

DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES
STATE COMPLAINT DECISION

DE SC # 24-15

Date Issued: July 3, 2024

On May 8, 2024, REDACTED (Parent), filed a complaint on behalf of REDACTED (Student), with the Delaware Department of Education (Department). The complaint alleges the REDACTED 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 Del. Admin. Code §§ 923.51.0–923.53.0.

The investigation included a review of Student’s educational records, as well as correspondence and interviews with REDACTED (Student), REDACTED (Parent), REDACTED (Supervisor of Support Services), REDACTED (Teacher1), REDACTED (Teacher2), REDACTED (Principal), and REDACTED (Special Education Specialist).

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 May 8, 2024. Therefore, the Department’s findings address violations from May 8, 2023 to May 8, 2024.

COMPLAINT ALLEGATIONS

Parent alleges the District violated Part B of the IDEA and implementing regulations, as follows:

1. Failed to implement the accommodations outlined in Student’s Individual Education Program (IEP).
2. Failed to address concerns regarding inappropriate substitute staff to student interactions.

FACTUAL FINDINGS

1. Student is a REDACTED -year-old REDACTED grade student who transferred from REDACTED in the Fall of 2023 and is now attending REDACTED (School). Student receives special education services under the classification of an Emotional Disability (ED) and Other Health Impairment (OHI).
2. On November 1, 2023, Student was admitted into REDACTED
3. On November 10, 2023, Student enrolled in the District.
4. On November 15, 2023, Student was discharged from REDACTED.
5. On November 27, 2023, a transition meeting was held, and Student attended School for the first time.
6. On November 29, 2023, Parent received a phone call from School regarding an incident where Student plugged a frayed charger into an outlet.
7. On December 1, 2023, Parent, Student and School met to discuss the incident. During the meeting, Student stated that there was no intention of harming anyone.
8. On December 6, 2023, Parent emailed Student's teachers to introduce REDACTED and to invite them to utilize REDACTED contact information to communicate any questions or concerns about Student and how Student could be successful in each class.
9. On December 8, 2023, Parent received an email from School because Student made a comment about jumping out of the window during class. Parent spoke with Student who stated that REDACTED was not planning to jump out of a window, and that once again, "teachers just don't get REDACTED."
10. On December 19, 2023, Student texted Parent to report that other students were throwing pencils at REDACTED. Student asked to be picked up from school because Student felt unsafe. However, Parent redirected Student to the Special Education Specialist (SES), and Student stayed in school through the day.
11. On January 23, 2024, the IEP team met to conduct the required 60-day transition meeting. At the meeting, the IEP team reviewed Student's August 23, 2023, evaluation report from REDACTED, developed a new Evaluation Summary Report (ESR), and determined that Student was eligible to receive special education services under the primary classification of ED and secondary classification of OHI in Delaware. During the meeting, the IEP team developed an IEP to support Student's self-regulation and appropriate on-task behavioral needs. Also, Parent received and signed a Prior Written Notice (PWN).
12. Student's January 23, 2024 IEP has a self-regulation/time on task behavior goal. The accommodations outlined in the IEP include: "use of a quiet alternate workspace when available, after instruction; call case manager to coordinate," "check in and/or breaks with preferred staff as requested or directed by teacher."

