

**DELAWARE DEPARTMENT OF EDUCATION  
EXCEPTIONAL CHILDREN RESOURCES**

**STATE COMPLAINT DECISION**

**DE SC #21-04**

**DATE ISSUED: May 28, 2021**

On March 29, 2021, the Delaware Department of Education (DDOE or Department) received a complaint filed by REDACTED on behalf of Student as authorized by Student’s parents (Parents), against REDACTED (District), the Delaware Department of Education, REDACTED STATE AGENCY (REDACTED) and the REDACTED PRIVATE AGENCY (REDACTED) (collectively, “Respondents”). The Complaint alleges the District and Respondents violated state and federal regulations concerning providing a free appropriate public education (FAPE) to Student under the Individuals with Disabilities Act (IDEA). The Complaint has been investigated as required by federal regulations at 34 C.F.R. §§ 300.151 to 300.153 and according to Department regulations at 14 DE Admin. Code §§ 923.51.0 to 53.0.

The investigation included review and examination of the records provided by the District, REDACTED STATE AGENCY, DDOE, and REDACTED PRIVATE AGENCY, related to the complaint issues. The Investigator interviewed District staff, Student’s parents, REDACTED legal clerks, LearnWell Services (LearnWell), and REDACTED PRIVATE AGENCY. The decision includes findings of fact that are relevant and material to address the complaint issues.

**COMPLAINT ALLEGATIONS**

The Complaint alleges:

1. Respondents failed to comply with IDEA, Title 14 Chapter 31 of the Delaware Code, and implementation of Federal and State regulations with respect to procedural requirements and the provision of FAPE to Student as a student with a disability under IDEA. The Complaint further alleges District, REDACTED STATE AGENCY, and REDACTED PRIVATE AGENCY denied Student FAPE by failing to provide Student with any educational services from March 30, 2020 to May 11, 2020. Finally,
  - a. The Complaint alleges DDOE denied the Student FAPE by failing in its monitoring and enforcement duties.
  - b. District denied Student FAPE by failing to provide Student with any educational services from March 30, 2020 to May 11, 2020.
  - c. REDACTED STATE AGENCY failed to comply with an Interagency Agreement between itself and the Exceptional Children and Early Childhood Education Group, DDOE, LEAs, and Charter Schools serving students with disabilities.
  - d. REDACTED PRIVATE AGENCY denied Student FAPE by failing to provide Student with any educational services from March 30, 2020 to May 11, 2020.

## FINDINGS OF FACT

### **District**

#### **A. Background Information**

1. Student is a REDACTED year old, REDACTED grade student receiving special education services as a student with an Emotional Disturbance.
2. Student has diagnoses which include conduct disorder and unspecified mood disorder.
3. During the 2019-2020 school year, Student attended a comprehensive technical high school that offers specialized training in technical programs and college-bound instruction with an academic course pathway across programs.
4. On or about the week of March 8, 2020, the Student was reported to make comments on the bus reflecting suicidal intentions. This was reported to the school. The District reported the incident to the Parents. The District recommended the Parents seek immediate medical support at the local emergency room.
5. On March 10, 2020<sup>1</sup>, at the REDACTED emergency room personnel and Parents' recommendation, Student was admitted to REDACTED PRIVATE PSYCHIATRIC FACILITY for mental health services. REDACTED PRIVATE PSYCHIATRIC FACILITY is a private psychiatric facility. Parents sought treatment for Student's behavior, which included suicidal ideations and the use of electronic devices over social media to further those ideations.
6. On March 10, 2020, Parents informed the District of Student's admission to REDACTED PRIVATE PSYCHIATRIC FACILITY.
7. LearnWell Services is an education service contracted by school districts in Delaware to provide educational instruction to students admitted to private psychiatric settings in Delaware. The District contracts with LearnWell Services to provide educational instruction to District students hospitalized in REDACTED PRIVATE PSYCHIATRIC FACILITY AND REDACTED PRIVATE AGENCY
8. On March 12, 2020, via email, the District received a request from LearnWell to provide LearnWell with 1-2 weeks' worth of assignments for Student to complete while a patient at REDACTED PRIVATE FACILITY. LearnWell informed the District that the Student would not have access to technology while in the program. All schoolwork must be in a format that can be completed without the use of technology and sent in WORD or PDF format.

