

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

**DE AC 20-07 (January 31, 2020)
(Revised February 4, 2020)**

On December 2, 2019, Parent filed a complaint with the Delaware Department of Education (Department). The complaint alleges that the (District) violated Part B of the Individuals with Disabilities Education Act (IDEA) and implementing 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 300.153 and according to the Department's regulations at 14 DE Admin. Code § 923.51.0 to 53.0. The investigation included a review of Student's educational records, staff correspondence, and documents provided by Parent and the District related to the issues in the complaint. Interviews were also conducted with Parent and relevant District staff.

ONE YEAR LIMITATIONS PERIOD

In accordance with 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 Department receives the complaint. *See*, 34 C.F.R. § 300.153(c); 14 DE Admin. Code § 923.53.2.4. In this case, the Department received the complaint on December 2, 2019. Therefore, the Department's findings address violations from December 2, 2018 to the current.

COMPLAINT ALLEGATIONS

The complaint alleges the District failed to provide a free, appropriate public education (FAPE) to Student in violation of Part B of the IDEA and implementing regulations. Parent alleges specifically:

1. The District failed to collect and provide accurate data to support the progress of the annual IEP goals.
2. The District failed to provide appropriate transition goals.
3. The District failed to implement and finalize the IEP.

FINDINGS OF FACT

1. Student is REDACTED (REDACTED) years of age and enrolled in the REDACTED (REDACTED) grade at REDACTED (School). Student is identified as a student with a disability under the classification of Mild Intellectual Disability as defined in 14 DE Admin. Code § 925.6.12. Student receives special education and related services at the School pursuant to the IDEA and 14 Del. C. § 3101 et seq.
2. Student is diagnosed with a unilateral conductive moderate rising to mild, sloping to a severe, hearing loss in the left ear.
3. Student is undergoing treatment for a medical condition that results in absences from School.

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4. Student's current Individualized Education Program (IEP) was developed at an IEP Team meeting held on December 17, 2018. Student's IEP is dated December 17, 2018 to December 16, 2019.
5. Pursuant to the IEP, Student's educational needs are in the areas of inferential questioning, reading comprehension, written expression, functional math problem solving, math calculation, auditory access to information, and self-advocacy skills for hearing loss. Student receives speech and language therapy for written expression and pragmatics. Student also receives physical therapy for gross motor skills.
6. Student's communication and language needs resulting from Student's hearing loss are met through accommodations in the school environment and the support of, and consultation with, a teacher of the deaf and hard of hearing.
7. Student's transition goals upon exiting school include attending a two-year college and working at a preschool.
8. Student receives small group English and math instruction based on the Dynamic Learning Map (DLM) standards. The remainder of the day, Student receives instruction in an inclusion classroom with modifications and supports. Student participates in the REDACTED Pathway.
9. Student receives these services in a B setting. This means Student participates in a regular setting greater than forty (40%) of the day.
10. On October 31, 2018, the District sent written notice of the December 17, 2018 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22.
11. The purpose of the IEP Team meeting was to conduct an annual review of the Student's IEP and develop the Student's new IEP.

12. In the compliant, Parent alleges Student's classwork and/or homework were not reflective of the November 13, 2018 progress report.
13. Specifically, Parent was concerned with the goals that were marked mastered. These included functional math calculation, math word problems, reading comprehension and written expression goals.
14. In addition, Parent was questioning the effort put forth into the writing of the transition progress report.
15. The Student's assigned Educational Diagnostician (ED), English, and math teacher at the time of the December 17, 2018 IEP, meeting were no longer employed either by the District or in the aforementioned positions. Therefore, they were not able to be interviewed or provide data regarding this complaint.
16. In addition, the collection of data for the November 13, 2018 progress report falls outside the timeframe of this complaint.
17. On December 11, 2018, in preparation for the December 17, 2018 IEP Team meeting, Parent sent an E-mail to the ED with suggested goals to be included in Student's IEP.
18. On December 12, 2018, the District followed-up with an E-mail to Parent, along with a draft of the December 17, 2018 IEP that incorporated the Parent's IEP suggestions.
19. On December 17, 2018, Student's IEP Team meeting was held, and included all members required by 34 C.F.R. § 300.306 and 14 DE Admin. Code § 925.6.0. Parent was in attendance.
20. Parent consented, in writing, to excuse the Assistant Principal, special education math teacher, nurse, and Division of Vocational Rehabilitation (DVR) counselor from attending Student's IEP Team meeting in compliance with 34 C.F.R. § 300.321(e)(2) and 14 DE Admin. Code § 925.21.5.1.
21. The December 17, 2018 prior written notice, (PWN), states, in relevant part;
 1. Proposed supports and services in the areas of reading comprehension, written expression, gross motor, auditory access to instruction, self-advocacy, and adult support services throughout the school day;
 2. To reconvene the IEP Team meeting for the addition of speech and language pragmatic and written expression goals, math support and services, and to present additional English and math goals; and,
 3. To extend Student's IEP until follow-up meeting is scheduled.

