

**Delaware Department of Education  
Exceptional Children Resources**

**State Complaint Decision**

**DE SC #26-12**

**Date Issued: February 26, 2026**

On January 27, 2026, REDACTED (Advocate) filed a complaint with the Delaware Department of Education (Department). 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 students with disabilities residing in the District 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 District transportation policy, District Board meeting videos and agendas, and interviews and correspondence with Advocate, District Director of Student and Special Education Services (Director), District Coordinator of Student Services (Coordinator), and District Principal of Autism Services (Principal).

**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 January 27, 2025. Therefore, the Department’s findings address violations from January 28, 2025, to January 27, 2026.

**Complaint Allegations**

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

1. Violation of Related Services (IDEA/ 14 DE Admin Code § 925): Failure of Transportation Policy 5003 to comply with provision of transportation for students with disabilities residing within walking zones as a related service. The policy adds an extra-legal requirement of having data, which is not found in federal or state law.

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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.

2. Infringement on IEP Team Authority: Failure of Transportation Policy 5003 to comply with authority of Individualized Education Program (IEP) Team to determine appropriate transportation accommodations for students with disabilities within walking zones.
3. Creation of Immediate Safety Hazards: Failure of Transportation Policy 5003 to keep “vulnerable” students safe while a “period of data collection” requirement is met for students residing within “walking zones” determined at risk for elopement or unsafe behavior.
4. Failure to Provide a Safety Reporting Mechanism: Failure of Transportation Policy 5003 to provide a formal mechanism for families to report "Unique Hazards" or safety concerns, as required for equitable policy implementation.

### **Factual Findings**

1. Red Clay School Board approved Transportation Policy 5003 on January 21, 2026 based on the recommendation of the Board Policy Review Committee (BPRC).
2. Pertinent to this complaint, the following statements are included in Transportation Policy 5003:

Students with disabilities shall be afforded transportation (as required by law) in compliance with the IEP or 504 plan, including any documented accommodations.

  - If a student has a safety need due to elopement or other unsafe behaviors and lives within the walking zone, there must be data to support the need for specialized transportation.

Students living within walking distance of their school may be transported if a Unique Hazard (hazardous walking conditions exist) is confirmed by the state. The district shall maintain a process for parents/community members to report a concern regarding a Unique Hazard condition.

Transportation Policy 5003 defines “Unique Hazard” as conditions or situations that expose a pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the state. 14 DE Admin Code §115

Safety Concerns about walking routes and/or bus stop locations that are not covered by a Unique Hazard will be reviewed by the Transportation Department. The district shall maintain a process for parents/community members to report a concern regarding a Safety Concern.
3. The Advocate, who filed this complaint, is a community member on the District Board Policy Committee.
4. On October 29, 2025, Advocate attended the District Policy Committee meeting. Meeting agenda included discussion of Transportation Policy 5003; addition of language

from Transportation Policy 8013 regarding transportation for Choice; addition of language identifying District contact for residents with concerns regarding walking conditions. Actions item indicated first reading of the Transportation Policy 5003 to the Board scheduled for November 19, 2025.

5. On December 3, 2025, Advocate attended District Board Policy Committee meeting. Meeting agenda included review of draft and discussion of Transportation Policy 5003. Minutes reflected the addition of language related to student eligibility for specialized transportation; “unique hazard”; safety concerns; transportation of students with IEP’s and 504’s, and transportation of students within a walking zone. Actions item stated the second reading of draft Transportation Policy 5003 to the Board for December 17, 2025.
6. On December 16, 2025, Advocate sent an email to District Board members requesting a pause on the vote of the Transportation Policy 5003 scheduled for December 17, 2025. Advocate stated, [draft] “...raises serious legal and student safety concerns and should not be adopted as written.” Advocate further stated, [draft] “...improperly ties special education transportation to behavior goals and data in conflict with IDEA and Section 504...”
7. On December 17, 2025, Advocate sent an email to District Board members stating, “...the version of Transportation Policy 5003 that is being presented tonight for Board action is different from the version presented as a first reading at the November Board meeting.”
8. On December 17, 2025, two community members (Advocate and another District Policy Committee member) raised safety concerns about Transportation Policy 5003 during public comment.
9. On January 6, 2026, Advocate sent an email to District Board members and District Policy Committee members stating concerns about student safety in response to data related to illegal passing of stopped buses shared at a recent Policy Committee meeting. Advocate requested Board and Policy Committee consider expansion of door-side and safer stop placements, especially on higher-speed or higher-volume roads; a stronger examination of stop location policies and unique hazard determinations; as well as safety interventions that prevent exposure, not just documented violations.
10. On January 7, 2026, District Board Policy Committee met. Meeting Business included review draft and further discussion of Transportation Policy 5003. The discussion included the decision to remove “with benchmarks and goals” from current draft statement: “If a student has a safety need due elopement or other unsafe behaviors and lives within the walking zone, there must be a unique educational need with benchmarks and goals with data to support the need for specialized transportation and in Delaware Code.”
11. On January 21, 2026, Deputy emailed Board and Policy Committee members the revised statement to Transportation Policy 5003 for action at Board meeting scheduled for the same day: “If student has a safety need due to elopement or other unsafe behavior and lives within walking zone, there must be data to support the need for specialized transportation. “

