

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION DE SC #21-06

Date Issued: August 23, 2021

On June 24, 2021, Parent filed a complaint with the Delaware Department of Education (Department), alleging the DISTRICT violated Part B of the Individuals with Disabilities Education Act (IDEA), and the implementation of state and federal regulations with respect to Student. The complaint has been investigated as required by federal regulations at 34 C.F.R. § 300.151 to 300.152 and Department regulations at 14 DE Admin. Code § 923.51.0 to 923.52.0. The investigation included a review of Student’s educational records, staff correspondence, and documentation provided by Parent and District related to the issues in the complaint. Interviews were also conducted with Parent and relevant District staff.

COMPLAINT ALLEGATIONS

The complaint alleges that District violated Part B of the IDEA and corresponding state and federal regulations as follows:

1. District used the discrepancy model contrary to Delaware’s administrative regulations rather than using Response to Intervention or patterns of strengths and weaknesses to assess Student for a specific learning disability.
2. District failed to find Student eligible for special education and related services and thus denied Student an Individualized Education Program (IEP).

FINDINGS OF FACT

1. Student is REDACTED years of age and has completed REDACTED grade at REDACTED School (School).
2. Parent shared that Student was administered several private speech and language evaluations through the Central Delaware Speech Language Pathology, Inc. (CDSLP).
3. On January 10, 2020, CDSLP administered the Expressive Vocabulary Test, 3rd Edition (EVT-3). The results of this evaluation indicated that Student demonstrated a mild-mixed receptive and expressive language disorder.
4. In August 2020, Student began to receive weekly speech and language therapy through CDSLP as a result of the evaluation.
5. On October 7, 2020, CDSLP administered the Test of Auditory Processing, 4th Edition (TAPS-4). Based on this evaluation, Student presented with deficits in the areas of auditory memory and language comprehension.

6. On November 11, 2020, CDSLP administered the Comprehensive Test of Phonological Processing, 2nd Edition (CTOPP-2). The results of this evaluation were indicative of a diagnosis of dyslexia.
7. On December 14, 2020, Parent sent an E-mail to Special Education Coordinator (Coordinator) requesting additional support for Student based on the recent diagnosis of dyslexia.
8. On December 21, 2020, Coordinator responded via E-mail that a conference needed to be scheduled to discuss the process for addressing Parent's request for additional support.
9. In January 2021, Parent shared that Student received a private occupational therapy evaluation focusing on sensory issues. The results of that evaluation indicated Student had a hearing sensitivity, meaning that when there is a lot of auditory stimulation, it is harder for Student to concentrate.
10. On January 5, 2021, a Child Study Team (CST) meeting was scheduled to discuss Student's progress and CDSLP's evaluation reports. Parent was in attendance.
11. At this meeting, the CST explained to the Parent the Multi-Tiered System of Support (MTSS) available at School and discussed CDSLP's evaluation results.
12. The CST recommended that Student receive Response to Intervention (RTI) Tier 2 support for reading. Tier 2 reading support meant Student would receive fifteen (15) minutes of instruction per day, twice a week, using the American Reading Company curriculum, which focused on decoding, comprehension and fluency. Instruction was delivered in a small group by the classroom teacher.
13. The CST also recommended the speech and language therapist complete a screener to determine if further school-based speech and language evaluations would be warranted.
14. At this CST meeting, Parent requested that District evaluate Student to determine eligibility for special education and related services.
15. On January 19, 2021, the Speech and Language Therapist (Therapist) sent an E-mail to Parent stating that the speech and language screener was completed. The results indicated that a full language evaluation was warranted.
16. On February 2, 2021, the MTSS team meeting was held to discuss Student's progress. MTSS teams meet monthly to review progress of all students receiving RTI support. Progress is monitored using the Independent Reading Level Assessment (IRLA).
17. Student's IRLA scores indicated that on January 5, 2021, Student was at a IB level, (mid-first grade blue) with a score of 1.36. By January 25, 2021, Student had progressed to a score of 1.80. The February 2, 2021 MTSS team's recommendation was for Student to continue to receive RTI Tier 2 support in reading.

