

**DELAWARE DEPARTMENT OF EDUCATION
EXECEPTIONAL CHILDREN RESOURCES**

**ADMINISTRATIVE COMPLAINT
LETTER OF FINDINGS**

DE AC 18-06 (March 23, 2018)

On January 2, 2018, Parent filed a state complaint with the Delaware Department of Education (“DDOE”). The complaint alleges the School District 1 and School District 2 violated state and federal regulations concerning the provision of a free, appropriate public education (“FAPE”) to Student under Part B of the Individuals with Disabilities Education Act (“IDEA”).

On January 2, 2018, Parent also filed a due process complaint asserting the same allegations raised in the state complaint. Because the issues raised in the state complaint were the same issues involved in the due process hearing, the DDOE stayed the investigation of the state complaint pending the resolution of the due process hearing pursuant to 34 C.F.R. § 300.152 and 14 DE Admin Code § 923.52.4. On January 24, 2018, the due process hearing panel dismissed the due process complaint. As a result, the DDOE began the sixty (60) day timeline for investigation of the state complaint on January 25, 2018, and the due date for the DDOE’s decision is March 25, 2018.

The state complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to the DDOE’s regulations at 14 DE Admin Code §§ 923.51.0 to 53.0. The investigation included a review of Student’s educational records, correspondence, and documentation provided by Parent, and School District 1 and School District 2. Interviews were conducted with Parent and staff from both school districts.

ONE YEAR LIMITATIONS PERIOD

In accordance with the IDEA and corresponding state and federal regulations, the complaint must allege violations that occurred not more than one (1) year prior to the date the DDOE receives the complaint. *See*, 34 C.F.R. § 300.153(c); 14 DE Admin Code § 923.53.2.4. In this case, the DDOE received the complaint on January 2, 2018. Therefore, the DDOE’s findings address alleged violations from January 2, 2017 to the current.

COMPLAINT ALLEGATIONS

Parent alleges School District 1 and School District 2 failed to provide FAPE to Student in violation of Part B of the IDEA and implementing regulations. Parent specifically alleges:

1. Student was denied special education services for eight (8) school days when Student’s educational placement was administratively changed by school officials to homebound instruction beginning December 6 through December 15, 2017.
2. Parent was denied participation in the decision to change Student’s educational placement to homebound instruction rendered by school officials on December 5, 2017.

3. Parent's verbal requests for an IEP Team meeting in the 2017 -2018 school year were denied.

FINDINGS OF FACT

1. Student is currently x years of age and eligible to receive special education and related services under the disability category of "emotional disability" as defined in 14 DE Admin Code § 925.6.9. Student is a resident of the School District 1.
2. Student has intensive behavioral and emotional needs, and requires a more restrictive educational placement with the structure and supports in a "Setting D." Student attended the School A from September 2014 through mid-December 2017 and received special education and related services within the special program. The School A serves students with disabilities who have unique behavioral, emotional, and social needs that impact learning and require a more restrictive setting with a small student to staff ratio.
3. School District 2 operates School A for eligible students who reside within the County and require special education and related services under Part B of the IDEA.
4. School District 1 does not otherwise provide a "Setting D" for special education students within its schools.
5. Thus, Student is a resident of School District 1, but at all relevant times, attended School A, operated by School District 2. Student is currently in the x grade.

Relevant Facts from 2016 – 2017 School Year X Grade

6. Student has behavioral needs that impede learning and require Student to receive individualized behavioral interventions, supports, and services in a setting with a small student to staff ratio.
7. School A scheduled an IEP Team meeting for February 8, 2017 for the purpose of determining Student's continued eligibility for special education and related services, conducting an annual review of the IEP, and developing a functional behavioral assessment and behavior intervention plan.
8. School A sent written notice of the meeting to Parent on January 25, 2017. Parent signed a waiver of the right to receive ten (10) school days written notice of the IEP Team meeting under 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
9. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. The IEP Team included a representative from School District 1. Parent also signed in agreement to excuse the School District 2's transportation supervisor from

attending the IEP Team meeting in compliance with 34 C.F.R. § 300.321(2) and 14 DE Admin Code § 925.21.5.

