

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN AND EARLY CHILDHOOD EDUCATION BRANCH**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC 13-2 (November 5, 2012)

On August 1, 2012, Parents filed a complaint with the Delaware Department of Education on behalf of Student.¹ The complaint alleges Pencader Charter High School violated state and federal regulations concerning the provision of a free, appropriate public education to Student (“FAPE”). 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 of Education’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records and the documentation provided by Parents. Interviews with school staff and Parents were also conducted.

FINDINGS OF FACT

1. Student is currently 17 years of age and enrolled in the 11th grade at Pencader Charter High School (“Pencader”). Student is identified with autism and eligible to receive special education and related services. Student has been attending Pencader since the 9th grade in the 2010- 2011 school year.
2. On August 1, 2012, Parents filed this complaint with the Department alleging that Pencader failed to provide Student with specific services and accommodations outlined in his IEP. During the complaint investigation, Parents clarified they do not dispute the content of Student’s IEP, nor do they contend the IEP is inappropriate as written. Rather, Parents claim specific provisions in Student’s IEP are not implemented consistently by school staff. In their complaint, Parents refer to specific supports and accommodations allegedly not provided to Student.
3. The Department's investigation is limited to alleged violations that occurred not more than one year prior to the date the complaint was received by the Department. *See*, 34 C.F.R. § 300.153(c). In this case, the complaint was received by the Department on August 1, 2012. As a result, this decision addresses the alleged violations starting in August 2011.

¹ The Final Report identifies some people and places generically, to protect personally identifiable information about the student 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.

Background Summary

4. Student attended the 10th grade at Pencader during the 2011-2012 school year. He was fully included in the general education classroom for all subjects with support from a 1:1 paraprofessional and a special education teacher.
5. Parents describe Student as high functioning and bright, but also not able to be fully independent. Parents feel Student needs adult supervision in many situations and assistance with some self-care matters. Parents report that Student generally feels positive about himself, but he is also very sensitive and easily feels things are his fault. Student's parents are both teachers, and very involved and supportive of Student in his public education.
6. In May 2011, Student's IEP team convened to develop his 10th grade IEP. The team described Student's strengths as paying attention to detail, participating in class, and being friendly to others. The team also noted Student's greatest area of need is the development of social skills, including the need for support in making and keeping friendships, as well as applying what he learns. The team stated that Student's high order thinking skills, such as complex questioning, requires support in the classroom, as well as in unusual social situations.
7. Student's 10th grade IEP contains goals for reading comprehension, math, and writing. Services, accommodations, and modifications include small group instruction in reading comprehension, strategies, story maps, and text connection discussions; special education support in the classroom; 1:1 paraprofessional support; extra set of subject area books at home; provision of critical vocabulary list for subject area content; provision of tests to the special education staff prior to the test date for modification; use of a calculator, graphic organizers, visual aids, highlighters, notecards or templates; direct instruction in writing traits, modeling, or prompting; modified assignments and tests; and additional time for test taking and class assignments.
8. Student was placed in the general education classroom and provided access to the general education curriculum with non-disabled peers. He was supported by a special education teacher for most core classes, as well as a 1:1 paraprofessional.
9. Under his 10th grade IEP, Student did not require any related services, such as speech therapy, nor did he require extended school year ("ESY") services. The IEP describes Student's post-secondary goals as attending college, living at home with his parents, and being employed as a preschool teacher. Student's sister is also a preschool teacher of students with disabilities.
10. Parents actively participated in the development of Student's 10th grade IEP. In addition, Parents provided the school with a written, detailed description of Student's unique needs and characteristics, as well as the supports and accommodations Parents felt he needed to be successful. Parents provided the information with the

understanding it would be specifically incorporated into Student's IEP. The educational diagnostician described the information as "very helpful", and she attached it to Student's IEP, distributed it to Student's teachers, and discussed it with the teachers at the start of both semesters. According to the school, the information provided by Parents, including their list of supports and accommodations, were accepted by the school and considered part of Student's IEP by written addendum.