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<sup>1</sup> Complaint cites March 11, 2020 as the date Student is admitted to PRIVATE PSYCHIATRIC FACILITY. Parents noted during interview that the Student was admitted on March 10, 2020.

9. On March 12 and 13, 2020, District sent LearnWell, through a facsimile, 35 pages of academic work for Student to complete during Student's stay at REDACTED PRIVATE PSYCHIATRIC FACILITY.
10. A LearnWell receipt, dated March 13, 2020, reflects that LearnWell billed the District for 2.66 hours of hospital tutoring instruction related to the Student. LearnWell completed instruction on March 13.
11. On March 13, 2020, Delaware Governor John Carney declared a state of emergency due to the COVID 19 pandemic. By report from LearnWell, REDACTED PRIVATE PSYCHIATRIC FACILITY closed access to all non-essential personnel and barred educational service staff from entering the facility. All educational services were discontinued.
12. Due to the Governor's state of emergency order (and as amended, the "Order"), REDACTED PRIVATE PSYCHIATRIC FACILITY closed its educational services center and did not permit LearnWell Services staff to assist students at the facility with educational instruction.
13. Due to the Governor's Order, the District closed the school buildings, and teachers had no access to the building to retrieve curriculum materials.
14. On March 20, 2020, REDACTED PRIVATE PSYCHIATRIC FACILITY recommended that Student receive care through REDACTED PRIVATE AGENCY adolescent outpatient/day treatment center. Student was discharged from REDACTED PRIVATE PSYCHIATRIC FACILITY to REDACTED PRIVATE AGENCY outpatient/day treatment on March 20.
15. On March 20, Student returned home and began attending REDACTED PRIVATE AGENCY outpatient/day treatment daily for behavioral treatment. Due to the Order and the COVID 19 pandemic, REDACTED PRIVATE AGENCY paused its educational services offered through LearnWell Services. LearnWell educational staff were not permitted to assist students at the facility with educational instruction.
16. On March 22, 2020, the Governor of Delaware amended the state of emergency, closing all non-essential businesses and ordering Delawareans to stay at home whenever possible. The Order went into effect at 8:00 a.m. on Tuesday, March 24 and was set to expire May 15, 2020. "Essential businesses" included public and charter schools, which were ordered to remain closed "except to support distance learning."
17. On March 23, 2020, the District's school psychologist had a conversation with Parents about the Students' status at REDACTED PRIVATE AGENCY. The school psychologist reported Parents were concerned about services and placement for Student. The school psychologist indicated to the Parent that due to Student's change in placement, an IEP meeting would need to be conducted.

18. Parents reported to the Investigator that Student often refused to attend outpatient/day treatment between March 20 and March 27, 2020. Parents reported that Student only attended two days of day treatment during the one week of day treatment services. Parents reported that Student's behavior became more challenging at home during Student's time at day treatment.
19. Parents reported to the Investigator that the Student's behavior at home became extremely difficult for them to control during outpatient/day treatment. Student used electronic devices that further instigated behavioral challenges, and there was a need to discontinue Student's use of all electronic devices to prevent access to any social media platforms.
20. According to Parents, REDACTED PRIVATE AGENCY informed Parents that due to the COVID 19 pandemic and the Governor's executive order, no physical materials such as schoolwork or electronic devices could be brought into the day treatment facility.
21. On March 30, 2020, the Parents met with the REDACTED PRIVATE AGENCY treatment team and made a decision to admit the Student to REDACTED PRIVATE AGENCY full time in its adolescent unit for psychiatric treatment.
22. On March 30, Student was admitted to REDACTED PRIVATE AGENCY'S full time residential unit. At the time of admittance to REDACTED PRIVATE AGENCY, no discharge date had been identified.
23. On April 1, 2020, Parents sent an email to the District's school psychologist and assistant principal indicating that Student was admitted to REDACTED PRIVATE AGENCY residential treatment facility.
24. According to Parents, REDACTED PRIVATE AGENCY informed them that the Student could not bring any outside materials, including clothing, schoolwork, or electronic devices, including Chromebook, with Student when being admitted full time to REDACTED PRIVATE AGENCY
25. On April 1, the District began providing remote instruction to all District students. According to the District team, the focus of the remote instruction was review of prior materials.
26. The District reported that the work sent on March 12 and 13, 2020 would have been sufficient for the Student to complete as a part of what was being reviewed at the time remote learning was initiated. The District reported that remote learning focusing on review of previous material continued through May 3, 2020.
27. On April 1, the District school counselor reached out to the Parents via email to inquire about Student's schoolwork that was sent to LearnWell while Student was at REDACTED PRIVATE PSYCHIATRIC FACILITY. Parents reported to the counselor in an email dated April 1, 2020 that when the Student was discharged from REDACTED PRIVATE PSYCHIATRIC FACILITY, the facility's educational instruction center was closed due to