10. Parent attended and participated in the February 8, 2017 IEP Team meeting.
11. Student's re-evaluation was completed in accordance with 34 C.F.R. § 300.303 and 14 DE Admin Code § 925.3.0. Based on Student's academic and behavioral needs, the IEP Team found Student continues to need special education and related services under the disability category of emotional disability. Based on data and evaluation, the IEP Team also determined Student no longer required occupational therapy services.
12. Student's IEP was developed at the February 8, 2017 IEP Team meeting.
13. Student's IEP has four (4) annual goals focused on: (a) frustration management; (b) appropriate interpersonal relationships; (c) decoding; and (d) number sense and numerical operations. Present levels of performance are described for each goal.
14. In the areas of frustration management and interpersonal relationships, the IEP describes Student's needs as staff support with a ratio of no more than 1:2 for the majority of the day, flexible grouping, additional staff support and escort throughout all school settings, consistent and frequent verbal, nonverbal and physical prompts, redirection, positive feedback, reinforcers, teacher and peer modeling, behavior specific praises, and frequent breaks and timeouts.
15. For decoding skills, the IEP outlines Student's needs for whole group instruction with grade level materials, extra time to complete assignments, additional staff support to assist with whole group and small group instruction, hands-on interactive lessons, breaks when needed, repeated practice, and use of manipulatives.
16. In the area of number sense and numerical operations skills, Student requires teacher modeling, small math group instruction based on math facts, use of manipulatives, extra time to complete tasks, earned breaks in the classroom, behavior specific praises, and hands-on and interactive lessons.
17. For written expression skills, the IEP describes Student's needs for teacher modeling of writing process, whole group and small group instruction, use of graphic organizers for research, x level text and grade level texts, supports to help develop ideas and drawing, and behavior specific praise.
18. A functional behavior assessment ("FBA") and behavior intervention plan ("BIP") were also developed at the February 8, 2017 meeting.
19. The FBA describes Student's problem behaviors as disruption, primarily within the classroom, including Student getting out of his/her seat, not complying with teacher instruction, use of inappropriate verbalization, inappropriate comments toward peers, damaging classroom items, cursing, and verbal aggression toward students and staff. The

FBA further describes Student's positive behaviors, and proposed replacement behaviors.

20. Per the FBA, the functions of Student's behaviors are gaining adult attention, escaping academic demands, social mediated attention, expressing anger, seeking power and control, expressing frustration, and sensory stimulation.
21. The BIP describes Student's replacement behaviors as Student remaining in seat during academic instruction, exhibiting positive interpersonal skills when interacting with peers and adults, and complying with school behavioral expectations.
22. The BIP outlines supports and interventions to reduce Student's problem behaviors, to include providing constant, positive reinforcement for appropriate behavior, allowing natural consequences to occur, developing predetermined visual cues, writing a behavior contract, including Student in high interest activities, teaching Student appropriate ways to communicate emotions, avoiding power struggles, and providing Student with clear, consistent, and predictable consequences, and other described interventions,
23. The BIP requires Student's behaviors to be monitored through the schoolwide behavior modification system. Pursuant to the BIP, Student's Special Education Teacher and paraprofessional track the frequency of the specific target behaviors through office discipline referrals and data collected and summarized in the school wide information system ("SWIS"). The BIP requires data analysis by responsible staff and the review and evaluation of behavioral trends during weekly meetings for student support. The BIP further requires Student's current level of maladaptive behaviors to be monitored with the specific interventions based on the functions of Student's behavior.
24. In addition to the BIP, Student's IEP further requires counseling services individually for twenty (20) minutes per session two (2) times per month, and in a group for fifty (50) minutes per session one (1) time per week.
25. At the February 8, 2017 meeting, the IEP Team concluded Student does not require extended year services for the summer 2017, but Student requires specialized transportation both to and from school with additional staff to support Student's behavioral needs.
26. The IEP Team determined Student's educational needs could be met in a "Setting D," namely School A, a separate, special program with a small student to staff ratio of 1:2, modified instructional and behavioral supports, related services, specialized transportation, and behavior management services.
27. Parent signed the IEP in agreement with the proposed program and placement. School A provided Parent with timely prior written notice proposing the IEP. Parent signed the prior written notice acknowledging receipt and waiving the ten (10) school day implementation period with respect to the IEP.

