

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC-14-6 (March 25, 2014)

On January 24, 2014, Student's Advocate ("Advocate") filed a complaint with the Delaware Department of Education ("DOE").¹ The complaint alleges that the Delaware College Preparatory Academy ("DCPA") violated the Individuals with Disabilities Education Act ("IDEA") with respect to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153, and according to the DOE's regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student's educational records, DCPA documents, and interviews with Student's guardian ("Guardian"), DCPA staff members and Advocate.

COMPLAINT ALLEGATION

The complaint alleges that DCPA identified Student as possibly having a disability but instead of evaluating Student, DCPA excluded Student without services, mandated the family to seek an independent evaluation at Student's family's expense, and informed Student's family that Student was excluded from school until the completion of the mandatory psychological/mental health evaluation. The complaint alleges that DCPA had knowledge of Student's possible disability classification based upon Student's behavior record and staff statements. The complaint alleges that Student's behavior and staff statements demonstrated that Student had significant challenges developing interpersonal relationships with staff and students consistent with the child suffering from emotional disturbances, and that Student had been placed in an alternative school as a result of the expulsion hearing.

FINDINGS OF FACT

1. Student was enrolled and attended DCPA from August 2013 until October 25, 2013 as a 3rd grader.
2. Upon enrolling Student at DCPA, Guardian communicated to DCPA administrators that she was recently granted custody of Student and Student's siblings. Guardian shared information regarding Student's past and expressed concern regarding Student's adjustment.
3. Student is not identified as a student with a disability under IDEA.

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.

4. Student's first (of 3) term report cards at DPCA demonstrates that Student received educational benefit and achieved grades of "3" (meets the standard) in English Language Arts; "4" (exceeds the standard) in Mathematics, Science, and Social Studies; "P" for passing in Art and Music with the following comments by the classroom teacher: "Your scholar continues to strive to do [his/her] best in all areas of learning. [He/She] works well with limited supervision and uses [his/her] time effectively. Your scholar is a conscientious student who always completes tasks accurately and with care. [He/She] works well independently and in a group setting."
5. Student received a behavior referral on October 8, 2013 for an altercation with the Dean of Students at DCPA outside of the cafeteria after being reprimanded for arguing with two female students. Student was taken to the office of the Dean of Students where Student apologized. Guardian was called to take Student home. At that time, Guardian expressed concern to the Dean of Students that the inappropriate behaviors at home were escalating and indicated that Terry Center had been contacted for support. Guardian requested that the following statement be included in the behavior report to escalate the services by the Terry Center staff: "For this reason, your scholar cannot return until [he/she] is evaluated by the Terry Psychiatric Center." At DPCA, it is not customary practice to include any conditions other than a required parent meeting with the student prior to the student returning to school.
6. Terry Center staff referred Student and family to Delaware Guidance Services. Student and family were counseled on October 8, 2013 with ongoing outpatient services.
7. Student was one of several students who received a bus conduct write-up on October 11, 2013.
8. Student received a conduct referral on October 25, 2013 for verbal harassment, inappropriate touching, and chronic disruption in the classroom directed at the classroom teacher while refusing to remove his/her hat. According to Student code of conduct, Student's behavior required a ten-day suspension and an expulsion hearing with the DCPA school board.
9. On October 30, 2013, a classroom teacher who is no longer employed at DPCA wrote a "To Whom it May Concern" letter that was received by DCPA. The letter described inappropriate behaviors and made reference to observing these behaviors in the past two months. The classroom teacher who submitted the letter is the same teacher who completed the report card that indicates "on grade level" performance and appropriate classroom behavior that was completed in October 2013 and encompasses the two and one-half months of school from August to October 2013.
10. Guardian met with the DCPA administrators on October 28, 2013. At the meeting, Student apologized and was suspended for five (October 28, 2013-November 1, 2013), rather than ten days. Student was provided school work to be completed at home and a DCPA administrator explained the steps in the required expulsion hearing.
11. Guardian met with DCPA administrators again on November 4, 2013 and scheduled a subsequent meeting for November 6, 2013 to discuss alternative placement options to

ensure continued educational services and homebound services for the interim. However, Guardian did not attend the November 6, 2013 meeting.