the Governor's Order and the COVID 19 pandemic. No one was available in the center to assist with retrieving the work and the Student was not able to access the work.

28. On April 1, the Parents notified the District through email that the Student's new facility at REDACTED PRIVATE AGENCY also had closed the educational instruction center and no educational staff were available to provide instructional support to the Student. Parents reported the Student was unable to bring clothes, printed matters, or books into the facility at the time of Student's admittance to REDACTED PRIVATE AGENCY.
29. On April 2, 2020, an Individual Education Plan (IEP) meeting was held virtually with the Parents and District team. The purpose of the meeting was to discuss Student's change in placement due to admittance to a private psychiatric facility and to begin planning for services upon discharge from REDACTED PRIVATE AGENCY.
30. During the IEP meeting, the Parents expressed concern for the Student's behavior at home, and the REDACTED PRIVATE AGENCY treatment team identified a need for a higher level of services for Student. The IEP team identified the REDACTED PRIVATE AGENCY admission as an interim crisis management intervention according to notes from the IEP meeting.
31. During the IEP meeting, the notes reflect a discussion about possible placement at an Intensive Learning Center (ILC) following Student's discharge from REDACTED PRIVATE AGENCY FACILITY. The Parents indicated they felt the ILC would not adequately meet the needs of the Student. A discussion was completed about possibly making a recommendation for the Student to be considered by the Interagency Collaborative Team (ICT) for additional intervention support.
32. An Interagency Collaborative Team (ICT), authorized under Title 14 Delaware Code, Chapter 31, Section 3124, provides a collaborative, interagency approach to service delivery for children and youth with disabilities who present unique educational needs that cannot be addressed through the existing resources of a single agency or the regularly offered free, appropriate, public education programs of the State. The ICT reviews existing information related to the student's evaluations and assessments, confirms individualized services were provided, discusses proposed educational plans, makes recommendations for alternative education services, and ensures coordinated interagency service delivery and funding are available to youth. The coordinated services may include behavioral health treatment plans.
33. On April 2, 2020, the IEP team referred the Student to the ICT to consider further intervention support following Student's eventual discharge from REDACTED PRIVATE AGENCY.
34. On April 2, the IEP team agreed that the original placement decision of Regular Setting, that was made for Student on March 2, 2020, remained appropriate and the goals were appropriate as well. The IEP notes reflect that due to the state of emergency, the District offered all students distance learning programs. Those students requiring special education

services, aids and modifications as identified on each goal page would be adapted for home learning to the extent possible.

35. During an interview with the District team, the school psychologist reported that prior to Student's admittance to REDACTED PRIVATE PSYCHIATRIC FACILITY and REDACTED PRIVATE AGENCY facilities, Student was able to fully participate in academic activities as long as the Student's assigned one-on-one paraprofessional aide was available. The District reported the Student had no academic challenges prior to being admitted for psychiatric services, the pandemic and State closure of school. However, the District school psychologist stated given the Student's current medical crisis, the Student would not have been emotionally ready to actively participate in academic instruction.
36. On April 2, the District forwarded paperwork to the Parents to initiate a referral to the Delaware ICT to seek additional educational support for Student including possible residential placement that could meet the Student's behavioral and learning needs.
37. On April 9, 2020, the Parent responded to an email from the District school counselor, dated April 1, 2020, inquiring about the status of the schoolwork that was sent to REDACTED PRIVATE PSYCHIATRIC FACILITY on March 12 and 13, 2020 for the Student to complete. The Parents reported that they contacted REDACTED PRIVATE PSYCHIATRIC FACILITY to get the instructional materials Student left at the facility. REDACTED PRIVATE PSYCHIATRIC FACILITY reported that the educational services office was closed and there were no staff available to recover and forward the educational materials that were left.
38. On May 4, 2020, according to information supplied by the school, the District began instruction on new academic materials via virtual remote platforms.
39. On May 5, 2020, the Interagency Collaborative Team met to review the request for additional Student supports. ICT agreed that the Student needed additional intensive supports and recommended residential placement at a facility in Pennsylvania.
40. On May 6, 2020, Parent informed the District, via email, that Student continued to lack access to online schoolwork due to pandemic safety precautions, i.e., Student did not have a laptop because of REDACTED PRIVATE AGENCY'S' safety precautions due to the COVID 19 pandemic.
41. On May 11, 2020, Student commenced special education and related services at a residential placement facility in Pennsylvania.