22. As a follow-up the December 17, 2018 IEP Team meeting, the Principal sent an E-mail to a special education math teacher to assess Student and collect data for creating present levels of performance (PLEP) for the math goals.
23. On December 17, 2018, the District sent written notice of a December 21, 2018 IEP Team meeting to conduct an annual review and revise the Student's IEP and transition plan. Parent signed a waiver of the right to receive ten (10) school days written notice of the meeting under 34 C.F.R. § 300.322 and 14 DE Admin. code § 925.22.
24. In preparation for the December 21, 2018 IEP Team meeting, the math teacher consulted with staff, and observed and assessed the Student. Based on the data collected, the teacher wrote two math goals.
25. On December 21, 2018, the IEP Team meeting was held as a continuation from the December 17, 2018 IEP Team meeting.
26. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1. Parent consented, in writing, to excuse the Assistant Principal from attending Student's IEP Team meeting in compliance with 34 C.F.R. § 300.321(e)(2) and 14 DE Admin. Code § 925.21.5.1.
27. The IEP Team agreed to keep the functional math problem solving goal that aligned with the DLM standards. Parent did not accept the goal for math calculation based on the recent assessments. Parent requested a continuation of the previous IEP math calculation goal. The IEP Team agreed to write a new math calculation goal.
28. As a result, the IEP Team determined that additional PLEP data was required for the new math calculation goal. This data would be collected when school resumed in January 2019.
29. Parent also expressed concern that the written expression goal for speech therapy should occur in all classroom settings, as well as in the structured speech therapy session.
30. The December 21, 2018 PWN, states, in relevant part;
 1. Additional speech and math calculation goals will be added to the IEP;
 2. Portions of the IEP will be revised to provide detailed clarification;
 3. Additional data will be collected to use in writing a PLEP for the math calculation goal; and,
 4. The IEP will be sent home for review and signatures.

31. As a result of the IEP Team's decision to collect additional math calculation data, the School assigned a math teacher to assess the Student. Due to the Student's absences, the work was sent home and returned to School on January 30, 2019. This data would be utilized to write a PLEP for a new math calculation goal.
32. It was also during this time that homebound instruction was made available and began in February 2019.
33. At the conclusion of both the December 17 and 21, 2018 IEP Team meetings, the IEP had still not been finalized. Therefore, another IEP Team meeting was to be scheduled to continue the discussions from the December 17 and 22, 2018 IEP Team meetings.
34. As of February 26, 2019, Parent had not been notified of the rescheduled IEP Team meeting, so Parent sent an E-mail to Assistant Principal requesting the School schedule an IEP Team meeting. Assistant Principal responded that teachers were collecting data in preparation for writing the new goals and included the IEP draft goals in the E-mail.
35. At the parent conferences on March 6, 2019, Parent again requested that the School schedule an IEP Team meeting. According to the Parent, the request was made to the newly hired ED who was unaware that an IEP Team meeting needed to be scheduled.
36. Also on this date, Student's January 24, 2019 progress report was sent home to Parent.
37. On March 18, 2019, the District sent written notice of a March 22, 2019 IEP Team meeting and an E-mail notifying Parent of the IEP Team meeting date. The Parent was also sent a draft copy of the IEP. Parent signed a waiver of the right to receive ten (10) school days written notice of the meeting under 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22.
38. On March 22, 2019, the IEP Team reconvened to review additional educational data and Student performance and revise the IEP. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1. Parent attended and participated in the meeting.
39. As per the March 22, 2019 PWN, the IEP Team proposed:
 1. The addition of data to support the PLEP for Student's math calculation goal;
 2. Revisions to Student's reading comprehension, written expression, math calculation, and functional math problem solving goals;
 3. The addition of a statement to ensure IEP progress data will be collected across "all settings by various staff members";
 4. The addition of a statement to ensure the data for the speech written expression goal will be collected "across the curriculum";

5. That the IEP goal data will be collected weekly;
6. That progress report interims will be sent home in the middle of the marking period and quarterly progress reports will be sent home every marking period; and
7. Intermittent home instruction will be provided when Student is absent for more than one (1) week.

