

**Delaware Department of Education
Exceptional Children Resources**

**State Complaint Decision
DE SC #26-10
Date Issued: March 10, 2026**

On January 9, 2026, REDACTED (Parent) filed a complaint on behalf of her son, REDACTED (Student) with the Delaware Department of Education (Department). The complaint alleges the Brandywine 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).¹ The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151–300.153 and according to the Department’s regulations at 14 DE Admin. Code §§ 923.51.0–923.53.0.

The investigation included a review of Student’s educational records, interviews with the Parent, District Local Education Agency (LEA) Representative/Manager of Special Programs, District Special Education Teacher, District Speech and Language Pathologist, District Administrator, District Occupational Therapist, District School Psychologist, Private Agency Representative providing private behavioral and speech and language intervention, as well as correspondence (emails and phone logs) between Parents and relevant District personnel (Manager of Special Programs, Independent Contractor).

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 9, 2026. Therefore, the Department’s findings address violations from January 9, 2025 to January 9, 2026.

Complaint Allegations

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

1. Failure to provide appropriate supervision and supports necessary to ensure Student’s safety.

¹ 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. Failure to provide Student access to a free appropriate public education (FAPE).
3. Failure to provide adequate training to school staff to ensure Student's safety.

Factual Findings

Background Information

1. Student is currently REDACTED years of age and attends REDACTED at REDACTED (School). Student is eligible to receive special education and related services as a child with an educational classification of Autism.
2. Student is currently enrolled in a 12-month, full-day REDACTED program specifically designed for children with Autism or severe disabilities, and placed in a "C" separate classroom, within an integrated setting.
3. Student enrolled in a private, parentally placed program designed for individuals with autism using an Applied Behavioral Analysis (ABA) approach to intervention. Student began private program in March 2024, attending 30 hours weekly, Monday through Thursday, receiving behavioral, speech and language and occupational therapies. After starting public school in September 2025, Student continues to receive ABA therapy from private program after school for 8 hours per week.
4. On June 3, 2025, Individual Education Program (IEP) Team conducted Student's initial IEP. IEP Team reports using evaluation data from Student's prior early intervention service, evaluation report, therapy reports, and observation data from prior private placement to identify Student's need for special education and related services. IEP Team data included information from Parent's reporting that Student's elopement behavior at home had become a significant concern. During the meeting, IEP Team identified Student's needs in the areas of communication, fine motor, self-help, and sensory processing. IEP Team determined Student qualified for Speech and Language Therapy (SLT) and Occupational Therapy (OT) services and identified Student needing placement in a 12-month, full-day school program in a "C" separate classroom, in an integrated setting.
5. On June 3, 2025, IEP Team noted from Parent report, Student required adult proximity and hand-held support during all transitions due to reported home elopement behavior. IEP Team identified Student had Unique Educational Needs in the areas of Safety and Transition. IEP Team rejected the need for Student to receive additional adult support because Student would "...be in the Least Restrictive Environment, setting (C), where Student will have a highly structured learning environment, with a low student-to-staff ratio, use of visuals, clear boundaries, and devoid of excessive distractions." IEP Team listed the following IEP Accommodations, Modifications, and Supports: "1) Hand-held support to walk in the line in hallways, to/from bus/car, classroom, Related Arts Classes, OT/Speech rooms, playground, WIN safety room, and back; 2) Student should always remain in adult proximity when in common areas, playground, hallways, gym, cafeteria,

auditorium, etc.; and 3) Student may wander or elope from learning areas and/or during transition.”

