

**Delaware Department of Education
Exceptional Children Resources**

State Complaint Decision

DE SC #26-14

Date Issued: April 2, 2026

On February 4, 2026, REDACTED (Guardian), filed a complaint with the Delaware Department of Education (Department). The complaint alleges Odyssey Charter School (School) violated state and federal regulations concerning the provision of a free, appropriate, public education (FAPE) to REDACTED (Student). 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 §§ 923.51.0–923.53.0.¹

The investigation included review of Student’s records and communication, as well as correspondence with Guardian and REDACTED Special Education Supervisor (Supervisor).

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 February 4, 2026. Therefore, the Department’s findings address any violations from February 4, 2025, to February 4, 2026.

Complaint Allegations

Guardian alleges School violated Part B of the IDEA and implementing regulations by the following:

1. Failure to conduct a manifestation meeting within required timelines.
2. Failure to provide special education services during a disciplinary removal.
3. Failure to provide Procedural Safeguards and a Prior Written Notice (PWN) for change of placement.
4. Failure to provide FAPE because suspension occurred prior to Manifestation Meeting.

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.

Factual Findings

1. Student is a REDACTED grader attending School and receiving special education and related services under the primary educational classification of Emotional Disability, and a secondary classification of Other Health Impairment (OHI), due to a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD).
2. On January 20, 2026, the Individualized Education Program (IEP) Team conducted Student's three-year reevaluation and annual IEP meeting. During the meeting, the IEP Team agreed that the student continues to meet eligibility requirements to receive special education services. The IEP Team identified Student's needs in the areas of written expression, math calculation, work completion and emotional/behavioral regulation. The IEP included the following goal addressing emotional/behavioral regulation: When presented with a challenging academic task, social interaction, or unexpected change in routine, the Student will utilize appropriate coping strategies (e.g., deep breathing, requesting a break, self-talk, or seeking adult support) to regulate emotions and return to the task within twenty (20) minutes in four (4) out of five (5) observed trials. The IEP Team provided counseling services as a related service, to be delivered once per week for twenty (20) minutes. The Student is served in an A setting.
3. According to progress monitoring data, the Student has demonstrated progress toward the emotional/behavioral regulation goal.
4. On January 21, 2026, Student asked a teacher how long she thought it would take to retrieve the weapon from the Constable's holster. He also stated that he felt the gun was not secure.
5. On January 21, 2026, the teacher emailed REDACTED, the Assistant Principal (AP), to inform him of what the student said.
6. On January 22, 2026, the AP contacted Guardian via phone, and informed Guardian of the incident that occurred and that the police were contacted. AP also asked Guardian to come to school to pick up Student.
7. On January 22, 2026, the School made the decision to classify the incident as "Terroristic Threatening" which is a Level 4 state-reportable incident, and Guardian was asked to take Student home until further notice. Level 4 actions require police notification, a behavioral contract, out-of-school suspension (5-10 days) and a recommendation for alternative placement or expulsion process.
8. According to the Guardian, Detectives came to school on January 22, 2026 to interview Student, and no law enforcement action was taken.
9. On January 22, 2026, the School conducted a Student threat assessment. During the assessment, staff reported that the Student did not initially provide a specific reason for making the statement. The Student stated that he had discussed the holster and access to the firearm with peers and expressed concern that the holster did not appear secure or safe. The Student later explained that the statement was made to avoid attending school.

10. On January 22, 2026, AP contacted Guardian via phone, with notice of Student suspension for 7 days.
11. On January 23, 2026, written notification of suspension was provided to Guardian via email.
12. On February 3, 2026, Student returned to school.
13. On February 2, 2026, REDACTED, Special Education Coordinator (SEC) called Guardian to schedule a Manifestation Meeting for February 10, 2026. Guardian agreed to meeting date and time. At this time, Student had accumulated 9 days of suspension for the school year.
 - October 8, 2025, Possession and/or use of tobacco or electronic smoking device (1 day)
 - December 11, 2025, Possession and/or use of tobacco or electronic smoking device (1 day)
 - January 22, 2026, Threat of physical attack with a weapon (7 days)
14. On February 3, 2026, Notice of Meeting (NOM) for Manifestation Meeting and Procedural Safeguards were emailed to Guardian. Guardian agreed to meeting date and time and signed waiver of 5 school days notice of meeting.
15. On February 10, 2026, the IEP Team held a Manifestation Meeting. The Team discussed and reviewed Student's current IEP, discipline records, psychoeducational evaluation, medical records, cumulative records, the threat assessment, and considered input from the student and family. Based on that information, the IEP Team concluded that the behavior was a manifestation of his disability. The IEP Team developed a safety and reintegration plan and agreed to conduct a Functional Behavioral Assessment (FBA). Guardian signed permission to conduct the FBA.