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40. On September 9, 2019, the District sent written notice of the October 15, 2019 IEP Team meeting to Parent in compliance with 34 C.F.R. § 300.322 and 14 DE Admin. Code § 925.22.
41. On October 15, 2019, an IEP Team convened to review Student's IEP progress and conduct transition planning. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1. Parent attended and participated in the meeting.
42. Parent requested to meet the teachers in person to discuss Student's progress in preparation for the annual review of Student's IEP which had an end date of December 6, 2019 IEP.
43. As reported to the investigator, the District did not complete a prior written notice since no revisions were made to the IEP.
44. On October 28, 2019, the School sent timely written notice of the December 6, 2019 IEP Team meeting to Parent. The purpose of the meeting was to conduct an annual review of the IEP, conduct transition planning for the Student, and develop the new IEP.
45. In conducting the annual review of the IEP, the IEP Team would review the November 8, 2019 progress report.
46. The progress report indicated that the Student's goals for written expression, math calculation, math problem solving, and self-advocacy skills for hearing loss were mastered. In addition, the speech goal for written expression was mastered.
47. The progress report also indicated that the goals for reading comprehension, written expression, and math calculation goals were not mastered. In addition, the speech goal for pragmatics and the physical therapy goal for gross motor were not mastered.
48. The progress report for the transition goals of independent living, employment and training indicated they are in progress of being completed. Work samples supported developing the skills for these areas.
49. The ED reported that the District has a process for the completion of progress reports. Special education teachers are given a deadline to enter progress based on their data collection. The ED checks to make sure the progress is entered into ESchoolPLUS. The

ED does not check the supporting data for the progress. This procedure has been implemented in the District for several years.

50. The School reported that the first marking period ended on November 2, 2019. The Student's first marking period progress report date was November 8, 2019. Progress reports were sent out to all parents on November 20, 2019.
51. On November 22, 2019, Parent E-mailed ED requesting Student's November 8, 2019 progress report and corresponding documentation.
52. On November 25, 2019, the ED responded by E-mailing, and sending home copies, of the requested progress report. The E-mail mentioned that data submitted by Student's teachers would be sent home the following day.
53. The ED indicated to the investigator that data was collected from teachers and sent home. Data included a summary of the English/Language Arts and math first (1st) marking period assignments, dates, and accuracy. Parent was also provided with the worksheets to support the accuracy scores.
54. On December 4, 2019, in preparation for the annual review of the Student's IEP, ED E-mailed a draft of the December 6, 2019 IEP to the Parent.
55. On December 5, 2019, Parent sent an E-mail to the School expressing concerns about the draft for the December 6, 2019 IEP and the November 8, 2019 progress report. Parent questioned the wording in the IEP goals and offered alternate suggestions.
56. The IEP Team meeting was held on December 6, 2019. The IEP Team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin. Code § 925.21.1.
57. The IEP Team reviewed the November 8, 2019 progress report and addressed Parent's concerns and questions regarding the data collection. The ED stated Parent was satisfied with the answers.
58. Parent expressed several concerns regarding the IEP goals:
 1. Parent was concerned that the reading comprehension goal was not a continuation of the previous goal. The IEP Team responded by removing the goal and continued the reading comprehension goal that Student had not mastered. Parent was satisfied as reported by ED.
 2. Parent expressed concern that goals were not being addressed across all subjects. Staff provided data to support that goals were addressed across all subjects and ED stated Parent was satisfied.
 3. Parent expressed concern that the speech therapy goals were only being addressed during the therapy sessions. The IEP was revised for the pragmatic and syntax

speech goals to include a pre-made “Conversation Observed in the Classroom” data sheet that would record Student progress in all classes.