6. Parent reported that during June 3, 2025 IEP meeting, IEP Team included private agency representatives from private program Student had been attending prior to District enrollment beginning March 3, 2024. Parent and private agency representative reported, in separate interviews, District did not request any documentation from the program during the IEP meetings held on June 6, 2025, January 13, 2026, or January 29, 2026. In separate interviews, Parent and private agency representative reported they offered documentation to District.
7. Parent reported requesting additional adult support be assigned to Student at June 3, 2025, IEP meeting. According to the June 3, 2026 Prior Written Notice (PWN), District rejected Parent’s request for adult support, “...because Student will be in Student Least Restrictive Environment, setting (C) where Student will have a highly structured learning environment, with a low student to staff ration, use visuals, clear boundaries, and devoid of excessive distraction.”
8. On June 6, 2025, District indicated it would conduct internal data collection on Student’s behavior upon enrollment and during classroom attendance according to Parent report. Principal reported District offered to communicate with the private agency and provided a consent form to the parent for signature and Parent did not return the signed form.
9. Parent shared with Investigator the outside behavior intervention program’s documentation that addressed the Student’s elopement behavior. Student had an intervention goal targeting elopement behavior beginning April 4, 2024. Private school collected data on elopement behavior intervention beginning on April 4, 2024. The elopement plan includes information addressing the behavior’s antecedents/triggers, identified replacement behaviors, and teaching interventions.
10. On October 30, 2025, following the completion of Student’s triennial re-evaluation, the IEP Team determined Student continued to meet the criteria for the educational classification of Autism. Following the eligibility meeting, IEP Team conducted annual IEP and identified Student with needs in the areas of communication, motor, academic, and behavior. IEP Team identified the need for speech and language and occupational therapies, and the continued need for 12-month special education programming in a separate (C) setting. IEP meeting minutes state Parent reported increased elopement behavior at home, including making it over the backyard fence. Family installed special locks on doors at home since Student was able to unlock doors at home, and family was looking into service dogs that are specific to children who have elopement concerns. Parent stated Student elopes to try to get adults to chase him not to escape. IEP Team identified the Student with safety needs that impact Student’s, “ability to navigate the school environment independently. During transition and in open spaces, Student may run or not remain in designated areas, which increases the risk of injury to themselves and others. As a result, Student should be in close proximity to an adult. Adult support and prompting is required to ensure safe participation in classroom activities, playground routines. Student requires adult support throughout the entire school day, including transitions within the classroom, traveling around the school building, and

both arrival to school and dismissal from school.” IEP Team identified a goal that addressed the Student’s need to “remain in area.”

11. On October 30, 2025, IEP Team issued PWN identifying Student as having a safety need that required accommodations to support navigating the school environment. IEP Team identified the following Accommodations and/or Modifications Student needs to benefit from his special education program: 1) Student should always remain in arms reach of an adult when in open, common areas: hallways, gym, cafeteria, auditorium, etc.; 2) Student should always remain in line sight in the classroom and on the enclosed playground area; 3) Student may wander or elope from areas and/or during transitions; 4) Hand-held support to walk in the line in hallways, to/from bus/car, classroom to OT/Speech rooms and back; 5) Student has limited language and cannot independently express his want/needs/personal information throughout the day and/or in emergency situations. No goal was identified for this need, and this behavior was identified in the Present Levels of Educational Performance as “need only.”
12. Investigator interviewed IEP Team. In attendance were the Principal, School Psychologist, Occupational Therapist, Speech-Language Pathologist, Classroom Teacher, and Special Education Coordinator. IEP Team reported Student did not demonstrate major elopement behaviors in the classroom between October 2025, IEP Meeting and January 7, 2026. IEP Team reported Parent did not offer outside documentation of elopement behaviors. IEP Team reported Student responded to the accommodations and modifications contained in October 30, 2026 IEP. District stated that between October 30, 2025, and the end of December 2025, there was an increase in classroom enrollment. According to District, no additional staff were added to the classroom. IEP Team reported that District Board Certified Behavior Analyst (BCBA) was available to work with staff. BCBA representative had not provided services to classroom between October 30, 2025 and January 7, 2026.
13. District stated Student eloped from the school playground on January 8, 2026, during recess and left the school property. School staff member retrieved Student off the school property and returned Student to the school. According to District, there were 8 school staff on the playground, the playground gate was not properly secured, and Student left the playground due to a period of unsupervised attention to Student.
14. District stated Child Protective Services agency provided training on crisis intervention, including how to perform safety holds with children, prior to the start of school, in August 2026. District indicated no additional training specific to elopement was provided.
15. On January 8, 2026, Parent reported receiving a phone call from the Student’s Principal informing Parent of Student’s elopement from the playground through the playground’s gate, and left school property boundaries. Principal reported to Parent, “8 adults were present on the playground, and it was determined that everyone was doing what they were supposed to do, and that someone turned their back for a second and Student was gone.” On the same day, Teacher sent home the regular Daily Note stating, “Student eloped from playground, staff members were able to get him + brought him inside to calm and redirect.”