28. Pursuant to the IEP, Student received counseling two (2) times a month with the School A social worker for individual sessions. Student also received frequent, and sometimes daily crisis counseling when Student was removed from the classroom due to interfering behaviors. Student participated in group counseling in the classroom one day a week for fifty (50) minutes from 10:05 to 10:55 am. Parent confirms Student received the counseling services outlined in the IEP.
29. The social worker addressed specific skills with Student, including social control regulation, frustration, anger management, appropriate interpersonal skills, and coping skills.
30. The social worker also consulted with the Special Education Teacher about Student's progress and behaviors when Student was picked up from class for counseling sessions. The counselor further participated in team meetings, to include reviewing the SWIS data, and often conferred with Parent.
31. Student's Special Education Teacher, and the classroom paraprofessionals met before and after school each week to discuss student behavioral data and trends.
32. Additionally, the "School Team" convenes on a monthly basis to review behavior data, trends and interventions for students based on data analysis. The School team includes School A's social worker, a behavioral consultant from Vendor, the Assistant Principal, classroom teachers, School A coordinator, and a clinical mental health therapist.
33. Student received a daily behavior point card to monitor and track behaviors. Parent confirms the daily point cards were sent home with Student.
34. Despite the behavioral supports and interventions, Student struggled to maintain appropriate behaviors for the 2016 – 2017 school year, and had frequent behavioral referrals resulting in disruption, removals from class, and other consequences.
35. On May 25, 2017, Student was admitted to a private facility due to increasing agitation and defiance. Student was diagnosed with disruptive mood dysregulation disorder, and history of attention deficit hyperactivity disorder was noted. Student's medications were changed, and Student was discharged on June 6, 2017 with recommendations to continue medical management, comply with mental health treatment, family therapy, and behavior modification.
36. School A also reported Student's behaviors in school as increasingly aggressive and defiant just prior to the private facility admission. Text here was redacted as required by FERPA (14 DE Admin. C. 251; Federal – 20 U.S.C. § 1232 g & h and FOIA 29 *Del. C.* Chapter 100; Federal - 5 U.S.C. § 552).

37. While at the private facility, a CASII evaluation was completed by the Department of Services for Children, Youth, and their Families noting: “[Student’s] behaviors have been escalating in the home and school over the last few months. Behaviors have included physical aggression in the school toward peers and adults, aggression in the home, and aggression in therapy toward Parent and staff. Client is also exhibiting escalating inappropriate behaviors toward adults and peers in all settings.”
38. The IEP Progress report dated June 9, 2017 reflects Student made progress toward mastery of goals in frustration management, interpersonal relationships, decoding, and written expression, and Student had mastered the number sense and numerical operations goal by June 2017.
39. However, according to data collected and summarized in SWIS records for the period December 9, 2016 through the end of the 2016 – 2017 school year, Student struggled to maintain appropriate behaviors. According to SWIS records for this period,
 - (a) Student had thirty-six (36) referrals for behaviors described as defiance, disruption, harassment, theft, fighting, harassment, inappropriate language, disrespect, and property damage. The majority of behaviors occurred in the classroom.
 - (b) SWIS records reflect Student received twenty-nine (29) detentions, one (1) in-school suspension, and two (2) loss of privileges.