## **DDOE**

### **DDOE Interagency Agreement with REDACTED STATE AGENCY, Local Education Agencies, and Charter Schools:**

42. The purpose of the Interagency Agreement (IA) cited in the complaint "...is to ensure through a cooperative effort that (a) a free, appropriate, public education (FAPE) is provided to all children with disabilities who are served by the REDACTED STATE AGENCY in program it directly provides, and in those programs provided through contractual arrangement, and (b) that all such program are under the general supervision of the Department of Education."

### **DDOE Monitoring and Compliance:**

43. The DDOE, District, and other LEAs signed the IA, which requires DDOE and local education agencies to provide special education and related services to students with IEPs who are attending DSCYF facilities.
44. REDACTED PRIVATE PSYCHIATRIC FACILITY and REDACTED PRIVATE AGENCY psychiatric facilities are private facilities, not provided by DSCYF nor contracted by DSCYF for services.
45. On February 24, 2020, a memo indicated that District spoke with the DDOE ICT liaison to inquire about possibly considering ICT as an option and to obtain information about applying. The DDOE ICT liaison shared the steps the District needed to follow with the Parents for the referral to move forward. A tentative date to discuss this student for further intervention and supports through ICT was placed on May 5, 2020.
46. On April 2, 2020, the IEP team met and agreed that a referral would be made to DDOE to consider ICT support for Student. At this meeting, the District obtained consent to release information from the Parents to share information with ICT in preparation for the May ICT meeting.
47. On April 8, District spoke with Parents to retrieve information to further the ICT application.
48. On May 5, 2020, the ICT met to consider Student's case for further supports. The ICT approved Student for residential placement at the meeting. An out-of-state placement was identified.
49. On May 7, 2020, Parents were requested to sign consent to share information with the residential placement site to begin the transition of Student from REDACTED PRIVATE AGENCY to the residential placement.
50. On May 11, 2020, Student was admitted to the out-of-state residential placement.

## **REDACTED STATE AGENCY**

51. The Interagency Agreement (IA) among the DDOE Exceptional Children and Early Childhood Education Group, REDACTED STATE AGENCY, local education agencies and charter schools serving children with disabilities ensures each program for children with disabilities administered by a public agency is under the general supervision and direction of the State Education Agency (SEA).
52. REDACTED STATE AGENCY, under the IA, is authorized to provide special education and related services either directly or by contractual arrangement for children with disabilities served in programs located in-state and out-of-state, in accordance with regulations of the Department of Education.
53. The IA ensures that through a cooperative effort, a free, appropriate public education (FAPE) is provided to all children with disabilities who are served by a REDACTED STATE AGENCY program that REDACTED STATE AGENCY provides directly or through contractual arrangement.
54. REDACTED PRIVATE AGENCY is a private, psychiatric hospital. There is no agreement in place for REDACTED STATE AGENCY to provide special education and related services in this setting.
55. The Student was placed in REDACTED PRIVATE AGENCY by agreement between the Parent and the Student's medical team. As a private, psychiatric setting, the LEA becomes the immediate party responsible for providing special education and related services.