16. On January 8, 2026, Parent withdrew Student from District.
17. On January 9, 2026, Parent filed a Special Education State Complaint with the Delaware Department of Education.
18. On January 13, 2026, District held an IEP Team meeting and determined the use of current classroom supports were not sufficient to support Student during times outside the classroom which necessitated a “high level of support for his behaviors for all portions of his school day.”
19. On January 13, 2026, Student returned to school with a one-on-one adult paraprofessional support and additional behavioral support, “for all portions of his school day. Student requires to have his hand held during all transitions outside of the classroom (including during arrival/ dismissal procedures, transitions between the classroom and specials, transitions to/from the lunchroom, and transitions to/from recess). Student always be in close proximity to his adult at all times throughout Student school day. The use of physical barriers be in place where there is exposure to exterior doors.”
20. On January 19, 2026, IEP Team held IEP meeting to revise Student’s IEP. IEP Team developed an interim Safety Plan and proposed a functional behavior assessment (FBA) upon Parent’s consent. Parents declined to sign the IEP at the IEP meeting.
21. On January 29, 2026, Parent signed the revised IEP with implementation to begin February 12, 2026.

Legal Conclusions

Allegation #1 Failure to provide appropriate supervision and supports necessary to ensure Student’s safety.

On June 4, 2025, Parent informed District of Student’s elopement behavior at initial IEP meeting. IEP meeting notes reflect this discussion. A representative from the private intervention agency attended the meeting. A goal and intervention targeting elopement were in place at the intervention agency for Student at the time of the IEP meeting. Accommodations and modifications were listed in the IEP from June 4, 2025, providing several strategies to mitigate elopement behavior.

On October 30, 2025, IEP meeting notes reflected Parent shared concerns about Student’s elopement behavior at home. Parent noted increased elopement incidents at home, including going over the backyard fence to escape. Private agency representative attended the October 30, 2025 IEP meeting. Parent reported making a request to increase adult presence in the classroom. District rejected the proposal for additional adult supervision, stating there was a sufficient number of adults in the classroom and other settings. District stated the accommodations and modifications listed in the IEP were sufficient to monitor the elopement behavior. Parent reported District would be collecting data during the child’s attendance in the program to monitor the child’s behavior. During Investigator interviews with District, District

reported that between October 30, 2025, and the end of December 2025, there was an increase in classroom enrollment. District did not add additional staff to the classroom.

On January 8, 2026, Student eloped from the school playground during recess and left the school property. School staff member retrieved Student off the school property and returned Student to the school. District reported there were 8 school staff on the playground, that the playground gate was not properly secured, and that Student left the playground due to a momentary period of unsupervised attention to Student.

There is sufficient evidence to document District failed to support Student's safety by not developing an IEP that sufficiently addressed the elements regulated in the development of an IEP according to 14 DE Admin. Code § 925.11. Evidence documented the following: 1) Parent report of increased elopement behavior at home, 2) documentation available from private intervention agency documenting elopement behavior intervention and not retrieved, 3) evidence number of adults present on the playground did not prevent elopement, 4) accommodations and modifications from IEP did not prevent elopement, and 5) lack of evidence that any specific data collection plan was in place to monitor the elopement behavior,

Therefore, I find there was a violation in the development of an appropriate IEP that failed to meet state education regulations under IEP development, specifically addressing the need for strategies to address Student's behavior.

Allegation #2 Failure to provide Student access to FAPE

On January 8, 2026, Student left the school playground through a gate that was not properly secured, and was not under adequate supervision from the 8 adults present on the playground.

During the IEP meeting held on June 3, 2025, Parent reported requesting additional adult supervision to ensure the Student's safety while at school. October 30, 2025 IEP meeting minutes document Parent reported Student was exhibiting increased elopement incidents at home, including going over the home's backyard fence, and the need to install enhanced latches in the home to prevent elopement. District considered the proposal for additional adult supervision and rejected it, indicating Student's placement in the Least Restrictive Environment, setting (C), in a highly structured learning environment, and with a low student to staff ratio, was adequate to meet the student's needs. Student received private intervention outside of school while also attending the District program. The private intervention included a goal and intervention strategies to reduce elopement behavior. No information was shared between the Parent, the private intervention agency, and the District, regarding outside elopement interventions. There is conflicting information about who is responsible for the lack of information sharing.

The District reported that, prior to the January 8, 2026 elopement, staff at school did not experience any elopement behaviors, though the IEP included a goal to target the Student to "remain in the area" at appropriate times, and measured with benchmarks. The October 30, 2025 IEP contained accommodations and modifications to address Student's safety and possible elopement behavior. The IEP did not contain a goal addressing this behavior, and the IEP notes indicated this was a "need only" area.