4. Parent was concerned with staff accountability and wanted the IEP Team to ensure that data was collected over the course of time. The IEP was revised to include a statement that data would be collected throughout the marking period to support the progress report updates.
 5. Parent was concerned that the transition goals do not get addressed at school and are not relevant for the Student.
59. The IEP Team used information from the Student’s October 30, 2019 Transition to Work Inventory, as well as the December 3, 2019 updated District Secondary Transition Survey and October 30, 2019 Transition to Work Inventory, to complete the transition goals on the IEP.
60. As a result of the Parent’s concerns, the IEP Team developed new or revised goals for written expression, math, and reading comprehension.
61. The School informed the Parent that the IEP Team revisions would be completed and the IEP would be sent home for Parent signature.
62. The December 13, 2019 prior written notice, states in relevant part:
1. The IEP Team agreed to revise the IEP and provide revisions to Parent by December 13, 2019;
 2. The IEP Team will reconvene in Spring 2020 to determine Student’s participation in the District’s REDACTED Program; and,
 3. Parents will become Student’s educational representatives.
63. Over the next several days, School staff revised the IEP as per the December 6, 2019 IEP Team discussions. On December 13, 2019, the ED E-mailed the revised IEP to the Parent.
64. On December 19, 2019, Parent sent E-mail to ED stating that Parent was not in agreement with the December 6, 2019 IEP. Parent requested the following changes:
1. More specificity written into goals to include data points, frequency of data collection, person collecting data, when and/or where data will be collected, and sample graphic organizers;
 2. IEP Team discussion on Student’s use of prompts versus independently completing classwork;

3. IEP Team discussion on pragmatics goals with the focus on Student conversing in various settings; and,
 4. Use of data collection as it relates to Student's instruction.
65. Parent requested an IEP Team meeting to address these concerns. The District scheduled an IEP Team meeting for January 14, 2020. The School sent timely written notice of the meeting to Parent on January 2, 2020.
- 66.

CONCLUSIONS

A. Failure to provide FAPE in Developing the Student's IEP

The IDEA and implementing state and federal regulations require school districts to provide a free appropriate public education, (FAPE) to students with disabilities. *See*, 20 U.S.C. § 1401(9); 34 C.F.R. § 300.101(a); 14 DE Admin. Code § 923.1.2. FAPE is special education that is specially designed instruction, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions, and related services, as defined by the Department rules and regulations approved by the State Board of Education, and as may be required to assist a child with a disability to benefit from an education that:

- a) Is provided at public expense, under public supervision and direction and without charge in the public school system;
- b) Meets the standards of the Delaware Department of Education;
- c) Includes elementary, secondary or vocational education in the State;
- d) Is individualized to meet the unique needs of the child with a disability;
- e) Provides significant learning to the child with a disability; and
- f) Confers meaningful benefit on the child with a disability that is gauged to the child with a disability's potential.

See, 14 DE Admin. Code § 3101(5)

The IDEA requires in developing a child's IEP, that IEP Teams:

- a) Review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- b) Revise the IEP, as appropriate, to address –
 - a. Any lack of expected progress toward the annual goals described and in the general education curriculum, if appropriate;
 - b. The results of any reevaluation conducted;
 - c. Information about the child provided to, or by, the parents;
 - d. The child's anticipated needs; or
 - e. Other matters.

See, 34 C.F.R. § 300.324(b); 14 DE Admin. Code § 925.24.7

The Parent alleges that the District failed to collect and provide accurate data to support the progress of the annual IEP goals. In this case, the District scheduled annual reviews of the

Student's IEPs in a timely manner for both the December 17, 2018 and December 6, 2019 IEP Team meetings. The District had a procedure in place to gather data to support progress and a means in which to record that data into ESchoolPLUS to meet a School imposed deadline. The District offered organization tools for teachers to collect and collate progress data and checks were in place to ascertain that data was entered. During the investigation, the Student's current teachers were able to provide evidence of the data and work samples used for the annual review of the December 6, 2019 IEP.

The Parent alleges the data for the November 13, 2018 progress report was misrepresented. This allegation falls outside the timeframe of this complaint. In addition, due to staff turnover and reassignments, this progress data was not available for review. The Parent's allegations that the math goal was mastered in November 13, 2018, and then it was not mastered when it was reassessed in January 2019, do question the validity of the original assessment data. At this time, due to the factors mentioned above, there is a lack of evidence to come to any conclusions. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulations regarding the failure to develop the Student's IEP.**

State and federal regulations require that a description of how the child's progress toward meeting the annual goals ... will be measured; and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. *See*, 34 C.F.R. § 300.320(a)(3)(ii); 14 DE Admin. Code § 925.20.1.3 The Parent alleges the District failed to send out quarterly progress reports. This was evidenced with the January 24, 2019 progress report being sent on March 6, 2019. **For these reasons, I find a violation of reporting IEP progress to Parent.**

B. Failure to Provide Appropriate Transition Goals

State and federal regulations implementing the IDEA require that, beginning with the earlier of the first IEP to be in effect when the child turns fourteen (14) or enters the eighth (8th) grade, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include:

- a) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- b) The transition services and activities (including courses of study) needed to assist the child in reaching those goals.