**Relevant Facts from 2017 – 2018 School Year
X Grade**

40. Student continued in his/her program and placement in School A for the x grade in the 2017 – 2018 school year.
41. Parent reported that Student was experiencing more intense behaviors beginning with the 2017 – 2018 school year. Staff changes occurred at School A in August 2017 that could have contributed, in part, to Student’s increased behaviors.
42. On September 26, 2017, Parent met with the Special Education Teacher, Student’s Intensive Outpatient (IOP) Therapist, and Educational Diagnostician (ED) to discuss Student’s ongoing behaviors and physical aggression in the classroom setting. Behavior interventions were discussed.
43. According to SWIS records, Student’s behaviors did not improve. For the period August 29, 2017 through December 15, 2017, Student had forty-seven (47) disciplinary referrals, as follows:
 - (a) Twenty (20) for physical aggression;
 - (b) Eight (8) for major defiance;
 - (c) Four (4) for fighting;

- (d) Five (5) for major disruption;
 - (e) Five (5) for negative behaviors;
 - (f) Five (5) for a variety of other negative behaviors.
44. As a result of the forty-seven (47) behavior referrals:
- (a) Seven (7) resulted in action on the part of the parent;
 - (b) Twenty-five (25) resulted in a conference;
 - (c) Seven (7) resulted in detention;
 - (d) Five (5) resulted in “other” actions; and
 - (e) Three (3) resulted in loss of privilege.
45. On or about November 9, 2017, Parent met with the School A Assistant Principal and other staff to discuss recent behavioral incidents involving physical aggression and disruption. Parent requested an IEP Team meeting and a 1:1 paraprofessional. The Assistant Principal informed Parent School A had to contact and include School District 1 to attend any IEP Team meeting.
46. School A staff continued to call Parent to report more intense behavioral incidents. Parent again requested the scheduling of an IEP Team meeting. Parent reports being told School A “was waiting to hear from School District 1.”
47. On November 27, 2017, the School A Assistant Principal sent Parent a letter advising that Student was suspended from school on November 28, 2017 for “intensive aggressions towards students and staff, threatening statements toward students and staff, and highly inappropriate language towards students.” Parent was advised Student could not return to school until clinical documentation confirmed Student “no longer poses a threat to self or others.” On the same date, the ED called Parent to describe the nature of Student’s physical and verbal aggressions toward school staff.
48. On November 27, 2017, Parent called Crisis Priority Response (“CPR”) and a crisis worker from the CPR went to the home, observed Student, and concluded Student could return to school. The CPR worker provided Parent with a written safety plan to give to School A.
49. On or about November 28, 2017, a neuropsychological evaluation was issued from the Department of Services for Children, Youth and their Families to address whether Student had an underlying organic and/or developmental etiology to cause the behaviors. A diagnosis was made. Behavioral concerns were described as a long history of physical aggression, destruction of property, running away, impulsivity, excessive movement, verbal threats, stealing and defiance.
50. Student served an out of school suspension on November 28, 2017, but School A attendance and SWIS records do not reflect an out of school suspension on this date.

51. On November 29, 2017, Parent met with the School A Assistant Principal to discuss the behavior incident, and provided a copy of the safety plan from the CPR worker.
52. On November 30, 2017, the CPR worker visited School A and observed Student. Because Student's behaviors were under control, the CPR worker left the building but offered to return, if needed. School A staff reported the CPR worker had no interaction with Student, sat in the back of the classroom, and observed.
53. When the CPR worker left the building, School A, Student's behaviors became out of control. School A staff called the CPR worker to return. The CPR worker did so, and while on route, called to inform Parent.
54. On November 30, 2017, the School A Assistant Principal sent Parent a letter advising that Student was suspended from school on December 1, 2017 for "intensive aggressions toward students and staff, threatening statements toward students and staff, and highly aggressive and inappropriate language towards staff." Parent was advised Student could not return to school until a manifestation determination meeting was held on December 4, 2017.
55. School A sent Parent a report describing the use of physical restraint on Student in connection with the November 30, 2017 incident. The report describes Student was punching and kicking staff, cursing, and making racial comments. The report notes Student was sent home early in the afternoon with the CPR worker and Student's relative.
56. Student served an out of school suspension on December 1, 2017. However, the school attendance and SWIS records do not reflect an out of school suspension on this date. The attendance records note Student received "homebound instruction" on December 1, 2017, but it was not provided.
57. On December 4, 2017, School A convened a manifestation determination meeting to determine whether Student's behavioral incident on November 30, 2017 was a manifestation of the disability. Parent waived the right to five (5) school days prior written notice of the meeting pursuant to 14 DE Admin Code § 925.22.1.1.
58. The team included Parent and the relevant members of the IEP Team as required by 14 DE Admin Code § 926.30.5 and 34 C.F.R. § 300.530(e). A representative from School District 1 was invited, but did not attend the meeting.
59. The team determined Student's behavior was a manifestation of Student's disability. The team reviewed Student's FBA and BIP, and determined revisions would be necessary and drafted by the School Psychologist.