11. On September 22, 2011, Pencader's school psychologist evaluated Student. She reported that Student had a prior cognitive evaluation conducted in 2008 resulting in a full scale IQ score of 68. Achievement testing showed Student performing in the average range in reading comprehension, the slightly below average range in math, and varied achievement levels in his writing skills. Student was, for example, able to combine simple sentences into compound and complex sentences, using appropriate conjunctions, and his grammar, spelling, and punctuation were generally correct. However, Student struggled with organizing and developing an essay and his word count was low. Consistent with Student's diagnosis of autism, the scores showed Student does best at concrete tasks requiring attention, concentration, vigilance, and motor speed, and Student does least well at tasks involving abstract reasoning or problem-solving.
12. On September 26, 2011, the IEP team convened to complete Student's triennial reevaluation. The team concluded Student continued to meet the eligibility criteria in the disability category of autism, and he required special education and related services in his public program.
13. The IEP team met on a few occasions throughout the 10th grade school year to respond to issues raised by Parents concerning the implementation of Student's IEP. There is a lengthy record of e-mails and communication between the Parents and school staff concerning the supports and accommodations in his IEP. Some of the issues raised by Parents were resolved amicably, and others were not. Parents raise many of their unresolved concerns in this complaint.
14. In the 10th grade, Student made educational progress in his program and placement. Student received A's and B's in most of his 10th grade courses. Student was also selected as a potential candidate for the National Honor Society. The teachers described Student as often excelling in class work. The teachers also describe Student as more social with his peers, more involved with student activities, more independent in social situations, more frequently initiating conversation with peers and adults, and volunteering in class activities.
15. Parents attribute most of Student's success to the support he receives at home from his mother (also a teacher). Student's mother feels she is tutoring him at home, and providing him with the instructional support the school should be providing.

16. School staff believes Student's educational progress is a result of his appropriate program and placement providing him with adequate support and full inclusion in the general education environment, in addition to the strong support and advocacy of his Parents in his education.

Implementation of the 10th Grade IEP

17. In their complaint, Parents refer to several accommodations and supports that were allegedly not provided to Student. Parents also claim the implementation issues occurred all year, and the examples identified in the complaint are not exhaustive.
18. **Migraine Prevention and Chocolate.** Parents' written addendum to the 10th grade IEP states Student suffers from migraine headaches, and cannot eat chocolate in isolation because it can trigger a headache. Parents claim the school failed to adhere to this IEP provision because Student was given chocolate on two occasions in class.

The school denies that chocolate was given to Student in isolation. The teacher used chocolate in a specific class activity on two occasions. On one occasion, she offered the students a very small piece of a Hershey candy bar. Student's paraprofessional told Student he could eat the small piece of chocolate because he was going to lunch directly after class and the activity was done in the last 5 minutes of class. On the second occasion, the teacher used M & Ms as a manipulative. Student ate a few M & Ms after his paraprofessional told Student he could eat the candy because he was going to lunch immediately after the class and the activity was done in the last 5 minutes of class. The teacher and paraprofessional were aware of Student's restriction to consuming chocolate in isolation. In fact, the teacher planned the timing of both activities (immediately before lunch) so Student could specifically be included and participate with his peers.

19. **Bathroom Access.** Parents' written addendum to the 10th grade IEP states Student must be able to move to the restroom promptly by signaling a teacher. Student has difficulty judging when he needs to use the bathroom, and he drinks a lot of fluid to control his headaches. Student also has discreet issues when using the restroom due to his disability. Parents contend Student's needs have not been accommodated because the boys' restroom has no privacy stall. Parents met with the school leader to address the issue, sent correspondence to the school about it, and raised the matter before the school board at a public meeting.

In response, the school reports a privacy door has now been installed. Previously, the boys' restroom did not have a privacy door. The school proposed that Student could use the faculty restroom, but Parents were concerned that Student would need to first access a key to unlock the door. Either way, the school reports, a privacy door has now been installed. In addition, Student's 11th grade IEP specifically states Student must have access to a restroom stall with privacy, and a door is in place.

20. **Body Temperature and Clothing.** According to the 10th grade IEP addendum, Student needs direction from staff to adjust his clothing, and a change of clothing must be kept in his locker because Student cannot judge his own body temperature. Parents claim the school failed to implement this accommodation because a change of clothing was not kept in Student's locker as agreed, but left in the trunk of the paraprofessional's car all year.

