

DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION  
BRANCH

FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION

DE AC 12-2 (October 19, 2011)

On August 29, 2011, K.H.<sup>1</sup> filed a complaint with the Delaware Department of Education (“the Department”) alleging a violation of state and federal special education requirements. Specifically, the complaint alleges the Christina School District (“the District”) failed to provide K.H. with proper and timely notice of Child’s individualized education program (“IEP”) meetings in her role as educational surrogate parent.

The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the Department’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included telephone interviews with the District’s Acting Supervisor of Special Education on or about September 10 and September 16, 2011 and with the complainant on September 17, 2011.

**FINDINGS OF FACT**

1. Child is a student in need of an educational surrogate parent. An educational surrogate parent (“ESP”) is a person appointed by the Department to represent a student with a disability in all educational decision making relating to the identification, evaluation, and educational placement of the student, or the provision of FAPE to the student. 14 DE Admin Code § 926.19.0; 34 C.F.R. § 300.519.
2. The Department determines a student’s eligibility for an ESP. ESPs may be appointed for a student with a disability when:
  - (a) No parent (as defined in 14 DE § 922.3.0 can be identified);
  - (b) The public agency, after reasonable efforts, cannot locate a parent;
  - (c) The parental rights of the student have been terminated and legal responsibility of the student has not been granted by a court of law to an individual, and the student has not been adopted;
  - (e) The student’s parent has consented, voluntarily, to the appointment of an ESP;

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<sup>1</sup> The Final Report identifies some people and places generically to protect personally identifiable information about the child from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the Final Report is released as a public record.

- (f) The student is an unaccompanied homeless youth (as defined in McKinney-Vento Homeless Assistance Act); or
  - (g) The student is in the custody of the DSCYF and in need of an ESP.
3. An ESP is treated as a “Parent” under the IDEA pursuant to the definitions in 14 DE Admin Code § 922.3.0 and 34 C.F.R. §300.9.
  4. School districts must take steps to ensure ESPs are invited and afforded an opportunity to participate at IEP meetings on behalf of the students they represent. School districts must notify ESPs of scheduled IEP meetings, in writing, and identify the purpose of the meeting, the time, location, and who will be in attendance. 14 DE Admin Code § 926.22.0; 34 C.F.R. § 300.322.
  5. On or about February 15, 2011, the Department notified K.H. (by letter) she had been appointed ESP for Child who was enrolled and attending a school in the District.
  6. On the same date, the Department (by email) notified the District and relevant school staff of K.H.’s official appointment as ESP for Child.
  7. K.H. also notified school staff (by email) that she was the appointed ESP. K.H. met with Child at school on February 25, 2011. While on school premises, K.H. informed school staff of her appointment as ESP.
  8. The District held IEP meetings for Child on March 1 and March 24, 2011. K.H. attended the meetings and signed in as the appointed ESP.
  9. Prior to the March 24, 2011 IEP team meeting, however, K.H. informed the school staff she did not receive notice Student was being suspended for a disciplinary event. K.H. also informed school staff she did not receive notice of the manifestation determination meeting during which the IEP team determined the behavior that resulted in Child’s suspension was not a manifestation of his disability.
  10. Following the manifestation determination, the District scheduled a formal disciplinary hearing for April 14, 2011. K.H. did not receive notice of the hearing. On April 6, 2011, K.H. contacted the District’s Office of School Climate and Discipline to notify the supervisor she was the appointed ESP and did not received notice of the disciplinary hearing.
  11. K.H. attended the disciplinary hearing and addressed the hearing officer in her role as Child’s ESP. On the record, K.H. explained her role as ESP, the lack of notice she received, and her understanding of the District’s duty to keep her informed and provide her with timely and proper notice of proceedings.

12. Following the disciplinary hearing, the District issued a hearing decision and report addressing Child's violation of the Student Code of Conduct.
13. Despite K.H.'s presence at the disciplinary hearing and multiple contacts with District and school administrators, the District did not send K.H. a copy of the hearing decision and report. Rather, K.H. received a copy of the hearing decision on May 20, 2011 from the social worker for the Department of Family Services (DFS).
14. On August 29, 2011, K.H. submitted a complaint to the Department of Education.
15. On August 30, 2011, the Department notified the District the complaint had been filed.
16. Following receipt of the complaint, the District's Acting Supervisor of Special Education reviewed Child's educational records, and discussed the complaint with school staff. The District acknowledges it did not follow procedures required by state and federal regulations with respect to K.H. in her role as ESP for Child.
17. K.H. does not challenge the appropriateness of Child's educational program, the manifestation determination, or the outcome of the disciplinary hearing.

### **COMPLAINT ALLEGATIONS**

K.H. alleges the District failed to provide her with proper and timely written notice of IEP meetings in her role as ESP for Child.

### **CONCLUSIONS**

State and federal regulations require that each identified child with a disability for whom it is determined that an ESP is required will have one appointed by the Department. An ESP is entitled to the same procedural safeguards as the child's natural parent, including the right to attend, be invited to, and participate in IEP meetings for the child. 14 DE Admin Code § 926.19.0; 34 C.F.R. § 300.519.

In this case, the District was notified K.H. was Child's appointed ESP on February 15, 2011. Despite the notification, the District and school staff did not provide K.H. with timely and proper written notice of IEP meetings. This practice was continued even after K.H. took additional steps to notify appropriate school and District staff of the obligations under state and federal regulations.

As stated above, the District acknowledges its noncompliance.

### **CORRECTIVE ACTIONS**

The District has taken actions to correct its noncompliance, and developed and submitted an Action Plan to the Department. Action Plan steps include:

Four (quarterly) Educational Surrogate Parent (ESP) program training sessions will be conducted by the District in collaboration with DDOE during the 2011-12 school year:

- Mandatory attendance for all Educational Diagnosticians (E.Ds)
- Other invitees – school psychologist, counselors and administrators

Documents specific to ESPs will be distributed to District Special Services staff and administrators, such as:

- Educational Surrogate Parent (ESP) fact sheet
- Frequently Asked Questions about Special Education and ESP
- Procedure for managing the ESP program (to be developed)

Upon receipt of ESP appointment letter from the Department:

- The District's Director will send electronic copy to the District Educational Diagnostician ("E.D.") for District level compliance monitoring purposes
- The E.D. will make copy of ESP appointment letter and place in student's cumulative file
- The E.D. will provide school secretary ESP contact information to be added on eSchool Plus
- E.D. will add the ESP to IEP Plus participant list

The District will incorporate all relevant documents (procedure, fact sheet) into the Educational Diagnostician manual that is being updated for the 2011-12 school year and beyond.

The District shall provide a written report to the Department describing the completion of each step in the Action Plan above on or before February 1, 2012, and a final report submitted no later than two weeks after the close of the 2011-2012 school year.

The District may confer with the Department of Education's Director of the Exceptional Children Resources Group to correct areas of noncompliance identified in these findings, including the actions required. Requests for technical assistance must be made sufficiently in advance of the date the corrective actions must be completed.

By: /s/ Edward Wulkan

Edward L. Wulkan

Assigned Investigator

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