60. The December 4, 2017 meeting minutes state, in relevant part:
- (a) Parent was informed Student could return to School A on December 5, 2017 with more consistent supports for positive attention, check-ins with staff twice a day, and increased IOP services wherein the therapist would come to School A and work with Student to ensure safety.
 - (b) Parent again requested a 1:1 paraprofessional for Student.
 - (c) More restrictive placements were discussed, but all placement decisions must be made by School District 1. The plan will be implemented for Student to return to School A, while the new FBA is initiated and the ICT process started.
 - (d) The plan will be voided if Student is put out of school for any behaviors which pose a threat to Student or others, and Student will be placed on homebound.
61. On December 5, 2107, Student returned to School A. But, the School A Assistant Principal called Parent in the late afternoon and advised Student was being placed on “homebound instruction” due to aggressive behaviors. Parent reports it was an unfair decision as Parent was not included in the decision. Parent reports asking the Assistant Principal for a due process hearing during the December 5, 2017 phone call.
62. On December 5, 2017, Student’s Special Education Teacher also sent an E-mail to Parent describing Student’s behaviors that day. Parent responded by E-mail stating her disagreement with the decision to place Student on homebound instruction.
63. On December 5, 2017, the Assistant Principal of School A submitted an application for homebound instruction to School District 2 administration noting homebound instruction is required “due to intensive behaviors beyond school capacity.”
64. On December 6, 2017, Parent sent an E-mail to Student’s Special Education Teacher asking when homebound instruction would start. The Special Education Teacher responded by E-mail and provided Parent with the contact information for the Director of Special Education for School District 1.
65. Parent reports having a conversation with the School A Assistant Principal on December 7, 2017, and again requesting a due process hearing based on the change in Student’s educational placement.
66. The homebound instruction had not started as of December 11, 2017. On the same date, the School A Assistant Principal sent an E-mail to the Director of Student Services for School District 2 requesting approval for homebound instruction. The Director responded by E-mail the same day with approval.

67. On December 11, 2017, Parent was contacted by the Director of Special Education for School District 1 to schedule an IEP Team meeting to discuss Student's educational placement. Parent reports asking about the status of his/her request for a due process hearing and Student's homebound instruction.
68. An IEP Team meeting was held on December 14, 2017. The notice of meeting was not provided by either school district in the course of the complaint investigation.
69. The purpose of the December 14, 2017 IEP Team meeting, as reported by the Director of Special Education for School District 1, was to discuss placement options and change Student's educational placement from "Setting D" to a "Setting C," and thereby return Student to School A within School District 1.
70. Parent attended the meeting, as well as the Director of Special Education for School District 1, and the Director of Student Services for School District 2.
71. The December 14, 2017 meeting minutes summarize the team's detailed discussion related to Student's need for intensive services and the range of resources available within the State both publicly and privately. The meeting minutes state, in relevant part:
 - (a) The team determined Student is not safe in his/her placement within the School A. Parent does not support Student's placement in a residential facility, and feels Student can be educated in a school setting with proper therapeutic supports.
 - (b) Student will attend School B in School District 1 in a "Setting C."
72. The placement page of Student's IEP was revised from a "Setting D" to a "Setting C."
73. Prior written notice was provided to Parent on December 14, 2017 stating Student would return to School District 1 to attend its School A in a "Setting C."
74. On December 18, 2017, Student returned to school at School B within School District 1.
75. Student did not receive educational services through homebound instruction for eight (8) days on December 6, 7, 8, 11, 12, 13, 14, and 15. However, School A's attendance records note Student was on homebound instruction for these dates.
76. On January 2, 2018, Parent filed the state complaint with the DDOE, as well as a due process complaint.
77. In the interim, School District 1 developed a new IEP for Student on February 14, 2018 at an IEP Team meeting. Student continues to attend school at School B.

