

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION

DE SC # 26-27

Date Issued: June 18, 2026

On April 22, 2026, REDACTED Esquire of Disability Rights Delaware of Community Legal Aid Society, Inc. filed a complaint on behalf of REDACTED (Student) with the Delaware Department of Education (Department). The complaint alleges the Delaware Department of Education's Adult and Prison Education Resources (APER) 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 state and federal law, special education records, transcript, communication between Student's Counsel and APER Counsel, as well as interviews with Student, Student's Counsel, Supervisor of Special Education, Special Education Teacher and Education Administrator.

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 April 22, 2026. Therefore, the Department's findings address violations from April 22, 2025, to April 22, 2026.

COMPLAINT ALLEGATIONS

Legal counsel alleges the APER violated Part B of the IDEA and implementing regulations, by the following:

1. Denying Student a meaningful opportunity to participate in the development of the IEP;
2. Failing to include required members of the IEP Team during the March 18, 2026, meeting, including Student's special education teacher;

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.

3. Developing, and implementing an IEP during the March 18, 2026, IEP Team meeting after Student and legal counsel objected to the composition of the IEP Team and left the meeting;
4. Failing to provide a Prior Written Notice (PWN) following the March 18, 2026, IEP Team meeting; and
5. Denying Student a Free Appropriate Public Education (FAPE) by proceeding with the March 18, 2026, IEP Team meeting.

Factual Findings

1. Student is a REDACTED -year-old student in the Delaware Department of Education's Adult and Prison Education Resources (APER). Student has reached the age of majority and has been determined to have the capacity to make his own educational decisions. Accordingly, the rights afforded to parents under the Individuals with Disabilities Education Act (IDEA) have transferred to Student. Student currently receives special education and related services through APER and is eligible under the educational classification of Emotional Disability.
2. On February 19, 2025, APER convened Student's annual IEP Team meeting. Student and Student's legal counsel attended the meeting. The meeting was scheduled for approximately ninety minutes and focused primarily on reviewing data considerations. The IEP Team did not complete the annual review during the allotted time and agreed to continue the meeting at a later date.
3. On March 18, 2025, APER reconvened Student's annual IEP Team meeting. Student and Student's legal counsel attended. During the meeting, Student's legal counsel requested revisions to annual goals, accommodations, specially designed instruction, and additional math data collection. The IEP Team did not complete the annual review during the allotted time.
4. APER scheduled a continuation of Student's annual IEP Team meeting for May 20, 2025. The meeting was subsequently cancelled at Student's request and rescheduled.
5. On June 30, 2025, Student and Student's legal counsel participated in a continuation of the annual IEP Team meeting. The IEP Team was unable to complete the annual review and scheduled an additional meeting.
6. On October 7, 2025, APER convened another continuation of Student's annual IEP Team meeting. Student and Student's legal counsel participated in the meeting. The annual review remained incomplete.
7. On December 9, 2025, APER convened again to continue Student's annual IEP Team meeting. Student's legal counsel requested an updated reading assessment before

proceeding further with the annual review. The meeting concluded without completion of the IEP process.

8. Between February 2025 and March 2026, APER and Student's legal counsel communicated regarding scheduling and continuation of Student's annual IEP Team meetings.
9. Prior to March 18, 2026, Student's special education teacher participated in previous IEP Team meetings and contributed to the development and revision of draft IEP documents.
10. Prior to March 18, 2026, APER's Special Education Coordinator reviewed Student's educational records, consulted with Student's special education teacher, reviewed assessment information, and participated in revising the draft IEP.
11. On March 18, 2026, APER convened a continuation of Student's annual IEP Team meeting. Student and Student's legal counsel attended the meeting.
12. On March 18, 2026, Student's special education teacher was unexpectedly unavailable to attend the meeting. APER designated the Special Education Coordinator to participate in the meeting in her place.
13. The Special Education Coordinator held Delaware certifications in Special Education and possessed extensive experience as a special educator, educational diagnostician, and special education administrator.
14. Upon learning that Student's special education teacher would not be present, Student and Student's legal counsel objected to proceeding with the meeting and subsequently left the meeting.
15. Following Student's and legal counsel's departure, APER continued the IEP Team meeting and completed the annual review process.
16. During the March 18, 2026, meeting, APER reviewed updated educational information, including transition survey information, career and technical education assessment information, reading assessment data, teacher input, revised annual goals, and transition planning information.
17. On March 18, 2026, APER finalized Student's annual IEP and determined that completion of the IEP was necessary because the annual review process had remained unresolved through multiple prior meetings.
18. Following the March 18, 2026, meeting, APER provided Student with a copy of the completed IEP and informed Student that APER was willing to reconvene the IEP Team to discuss any questions or concerns regarding the completed IEP.