18. On February 4, 2021, District provided Parent with permission to evaluate and prior written notice proposing to evaluate Student for special education and related services as required by Federal regulations, 34 C.F.R. §§ 300.503 and 300.300 and Delaware regulations, 14 DE Admin. Code §§ 926.3.0 and 925.1.0
19. On February 6, 2021, Parent provided District with a signed written consent to evaluate Student and determine Student's eligibility for special education and related services.
20. Student's psycho-educational assessments were completed on March 8, 26, and 29, 2021.
21. Student's speech and language assessments were completed on April 13, 2021. Speech Language Pathologist (SLP) administered tests different from those administered by CDSLP. The tests administered by the District SLP were the Comprehensive Assessment of Spoken Language, 2nd Edition (CASL-2) and the Oral and Written Language Scale, 2nd Edition (OWLS-2).
22. On March 31, 2021, District sent written notice to Parent of an April 15, 2021 IEP team meeting to determine whether Student was eligible for special education and related services.
23. The MTSS team meet on April 8, 2021 to again monitor Student's RTI progress. The classroom teacher commented that Student was continuing to make progress. Student's IRLA scores indicated that on March 24, 2021, Student was at a 2B level, (end-first grade blue), with a score of 1.89, The MTSS team's recommendation was for Student to continue to receive RTI Tier 2 support in reading.
24. On April 13, 2021, School Psychologist sent a draft Evaluation Summary Report (ESR) via E-mail to Parent. ESR Section A, a review of information, was the only section that was completed. Parent was told that ESR Sections B, C and D would be completed at the meeting.
25. On April 15, 2021, and continuing on April 19, 2021, Student's IEP team meeting was held and included all members required by 34 C.F.R. § 300.306 and 14 DE Admin. Code §§ 925.8.0 and 925.21.0.¹
26. The IEP team reviewed multiple sources of information, including the District's and CDSLP's evaluation results, RTI progress monitoring data from the April 8, 2021 meeting, information provided by Parent, and observations of Student.
27. The SLP shared that Student's scores on district administered evaluations did not fall below average in any core tests, although there were a few subtests that were below average.

¹ A substantial revision of 14 DE Admin. Code § 925 went into effect on July 1, 2021. At all relevant times, the previous version of 14 DE Admin. Code § 925 was in effect, as such, all citations to 14 DE Admin. Code § 925 are to the version of the regulations in effect prior to July 1, 2021.

28. The School Psychologist shared that Student's scores on district administered evaluations fell in the average range of functioning and in the 34th percentile for phonics, fluency and comprehension when compared with same age peers. Although there were some subtest scores that fell within the below average range, the phonics, fluency, comprehension, and total index scores were all within the average range.
29. The IEP team discussed the January 2021 private occupational therapy evaluation. The team concluded that Student's hearing sensitivity did not qualify Student with an educational classification of Hearing Impairment.
30. The IEP team concluded Student did not have a disability requiring the provision of special education and related services under Part B of the IDEA. This is documented in detail in the April 15 and 19, 2021 ESR.
31. The April 19, 2021 prior written notice (PWN) states, in relevant part:
 - a. The IEP team considered qualifying Student with an educational classification of Learning Disability. However, based on the eligibility criteria for the educational classification of Learning Disability in Title 14 of the DE Admin. Code, the Team determined that Student did not qualify for special education and related services as a student with a Learning Disability.
 - b. The IEP team considered qualifying Student with an educational classification of Speech Language Impairment. However, based on the eligibility criteria for the educational classification of Speech Language Impaired in Title 14 of DE Admin. Code, the IEP team determined Student did not qualify for special education and related services as a student with a Speech Language Impairment.
 - c. The IEP team considered qualifying Student with an educational classification of Hearing Impairment. However, based on the eligibility criteria for the educational classification of Hearing Impairment in Title 14 of the DE Admin. Code, the Team determined that Student did not qualify for special education and related services as a student with a Hearing Impairment.
32. Parent did not agree with the IEP team's decision. On April 19, 2021, Parent sent an E-mail to the IEP team members stating that Parent was in disagreement with the IEP team's decision.
33. On April 28, 2021, a meeting to discuss Student's eligibility for a 504 Plan was held with Parent in attendance. Section 504 of the Rehabilitation Act covers accommodations, services and the supports Student would be receiving in order to have access to education at school.
34. At this meeting, Student's strengths and weaknesses were discussed and the 504 Team agreed that Student qualified for a 504 Plan. Accommodations focused on reading and auditory sensory accommodations for loud noises and distractibility. A draft 504 Plan was sent home to Parents but never signed and returned.