Legal Conclusions

Allegation # 1: Failure to conduct a manifestation meeting within required timelines.

Pursuant to 14 Del. Admin. Code § 925.9.1.1 (Children with Disabilities Subpart D, Evaluations, Eligibility Determination, Individualized Education Programs),

9.0 Parent Participation Public agency responsibility, general: Each public agency shall take steps to ensure that 1 or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

9.1.1 Notifying parents of the meeting, in writing, no less than 10 school days prior to the IEP Team meeting (unless mutually agreed otherwise) to ensure that they will have an opportunity to attend, and no less than 5 school days prior to a meeting to conduct a manifestation determination under 14 DE Admin. Code 926, Section 30.0.

The School notified guardian verbally of meeting on February 2, 2026, and in writing on February 3, 2026. The School was closed for students on February 9, 2026, and the manifestation meeting was held on February 10, 2026, which was 5 days after verbal notification was provided and 4 school days after written notification was provided. Guardian waived 5-day notice.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as out-of-school suspension, for a child with a disability who violates a code of student conduct. 34 CFR §300.530 (b)(1).

§ 300.530 Authority of school personnel.

(b)General.

(1). School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

The School was not required to conduct a manifestation determination meeting until the Student accumulated ten or more days of suspension, which would constitute a change in placement; however, in this case, the School proactively conducted the manifestation determination meeting prior to the Student reaching 10 days of suspension.

Therefore, I find no violation because the School held a manifestation meeting within the required timelines and followed proper procedures.

Allegation #2: Failure to provide special education services during a disciplinary removal.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as out-of-school suspension, for a child with a disability who violates a code of student conduct. 34 CFR §300.530 (d)(3).

Discipline Procedures §300.536 Change of placement because of disciplinary removal.

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

- (1) The removal is for more than 10 consecutive school days; or
- (2) The child has been subjected to a series of removals that constitute a pattern—
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The student has served a total of nine days of out-of-school suspension: one day on October 8, 2025, for possession and/or use of tobacco or an electronic smoking device; one day on December 11, 2025, for possession and/or use of tobacco or an electronic smoking device; and seven days on January 22, 2026, for making a threat of physical attack with a weapon. Since a ten-day removal constitutes a change in placement, the School was not obligated to provide special education services during the period of disciplinary removal.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as out-of-school suspension, for a child with a disability who violates a code of student conduct. 34 CFR §300.530 (d)(3).

Discipline Procedures §300.530 Authority of school personnel.

(d) Services.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

The School is not obligated to provide educational services to students with disabilities who are suspended, unless such services are also provided to students without disabilities. In the present case, consistent with its general practice, the School does not provide educational services to any student suspended for a period of fewer than ten (10) days.

Therefore, I find no violation, as the School did not fail to provide special education services during the disciplinary removal, given that the student was not removed for more than ten (10) days.

Allegation # 3: Failure to provide Procedural Safeguards and a Prior Written Notice (PWN) for change of placement.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as out-of-school suspension, for a child with a disability who violates a code of student conduct. 34 CFR §300.536 (a)(1-2).

Discipline Procedures §300.536 Change of placement because of disciplinary removal.

- (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—
- (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern—
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Pursuant to 14 Del. Admin. Code § 926.3.1.2 (Procedural Safeguards and Prior Written Notice), when a District refuses to initiate or change the identification, evaluation, or educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to the child, the District is required to issue Prior Written Notice (PWN) identifying the rationale for such refusal. According to school disciplinary records, the Student did not accumulate 10 days of suspension. Therefore, the School was not obligated to send Procedural Safeguards or a PWN because a change of placement did not occur.

Therefore, I find no violation because the disciplinary action did not exceed 10 days and did not constitute a change of placement.

Allegation # 4: Failure to provide FAPE because suspension occurred prior to Manifestation Meeting.

The IDEA authorizes school personnel to implement a short-term disciplinary removal from the current placement, such as out-of-school suspension, for a child with a disability who violates a code of student conduct. 34 CFR §300.530 (b)(1).

§ 300.530 Authority of school personnel.

(b)General.

(1). School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

The Student's IEP provides that the Student will adhere to the school's code of conduct. In this case, the School determined that the Student's actions violated the code of conduct and imposed a disciplinary removal commensurate with the level of the violation. The School is not required to provide FAPE during a suspension unless the total number of suspension days exceeds ten.

Therefore, I find there was no violation of FAPE because the disciplinary action was followed per code of conduct.

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 Delaware regulations. Therefore, no further action by the Department shall be taken.

Respectfully submitted,
REDACTED
State Complaint Investigator