See, 34 C.F.R. § 300.320(b); 14 DE Admin. Code § 925.20.2

Parent alleges that the transition goals for the December 17, 2018 and December 6, 2019 IEP are not specific to the needs of the Student and do not get addressed by the School.

A review of the December 17, 2018 IEP documents indicate a District Secondary Transition Survey was completed on November 19, 2019, along with a Student interview. This data was used to create the IEP.

A review of the December 6, 2019 IEP documents indicate the Student completed a Transition-to-Work Inventory on October 30, 2019 indicating her interest profile and a Financial Literacy Inventory on December 3, 2019 to determine Student's knowledge of basic money management. An updated District Secondary Transition Survey was completed on December 3, 2019. Information from these documents were used in preparation for the December 6, 2019 IEP

A comparison of transition goals from December 17, 2018 and December 6, 2019 indicate that the goals are different and have been changed to reflect the Student's progression to exit the twelfth (12th) grade. This evidence supports the District's efforts to address the changing transition needs of the Student. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulations regarding failure to provide appropriate transition goals.**

C. Failure to Implement the IEP by Scheduling a Timely Meeting

State and federal regulations implementing the IDEA require, "each public agency shall ensure that...the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revised the IEP, as appropriate..." See, 34 C.F.R. § 300.320(b); 14 DE Admin. Code § 925.24.7(6)(b). In this case, the IEP Team determined a follow-up meeting needed to be scheduled for the December 17, 2018 IEP Team meeting. Having not been notified of a date, Parent requested the IEP Team meeting on February 26 and again on March 6, 2019. The IEP Team meeting was eventually scheduled for March 22, 2019. The evidence demonstrates that the District failed to follow through with the IEP Team's decision to schedule a follow up meeting, as well as to respond to the Parent's requests to schedule said meeting in a timely manner. It is not clear what special education services were provided between December 17, 2018 and March 22, 2019. **For these reasons, I find a violation of the IDEA and corresponding state and federal regulations regarding the provision of FAPE and scheduling a timely meeting.**

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the Department directs the District to take the following corrective actions:

School Level Corrective Actions

1. On or before **April 1, 2020**, the School shall review District policies, procedures and practices and revise as necessary to ensure IEP progress is reported to parents as stated in the IEP. As necessary, the District shall develop written procedures to ensure that:
 - a. Parents receive IEP progress reports on a timeline as stated in the IEP.
 - b. Evidence of such review shall be provided to the Director of Exceptional Children Resources on or before **April 1, 2020**.

2. The REDACTED Pathway teachers must engage in Standards-Based IEP training. Staff can register in PDMS to access the learning modules. The District shall submit course completion documentation to the Director of Exceptional Children Resources on or before **April 30, 2020**. Staff must also engage in a data collection book study or professional learning community to improve data collection knowledge and skills. Materials used and sign in sheets shall be submitted to the Director of Exceptional Children Resources on or before **April 30, 2020**.
3. On or before **April 1, 2020**, the School shall review District policies, procedures and practices and revise as necessary to ensure timely scheduling and parent notification of IEP Team meetings. As necessary, the District shall develop written procedures to ensure that:
 - a. Parents' requests for IEP Team meetings are responded to, and scheduled, in a timely manner.
 - b. Evidence of such review shall be provided to the Director of Exceptional Children Resources on or before **April 1, 2020**.

Student Level Corrective Actions

1. **On or before February 28, 2020**, the District shall develop a written plan of compensatory education services to be provided to Student for the time period between December 17, 2018 through March 22, 2019. The District shall submit a written explanation of how the amount of compensatory services were calculated. The District shall also submit a specific plan for delivering the compensatory services to Student, including a timeline for service delivery and how the services will be provided. The written plan shall be provided to the Department's Director of the Exceptional Children Resources Work Group.
2. Since there is ongoing disagreement between the Parent and District regarding the development of PLEPs and goals, the District must reach out to the University of Delaware's Office of Conflict Resolution to begin the process of scheduling a facilitated IEP Team meeting. This meeting must be scheduled on or before **February 28, 2020**. Evidence that this meeting was held shall be provided to the Department's Director of the Exceptional Children Resources Work Group **on or before March 6, 2020**. Evidence shall include, but is not limited to, copies of the notice of meeting, prior written notice, and finalized IEP.

By: /s/
Assigned Investigator