education curriculum, if appropriate;

11.7.2 The results of any re-evaluation conducted under Section 3.0;

11.7.3 Information about the child provided to, or by, the parents, as described in subsection 5.1.4;

11.7.4 The child's anticipated needs; or

11.7.5 Other matters.

According to *14 DE Admin. Code § 925.11.6* Amendments: Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in subsection 11.4, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

Parent expressed concerns to school staff on multiple occasions regarding Student's health and safety while at school. The classroom staff and administration responded by either letting Parent know how Student was injured and having Student evaluated by the school nurse or by letting Parent know that they were unaware of any incident that may have caused a mark or an injury. Due to the number of times Parent voiced concerns, School should have held an IEP meeting(s) to address Parent's concerns and to determine whether Student's IEP needs to be revised to ensure Student's safety during the school day. Parent removed Student from school on two separate occasions due to a lack of trust and confidence in School's ability to maintain Student's safety.

Therefore, I find that there was a violation of IDEA, state special education regulations, and a denial of FAPE regarding procedures for reviewing a child's IEP to determine if a revision is required based on parent concerns and the child's anticipated needs.

### Corrective Actions

#### Student Level

School shall schedule and hold an IEP meeting with Parent to discuss Student's progress and Parent concerns on or before February 20, 2026. During the meeting, District shall propose Student receive an updated evaluation. The team shall discuss whether current behavior accommodations and supports are appropriate, and whether a Functional Behavior Analysis (FBA) and Behavior Support Plan (BSP) should be added to Student's IEP.

During the meeting the IEP Team shall develop an IEP that includes a plan to transition Student back to school. The IEP shall also be developed to prepare Student for full time attendance and for entering REDACTED next school year , Additionally, the IEP Team shall consider and discuss if a formal communication system with Parent and daily nurse body checks should be implemented. The IEP Team, including Parent, shall discuss how the District will provide **compensatory** education regarding educational and related services for the date ranges of **May 10, 2025, through May 22, 2025** and **November 5, 2025, through January 9, 2026**. All compensatory education must be completed by **January 9, 2027**. Lastly, The IEP Team shall reconvene, at a mutually agreeable day and time to review the results of the updated evaluation. And to update the IEP if appropriate. Student's IEP and a Prior Written Notice (PWN) from the meetings, and documentation outlining the amount of compensatory education owed 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 **February 27, 2026**.

#### School Level

1. School shall conduct professional development with all special education and related service staff regarding the following:
  - Procedures for ensuring that an IEP Team periodically reviews the child's IEP to determine whether a revision is appropriate based upon parent concerns and the child's anticipated needs.
  - Procedures for responding and appropriately handling behavior concerns
2. School shall also:
  - Review and/or develop policies, practices and procedures about what to do when a parent has concerns.

This professional development must take place by **March 15, 2026**. All materials, as well as staff sign-in sheets, must be sent to the Director of Exceptional Children Resources by **March 30, 2026**. Policies, practices and procedures must be shared with staff and the Director of Exceptional of Student's Resources by **March 30, 2026**.

Respectfully submitted,

*REDACTED*

REDACTED