## **REDACTED PRIVATE AGENCY**

56. REDACTED PRIVATE AGENCY is a private psychiatric facility.
57. Student was admitted to REDACTED PRIVATE AGENCY with approval by Parents and the REDACTED PRIVATE AGENCY medical team.
58. REDACTED PRIVATE AGENCY makes available educational services to patients within the facility through LearnWell Services. REDACTED PRIVATE AGENCY does not have an education service division.
59. REDACTED PRIVATE AGENCY and LearnWell Services reported that up through March 12, 2020, LearnWell Services provided educational services to children admitted as patients, including children with IEPs.
60. On March 13, 2020, the Governor of Delaware issued the Order. REDACTED PRIVATE AGENCY closed its facilities to non-essential personnel, including LearnWell's educational/instructional staff.



61. On March 16, 2020, LearnWell sent an email notice to all Delaware children and adolescent treatment facilities and all Delaware school districts that due to the Governor's declaration of a public health emergency, all teachers were removed from all on-site teaching responsibilities.
62. On March 22, 2020, the Governor of Delaware amended the Order, closing all non-essential businesses and ordering Delawareans to stay at home whenever possible. The order went into effect 8:00 a.m. on March 24, 2020 and was ordered through May 15, 2020. "Non-essential businesses" included public and charter schools, which were ordered to remain closed "except to support distance learning."
63. The Delaware Secretary of Education provided guidance that LEAs would have a plan by April 3, 2020, to offer remote learning to students. At that time, DDOE expected that schools would open on May 15, 2020.
64. REDACTED PRIVATE AGENCY discontinued LearnWell services following the Governor's Order.
65. REDACTED PRIVATE AGENCY reported that no outside materials, including clothes, paper sources, or electronic devices, were allowed into their facilities to reduce transmission of the virus. This decision was also reported by the Parents in an email to the District on April 1, 2020 and again on May 6, 2020.
66. On May 5, 2020, the District emailed LearnWell Services to inquire whether it would provide services to any District students in treatment as the District would be starting new, guided learning on that date. LearnWell Services responded that no Delaware treatment facilities allowed LearnWell to implement its Virtual Program, and no services were being provided.
67. The District reported that REDACTED PRIVATE AGENCY did not contact the District to request any schoolwork for the Student to complete while the Student was a patient.
68. According to the discharge summary dated May 13, 2020, provided by REDACTED PRIVATE AGENCY while at REDACTED PRIVATE AGENCY, the Student was involved in individual, group, milieu, and activity therapy. Student was reported to need medication during residential treatment to control aggressive behavior toward staff and peers. Student was provided one-on-one support during a period of her treatment.
69. In the relief requested by the complainant, DLP requested that all students that were patients at REDACTED PRIVATE AGENCY during the COVID-19 pandemic be identified, "who failed to receive FAPE during this time." REDACTED was asked during the interview completed on April 16, 2021 if there was any evidence that REDACTED PRIVATE AGENCY failed to provide FAPE to other students with IEPs who may have been patients at the facility between March 30, 2020 and May 11, 2020. The REDACTED said they had no evidence that any student with an IEP who was a patient at REDACTED PRIVATE AGENCY during this same period did not receive special education or related services.

## CONCLUSIONS

### **A. Claim: DDOE denied Student FAPE from March 30, 2020 to May 11, 2020 by failing in its monitoring and enforcement duties.**

As a threshold matter, DDOE did not directly provide educational services to Student before March 30, 2020 and did not fail to deliver educational services from March 30, 2020 through May 11, 2020.

Separately, DDOE fulfilled its monitoring and enforcement duties under IDEA and state law. The DDOE, through its management of the Delaware Interagency Collaborative Team, actively supported the Student, Parents and District search and identification of additional interventions and supports for the Student. Consequently, Student enrolled in an out-of-state residential placement on May 11, 2020. This placement was approved by the State of Delaware, Parents, and the District.

Under the IDEA, DDOE must ensure that FAPE is made available to all students within Delaware. 20 U.S.C. § 1412(1)(A). Education was made available to Student for 2.66 hours on March 13, 2020. On March 20, Student was discharged to day treatment at REDACTED PRIVATE AGENCY. On March 27, Student was readmitted to REDACTED PRIVATE AGENCY for crisis management. On April 1, Parents informed District that neither computers nor printed materials could be brought to the hospital. On April 2, the IEP team met and revised Student's placement and agreed to take the case to ICT for residential placement. On April 9, Parent informed District that Student had no access to electronics when at REDACTED PRIVATE PSYCHIATRIC FACILITY because the learning center was closed and not staffed. In addition, books were not allowed. On May 6, Parent informed District that Student was "not able to access online/school work due to medical reasons." Accordingly, the Student could not accept the services made available to Student for two reasons: (1) Student's acute medical condition and (2) the limitations placed on REDACTED PRIVATE PSYCHIATRIC FACILITY and REDACTED PRIVATE AGENCY by the global COVID-19 pandemic. An LEA will not be held to have failed to provide FAPE when an acute medical condition impedes educational services. *Mary T. v. School Dist. of Philadelphia*, 575 F.3d 249-250 (3d. Cir. July 31, 2009).