19. On March 18, 2026, APER issued a Prior Written Notice documenting the actions taken by the IEP Team and the revisions made to Student's IEP.
20. The Prior Written Notice identified revisions to Student's goals, assessment information, teacher input, transition planning information, and other data the IEP Team reviewed during IEP development.
21. Following issuance of the Prior Written Notice, Student, through legal counsel, asserted that the notice did not sufficiently explain the basis for the decisions made during the March 18, 2026, IEP Team meeting.
22. APER maintained that the Prior Written Notice contained the required explanations, data sources, and rationale supporting the IEP Team actions.
23. On April 22, 2026, Student, through legal counsel, filed a state complaint alleging that APER violated IDEA by proceeding with the March 18, 2026, IEP Team meeting after Student and legal counsel objected to the composition of the IEP Team and left the meeting.
24. During the investigation, APER asserted that Student had participated extensively in the annual review process over multiple meetings, that Student's special education teacher contributed to development of the draft IEP, that a qualified substitute special educator attended the March 18, 2026 meeting, and that the completed IEP reflected updated educational, transition, and assessment information.
25. During the investigation, Student, through legal counsel, maintained that proceeding with the March 18, 2026, meeting without Student's special education teacher present violated IDEA procedural requirements and resulted in an invalid IEP and denial of FAPE.

Legal Conclusions

Allegation 1: Denying Student a meaningful opportunity to participate in the development of the IEP.

IDEA requires public agencies to ensure that parents are afforded an opportunity to participate in meetings regarding the identification, evaluation, educational placement, and provision of FAPE to their child. Specifically, 34 C.F.R. § 300.322(a) requires public agencies to "take steps to ensure that one 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." Delaware regulations similarly require meaningful parent participation in the development of a student's IEP. See 14 DE Admin. Code §§ 925.21.0 and 926.23.0.

The record demonstrates that Student and Student's legal counsel participated in an extensive IEP development process spanning approximately thirteen months. Student and legal counsel attended multiple IEP Team meetings and actively participated in discussions regarding goals, accommodations, specially designed instruction, transition planning, and assessment needs. The record further demonstrates that APER scheduled numerous continuation meetings and considered concerns raised by Student and legal counsel throughout the process.

On March 18, 2026, Student and legal counsel attended the scheduled IEP Team meeting. After learning that Student's special education teacher was unexpectedly absent and had been replaced by another certified special education professional, Student and legal counsel objected and voluntarily left the meeting. Although Student disagreed with APER's decision to proceed, the evidence establishes that APER afforded Student numerous opportunities to participate in the IEP development process and that Student exercised those opportunities.

I would like to note that when interviewing the Student for this investigation, Student shared with this investigator that he was rather frustrated with this IEP process. The Student was bothered by the number and length of IEP meetings to address programming concerns. It is Student's opinion that this was due to the IEP meetings being focused on legal issues and not IEP development.

I find this dynamic troubling because arguing over legal issues is not the proper purpose of these IEP meetings. The purpose of the IEP meeting is to develop an appropriate program that meets the educational needs of a student and to address other issues involving FAPE provisions. I want the parties to strongly consider focusing the IEP meetings on the actual development of the Student's IEP. The discussions of any legal issues can happen between the parties outside the time set aside for the IEP meetings. While this is not a FAPE violation because the parties agreed to continue the meetings, this practice is concerning because it detracts from the proper purpose of an IEP meeting and needlessly lengthens the IEP development process.

Therefore, I find no violation of IDEA or state special education regulations regarding meaningful participation in the IEP process.

Allegation 2: Failing to include required members of the IEP during the March 18, 2026, meeting, including Student's special education teacher.

IDEA requires that the IEP Team include: "not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child." 34 C.F.R. § 300.321(a)(3). Delaware regulations similarly require participation of the student's special education teacher in the development and review of the IEP. See 14 DE Admin. Code § 925.22.0.

The record establishes that Student's assigned special education teacher was unexpectedly absent from the March 18, 2026, IEP Team meeting. APER designated another certified special ed-

education professional to attend the meeting in her place. The substitute special educator possessed extensive special education experience, reviewed Student's records, consulted with Student's special education teacher, and participated in development of the draft IEP.

However, IDEA specifically requires participation of the student's special education teacher or provider as a member of the IEP Team. While Student's special education teacher participated extensively in prior IEP Team meetings and contributed to development of the draft IEP, she was not present during the March 18, 2026, meeting. The regulations do not provide an exception based solely upon prior participation.

Accordingly, APER did not fully comply with the procedural requirements governing required IEP Team membership.

Therefore, I find a violation of IDEA and state special education regulations regarding required IEP Team membership.

Allegation 3: Developing, finalizing, adopting, and implementing an IEP during the March 18, 2026, IEP Team meeting after Student and legal counsel objected to the composition of the IEP Team and left the meeting.

