

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

**FINAL REPORT  
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 13-6 (February 28, 2013)**

On November 14, 2012, Complainant filed a complaint with the Delaware Department of Education on behalf of Student.<sup>1</sup> The complaint alleges the Cape Henlopen School District (“the District”) 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.

**Findings of Fact**

1. During the 2011-2012 school year, Student was served by the Special Program in a self-contained special education classroom located in the District's High School.
2. In Delaware, students with disabilities are entitled to receive FAPE until the receipt of a regular high school diploma or until the end of the school year in which the student turns the age of 21. *See*, 14 Del. C. § 3101; § 3120; 14 DE Admin Code § 923.1.2; 34 C.F.R. § 300.101. Once a student with a disability “ages out” of eligibility for special education services, the student may be eligible for adult level public services.
3. In this case, Student reached the age of 21 on September 7, 2011. He received services in the Special Program through August 2012. Student has reached the maximum age of eligibility for special education services under the Individuals with Disabilities Education Act (“IDEA”) and Delaware law.
4. The complaint alleges Student was denied FAPE during the 2011-2012 school year.
5. Student’s educational needs are extensive. Student has severe cognitive limitations, significant deficits in adaptive skills, and no verbal communication. He has interfering behaviors and is limited in his non-verbal communication. Student uses an alternative augmentative communication device that combines a 3D picture exchange system with communication buttons.
6. Student’s 2011-2012 IEP identified his needs in the areas of behavior, expressive and

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<sup>1</sup> 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.

receptive communication skills, self-help, domestic skills, vocational skills, and dietary needs.

7. In school, Student exhibited self injurious behaviors, including hitting his head with the palm of his hand and hitting his head against objects or people. Because Student's behaviors impeded his learning, Student had a positive behavior support plan based on a functional behavior assessment.

8. Student received extensive related services, including special transportation, occupational therapy, speech and language therapy, psychological services, and school nurse services.

9. Student's IEP contained 5 annual goals, with short term benchmarks. The IEP goals focused on increasing Student's independence levels in functional and vocational areas and communication. Goals included: (a) increasing Student's spontaneous communication attempts with the use of pictures, gestures, verbals, and his augmentative communication system; (b) increasing his ability to request help independently; (c) using a handkerchief or tissue appropriately; (d) setting the table using a template; and (e) completing shredding jobs in at least 3 locations with a minimum of 2 being out in the community.

10. Student's IEP contained post secondary transition goals, and activities and services designed to assist Student in reaching his goals. Student's transition goals focused on Student working in a community based work setting, taking part in vocational training with support, and continuing to live with his parents.

11. Student was very limited in his use of the Picture Exchange Communication System ("PECs"). As a result, Student used a modified tactile and visually based communication system to include an augmentative communication voice output device.

12. Student was served in a self-contained special education classroom by a special education teacher and paraprofessional with 3 other students. Student was instructed in task completion in the community, classroom, and apartment settings to improve his daily living and self help skills. Student's activities included: (a) walks on the treadmill for exercise; (b) classroom tasks, such as sorting, stocking shelves, and hanging product on the work cart; (c) lunch with peers in the high school cafeteria; (d) outside exercise; (e) speech and occupational therapy; (f) community outings and visits to vocational job sites; (g) gym class with peers in the high school gymnasium; and (h) visits to the apartment to work on domestic tasks.

13. A functional behavior assessment ("FBA") was also conducted to assess the function of Student's behaviors. The team concluded Student was more likely to engage in self-injurious behaviors ("SIBs") when a demand was given, when he was in a noisy environment, or when he was experiencing a health related problem. In response, the team developed a behavior plan with targeted interventions to reduce Student's behaviors through modifying his environment, reducing his exposure to loud noises, increasing his sensory and attention opportunities, arranging his schedule to have as much 1:1 support as possible, teaching him ways to ask for a break from a task or demands, modifying his work schedule to be in quiet and calm environments, and modifying jobs in the classroom and community.

14. Despite these supports, Student's parents felt his behaviors were increasing in frequency, duration, and intensity. In June 2011, they requested the Special Program to change Student's behavior plan. They requested school staff to stand in front of Student during a SIBs episode and restrain Student's hands to stop him from hitting. Because the approach posed a risk of injury to staff, the Special Program initially declined the request. After discussion with the director of the Special Program, however, the team reconsidered and agreed to use the strategies requested by the parents.

15. Student made educational progress in his program. While the rate of Student's self-injurious behaviors remained consistent throughout the 2011-2012 school year, his behaviors decreased in comparison between the 2010-2011 and 2011-2012 school years. In the 2010-2011 school year, Student had approximately 6 behavior episodes a day, and by the end of the 2011-2012 school year, the rate reduced to approximately 3 episodes a day. Many of Student's earlier behaviors were also reduced or eliminated by the Special Program, to include Student mouthing and chewing on his shirt, jumping, darting and eloping, and engaging in high-pitched screaming. Because these behaviors were eliminated, Student was later able to be placed in vocational sites in the community.