Immediately upon the District notifying DDOE that the Student would need additional, intensive supports to be successful, DDOE set a tentative date to bring the Student's case to the ICT for review and consideration. The ICT reviewed existing information related to the student's evaluations and assessments, confirmed individualized services were available and provided, discussed proposed educational plans, made recommendations for alternative education services, and ensured FAPE was available to the Student. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation regarding FAPE as DDOE completed its monitoring and enforcement obligations.**

**B. Claim: District denied Student FAPE by failing to provide Student with any educational services from March 30, 2020 to May 11, 2020.**

The District provided academic work for the Student to complete immediately upon the Student's admittance to REDACTED PRIVATE PSYCHIATRIC FACILITY and contracted with LearnWell Services to implement instruction. On March 13, 2020, LearnWell Services provided academic support to the Student while at REDACTED PRIVATE PSYCHIATRIC FACILITY.

On March 13, 2020, the Governor of Delaware declared a state of emergency and immediately ordered all schools closed. On March 24, the Governor of Delaware continued the state of emergency and further declared a public health emergency, continuing the closure of schools through May 27, 2020. The public health emergency closed all non-essential businesses, and medical facilities decided to not allow non-essential personnel to enter except for emergencies. These declarations resulted in the discontinuance of educational services to all District students and Delaware psychiatric facilities in which students attended or resided. LearnWell, the Delaware LEAs general contractor for educational supports to students in Delaware psychiatric facilities, was forced to discontinue on-site services to all eligible students, including the Student.

Student was admitted to REDACTED PRIVATE AGENCY a full-time psychiatric treatment facility, on March 30, 2020, after attending REDACTED PRIVATE AGENCY'S outpatient day treatment program, which began on March 20, 2020. Parents identified the Student's behavior as unmanageable at home during the outpatient treatment period. The Parents and the REDACTED PRIVATE AGENCY medical team agreed that the Student would benefit from admittance into the facility's full-time treatment center.

Before the Student was admitted full time, the District made available academic instructional materials for the Student to complete while a patient at REDACTED PRIVATE PSYCHIATRIC FACILITY, reflecting the District's attempt to continue implementing FAPE. Those same materials would have continued to be available to the Student while attending the day treatment program at REDACTED PRIVATE AGENCY.

On April 1, 2020, the Parents notified the District that the Student did not have access to any outside materials in REDACTED PRIVATE AGENCY. Parents indicated that REDACTED PRIVATE AGENCY stated that no outside clothing, paper sources, or electronic devices would be allowed to be brought into the facility due to the COVID 19 pandemic and concern for the spread of the virus.

The District held an IEP meeting on April 2, 2020 to discuss Student's change in placement due to admittance to a private psychiatric facility and to begin planning for services upon Student's discharge from REDACTED PRIVATE AGENCY. During the IEP meeting, the team agreed that a referral to the state's Interagency Collaborative Team (ICT) would be most appropriate to seek additional intervention support.

On April 9, 2020, following an inquiry by the District about the status of the schoolwork that the District sent to the Student while at REDACTED PRIVATE PSYCHIATRIC AGENCY for LearnWell Services to implement, the parents informed the District in an email that the Student left the schoolwork at REDACTED PRIVATE PSYCHIATRIC AGENCY at the time of Student's

discharge, and that Student no longer had access to the schoolwork or Student's Chromebook for academic use. Due to the state of emergency, there were no personnel available at REDACTED PSYCHIATRIC FACILITY to retrieve the materials, and, in any event, no materials were permitted into DBHS.

