

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE AC-17-02 (October 17, 2016)

On July 25, 2016, Parent filed a complaint on behalf of Student.¹ The complaint alleges that Lake Forest School District (LFSF) violated the Individuals with Disabilities Education Act (“IDEA”) with respect to the 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 Delaware Department of Education’s (DDOE) regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, documents provided by the parent, documents provided by advocate, documents filed by the Department of Health and Social Services (DHSS), Child Development Watch (CDW) and documents provided by staff in the LFSF along with interviews with Parent of the Student, Child Find Coordinator at LFSF, Director of Special Services at LFSF, and PIC staff.

COMPLAINT ALLEGATION

The complaint alleges that LFSF staff violated student’s rights by (1) failing to evaluate the student in the timeline as stipulated according to the DDOE’s regulations at 14 DE Admin Code §§ 925.2.4. (2) Failing to provide a meeting to review the results of the evaluation in a timely manner according to the DDOE’s regulations at 14 DE Admin Code §§ 925.6.1. (3) Failing to develop and implement an IEP according to the DOE’s regulations at 14 DE Admin Code §§ 925.22.2.

FACTS:

1. Student was x years, x months of age when the complaint was filed. Student’s primary language is not English. Student receives early intervention services through CDW under Part C of the IDEA to address Student’s developmental delays. Student receives early intervention services to address the following needs: cognitive domain, receptive and expressive language, adaptive daily living skills, social emotional needs, and fine motor skills.

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.

2. On November 16, 2015, CDW sent referral to LFSD requesting Student be evaluated for Autism using the Autism Diagnostic Observation Schedule (ADOS). The ADOS is a semi-structured assessment of communication, social interaction, and play (or imaginative use of materials) for individuals suspected of having autism or other pervasive developmental disorders. CDW suspected Student may be a child with a disability and in need of special education and related services under Part B of the IDEA.
3. The referral from CDW to LFSD noted concerns with Student in the areas of speech delay, eating and feeding issues, difficulty with engaging and interacting with staff and parents, limited eye contact, banging and making noise during an evaluation, as well as when at home, refusal to complete tasks initiated by assessors and parents, and unable to imitate simple directions.
4. In addition, CDW recommended Student receive a hearing exam to rule out hearing concerns, an occupational therapy (OT) evaluation for fine motor delay, as well as sensory issues with feeding and environmental factors; gagging, choking and texture issues to be addressed with oral motor and feeding.
5. According to the LFSD Director of Special Services, the referral from CDW to the LFSD Child Find Coordinator was dated November 16, 2015. According to the LFSD Director of Special Services, the referral from CDW to the LFSD Child Find Coordinator was received on this date as well.
6. A sensory profile was forwarded from CDW to the LFSD Child Find Coordinator on December 2, 2015.
7. The LFSD Director of Special Services shared the information with the LFSD Psychologist on January 12, 2016. According to the LFSD Director of Special Services, the Director was trying to find someone to administer the ADOS.
8. On February 2, 2016 The LFSD Child Find Coordinator sent an email to CDW with available dates for the evaluation so they could communicate this information to the parents.
9. CDW confirmed February 18, 2016 for the evaluation.
10. LFSD sent an email to CDW on February 3, 2016 withdrawing the February 18, 2016 evaluation date. The evaluation could not be completed in Student's primary language. The LFSD had no evaluator who was able to complete the ADOS in Student's primary language.
11. LFSD Child Find Coordinator contacted Vendor requesting another Psychologist who spoke student's primary language to complete the evaluation on February 16, 2016.

12. On March 10, 2016 Vendor contacted the LFSD Child Find Coordinator. Vendor was unable to provide an evaluator who spoke Student's primary language.
13. On March 15, 2015 the advocate contacted the LFSD Child Find Coordinator for an update on the evaluation. The advocate was informed that the LFSD was trying to find an evaluator who spoke Student's primary language.
14. On April 6, 2016, LFSD staff went to Student's home to obtain the parent's written consent for the evaluation. The parent, whose primary language is not English, contacted the advocate. Parent reported that the parent had provided written consent earlier and was unsure of the purpose of the visit by the LFSD staff.
15. On April 7, 2016 the parent's current written consent for the evaluation was delivered to the School. LFSD staff contacted The School requesting a Psychologist who spoke the primary language of Student.
16. Once LFSD received the parent's written consent, LFSD then had 45 school days, or 90 calendar days (whichever is less), to conduct the initial evaluation and determine if Student is a student with a disability in need of special education and related services under Part B of the IDEA. *See*, 14 DE Admin Code 925.2.2
17. However, LFSD did not comply with this timeline. On May 16, 2016 The School staff contacted LFSD Director of Special Services stating that a Psychologist who spoke Student's primary language was not available.
18. On June 22, 2016 The School contacted the LFSD Child Find Coordinator indicating that a translator was available to interpret and provide the evaluation.
19. On July 12, 2016, July 14, 2016 and July 19, 2016 the advocate emailed the LFSD Child Find Coordinator to request an update on the process since Parent was concerned that an evaluation had not been completed.
20. On July 19, 2016, the School Psychologist completed an evaluation for Autism.
21. On July 21, 2016 the Eligibility Summary Report (ESR) was forwarded to LFSD Child Find Coordinator from the School Psychologist. LFSD Child Find Coordinator scheduled the ESR translation from Student's primary language to English on July 25, 2016
22. On July 27, 2016, LFSD Child Find Coordinator contacted the parents and the advocate to schedule an eligibility meeting for August 15, 2016.