16. Records show Student also had frequent medical conditions and was prone to infirmity. As a result, many of the spikes in his behavior occurred during times he was ill. In March 2012, for example, Student had 26 episodes of SIBs, but 13 of the episodes occurred over 3 days when Student was sick.

17. In the area of communication, Student was able to generalize and use his communication device across settings. He also made progress by increasing his spontaneous communication attempts using his communication device. Records further show Student made progress in self-help skills related to setting a table using a template.

18. Student participated in several vocational job sites while enrolled in the Special Program, and his tasks included shredding documents, filling vending machines, recycling, custodial work, horse farm labor, and restaurant work. Student was given a task analysis for every job, his activities were monitored, and his behaviors were tracked. As Student approached his exit date from the Special Program, his primary job responsibility involved shredding documents. He progressed from minimal time on task in the school setting to working for extended periods of time on job sites.

### Transportation

19. For the majority of his program, Student was transported on a van to school accompanied by staff from the Special Program. In July 2011, however, the IEP team developed a plan to transition Student to the bus to provide Student with access to nondisabled peers in a setting that was less restrictive. Parents met with Special Program staff a few times over the summer and outlined a specific plan and supports that would be needed.

20. In the summer of 2011, Student transitioned from the van to the bus. For the first

week, he rode the bus in the afternoons, and the van followed in case there was a problem. Student then rode the bus in the mornings and afternoons, and he was the first student dropped off and the last picked up. The bus rides were 20 minutes each way, and Student had no significant behavior problems.

21. Parents expected the same plan would be in place at the start of the 2011-2012 school year. However, Student was assigned to a different bus route in September. The new route required Student to ride on the bus for more than 60 minutes each way without staff support from the Special Program.

22. In response, Parents withheld Student from the bus and transported Student to school on their own. Records show Parents contacted the District office and Special Program staff on multiple occasions relating their concerns with the bus transportation and Student's safety. Parents felt the school officials were not responding in a timely, and the communication was inconsistent between the Special Program staff and the District's transportation office.

23. The District eventually proposed a more conducive bus plan. Student's travel time was reduced to 50 minutes each way, and the Special Program agreed to train the bus monitor on the required behavior interventions when Student had SIBs on the bus. These provisions were documented in Student's IEP.

24. The IEP team agreed Student would not be placed on the bus if he demonstrated any SIBs on the way to the bus, or during the loading process. If Student demonstrated any SIBs, the team agreed staff would contact a parent. Based on this agreement, Parents permitted Student to ride the bus.

25. In November 2011, however, Student got off the bus and seemed visibly upset to Parent. Parent suspected Student had an episode of SIBs on the way home from school, but the bus driver and monitor had not mentioned anything to her. Parent contacted the Special Program. The Assistant Principal viewed the video tape of the bus ride and confirmed Student had at a 5 minute episode of SIBs on the ride home. Parents expressed concern, reviewed the incident and the transportation plan with school staff, and eventually returned Student to the bus with the assurance that Student would be protected when SIBs occurred on the bus.

26. A few months later, Student had a more severe episode of SIBs on the bus. On January 31, 2012, Parent again noticed that Student was visibly upset and shaken after exiting the bus. The driver confirmed to Parent that Student "was hitting himself in the head all the way home."

27. Student's SIBs were recorded by a video camera placed on the bus, and reviewed by the Department in the course of the complaint investigation. The video shows Student hitting himself in the head repeatedly with the palm of his hand after he boarded the bus, and continuing for the next 50 minutes. The bus monitor was standing right next to Student and watching the SIBs. The bus monitor took no action to respond, nor did the bus driver who acknowledged Student was not supposed to ride the bus when engaging in SIBs, and Parent was to be called. An acting teacher also boarded the bus and observed Student engaging in SIBs. The acting

teacher did not respond, and was not familiar with Student's needs and the plan to intervene and prevent Student from self-injuring.

28. Student did not require medical treatment, but Parent reports Student was shaken and disoriented. Parent also reports Student's self-injurious behaviors increased at home after the incident.

29. In early February 2012, an IEP team meeting was convened, and a specific bus plan was developed for Student. However, Parents had concerns for the safety of their son, and withheld him from the bus. Parents requested that Student return to the van for his transportation, and the District eventually agreed.

30. Parents also requested to view the video tape from the January 31<sup>st</sup> bus ride. Initially, the District denied the request citing reasons related to policy and the confidentiality of other students. Parents persisted in their request, and sent letters and E-mails to school officials. In March 2012, the District provided the video recording to Parents with the identity of other students redacted.

31. According to the District, bus monitors and drivers receive ongoing training. On January 17, 2012, transportation staff were trained in the Devereux program's safe and positive approaches for behavior management in students with disabilities. The District also reports that transportation staff were trained again on February 16, 2012 (i.e., two weeks after the January 31<sup>st</sup> incident involving Student)

32. Parents filed this complaint on November 14, 2012.

### **Complaint Allegations**

Parents claim Student was denied FAPE in his educational program as evidenced by the following:

- (a) Student has minimal use of PECs which allegedly contributed to an increase in his SIBs;
- (b) The District failed to eliminate or effectively reduce Student's SIBs;
- (c) The District failed to provide Student with meaningful vocational job skills, or job or volunteer opportunities; and
- (d) The District failed to provide Student with safe transportation and implement his IEP and behavior plan on the bus.