CONCLUSIONS

A. Unilateral Change in Student's Educational Placement to Homebound Instruction by School Officials

As a general rule, a student's educational placement must be based on the student's IEP and determined by a group of persons, including the parent, and other persons knowledgeable about the student and the IEP. *See*, 34 C.F.R. § 300.116(a)-(b); 14 DE Admin Code § 923.16.1-2. The parent must be afforded an opportunity to be part of any group that makes decisions relating to the educational placement of the student. *See*, 34 C.F.R. § 300.501(c); 14 DE Admin Code § 926.1.4. If the parent then disagrees with the educational placement decision proposed by the school district, the parent may exercise the procedural safeguards for dispute resolution (i.e., mediation, due process hearing, or state complaint).

However, school officials may unilaterally place a student in an interim alternative educational setting for up to forty-five (45) school days, without regard to whether the behavior is a manifestation of a student's disability, when the student:

- (1) Carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function;
or
- (3) Has inflicted serious bodily injury.

See, 34 C.F.R. § 300.530(g); 14 DE Admin Code § 926.30.7.

In addition, the IDEA authorizes school officials to remove a student with a disability from the current educational placement to another educational setting, or suspension, for not more than ten (10) consecutive school days, or for not more than ten (10) cumulative days in the same school year for separate behavioral incidents, as long as it does not constitute a pattern resulting in a change of placement. *See*, 34 C.F.R. § 300.530(b); 14 DE Admin Code § 926.30.2.

Further, the IDEA permits school officials to request an expedited due process hearing to seek an order by hearing officer ordering the change in placement if the hearing officer determines maintaining the student in the current placement is substantially likely to result in injury to the student or others. *See*, 34 C.F.R. § 300.532(a); 14 DE Admin Code § 926.32.2.2.

In this case, the School A Assistant Principal unilaterally rendered the decision to change Student's educational placement to homebound instruction on December 5, 2017. At that point, Student had served two (2) days out of school suspension in the school year. While School A could have suspended Student out of school for up to eight (8) more consecutive days without causing a change in placement, the Assistant Principal's administrative decision to change Student's placement to homebound was not characterized or described as a suspension or disciplinary removal. Rather, Parent was informed Student could not return to School A due to continuing aggressive behaviors that could not be handled by School A, and no time period was given. **For**

the reasons stated, I find a violation of the IDEA and corresponding state and federal regulations relating to the unilateral change to Student's educational placement. While School A appropriately recognized the safety risk associated with Student's behaviors, any change to Student's educational placement must occur within the procedural requirements of the IDEA described herein.

B. Denial of Special Education Services for Eight (8) School Days

Student did not receive special education services for eight (8) school days following the unilateral change to Student's educational placement beginning December 6 through December 15, 2017. **As a result, I find a violation of the IDEA and corresponding state and federal regulations relating to the provision of special education services for this period due to the failure to provide a free appropriate public education (FAPE).** *See*, 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); 14 DE Admin Code § 923.1.2.