12. DPCA sent meeting notice to Guardian for the November 4, 2013 expulsion hearing, but Guardian cancelled the meeting. However, Guardian did complete a homebound application.
13. DPCA sent meeting notice to Guardian for the rescheduled November 16, 2013 expulsion hearing. At the hearing, Guardian shared her concerns and thanked the expulsion board for not expelling Student and for their willingness to have Student return to DCPA. Guardian requested that Student be enrolled at an alternative placement instead of returning to DCPA. Homebound hours were also increased as a directive from the DPCA school board.
14. Homebound services were to begin on November 20, 2013, but both Guardian and the homebound instructor cancelled. Both continued to schedule and then cancel homebound sessions.
15. On December 2, 2013, Student enrolled at Positive Changes – an alternative placement program - and remained there until January 16, 2014. Academically, Student received a grade of “A” in ELA, science, social studies, and math. Behavioral comments were as follows: “Demonstrates good effort;” “Produces work of high quality;” “Cooperates with teacher.” A January 8, 2014 Student Progress Report provided an update on student progress as follows: on or above grade level in ELA, science, social studies, and math and a grade of “O” (Outstanding). All areas of appropriate behavior and work habits were checked along with the following comment from the teacher: “Student works well independently. [He/She] completes all [his/her] work and strives to do [his/her] best. [He/She] is a joy to have in class.”
16. On January 16, 2014, Guardian withdrew Student from Positive Changes and enrolled Student at an elementary school in Student’s school district of residence.
17. DCPA staff provided several documents on student support services and explained how each process would address Child Find, Student Support Team, Counseling, Enrichment and RTI in order to best meet the needs of individual students, which are shared with staff and parents/guardians.
18. Included in the documents from DCPA are letters to Guardian regarding the expulsion hearing and a follow-up letter after the expulsion November 16, 2013 expulsion hearing. There was no police report filed regarding the October 25, 2013 incident.
19. DCPA policies and practices with respect to “child find” are consistent with IDEA and State regulations.

CONCLUSIONS

This investigation is limited to determining whether there was a violation of Part B of the IDEA or state regulations concerning the provision of special education and related services.

Public charter schools in Delaware are subject to the "child find" requirements outlined in 14 Del. C. § 3122. As such, charter schools are responsible for identifying, locating, and evaluating students with disabilities who may be in need of special education and related services. In this case, the essence of the complaint is that DPCA failed in its child find obligations by failing to identify Student as a student eligible – or potentially eligible – for special education and related services under a classification of Emotional Disturbance.

Delaware regulations define “Emotional Disturbance” as “a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree *that adversely affects a child's educational performance*: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.” 14 DE Admin. Code § 922.3.0 (emphasis added).

Here, the evidence makes clear that Student's educational performance had not been adversely affected by Student's behavioral and/or social characteristics. Rather, Student in fact made meaningful educational progress, including grades of “A” or “O” in all academic subject areas. Because Student's educational performance had not been adversely affected, the evidence fails to demonstrate that Student qualifies for special education services under a classification of Emotional Disturbance. Consequently, the evidence also fails to support the conclusion that school officials should have suspected that Student had special education needs and/or evaluated student as a student with an Emotional Disturbance.

While circumstances may exist in which a student may qualify for special education services despite his/her satisfactory educational performance, the evidence does not establish that such circumstances exist here. Importantly, aside from the October 8, 2013 incident, Student's behavior at DPCA was satisfactory up until the October 25, 2013 incident giving rise to the expulsion hearing. Those isolated incidents do not rise to the extent of placing DPCA “on notice” of Student's potential eligibility for special education services based upon Student's behavior and/or social characteristics as alleged in the complaint. Finally, the evidence fails to establish that DPCA mandated the family to seek an independent evaluation at Student's family's expense. Rather, DPCA included the referenced language at Guardian's request.

DPCA's policies and practices with respect to “child find” are entirely consistent with IDEA and State regulations, and the evidence fails to establish a deviation therefrom with respect to Student. **Therefore, I have not identified a violation of Part B of the IDEA or corresponding state regulations.**

CORRECTIVE ACTIONS

The DOE is required to ensure corrective actions are taken when violations of the requirements are determined through the complaint investigation process. *See* 14 DE Admin. Code § 923.51.3.3. In this case, no violation of IDEA was found. Therefore, “no further action by the DOE shall be taken.” 14 DE Admin. Code § 923.51.3.2.

By: /s/ Ann Hilkert
Assigned Investigator