35. On June 24, 2021, Parent filed this state complaint with the Department alleging REDACTED District violated Part B of the IDEA and implementing regulations with respect to Student.
36. On July 8, 2021, District submitted their response to the complaint to the Department. In the response, District offered to reevaluate Student, employing services of District specialists who did not administer the initial assessments. Parent declined District's offer.
37. District also proposed assessing Student in areas of executive functioning abilities and offering an independent evaluation. Parent declined District's offer.
38. District's response to the complaint denied the claim that District used a discrepancy model to determine Student's eligibility. District reiterated that the RTI team examined Student's strengths and weaknesses and RTI progress as measured by the IRLA in determining eligibility.

CONCLUSIONS

A. District did not use the discrepancy model contrary to Delaware's administrative regulations rather than using Response to Intervention or patterns of strengths and weaknesses to assess Student for a specific learning disability.

Delaware regulations state, "Elimination of the discrepancy model: Public agencies shall not use discrepancy between achievement and intellectual ability to determine eligibility for special education and related services under the learning disability category, *See* 14 DE Admin. Code § 925.6.11.1. There is no evidence that the district used the discrepancy model in its evaluation or eligibility determination. *For these reasons, I find no violation of Part B of the IDEA and corresponding state and federal regulations regarding using the discrepancy model to identify a specific learning disability.*

B. District's Determination that Student was Ineligible for Special Education and Related Services did not violate the IDEA.

Parent alleges District violated Part B of the IDEA by finding Student ineligible for special education and related services at the April 15 and 19, 2021 eligibility meetings. The IDEA and implementing state and federal regulations require the IEP team to determine whether a child is a child with a disability after the completion of the administration of assessments and other evaluation measures. *See* 34 C.F.R. § 300.306; 14 DE Admin. Code § 925.6.1.

In this case, the IEP team reviewed multiple sources of information as required by state and federal regulations. This included both evaluations from the CDSLP and those completed by District personnel. The IEP team included the School's Speech Therapist and School Psychologist, both of whom are qualified professionals to discuss these evaluations. The IEP team reviewed and discussed Student's educational history, as well as Student's classroom performance and RTI progress. The IEP team considered and discussed Student's eligibility under criteria for Learning

Disability *See* 14 DE Admin Code §§ 925.6.11, 925.7.0, 925.9.0, 925.10.0, and 925.11.0; Speech and Language Impairment; *See* 14 DE Admin. Code § 925.6.15; and Hearing Impairment. *See* 14 DE Admin. Code § 925.6.10.

In Parent's April 19, 2021 dissent statement to the IEP team, Parent alleges Student has dyslexia, therefore qualifying under the educational classification of Specific Learning Disability. In determining the existence of a specific learning disability, state regulations state that a group may determine that a child has a specific learning disability if:

9.1.1 Lack of achievement: The child does not achieve adequately for the child's age or to meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or State-approved grade-level standards:

9.1.1.1 Oral expression.

9.1.1.2 Listening comprehension.

<https://sites.ed.gov/idea/regs/b/d/300.309/a/1/iii>

9.1.1.3 Written expression.

9.1.1.4 Basic reading skill.

9.1.1.5 Reading fluency skills.

<https://sites.ed.gov/idea/regs/b/d/300.309/a/1/vi> 9.1.1.6 Reading comprehension.

<https://sites.ed.gov/idea/regs/b/d/300.309/a/1/vii> 9.1.1.7 Mathematics calculation.

<https://sites.ed.gov/idea/regs/b/d/300.309/a/1/viii> 9.1.1.8 Mathematics problem solving.

14 DE Admin. Code § 925.9.1.1 and *see also*, 34 C.F.R. 300.8 (c)(10)(i).

During the April 15 and 19, 2021 IEP team meetings, the School Psychologist explained the Feifer Assessment of Reading (FAR) results, which was administered by the District in March 2021. Student's FAR Total Index was in the average range of functioning and at the 34th percentile for phonics, fluency and comprehension when compared with same age peers. The FAR is a reliable and valid representation of reading capabilities which is highly predictable of reading deficiencies. The School Psychologist stated that the scores were not indicative of dyslexia or a reading disability according to IDEA federal and state regulations.