12. On January 21, 2026, District held District Board meeting. Two community members (Advocate and another District Policy Committee member) again raised concerns about Transportation Policy 5003, pertaining to general student safety issues during public comment.
13. On January 27, 2026, Advocate filed state complaint.
14. During the interview process, Advocate reported to Investigator that a parent shared concerns through a common social media group about transportation related to parent's child. Advocate did not provide any identifying information regarding parent or child. Parent shared with Advocate that the child has autism, has an IEP, and is within a walking zone of attending school. Parent reported the IEP Team did not address transportation needs as a related service during IEP meeting stating, "Student is within walking zone; therefore, it did not apply." Parent also shared with Advocate, parent has an older child with autism who received bus transportation to the same school when that child was enrolled, despite being within walking zone.
15. In an interview with Investigator, Director confirmed awareness of the Advocate's concerns as indicated in #14, as Director is also a member of the District Policy Committee. Director offered Advocate options to share with parent, including contacting District Special Services for support to meet with IEP Team to address concerns, etc. Advocate did not share any identifying information about child or attending school with Director.
16. Coordinator sent Investigator Professional Development PowerPoint used in Transportation Policy training with all District Special Education Coordinators (SECs). According to Coordinator, professional development is provided to all SECs specific to student transportation as a related service since it is an updated policy.
17. Principal of Autism Services reported to Investigator that if a student has an educational classification of autism, regardless of educational setting, typically either the SEC or itinerant teacher from Autism Services will attend student's IEP meeting. The purpose is to discuss transportation services, including field trips and or 12-month program, since all students with autism are eligible for 12-month program.

### **Legal Conclusions**

This complaint was filed regarding language included in District Transportation Policy 5003, addressing students with disabilities. Advocate shared communication with a parent of a District special education student. Since that parent did not file this complaint, nor does Investigator have a signed Release of Information, Investigator addressed this complaint based on the information Advocate and District personnel provided.

**Allegation #1 Violation of Related Services (IDEA/14 DE Admin Code § 925): Failure of Transportation Policy 5003 to comply with provision of transportation for students with disabilities residing within walking zones as a related service. The policy adds an extra-legal requirement of having data, which is not found in federal or state law.**

Since this complaint is not filed on behalf of a specific student, there are no student records or documentation to review to respond to this allegation.

Transportation Policy states:

Students with disabilities shall be afforded transportation (as required by law) in compliance with the IEP or 504 plan, including any documented accommodations.

- If a student has a safety need due to elopement or other unsafe behaviors and lives within the walking zone, there must be data to support the need for specialized transportation.

Transportation is a related service according to 14 DE Admin. Code 923§ 13.2 “**Related Services**” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education...”

Delaware regulations define evaluation: “**Evaluation**” means procedures used in accordance with 14 DE Admin Code 925, Sections 4.0 through 6.0 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (See 14 DE Admin Code § 922). As such, an evaluation requires data collection.

In DE Admin Code § 925.4.2.1, evaluation procedures include using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent... They also include observation in the child’s learning environment 14 DE Admin Code § 925.4.2.2.

Additionally, 14 DE Admin Code § 925.4.3.6 states, “In evaluating each child with a disability under Sections 4.0 through 6.0, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs...”

It is clear from the regulations that data collection for evaluation purposes to determine the need for related services could and should include parent input. In addition, observations may also be a data source. Identifying the need for related services is dependent on data collection of some sort.

**Therefore, I find no violation of IDEA or state special education regulations.**

**Allegation #2 Infringement on IEP Team Authority: Failure of Transportation Policy 5003 to comply with authority of Individualized Education Program (IEP) Team to determine appropriate transportation accommodations for students with disabilities within walking zones.**

The regulations indicate who is part of the IEP Team:

## **8.0 IEP Team**

8.1 General: The public agency shall ensure that the IEP Team for each child with a disability includes:

8.1.1 The parents of the child;

8.1.2 Not less than 1 regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

8.1.3 Not less than 1 special education teacher of the child, or where appropriate, not less than 1 special education provider of the child;

8.1.4 A representative of the public agency who:

8.1.4.1 Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

8.1.4.2 Is knowledgeable about the general education curriculum;

8.1.4.3 Is knowledgeable about the availability of resources of the public agency; *and*

*8.1.4.4 Has authority to commit agency resources and be able to ensure that whatever services are set out in the IEP will actually be provided.*

8.1.5 An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subsections 8.1.2 through 8.1.6;

8.1.6 Whenever the child is, or may be, participating in a career and technical education program, or career pathway, a career technical education teacher of the child, or pathway teacher, or career technical teacher coordinator;

8.1.7 Whenever appropriate, the child with a disability; *and*

*8.1.8 At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.*

The parent is an integral part of the IEP Team. As such, the state special education regulations do clarify definitions and address requirements that assure parent participation in the IEP process including:

- 14 DE Admin Code §923.13.2 “**Related Services**” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education...”
- 14 DE Admin Code §925.9.2.3 “A summary of the procedural safeguards shall be included with the notice of meeting and a full copy of the procedural safeguards shall be provided to the parents at the IEP meeting.”