The October 30, 2025 IEP contained goals that targeted communication, motor, and academic areas of literacy, mathematics, following one-step directions, and remaining in an area. A functional behavioral assessment had not been completed, nor was one planned. There was no strategic plan established to address Student's elopement behavior. In an interview with IEP Team, Team reported not having experienced any displays of elopement behavior in the school setting prior to the January 8, 2026 incident. IEP Team reported that there was an increase in classroom enrollment, and District explored possible need for additional staff in the classroom, though District did not hire additional staff.

I find there was sufficient evidence and information, beginning with the initial June 3, 2025 IEP meeting, and subsequently at the October 30, 2025 IEP meeting, that the District was in violation of state regulations requiring the development of an IEP that addressed FAPE under 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 pre-school, 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).

Therefore, I find the District in violation of 14 DE Admin. Code §925.11 addressing the lack of positive behavioral interventions and supports to address Student's behavior.

Allegation #3 Failure to provide adequate training to school staff to ensure Student's safety

On January 8, 2026, Student eloped from the school playground during recess and left school property. Parent and District report a school staff member retrieved Student off school property and returned to the school. District reports 8 school staff on the playground on January 8, 2026, the playground gate was not properly secured, and Student left the playground due to a period of unsupervised attention.

Student's October 30, 2026, IEP listed accommodations and modifications to address the student's "Safety-Need Only" area. Accommodations and modifications included "Student should always remain in arms reach of an adult when in open, common areas; Student should always remain in the line of sight in the classroom and on the enclosed playground area; Student may wander or elope from areas and/or during transitions; Hand-held support to walk in the line in hallways, to/from bus/car, classroom to OT/Speech rooms and back."

During an interview with the Investigator, IEP Team reported having not received specific training on elopement prevention. District reported the staff received training from Child Protective Services on appropriate interactions with children, and safe-hold procedures when interacting with children requiring immediate behavior de-escalation. IEP Team reports no

interaction between the District and the outside intervention agency providing behavioral intervention, including working on the Student's elopement behavior with interventions.

Pursuant to 14 DE Admin. § Code 923.56.1 (Children with Disabilities Subpart B General Duties and Eligibility of Agencies), a District is required to ensure all staff are appropriately and adequately prepared and trained and have the content knowledge and skills to serve children with disabilities. When staff are not adequately prepared and trained, District is in violation of this regulation.

Therefore, I find there was a violation of IDEA due to District's failure to meet state special education regulations under General Duties as an Eligible Agency.

Corrective Actions

Student Level

1. District shall provide Student with compensatory education services to address the identified needs set forth in the Student's current IEP. Student shall receive a total of 390 minutes of compensatory education services, to be provided in the areas of speech and language therapy (60 minutes), occupational therapy (90 minutes), and academic instruction (240 minutes), to address literacy and mathematics no later than **June 30, 2026**. The compensatory time determined is based on the amount of service time Student was entitled to receive during the time Parent withdrew Student from school, January 9-January 13, 2026.

Documentation of plan to deliver compensatory education services, to include arrangements if the Student is ill or misses a scheduled session for some other reason, compensatory time is to be developed and provided to Director of Exceptional Children Resources no later than **April 30, 2026**. Documentation of compensatory education time completion shall be provided to the Director of Exceptional Children Resources no later than **June 30, 2026**.

2. The District shall convene an IEP meeting to address Student's elopement behavior and safety needs in school setting. During the meeting, the district will review and revise the IEP as necessary, as well as develop and FBA and BSP. The IEP and BSP should address the student's safety and strategies to integrate the plan across the Student's time in school. . The IEP, PWN, FBA and BSP shall be provided to the Director of Exceptional Children Resources no later than **March 30, 2026**.

School Level

1. Professional development related to appropriate behavioral intervention, including Student's revised IEP, and Student Behavior Support Plan, shall be provided to all IEP Team members responsible for implementation of the Student's IEP and Behavior Support Plan. Such training shall be completed no later than **April 30, 2026**. Training materials, including but not limited to PowerPoint presentations, media, handouts, and sign-in sheets shall be submitted to the Director of Exceptional Children Resources no later than **May 1, 2026**.

Respectfully submitted,

REDACTED

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