

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

**FINAL REPORT
ADMINISTRATIVE COMPLAINT RESOLUTION**

DE SC 20-02 and 20-03

(November 25, 2019)

On October 1 and October 3, 2019, Guardian filed complaints with the Delaware Department of Education (DDOE). The complaints allege the School District (the District) violated state and federal regulations by failing to implement Student's individualized education plan (IEP) in culinary arts class. The complaints have 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 and interviews with Guardian and school staff.

COMPLAINT ALLEGATIONS

The complaints allege the District failed to provide Student with the special education supports, services, and modifications in culinary arts class as required by Student's IEP. The complaints allege the District failed to implement Student's IEP in culinary arts class specifically on September 30 and October 2, 2019 to address Student's learning disability.

FINDINGS OF FACT

1. Student is X years of age and attends the Xth grade at School within the District.
2. Student attended X through the Xth grade in the District. Student was then home schooled by Guardian for the Xth and Xth grade school years.
3. The first day of school for the 2019 – 2020 school year was August 26, 2019.
4. On or about September 10, 2019, Guardian registered Student at School for the Xth grade.
5. However, the school had no recent evaluation data for Student to reflect current academic levels or areas of educational need because Student had been home schooled the prior two (2) years. With Guardian's consent, the school completed an expedited special education evaluation. Student did not begin school while the evaluation was being completed.
6. On September 26, 2019, the District convened an IEP team meeting to review the evaluation and determine Student's continued eligibility for special education and related services. The IEP team also convened to develop, review, and revise Student's IEP.

7. The school sent timely written notice of the meeting to Guardian in compliance with 34 C.F.R. § 300.322 and 14 DE Admin Code § 925.22.
8. The IEP team included the members required by 34 C.F.R. § 300.321 and 14 DE Admin Code § 925.21.1. Guardian attended and participated in the meeting.
9. Based on the review of evaluation data, the IEP team determined Student is eligible for special education and related services as a child with a learning disability in the areas of basic reading skills, reading comprehension, mathematics calculation and problem solving, and written expression.
10. Student's IEP was revised at the September 26, 2019 meeting to reflect Student's current educational needs.
11. Pursuant to the IEP, Student requires interventions, supports, and strategies to assist Student in accessing and/or using grade level textbooks and other core materials in standard print formats due to Student's learning disability. Student also requires evidence based reading interventions, supports, and strategies to address Student's limited reading proficiency.
12. Student requires the following supports and accommodations to address Student's reading comprehension needs: small group instruction with increased adult support, text read aloud above Student's reading level, repetition and opportunity to practice and generalize skills, redirection, use of verbal or nonverbal prompts, directions simplified and/or rephrased as needed.
13. Student requires the following supports and accommodations to address Student's decoding needs: reading instruction for phonemic awareness, word recognition, spelling, vocabulary, grammar and usage, listening and reading comprehension, small group for instruction and testing, questions and directions read aloud, and extra time.
14. The IEP team determined Student requires a modified curriculum with a staff to student ratio of 1:3 to 1:8 for core subjects (English, math, science, and social studies), and adult support in elective classes. The IEP team determined Student's educational needs could be met in the general education classroom greater or equal to forty (40%) of the day and no more than seventy nine (79%) of the day.
15. The IEP team also found Student eligible for reading based extended school year services, but Guardian declined.
16. Guardian signed the IEP in agreement with the proposed program and placement.
17. The District provided Guardian with timely prior written notice proposing the IEP in compliance with 34 C.F.R. § 300.503 and 14 DE Admin Code § 926.3.0.

18. At the September 26, 2019 IEP team meeting, Guardian informed the IEP team Student would begin the first day of school on Monday, September 30, 2019. The special education coordinator confirmed that Student's class schedule would be completed on September 30th and the instructional staff would be expecting Student to start on Monday.
19. On Friday morning, September 27, 2019, Guardian called the special education coordinator advising that Student wanted to attend school that day. The special education coordinator reminded Guardian Student's class schedule was not yet finalized, but Student could "shadow" another peer from the same setting as Student for the day.
20. On September 27, 2019, Student attended all core academic and elective classes with the peer.
21. On Monday, September 30, 2019, the special education coordinator finalized Student's class schedule.
22. Teachers are provided a class roster electronically through eSchool , at the start of the school year and throughout the year as the roster is revised. Students with disabilities on the class roster have a yellow triangle next to their names to highlight the student has an IEP. The IEPs are available online through IEPPlus and the eSchool system links to IEPPlus. The teachers can view the IEPs through IEPPlus for each student with a disability.
23. The District requires all general education teachers to read their class rosters and the IEPs for each student with a disability. General education teachers are responsible for ensuring the services, supports, and accommodations in each IEP are provided in their classrooms, including elective courses.
24. Student's IEP was developed and available for viewing by instructional staff in IEPPlus on September 26, 2019.
25. Student's name was added to the culinary arts roster through eSchool some time during the day on September 30, 2019. When Student arrived in class that day, the teacher was not yet familiar with the content of Student's IEP and had no knowledge of the specific supports Student required.
26. The culinary arts teacher welcomed Student into the classroom and gave Student a twelve (12) page culinary notebook to read which described the course, classroom rules, and culinary guidelines. The teacher also told Student to read chapter five (5) in the textbook to prepare for an upcoming test. In addition, the students were taking a test on culinary equipment during the class period, and the teacher gave Student the same test to assess Student's content knowledge in the area of culinary arts. Student was not able to complete or understand any portion of the test, and it was not graded.