### **Conclusions**

#### **A. Student Received FAPE in his Program**

As mentioned, Student has significant health and extensive educational needs. The District acknowledges Student did not made educational progress in leaps and bounds, but Student has a learning style that dictates his progress will be slow. Progress reports show Student would make incremental gains in some areas, and then regress. The progress reports also show fluctuation between progress and regression over time. While the District acknowledges Student exited the program with a very limited use of PECs, the District provided him with an individualized communication system based on his unique needs and Student used the device across multiple settings. Student also progressed by increasing his spontaneous communication attempts using the communication device. Records additionally show Student progressed in self helps areas, including the setting of a table through the use of a template.

While the Special Program did not eliminate Student's self-injurious behaviors, the data shows his SIBs decreased between the 2010-2011 and 2011-2012 school years. In addition, many of Student's earlier behaviors were effectively reduced to enable Student to eventually be placed in vocational job sites within the community. In addition, some of the spikes in Student's behaviors were attributable to Student's medical conditions, and not a lack of educational programming. Student also had an FBA and behavior plan based on lengthy direct observation, data review, and applied behavior analysis. The behavior interventions corresponded to the FBA, and were implemented across settings to address Student's unique needs. Data was collected, and the IEP team met to revise the behavior interventions when necessary.

I find Student's IEP provided an appropriate program to address Student's unique needs. The IEP is reasonably calculated to provide Student with meaningful educational benefit. The program provides a highly structured learning environment with a daily schedule of functional academics using an individualized communication system. The program provides Student with high levels of consistency and repetition, and services to teach him how to communicate in community settings and vocational job sites. Student's progress was slow and not always steady over time, but it was based on an appropriate program tailored to his needs.

I also find the District provided Student with meaningful vocational job skills, appropriate transition planning, and adequate job and volunteer opportunities. There is ample evidence that Student participated in a variety of vocational job sites while enrolled in the Special Program. Student's tasks were varied, and included a task analysis for every job. His activities and behaviors were monitored and addressed in all of the vocational sites. As Student approached his exit date from the Special Program, his primary job responsibility involved shredding documents. Student clearly progressed from minimal time on task in the structured school setting to working for extended periods of time in various job sites. The District also established a job opportunity for Student to assume in a local retail store when he exited the Special Program. In sum, **the Department finds no violation of state or federal regulations related to the appropriateness of Student's IEP regarding the program, placement, or secondary transition planning.**

## **B. Failure to Implement Student's IEP and Behavior Plan on the Bus**

There is no dispute the District failed to implement Student's IEP and behavior plan on the bus on January 31, 2012 and an earlier occasion in November 2011. The failure to properly monitor

Student and implement his behavior plan on January 31<sup>st</sup> resulted in Student hitting himself in the head repeatedly for approximately 50 minutes. As mentioned, the bus monitor was standing right next to Student and watching the SIBs. The bus monitor took no action to respond, nor did the bus driver. The acting teacher who boarded the bus did not intervene. Procedures were established to protect Student from self-injurious behaviors on the school bus, including strategies to assist him in de-escalating. In addition, there were multiple meetings with Parents and school staff to discuss the specific plans that would be necessary to protect Student from SIBs at school and on the bus. On January 31, 2012, the procedures were not followed by the staff who were responsible for Student's safety and aware of his needs.

I find the District failed to implement Student's IEP and behavior plan on the bus in November 2011 and January 31, 2012. The non-implementation of behavior interventions on these occasions raised serious and legitimate concern for Student's safety. However, these incidents did not result in a denial of educational services, educational harm, or a deprivation of FAPE to Student. As mentioned, Student's educational program provided him with FAPE. The bus incidents were isolated, and did not result in a deprivation of his total educational program or specialized services. While no specific remedy is ordered with respect to Student who has exited the Special Program, the District must implement detailed, corrective actions to ensure the future safety of students enrolled in the Special Program who are transported on the bus.

### **CORRECTIVE ACTION**

To address the regulatory violations noted in this Decision:

- A. The District shall provide a detailed corrective action plan to the Director of Exceptional Children Resources for the Department of Education on or before ***April 30, 2013***. The plan shall set forth specific procedures to ensure the IEPs, supports, and behavior plans are implemented for students in the Special Program who are transported on District buses. The plan must include a specific training requirement for bus monitors, staff, and drivers, and provisions to address how compliance will be monitored, data collected, reviewed, and analyzed to ensure interventions, supports, and safety measures are provided to students in the Special Program transported on District buses.
- B. The District shall ensure a copy of this decision is provided to all members of the Cape Henlopen School District Board of Education.

By: **/s/ Jennifer L. Kline**  
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