13. On January 24, 2024, Student called Parent from home to report an altercation that occurred with three other students in the neighborhood when Student exited the school bus. Parent drove Student to-and-from school for 3 weeks because of the incident.
14. On March 12, 2024, Student requested to leave the classroom during English Language Arts and Teacher1 told Student to wait until instruction and a quiz were completed.
15. On March 12, 2024, Parent emailed Teacher1 to ask why Student was not permitted to leave the classroom. Parent also stated that accommodations in Student's IEP allow for Student to leave class when requested or instructed to do so. Teacher1 responded via email and informed Parent that Student was not permitted to leave the room because instruction had not ended. Teacher1 also apologized for the incident and ensured that REDACTED would continue to implement Student's IEP as written. Parent responded to the email by accepting Teacher1's apology and acknowledged that REDACTED did not support Student's inappropriate behavior. Parent also said REDACTED would reiterate the need for Student to abide by classroom expectations.
16. On March 13, 2024, Parent contacted Principal via email to voice REDACTED concerns with the incident and the Teacher1's handling of the situation. Principal responded via email and stated that REDACTED would "work with the Teacher1 to avoid any future similar situations." In a follow up email, Parent asked if the actions noted in Principal's reply were the extent of how the incident would be addressed. Parent also asked if REDACTED should file a more formal complaint to ensure that there was follow-up.
17. On March 14, 2024, Principal emailed Parent to ask for Parent's availability to speak by phone to discuss Parent's concerns.
18. On March 14, 2024, Parent and Principal confirmed that they would speak via phone on March 17, 2024.
19. On March 27, 2024, Student's third marking period IEP progress report showed sufficient progress toward the annual behavior goal.
20. On April 8, 2024, Student engaged in disruptive behavior; calling out, using cellphone, talking loudly in the classroom and Teacher2 emailed Parent to inform Parent of the incident. Also, Teacher2 told Parent that Student was directed multiple times to put REDACTED phone away, and that Student refused to do so. Parent replied via email and informed Teacher2 that Student felt REDACTED was dismissed and disrespected by Teacher2 when Student asked if an assignment was graded. Teacher2 did not answer the question, so Student felt that REDACTED did not have to reciprocate respect. Parent also stated that REDACTED would remind Student that REDACTED has a responsibility to listen to the teacher and it is not appropriate to have REDACTED phone out (especially if Student was asked to put the device away).
21. On April 8, 2024, the SES emailed Student's teachers, and cc'd Parent, with suggestions on how to support Student's behavior in the classroom.
22. On April 9, 2024, Parent requested a meeting to review Student's IEP.

23. On April 10, 2024, the SES replied via email and suggested that a parent conference be held because the IEP was well written.
24. On April 16, 2024, Parent received an invitation to meet so that the IEP team could hear and address Parent's concerns.
25. On April 18, 2024, a meeting was held, at Parent's request, to discuss and review Student's IEP accommodations and an alleged inappropriate comment, made by a substitute teacher, regarding Student's "future not being bright" as it was "degrading" and not warranted. During the meeting, Parent stated that REDACTED did not believe that any revisions to Student's IEP were necessary.
26. On the day of the April 18, 2024, meeting, Principal emailed Student's teachers to remind them of Student's IEP accommodations. Principal also attached the accommodations, modifications and supports page from Student's current IEP and instructed teachers to include "notes with substitute teacher plans so that substitutes were aware of how to address concerns with Student."
27. On April 26, 2024, Student received a discipline referral for being late to class without a pass.
28. On May 1, 2024, Principal called Parent after receiving a report that Student threatened to shoot up the school.
29. On May 2, 2024, Parent, Student and Principal met to discuss the report. Student denied making threats toward the school but, Student did say that students have told REDACTED that REDACTED looked like a school shooter. Student also stated that REDACTED would have said, "At least I would let you know first." in response to being told that Student looked like a school shooter.
30. On May 7, 2024, Student served an in-school suspension due to the April 26, 2024 incident. Student was using REDACTED cell phone and did not put the device away when asked to do so. The classroom staff, spoke with Student privately and asked that Student put the device away and directed Student to begin REDACTED work. Student did not respond to the request and continued to use the phone. At that time, the classroom staff repeated the request and informed Student that an administrator would be called to assist if Student did not comply. Student asked which administrator would be called and continued to use the phone. An administrator was called to the classroom and escorted Student to the office. Subsequently, Student was suspended for failure to perform appropriately in in-school suspension.
31. On May 8, 2024, Parent filed a State Complaint.

CONCLUSIONS

The IDEA and implementing state and federal regulations require school districts to provide FAPE to students with disabilities. See, 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); 14 Del. Admin. C. § 923.1.2. FAPE is special education that is specially designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the DDOE rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- (a) Is provided at public expense, under public supervision and direction and without charge in the public school system.
- (b) Meets the standards of the Delaware Department of Education.
- (c) Includes elementary, secondary, or vocational education in the State.
- (d) Is individualized to meet the unique needs of the child with a disability.
- (e) Provides significant learning to the child with a disability; and
- (f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability potential.