The school denies the allegation. The school reports the change of clothing was always accessible and stored in the paraprofessional's office. Only once was the change of clothing placed in the paraprofessional's car because Student was going on a field trip. The paraprofessional took the extra clothing on the field trip in case Student needed it.

Parents also claim Student left the school building in March 2012 wearing his winter coat and gloves when the temperature was a warm 60 degrees. Parents argue this demonstrates the failure of the school to respond to Student's specific needs. School staff recalls the incident specifically, and Student wanting to put on his coat and gloves to walk to the car after school. The school contends it was incidental, and staff are fully aware of Student's specific needs regarding body temperature and clothing, and they have responded when needed throughout the year.

21. **Snack and Lunch Schedule.** The 10th grade IEP addendum states that Student requires food and fluid intake every 2 ½ hours to prevent his migraine headaches. In addition, Parents developed a specific snack schedule (based on Student's school lunch schedule) to ensure Student could access food and fluid at set intervals. The snack schedule was posted in Student's communication book. Parents contend, however, the school changed Student's lunch schedule on two occasions and failed to inform Parents. As a result, Student's snack schedule was not aligned, nor spaced appropriately with his lunch schedule.

The school acknowledges Student's lunch schedule was changed, but claims the revision was a minimal time change and staff respond to Student's needs for frequent food and fluid intake. The school argues the change in lunch schedule was incidental, and Student's 11th grade IEP now states Student shall have the same lunch period at the same time every day and Parents will be kept informed.

22. **Accommodations for Perceptual Issues.** Parents' written addendum to the 10th grade IEP states that Student has difficulty using a ruler, graphing, drawing basic shapes, arrows, and less than/greater than signs. Parents argue the school staff failed to accommodate Student in this area because, for example, Student was required to draw symbols and shapes during a class assessment involving the concept of supply and demand (i.e., economics). The school denies the allegation and explains Student was not formally assessed on this skill. Rather, the teacher asked Student to "give it a try" and draw the shapes and symbols to see if he could do it. The teacher did not deduct anything from his grade. This is consistent with Student's 11th grade IEP that now states Student will not be penalized in grading if an assignment requires a

drawing of any kind.²

23. **Parent Communication with Teachers.** Parents claim the educational diagnostician cut off their direct communication with Student's teachers in January 2012. The school reports the educational diagnostician was designated as the primary point of contact for Parents' frequent questions and concerns. Some of the teachers felt overwhelmed by the volume and/or tone of Parents' communications. As a result, the school felt it would be helpful for the IEP implementation issues to be raised to the school's educational diagnostician first, and then to the individual teachers as needed. Parents feel the educational diagnostician "overstepped her bounds". The school disagrees, claiming the educational diagnostician appropriately managed the conflict with Parents in her role as the lead special education administrator.
24. **Support to Student for Preparing and Taking Classroom Based Assessments.** Parents note one of their central concerns is the school's (alleged) failure to provide adequate and consistent support to Student for taking and preparing for classroom based assessments.
- (a) According to Parents, autism affects Student's ability to take accurate and thorough notes in class concerning the relevant content and instructions from the teacher. Parents feel Student is also limited in his ability to extract relevant information from his own class notes and text books. Parents contend the teachers do not check Student's notes for accuracy, and is imperative that Student receive study guides aligned to the material on assessments so Student can study and succeed in the general education environment. Parents believe Student can be independent in the regular education setting, but it is also overwhelming for him causing anxiety and stress when he does not receive adequate support. Parents claim the study guides are essential to Student's success so he can study only the material that is on the assessments.
 - (b) The IEP team revised Student's 10th grade IEP to require that all tests be given to Student's special education teachers three (3) days in advance to allow his tests to be modified. Based on the modification, a study guide would be prepared and given to Parents two (2) days in advance to help Student study.
 - (c) Parents allege this IEP revision was not implemented consistently in the 10th grade causing undue stress to Student. According to Parents, some teachers provided a copy of the test and answers, or only the answers to the test. Other teachers provided study guides that were too lengthy and failed to highlight the relevant material. On other occasions, teachers provided study guides that were too brief and failed to contain the key concepts needed for the assessment.