IDEA requires that an IEP be developed by an IEP Team that meets the requirements set forth in 34 C.F.R. § 300.321. However, procedural violations do not automatically invalidate an IEP. Pursuant to 20 U.S.C. § 1415(f)(3)(E)(ii), a procedural violation results in a denial of FAPE only if it: "(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits."

The evidence establishes that Student's special education teacher participated in the prior IEP meetings, contributed to development of the draft IEP, and consulted with the substitute special educator before the March 18, 2026, meeting. The record further demonstrates that Student and legal counsel actively participated in the IEP process over multiple meetings before leaving the March 18, 2026, meeting.

Although APER committed a procedural violation by proceeding without Student's special education teacher present, the record does not establish that the resulting IEP was substantively deficient, deprived Student of educational benefit, or significantly impeded Student's participation rights. The evidence further demonstrates that APER provided Student with a copy of the completed IEP and offered opportunities to address additional concerns.

Therefore, while I find a procedural violation regarding IEP Team composition, I do not find that the March 18, 2026, IEP was rendered invalid under IDEA.

Allegation 4: Failing to provide a Prior Written Notice following the March 18, 2026, IEP Meeting.

34 C.F.R. § 300.503(b) requires that prior written notice include: "(1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action . . . (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal." See also 14 DE Admin. Code § 926.3.0.

The record demonstrates that APER issued a Prior Written Notice following the March 18, 2026, meeting. The notice described the actions taken by the IEP Team, identified the data reviewed, explained the revisions made to Student's IEP, and documented the basis for the Team's decisions.

Although Student disagreed with the decisions reflected in the Prior Written Notice, disagreement with the content of an educational decision does not establish that the notice itself was procedurally deficient. The evidence does not demonstrate that APER failed to include the required components identified in 34 C.F.R. § 300.503(b).

Therefore, I find no violation of IDEA or state special education regulations regarding Prior Written Notice.

Allegation 5: Denying Student a Free Appropriate Public Education (FAPE) by proceeding with the March 18, 2026, IEP Team meeting.

A procedural violation constitutes a denial of FAPE only when it: "(I) impeded the child's right to a free appropriate public education; (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or (III) caused a deprivation of educational benefits." 20 U.S.C. § 1415(f)(3)(E)(ii). IDEA further requires that an IEP be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas County School District RE-1*, 580 U.S. 386 (2017).

As discussed above, APER committed a procedural violation when it proceeded with the March 18, 2026, IEP Team meeting without Student's special education teacher present. However, the record demonstrates that Student and legal counsel participated extensively throughout the IEP development process; Student's special education teacher contributed to development of the draft IEP; a qualified substitute special educator participated in the meeting; and the completed IEP incorporated updated assessment information, transition planning, and educational goals. The evidence does not establish that the procedural violation impeded Student's right to FAPE, significantly impeded Student's participation rights, or caused a deprivation of educational benefit.

The record demonstrates that Student and legal counsel participated extensively in the IEP development process over approximately thirteen months and seven IEP Team meetings. The record further demonstrates that Student's special education teacher participated in prior meetings, contributed to development of the draft IEP, and provided input before the March 18, 2026 meeting. Although APER committed a procedural violation when it proceeded without Student's special education teacher present, the evidence does not establish that the resulting IEP was inappropriate, that Student was denied educational benefit, or that Student was denied a free appropriate public education. Accordingly, the investigator finds that reconvening the IEP Team is not necessary to remedy the procedural violation identified in this decision.

Therefore, while I find a procedural violation regarding IEP Team composition, I find no violation of IDEA or state special education regulations regarding the provision of a Free Appropriate Public Education.

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 a violation of IDEA and state special education regulations regarding required IEP Team membership. Specifically, APER convened and completed the March 18, 2026, IEP Team meeting without Student's special education teacher present, contrary to the requirements of 34 C.F.R. § 300.321(a)(3). A qualified substitute special educator participated in the meeting; and the completed IEP incorporated updated assessment information, transition planning, and educational goals with input from the Student's special education teacher. The Investigator did not find that this procedural violation resulted in a substantive denial of FAPE.

Agency Level

1. By August 17, 2026, APER shall develop and disseminate written guidance to all special education administrators, coordinators, and staff responsible for convening IEP Team meetings regarding the IDEA requirement that a student's special education teacher or provider be included as a member of the IEP Team pursuant to 34 C.F.R. § 300.321(a)(3).

- By September 16, 2026, APER shall review and revise, as necessary, its internal procedures governing IEP Team meeting scheduling and required participant attendance to ensure compliance with 34 C.F.R. § 300.321.
- By September 16, 2026, APER shall provide the Department with written assurance that all future IEP Team meetings will be convened with required team members present or properly excused in accordance with IDEA and Delaware special education regulations.

The Department will make itself available to APER to provide technical assistance regarding IEP Team membership requirements, excusal procedures for required team members, and procedural compliance during the IEP development process.

Respectfully submitted,

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