23. On August 15, 2016 an eligibility meeting was conducted at the LFSD. Parents were provided a copy of the Procedural Safeguards. Participants included LFSD Director of Special Services, LFSD Child Find Coordinator, Parents, School Psychologist; CDW staff, and a translator. The team discussed the ESR and determined that Student was eligible for services as a child with Autism. The Parents agreed to permission to proceed with evaluations in the areas of occupational therapy and speech/language therapy. The IEP team scheduled an IEP Meeting for program, planning and placement on September 12, 2016.
24. On September 12, 2016 the IEP meeting was held at the LFSD. Participants included the Parents, LFSD Director of Special /Services, LFSD Child Find Coordinator, School Representative, LFSD Speech Pathologist, LFSD Occupational Therapist, CDW staff, Advocate, Translator, and an IEP Facilitator from the Special Education Partnership for the Amicable Resolution of Conflict (SPARC). At the IEP meeting, the IEP Team agreed to enrolling the student in the Program at the School where Student would receive special education and related services to including Occupational Therapy and Speech/Language Services weekly. The initiation date of the IEP was to begin 9/27/2016.
25. According to the LFSD Director of Special Services, compensatory services were discussed with the parents. LFSD did not provide services during the period of time when the student would have qualified if the evaluation had been completed within the required timeline under Delaware regulations. The LFSD Director of Special Services agreed to 8 months (36 sessions) of compensatory services for Occupational and Speech language Therapy to be delivered in the school program. Parents requested 12 months (48 sessions) of compensatory services to be delivered in the home. This issue was not resolved at the IEP meeting.

CONCLUSIONS

In Delaware, children identified with an educational classification of Autism are eligible for Part B services from birth until the receipt of a regular high school diploma or the end of the school year in which the student attains the age of twenty-one (21), whichever occurs first. *See*, 14 DE Admin Code §§ 925.6.6.3. In this case, CDW requested LFSD to evaluate Student for Autism when Student was x year and x months of age.

Pursuant to state regulations, a School District must, within forty-five (45) school days or ninety (90) calendar days, whichever is less, of receiving parental consent, conduct the initial evaluation for the child and determine the child's eligibility for special education and related services at a meeting convened for that purpose. *See*: 14 DE Admin Code §§ 925.2.3. If the child is then determined eligible for special education and related services, the School District must ensure an IEP meeting for the child is held within thirty (30) calendar days of a determination the child needs said services. *See*, 14 DE Admin Code 925.23.

In this case, the School District was on notice as early as November 16, 2015 that Student required an evaluation to determine Student's eligibility for special education and related services under Part B of the IDEA. Yet it took the School District almost five (5) months to obtain the Parent's written consent to conduct the evaluation. Once the Parent's written consent was received on April 6, 2016, it took the School District until August 15, 2016 to conduct the initial evaluation and determine Student's eligibility for Part B services. Forty-five (45) school days after parental consent was provided would have been June 10, 2016 and ninety (90) calendar days would have been July 4, 2016.

The School District's delay in obtaining the Parent's written consent, as well as the delay in completing the initial evaluation, was excessive and had the effect of denying Student required services for most of the school year. It appears the School District had no process or service in place to properly address special education evaluations and procedural safeguards for families whose primary language is another language.

The District held Student's IEP meeting on September 12, 2016, and within thirty (30) days of the eligibility determination, and was thus compliant with 14 DE Admin Code § 925.23.2.

However, the School District's significant delay in obtaining written parent consent and completing the evaluation also caused Student's IEP meeting and receipt of services to be delayed. LFSD's Director of Special Services is in agreement that compensatory services are appropriate.

CORRECTIVE ACTIONS

The DDOE 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, a violation of IDEA was found. Therefore,

- A. LFSD must convene an IEP meeting by **November 7, 2016** in order to ensure that the IEP addresses all areas of Student's needs. A copy of the IEP should be submitted to Delaware Department of Education, Director of Exceptional Children Resources by **November 9, 2016**.
- B. LFSD will calculate and submit the number of hours owed to Student to address all areas of the IEP including Related Services, as well as a description of how the number of hours were calculated. Compensatory education will be provided for the time period of **February 5, 2016 – September 26, 2016**. LFSD will submit a plan for delivering the compensatory education, including a timeline for service delivery and how the services will be provided (e.g. at home, in school, during the summer, etc.). This plan must be submitted to Delaware Department of Education, Director of Exceptional Children Resources on or before **November 18, 2016**.

- C. LFSD must provide professional development to all special education staff regarding the timeline for evaluations. LFSD will provide evidence of this plan to Delaware Department of Education, Director of Exceptional Children Resources on or before **November 1, 2016**. The professional development must be completed and the associated documentation (sign in sheet, agenda, copy of handouts, copy of Power Point etc.) must be sent to Delaware Department of Education, Director of Exceptional Children Resources by **December 9, 2016**.

- D. LFSP must review their policies and procedures with respect to addressing referrals from CDW, as well as communicating with families for whom English is not their primary language and submit a copy to Delaware Department of Education, Director of Exceptional Children Resources by **December 9, 2016**.

By: _____
Assigned Investigator