² In their complaint, Parents refer to an incident involving Student's 9th algebra teacher alleging his failure to make an accommodation for Student's difficulty with small printed material, arrow direction, and less than/greater than signs. Because this alleged violation relates to the 2010-2011 school year, it is outside the scope of the Department's investigation.

Parents feel the teachers were supposed to provide accurate notes and study guides to augment Student's learning, and they failed to do so under the 10th grade IEP. Parents provided documentation with their complaint to show the disparity in the format and content of the study guides provided by the teachers.

- (d) Parents claim the violation is continuing under the 11th grade IEP. The 11th grade IEP team identifies Student's area of need as "testing preparation and testing accommodations" and states: "Student will be given an assessment review tool that will contain all accurate information and align with the material on the assessment." Parents claim the teachers are continuing to provide study guides inconsistently.
- (e) In response, the school acknowledges the study guides have been provided to Parents with a varied approach from teachers. The school explains that teachers use and develop study guides in different ways depending on the class and the teacher. Some teachers use study guides effectively as a reinforcer and students check their answers in class with the teacher. Other teachers don't use study guides with students in class, but reinforce the material using other research based strategies. In all cases, the school explains, study guides are meant to reinforce material learned in class (including key vocabulary concepts) and allow students to practice some critical thinking. The school feels that placing the answers into the study guides (as requested by Parents) teaches Student how to memorize the material, rather than teaching him how to extract from notes or other written material. Either way, the school claims, the teachers have provided adequate support to assist Student with preparing for and taking assessments as evidenced by his success in the regular education setting.
- (f) During the investigation, the teachers reported they consistently provide assessment review tools to Student to assist him with preparing for and taking assessments. Some of Student's teachers reported that Student was an excellent note taker and could often complete the answers to study guides independently.

25. **Additional Allegations.** Parents' written addendum to the 10th grade IEP states that Student must have extra space to write because his handwriting is very large. The addendum also states Student needs to access clearly written and typed notes. Parents provided two examples of these provisions not being implemented consistently.

CONCLUSIONS

The appropriateness of Student's IEP is not in dispute. Parents do not challenge the provisions of Student's IEP or his placement in the regular education setting. Rather, Parents claim Student's IEP was not implemented consistently by school staff.

When evaluating a claim of a failure to implement a student's IEP, the Department must determine whether the alleged failure to implement the IEP has deprived the student of an entitlement to FAPE as required by state and federal law. *Ross v. Framingham School Committee*, 44 F. Supp.2d 104 (D. Mass 1999). A school fails to implement a student's IEP when: (1) the failure to implement is complete; (2) there is a variance from the program described in the IEP that deprives the student of FAPE; and (3) the student does not make progress toward IEP goals. *Id.*

In this case, Pencader did not completely fail to implement Student's IEP. At all relevant times, Student's teachers had a copy of Student's IEP in the classroom, they were aware of Student's needs, and they explained specifically how they implemented each provision in the IEP. The evidence also establishes Student is making educational progress and receiving meaningful educational benefit. He is receiving the total of his special education program as outlined in his IEP. In summary, I have not identified a violation of Part B of the IDEA or corresponding state regulations resulting in a substantive denial of FAPE to Student.

I have, however, identified some limited instances when specific provisions in the 10th grade IEP were not implemented. Based on the documentation provided by Parents, for example, I found isolated examples of the assessment tools provided in 10th grade that did not appear to be study guides as referred to in the 10th grade IEP. Some of the issues may be attributed (in part) to the team's approach in merely attaching Parents' description of Student's needs as a written addendum to Student's 10th grade IEP, rather than formally incorporating the provisions into the IEP form. The 11th grade IEP more clearly incorporates and identifies the parental input into the IEP and the specific language adopted and agreed to by the IEP team. The school is reminded of its responsibility to implement all of the IEP provisions as written in the IEP. As mentioned, however, there has been no substantive denial of FAPE to Student.

By: /s/Jennifer L. Kline, Esq.
Jennifer L. Kline, Esq.
Assigned Investigator
Education Associate