In determining the existence of a specific learning disability, in addition to not achieving adequately for the child's age or to meet state approved grade level standards, the child must also meet one of the two following criteria:

9.1.2 Insufficient progress: The child does not make sufficient progress to meet age or State-approved grade-level standards in one or more of the areas identified [above] when using a process based on the child's response to scientific, research-based intervention; **or**

9.1.3 Pattern of strengths and weaknesses: The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade-level standards, or intellectual development, that is determined by the group

to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with [14 DE Admin. Code § 4.0 and 5.0].

14 DE Admin. Code §§ 925.9.1.2 and 925.9.1.3

During the April 15 and 19, 2021 meetings, the IEP team discussed Student's progress with RTI Tier 2 support. Student's IRLA scores from January 5, 2021 to March 24, 2021 indicated Student progressed from the mid-first grade level (1B, 1.38) to the end-first grade level (2B, 1.89) with three months of RTI Tier 2 support. The IEP team agreed that Student was making progress with RTI support.

Parent alleges neither RTI nor patterns of strengths and weakness were used to assess Student's eligibility for special education and related services. The IEP team discussed Student's strengths and weaknesses with regard to the assessments administered and Student's IRLA scores. The February 4 and March 8, 2021 MTSS minutes reviewed Student's progress in RTI and indicated Student was making progress and would continue Tier 2 support for reading. Student began RTI Tier 2 support in January 2021. District data does not support Parent's allegations that Student was not making progress using RTI interventions.

If the IEP team has determined that a child lacks achievement under 14 DE Admin. Code § 9.1.1 and meets the criteria in either 14 DE Admin. Code §§ 9.1.2 or 9.1.3, then the IEP team must:

9.1.4 Rule out other conditions: The group determines that its findings under 9.1.1, 9.1.2 and 9.1.3 are not primarily the result of—

- 9.1.4.1 A visual, hearing, or motor disability;
- 9.1.4.2 An intellectual disability;
- 9.1.4.3 Emotional disturbance;
- 9.1.4.4 Cultural factors;
- 9.1.4.5 Environmental or economic disadvantage; or
- 9.1.4.6 Limited English proficiency.

14 DE Admin. Code § 925.9.1.4.

Additionally, the IEP team must also:

9.2 Ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group shall consider, as part of the evaluation described in [14 DE Admin. Code §925] 4.0 through 6.0:

9.2.1 Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

9.2.2 Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

14 DE Admin Code § 925.9.2.

The IEP team addressed these factors by reviewing and discussing Student's educational history, medical history, current classroom performance, previous and current assessments, and classroom observations made by the School Psychologist. The ESR minutes of April 15, 2021 indicated the School Psychologist reviewed the learning disability portion of the ESR form.² The determination that Student did not meet the eligibility criteria to receive special education and related services was made at this meeting.

In addition to considering Student's eligibility for special education and related services under the Specific Learning Disability classification, the IEP team also considered Student's eligibility under the Speech and Language Impairment and Hearing Impairment classifications. The SLP shared Student's evaluation results and indicated that they fell within the average range; therefore, Student did not meet the eligibility criteria under a Speech and Language Impairment classification. The IEP team also discussed eligibility criteria for under a Hearing Impairment classification and decided Student did not meet criteria for eligibility based on hearing sensitivity.

Parent alleges that ESR Section B, Learning Disability, was never discussed at the ESR meeting. A review of the April 15 and 19, 2021 ESR minutes indicated the School Psychologist reviewed all possible categories a student could qualify for special education and related services and gave special attention to the category of Learning Disability. Other District members supported the fact that Student's eligibility under Learning Disability was discussed. Section B of the ESR form has a line through it and a N/A written in sections since the IEP team determined that Student did not meet the eligibility for Learning Disability or any other eligibility category.

The eligibility decision was properly discussed and documented in the April 15 and 19, 2021 Evaluation Summary Report. The April 19, 2021 PWN summarized the IEP team's decision that Student did not meet eligibility criteria to receive special education and related services. ***For these reasons, I find no violation of Part B of the IDEA and corresponding state and federal regulations regarding the eligibility determination finding Student not eligible for special education and related services.***

² When this complaint was filed, the state regulations used both the term Learning Disability and Specific Learning Disability interchangeably. The ESR used the term Learning Disability. However, the federal and state regulations, which contain the eligibility criteria for a specific learning disability, mirror each other and are the same.

RESOURCES

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 Department shall be taken.

The Department will make itself available to the District to provide technical assistance and/or professional development regarding the documentation and synthesis of information using the ESR.

By: REDACTED
Assigned Investigator