1. Failed to implement the accommodations outlined in Student's IEP.

According to 14 DE Admin. Code § 925.10, each public agency shall, at the beginning of each school year, have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Section 2.0.

10.3 Accessibility of child's IEP to teachers and others. Each public agency shall ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider described in this paragraph is informed of:

10.3.1 Their specific responsibilities related to implementing the child's IEP; and

10.3.2 The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

Student's January 23, 2024 IEP has a self-regulation/time on task behavior goal. The accommodations outlined in the IEP include: "use of a quiet alternate workspace when available, after instruction; call case manager to coordinate," "check in and/or breaks with preferred staff as requested or directed by teacher."

Regarding the March 12, 2024 incident, Teacher1 explained to Parent that, in alignment with Student's IEP, class instruction was not completed at the time Student requested to leave the room; therefore, Student was asked to wait. However, Student was afforded the opportunity to leave the room once the instruction and quiz were finished. Also, Parent acknowledged that Student needed to take responsibility for REDACTED inappropriate actions in class and toward the teacher.

Regarding the April 8, 2024 incident when Student engaged in disruptive behavior; calling out, using cellphone, talking loudly in the classroom and Student felt dismissed and disrespected by Teacher2 when Student did not receive an answer when Student asked if an assignment was graded. Parent replied via email and stated that she would "remind Student that REDACTED has a responsibility to listen to the teacher and it is not appropriate to have REDACTED phone out (especially if REDACTED was requested to be put away)." Also, Teacher2 stated that REDACTED would continue to follow Student's IEP. Additionally, the SES emailed Student's teachers, and cc'd Parent, with suggestions on how to support Student's behavior in the classroom.

Regarding the April 18, 2024 incident when the substitute teacher made a comment regarding Student's "future not being bright" as it was "degrading" and not warranted, the Principal emailed Student's teachers to remind them of Student's IEP accommodations. Principal also instructed teachers to include "notes with substitute teacher plans" so that substitutes were aware of how to address concerns with Student.

Regarding the May 7, 2024 incident when Student used a cellphone during in-school suspension, the in-school suspension staff followed an established classroom expectation that students do not use cellphones without permission. Student's IEP accommodations allow Student to use REDACTED phone for academic purposes. However, Student was not engaged in academic activities when Student was asked to put the device away.

Student and Parent agreed upon the IEP at the January 23, 2024 meeting. The IEP was implemented, and Student made sufficient progress toward the annual behavior goal during the third marking period which shows that the accommodations outlined in Student's program were implemented. Furthermore, the School responded appropriately to each of the Parent's concerns promptly and efficiently. **Therefore, I find that there was not a violation of FAPE, IDEA, or state regulations.**

2. Failed to address concerns regarding inappropriate substitute to student interactions.

According to 14 DE Admin. Code § 925.11.7, 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 revise the IEP, as appropriate, to address:

11.7.4 The child's anticipated needs; or

11.7.5 Other matters.

Parent emailed Principal to voice concern over substitute teacher's interaction with Student. Parent stated that the comments made regarding Student's "future not being bright" was "degrading" and not warranted. The IEP team had an IEP meeting and reviewed the accommodations listed in Student's IEP and discussed the alleged inappropriate comment. During the meeting, Principal told Parent that the staff who made the alleged comment was addressed. Parent agreed that no revisions to the IEP needed to be made. After the meeting, Principal emailed Student's teachers to remind them of Student's IEP accommodations. Principal also attached the accommodations, modifications and supports page from Student's current IEP and instructed teachers to include "notes with substitute teacher plans" so that substitutes were aware of how to address concerns with Student. The School responded appropriately to Parent's concerns promptly and efficiently. **Therefore, I find that there was not a violation of FAPE, IDEA, or state 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, no violation of Part B of the IDEA was identified. Therefore, no further action by the DDOE shall be taken.

REDACTED

Investigator