- 14 DE Admin Code §925.9.3.1 and 9.3.1.1 “The IEP Team shall provide a questionnaire requesting the input of a child's parent, and where appropriate, the input of the child, with respect to the child's progress to date and additional proposed steps that should be taken to adjust the child's goals, curriculum, services, aids, modifications, or other elements of the child's IEP.”
- “The questionnaire shall be sent with or prior to the written meeting notice inviting the parent to attend the IEP meeting.”

Question # 7 of the District document entitled “Parent Questionnaire – IEP Development (Elementary) states, “Please list any additional questions or concerns (e.g., transportation, therapy services) that you would like to address at the IEP meeting.” Additionally, Question #8 of the District document entitled “Parent Questionnaire. – IEP Development “(for secondary students) states “Please list any additional questions or concerns (e.g., transportation, therapy services) that you would like to address at the IEP meeting.” This evidences District compliance with the regulation to solicit parent input prior to development of student’s IEP, inclusive of transportation concerns.

Finally, per 14 DE Admin Code § 923.53.0, Parents, advocates or organizations have a formal complaint process to address any concerns regarding District’s provision of students determined eligible for special education and related services.

During development of annual reviews and revisions of a student’s IEP, the IEP Team is responsible to review each portion of the student’s IEP to ensure concerns, updates and revisions are discussed and addressed.

Nothing in this policy appears to remove the authority of the IEP team to develop programming to meet the needs of a student, including any need for specialized transportation.

**Therefore, I find no violation of IDEA or state special education regulations.**

**Allegation #3 Creation of Immediate Safety Hazards: Failure of Transportation Policy 5003 to keep “vulnerable” students safe while a “period of data collection” requirement is met for students residing within “walking zones” determined at risk for elopement or unsafe behavior.**

Transportation Policy 5003 states:

Students with disabilities shall be afforded transportation (as required by law) in compliance with the IEP or 504 plan, including any documented accommodations.

- If a student has a safety need due to elopement or other unsafe behaviors and lives within the walking zone, there must be data to support the need for specialized transportation.

If a student demonstrates a pattern of elopement or unsafe behavior in school or in the community, related data, and service needs, it should be discussed and documented in the student’s IEP. In District Transportation Policy 5003, the qualifying statement, related to data collection, could apply to a student entering a District school for the first time; a student newly

determined eligible for special education services; a student moving from another district, state, or private school; or a current District special education student exhibiting novel or accelerated elopement or unsafe behavior identified by any IEP Team member (including parent).

Under these circumstances, an IEP Team meeting must be convened for the purpose of developing or revising the student's IEP. Under federal and state regulations, data (i.e., evaluation, assessment, observation, progress reports, medical necessity) are required for a child to be determined eligible for special education and each related service. The District SEC professional development transportation training material specifies, while 6-8 weeks of data is general practice, safety would be prioritized related to duration /type of data collected, in any case, for the determination of individualized services or accommodation.

**Therefore, I find no violation of IDEA or state special education regulations.**

**Allegation #4 Failure to Provide a Safety Reporting Mechanism: Failure of Transportation Policy 5003 to provide a formal mechanism for families to report "Unique Hazards" or safety concerns, as required for equitable policy implementation.**

Transportation Policy 5003 defines "Unique Hazard: as conditions or situations that expose a pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the state." 14 DE Admin Code §115

The Policy states:

Students living within walking distance of their school may be transported if (hazardous walking conditions exist) a Unique Hazard is confirmed by the state. The district shall maintain a process for parents/community members to report a concern regarding a Unique Hazard condition.

Safety Concerns about walking routes and/or bus stop locations that are not covered by a Unique Hazard will be reviewed by the Transportation Department. The district shall maintain a process for parents/community members to report a concern regarding a Safety Concern.

This Allegation is not specific to IDEA students. Therefore, it falls outside the purview of this state complaint process. As it relates to IDEA students, there is nothing in this policy that impacts a student's right to dispute resolution options available under IDEA. These dispute resolution processes allow parents the opportunity to address disputes about IEP programming, including any specialized transportation. Additionally, nothing in this policy removes a parent's ability to inform the District about specialized transportation concerns or request an IEP meeting to discuss said concerns.

**Therefore, I find no violation of IDEA or state special education 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, the Investigator found no violation of Part B of the IDEA or state regulations. Therefore, the Department will take no further action.

Respectfully submitted,

REDACTED Investigator