The REDACTED PRIVATE AGENCY discharge summary noted that while the Student was a patient, Student's treatment included individual, group, milieu, and activity therapy. Student was provided one-on-one support to assist with control of Student's behavior. While a patient at REDACTED PRIVATE AGENCY, Student was reported to be agitated and aggressive towards staff at times. On two occasions, Student's behavior was reported to be so aggressive and agitated that the Student required medication. REDACTED PRIVATE AGENCY FACILITY reported that the significance of the Student's behavior required a need for continued long-term treatment. At discharge, the Student acknowledged Student's need to continue to work on Student's behavior, communication, and impulse control.

On May 4, 2020, the District began instruction in new academic content through virtual platforms. The District contacted the Parents to determine how it could connect with the Student to continue instruction. On May 5, 2020, the District emailed LearnWell Services to inquire if LearnWell provided services to any District students in treatment. LearnWell Services responded that no Delaware treatment facilities had allowed LearnWell to return onsite and implement their Virtual Instructional Program, and no services were being provided.

On May 5, 2020, the ICT met to review the request for additional supports for Student and agreed that the Student needed additional intensive supports and recommended residential placement at a facility in Pennsylvania. On May 6, 2020, Parent informed the District, via email, that Student continued to not have access to online schoolwork due to medical reasons.

On May 11, 2020, the Student began to receive special education and related services at a residential placement facility in Pennsylvania. Separately, the REDACTED PRIVATE AGENCY discharge summary reflects the status of the Student's behavioral challenges as aggressive and requiring one-on-one support and "prn" medication to control outbursts. One-on-one support was provided by REDACTED PRIVATE AGENCY, as outlined in the student's IEP and would have been available to support the Student's IEP goals: "Managing Internalized Behaviors" and "Appropriate Behaviors" to "benefit from the continuation of 1:1 para support" and "support with self-advocacy and appropriate interpersonal relationships with others."

The Student was unable to accept academic services from LearnWell due to Student's acute medical condition as evidence by the Course of Treatment notes from the REDACTED PRIVATE AGENCY summary and the notes reflected in the IEP meeting held on April 2, 2020. *Mary T. v. School Dist. Of Philadelphia*, 575 F.3d 249-250 (3d. Cir. July 31, 2009) held that an LEA will not be held to have failed to provide FAPE when educational services are impeded by an acute medical condition.

The state of emergency declared on March 13, 2020 and again on March 23, 2020 by the Governor of Delaware and issuance of a public health emergency, closed all non-essential facilities in the state. The closure resulted in the interruption of education services to all students in Delaware including the Student while a patient at REDACTED PRIVATE AGENCY. The DDOE issued a

guidance document on July 9, 2020 entitled “A Successful Launch of the 2020-2021 School Year: Recovery Efforts and the provision of FAPE for Students with Disabilities during the Re-Opening of School from COVID-19” (see attached). In that document, DDOE states, “All students are anticipated to return to school with some level of unfinished learning,” caused by COVID 19 closures. LEAs will not be held to have failed in their FAPE obligations if their offered educational services are impeded by REDACTED PRIVATE AGENCY’S COVID 19 precautions. “A Student with unfinished learning has not necessarily been denied a FAPE. However, it is vital for LEAs to act proactively to address unfinished learning to avoid a future denial of FAPE.”

**The District is not in violation of 14 Del Admin C §923.1.2.1; 34 CFR §300.101, in its obligation to provide FAPE to Student and met its FAPE obligations by providing Student with similar access as granted to other District students. When the District offered virtual, remote instruction on April 1, the Student was unable to access the virtual instruction. Student’s private placement at REDACTED PRIVATE AGENCY and the facility’s prohibition of electronic devices and other outside materials restricted the Student’s access to instruction.**

**C. Claim: REDACTED STATE AGENCY denied Student FAPE by failing to comply with an Interagency Agreement between itself, and the Exceptional Children and Early Childhood Education Group, DDOE, LEAs, and Charter Schools serving students with disabilities.**

The Interagency Agreement (IA), set forth in Exhibit C of the Parents’ complaint (SC #21-04), outlines the roles and responsibilities of REDACTED STATE AGENCY and DDOE, LEAs and charter schools serving children with disabilities. *See* 34 CFR §300.142. The IA’s purpose is to ensure children with disabilities who are served by a REDACTED STATE AGENCY program directly administered or provided through contractual agreement, receive FAPE as outlined in 34 CFR §300.142(a), (b), & (c)(2).