27. Student was pretending to read in class so the peers would not recognize Student's reading deficits.
28. The reading material in the culinary notebook, the equipment test, and chapter five (5) of the textbook were all above Student's reading level and Student could not read or understand the materials. Pursuant to the IEP, any reading material above a second (2nd) to third (3rd) grade level needs to be read to Student or given to Student in an accessible format.
29. On October 1, 2019, Guardian filed a complaint (SC 20-02) with the DDOE alleging the District violated the IDEA by failing to provide Student with the necessary supports, services, and accommodations to address Student's educational needs in culinary arts class on September 30, 2019.
30. The special education coordinator sent an E-mail to the culinary arts teacher and the other elective course teachers on October 1, 2019 informing them Student was added to their class rosters. In the E-mail, the special education coordinator emphasized Student's significant reading deficits noting any material above a second (2nd) or third (3rd) grade level needed to be read to Student by an adult or given to Student in an accessible format. The special education coordinator included a link to the IEP, and noted Student also requires accommodations in writing.
31. The culinary arts teacher received the E-mail on October 1, 2019, and began taking steps to ensure Student received the required supports and services in the classroom.
32. Meanwhile, Student attended culinary arts class with a substitute teacher the next day on October 2, 2019. In the teacher's absence, all students were given a classroom activity called "restaurant bingo" with logo pictures of common restaurant chains.
33. Student could not read or understand the assignment given by the substitute and Student thought it was a test.
34. On October 3, 2019, Guardian filed a complaint (SC 20-03) with the DDOE alleging the District violated the IDEA by failing to provide Student with the necessary supports, services, and accommodations in the IEP in culinary arts class on October 2, 2019.
35. The culinary arts teacher reported Student was not graded on the "restaurant bingo" activity, it was not a test, and there was little to no reading involved.
36. Between September 30 and October 30, 2019, Student had been absent for an estimated six (6) days, and attended culinary arts class for a limited number of days due to the absences and the rotating schedule of elective classes within the school.
37. The culinary arts teacher has a copy of Student's IEP and is currently providing the services, supports, and modifications to Student in the classroom.

38. In culinary arts class, Student is seated close to the front of the classroom and has instructional support from the paraprofessional. Tests, quizzes, and assignments are read to Student by the paraprofessional, as needed. Student is also grouped with three (3) other students from the same setting as Student for group work and activities. Student was given a chrome book for use of the “Snap and Read” program for reading both accessible and inaccessible text aloud to Student and assisting Student with vocabulary.
39. Student receives extra time on assignments in culinary arts class, as well as repetition in practicing skills, redirection as needed with verbal and nonverbal prompting, and directions simplified and rephrased as needed.
40. Student has other elective classes, including physical education, art design, and farm. During interviews, each teacher confirmed having a copy of Student’s IEP and described in detail how the services, supports, and modifications are provided to Student in their classrooms as outlined in the IEP. Student’s IEP is being implemented in the elective courses.

CONCLUSIONS

A. The District Is Providing Student with the Supports, Services, and Modifications in the Elective Classes as Required by Student’s IEP.

The IDEA and corresponding Delaware law requires schools 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 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 DDOE 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 Department;
- (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 Del. C. § 3101(5). FAPE is provided to students with disabilities through the implementation of the IEP.

In this case, I find the District is providing the supports, services, accommodations, and modifications to Student as outlined in the September 26, 2019 IEP. The teachers have a copy of Student’s IEP and described how the IEP is being implemented in the elective classes. During interviews, the teachers demonstrated knowledge of Student’s learning disability and the

services, supports, and modifications Student requires. Therefore, I find Student is receiving the services outlined in the IEP and there is no denial of FAPE to Student.

However, while the District was finalizing Student's class schedule on September 30, 2019, Student attended culinary arts class for a full class period when the teacher was not yet familiar with Student's IEP and reading deficits. Mistakenly, Student was given reading material that was above Student's reading level and Student could not read or understand any of it. While Student was not graded, Student was pretending to read in class so the peers would not recognize Student's reading deficits. The non-implementation of Student's IEP on this occasion amounts to a *de minimus* procedural violation of the IDEA. Corrective action is warranted to ensure instructional staff for elective courses are promptly informed of the special education needs of students with disabilities when they enter the classroom setting, or prior thereto, especially as it relates to the need for modification to the curriculum and the need for interventions, supports, and strategies for students to access and/or use grade level textbooks and other core materials in standard print formats.

CORRECTIVE ACTION

1. On or before January 30, 2020, the District shall provide professional development to staff at the School, to include school administrators, special education coordinators, and instructional staff for elective courses, to ensure:
 - (a) instructional staff for elective courses are promptly informed of the special education needs of students with disabilities when the students enter the classroom setting, or prior thereto, especially as it relates to the need for modification to the curriculum and the need for interventions, supports, and strategies for students to access and/or use grade level textbooks and other core materials in standard print formats; and
 - (b) students with disabilities are provided the supports and services outlined in their IEPs on their first day of attendance in the elective courses.
2. Copies of professional development material (e.g. PowerPoint presentation, handouts etc.), agendas, and attendance rosters shall be provided to the Director of Exceptional Children Resources for the DDOE on or before February 3, 2020.

By: /s/
Assigned Investigator