C. Accuracy of Educational Records

The School A attendance records designate Student on homebound instruction from December 1, 2017 through December 15, 2017. However, homebound instruction was not provided for this period. In addition, Student served out of school suspensions on November 28 and December 1, 2017, but the School A attendance and SWIS records do not reflect out of school suspensions on these dates. **As a result, I do not find a violation of the IDEA and corresponding state and federal regulations relating to the accuracy of educational records maintained for Student. However, it is in violation of District policy on maintaining attendance records 14 DE Admin Code § 615.**

D. Prior Written Notice for Parent Request for IEP Meeting and 1:1 Paraprofessional

Prior written notice must be provided to the parent of a student with a disability no less ten (10) school days before the school district proposes, or refuses to, initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the student. The notice must include: (1) a description of the action proposed or refused by the school district; (2) an explanation of why the school district proposes or refuses to take the action; (3) a description of each evaluation, procedure, assessment, record, or report the school district used as a basis for the proposed or refused action; (4) a statement that the parents of the child with a disability have the protections of the procedural safeguards under Part B; (5) sources for parents to contact to obtain assistance in understanding the procedural safeguards; (6) a description of other options the IEP Team considered and the reasons why those options were rejected; and (7) a description of other factors that are relevant to the school district's proposal or refusal. *See*, 34 C.F.R. § 300.503(a); 14 DE Admin code § 926.3.0.

In this case, Parent met with the School A Assistant Principal and other staff on November 9, 2017 to discuss Student's behavioral incidents. During this meeting, Parent clearly requested an IEP meeting, as well as a 1:1 paraprofessional for Student. Almost a month later, at the December 4, 2017 manifestation determination meeting (after a major behavioral incident), Parent again requested a 1:1 paraprofessional. While some discussion occurred related to Parent's request, neither School District 1 nor School District 2 formally responded to Parent's request with prior

written notice. The prior written notice is a procedural safeguard which provides the parent with timely and unequivocal notice when the school district is refusing a requested action, and in this case, Parent's request for an IEP meeting, as well as a 1:1 paraprofessional. **For this reason, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of prior written notice.**

CORRECTIVE ACTION

To address the regulatory violations stated in this decision, the DDOE directs School District 1 and School District 2 to take the following corrective actions:

Student Level Corrective Action

1. School District 1, in consultation with School District 2, shall calculate the hours of educational instruction Student should have received for eight (8) school days covering December 6, 2017 through December 15, 2017. School District 1 shall provide compensatory instruction services to Student to remedy the denial of services for Student for this period. School District 1 shall propose a compensatory instruction plan to Parent, which must be approved by Parent. The plan shall specify the number of hours of instruction, how and when the instruction shall be provided, and when all compensatory education services will be provided. School District 1 shall provide the compensatory instruction plan to the Director of Exceptional Children Resources of the DDOE on or before **April 27, 2018**. School District 1 shall also provide documentation the plan was shared and agreed to by Parent or on before **April 27, 2018**.
2. **Upon the provision of all compensatory education services**, School District 1 shall provide to the Director of Exceptional Children Resources of the DDOE a written report detailing Student's receipt of the compensatory instruction required by the plan (including dates, times, and type of service provided). School District 1 shall also provide a copy of the report to the Parent at the same time it is sent to the DDOE. Any records provided to the Director of Exceptional Children Resources to evidence the provision of compensatory instruction to Student must be verified in writing by the District's administration as an accurate representation and account of services provided.

District Corrective Actions

1. On or before May 30, 2018, District 2 shall ensure professional development is provided to special education staff and administrators at School A regarding:
 - (a) prior written notice, and when it is required in response to parental requests;
 - (b) maintenance and implementation of accurate educational records pertaining to student attendance records and behavioral records; and

- (c) IDEA procedures for changing the educational placement of student with a disability.
- (d) the process of developing and revising a FBA and BIP which includes involving all IEP Team members.

The professional development shall be based on the findings as stated in this decision.

- 2. Copies of professional development materials, PowerPoint presentations, agendas, and attendance rosters shall be provided to the Director of Exceptional Children Resources for the DDOE on or before May 30, 2018.

By:

Assigned Investigator