In its response to the complaint dated April 13, 2021, REDACTED STATE AGENCY stated REDACTED PRIVATE AGENCY is not a REDACTED STATE AGENCY program.

The Department’s investigation confirmed REDACTED PRIVATE AGENCY, the facility in which the Student was admitted and within which treatment was provided, is not a REDACTED STATE AGENCY program nor does REDACTED STATE AGENCY have any contractual arrangement with REDACTED PRIVATE AGENCY for the provision of services. Accordingly, the IA cited in the Complaint does not pertain to the facts of this case.

REDACTED STATE AGENCY’s actions did not directly or indirectly cause the Student’s admittance and placement in REDACTED PRIVATE AGENCY. The Student was admitted to REDACTED PRIVATE AGENCY by the Parents and with the recommendation of the REDACTED PRIVATE AGENCY medical team. Parents’ private insurance paid for the Student’s patient stay at REDACTED PRIVATE AGENCY. REDACTED STATE AGENCY has no responsibility for educational services for the Student in this case. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation regarding FAPE as REDACTED STATE AGENCY complied with the Interagency Agreement.**

**D. Claim: REDACTED PRIVATE AGENCY denied Student FAPE by failing to provide Student with any educational services from March 30, 2020 to May 11, 2020 as REDACTED PRIVATE AGENCY is considered a public agency with a responsibility to provide FAPE.**

REDACTED PRIVATE AGENCY is a private psychiatric facility. The Student was admitted as a full-time patient to REDACTED PRIVATE AGENCY adolescent residential treatment facility on March 30, 2020 and stayed through May 11, 2020 with approval from the Parents and recommendation from the REDACTED PRIVATE AGENCY medical team.

While at REDACTED PRIVATE AGENCY, the Student was involved in individual, group, milieu, and activity therapy. Student was reported to need medication during residential treatment to control behavior. Student was provided one-on-one support during a period of Student's treatment.

The Complaint relies upon 16 Del C. §516(12), which indicates that REDACTED PRIVATE AGENCY under the state's Mental Health Patients' Bill of Rights, has the responsibility to provide the "same training and education that the patient would otherwise be entitled to receive in the patient's local school." However, in addition, the same law states, "The facility shall arrange for such training and education, which shall be consistent with the mental ability of the patient."

In discussion with REDACTED PRIVATE AGENCY, LearnWell, and the District, prior to the COVID-19 pandemic, REDACTED PRIVATE AGENCY arranged for educational instruction to be provided to all students eligible for instruction while those students were patients and receiving treatment in the facility. The District had a contract with LearnWell Services prior to the Student entering REDACTED PRIVATE AGENCY to provide instructional services to the Student.

However, due to the State of Delaware's declaration of a public health emergency and ensuing state of emergency orders (Orders) on March 13 and again on March 22, 2020, REDACTED PRIVATE AGENCY closed its facility to non-essential personnel. LearnWell Services discontinued instructional services and pulled instructional staff from the REDACTED PRIVATE AGENCY facility. LearnWell Services notified the SEA and LEAs by email on March 16, 2020, that due to the executive order and state of emergency, it would be unable to provide instructional services to students enrolled in the facilities for which it was contracted to serve.

REDACTED PRIVATE AGENCY informed the Parents that no outside materials would be allowed to be brought into their medical facility including clothing, paper sources and electronic devices. Further, due to the Student's behavioral challenges that included inappropriate uses of electronic devices on social media platforms prior to Student being admitted to REDACTED PRIVATE AGENCY the Student was not allowed access to any electronic device during Student's treatment.

The Governor of Delaware's State of Emergency declarations on March 13, 2020 and again on March 23, 2020 closed all non-essential facilities and restricted access to medical facilities preventing REDACTED PRIVATE AGENCY from providing instructional services to Student and other similarly situated individuals. REDACTED PRIVATE AGENCY followed the

Governor's Order as written. **For these reasons, I find no violation of the IDEA and corresponding state and federal regulation regarding FAPE.**

### **DISTRICT RESPONSIBILITIES**

1. In keeping with the DDOE guidance, the District should monitor the Student and coordinate educational supports with the out of state provider. District should provide an update to DDOE on Student's status by **August 15, 2021**.

By: /s/ REDACTED

Assigned Investigator