

**DELAWARE DEPARTMENT OF EDUCATION
EXCEPTIONAL CHILDREN RESOURCES**

STATE COMPLAINT DECISION DE SC 22-05

Date Issued: April 14, 2022 REVISED: April 29, 2022

On February 15, 2022, the Delaware Department of Education (DDOE) received a complaint filed by REDACTED (Parent1) on behalf of REDACTED (Student) against the REDACTED (School1) and the REDACTED (District1). The complaint alleges School1 and District1 violated state and federal regulations concerning the provision of a free, appropriate public education (FAPE) to Student under the Individuals with Disabilities Education Act (IDEA).¹ The alleged deprivation of FAPE occurred from November 17, 2022 to February 17, 2022. 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 records, as well as email and text message communications provided by Parent1 and District1. The Investigator interviewed School1 and District1 staff, as well as Parent1. The decision includes findings of fact that are relevant and material to addressing the complaint issues.

COMPLAINT ALLEGATIONS

The Complaint alleges that School1 and District1 violated Part B of the IDEA and corresponding state and federal regulations as follows:

School1 and District1 failed to provide Student with appropriate special education services between December 17, 2021 and February 17, 2022;

1. When Parent1 removed Student and Student's REDACTED (Student2) from School1 over concern for Student2's safety related to staff issues including: alleged incompetence of School1 staff, threats that have been ongoing throughout school districts in the nation, and a lack of trust that staff can protect Student2, together with a recent Covid-19 surge, and Schoology was implemented as sole source of education and then discontinued.

¹ The complaint decision identifies some people and places generally, to protect personally identifiable information about the student from unauthorized disclosure. An index of names is attached for the benefit of the individuals and agencies involved in the investigation. The index must be removed before the complaint decision is released as a public record.

2. Staff accessing Parent1's social media, resulting in another staff member making "threatening" comment to Parent1 on social media.²

FINDINGS OF FACT

1. Student is a REDACTED REDACTED-year-old REDACTED grader who receives special education services as a student with an educational classification of Autism in Separate Special Education in an Integrated Setting.
2. On July 14, 2021, District1 sent a notice entitled, "Learning Commitment Response." Notice stated, "...It is our intention to provide a high-quality virtual option for families who decide to keep their children at home. We will NOT be providing hybrid instruction..."
3. Supervisor of Special Education (Supervisor2) reported to Investigator that the information Parent1 received in July 2021 was a district-wide survey distributed to help inform the District1's ultimate decisions regarding potential options for delivering education to students in District1 during the 2021-22 school year. However, Supervisor2 stated that programming for students at School1 was determined to be best delivered in-person due to the needs of the student population. The survey was distributed in error to students attending School1. Supervisor2 also stated that homebound services were described, with limitations of hours and requirements of documentation were explained.
4. Parent1 responded to the "Learning Commitment Response" notice indicating Parent1 would like Student to attend school virtually.
5. On August 24, 2021, Parent1 was informed virtual learning was not an option for Student and "Learning Commitment Response" notice was sent in error to School1 families. According to Principal and Teacher, Parent1 agreed to in-person learning.
6. On August 25, 2021, Parent1 sent email to Assistant Principal requesting meeting about concerns for Student's general well-being as Parent1 was under impression Student would be learning virtually until informed the day prior that virtual learning was not an option.
7. On September 7, 2021, Student began in person learning at the start of the 2021-2022 school year.
8. On November 17, 2021, Parent1 sent email to Supervisor 2 requesting referral to School2 in District2 be made.
9. During the time period from December 16, 2021 through December 23, 2021, all students in District1 shifted to full-time virtual learning due to a Covid-19 surge.

² This allegation of staff harassment is a District1 personnel matter and beyond the scope of this investigation. Specifics of this allegation are only referenced as it relates to provision of FAPE for Student.

10. On December 17, 2021, Parent1 sent email to Principal and Assistant Principal informing School1 staff Student would be learning virtually for the remainder of the school year or until Student was transferred to School2. Parent1 cited alleged incompetence of School1 staff, threats that have been ongoing throughout school districts in the nation, the surge in Covid-19 cases, and a lack of trust School1, and staff cannot protect Student2 as reasons why Student would continue learning virtually. Parent1 requested all Student's work be uploaded to Schoology and absences be excused.
11. District1 stated in their response to the state complaint that the allegations made in the complaint are without merit and led to Parent1 unilaterally "physically withdrawing" Student. District1 further stated "...At all times our doors were open and welcoming to the Student and we were offering the Student a Free and Appropriate Education."
12. On December 17, 2021, Supervisor2 forwarded Parent1's email to Assistant Superintendent and stated District1 "...does not currently offer the virtual programming for School1."
13. On December 17, 2021, Supervisor2 sent referral for Student to District2.
14. On December 17, 2021, Assistant Superintendent clarified Parent1 request to provide Student work via Schoology to complete and submit back to School1.
15. On December 17, 2021, Principal further clarified to Assistant Superintendent that Parent1's request was to provide work indefinitely via Schoology. Principal stated this would not provide any instruction, just work completion.
16. On December 17, 2021, Assistant Superintendent sent email to Principal and Supervisor2 suggesting Principal clarify request with Parent1; communicate to Parent1 request was not in best interest of Student, as instruction is critical; clarify District1 cannot excuse absences without valid reason for absence; and have Educational Diagnostician schedule an IEP meeting. Assistant Superintendent requested Supervisor2 provide Assistant Superintendent recommendations of proposed options so that District1 could remain in compliance.
17. The Student was informed and had full access to instruction, as did all students in District1, due to a COVID-19 surge.
18. On January 10, 2022, Parent1 sent email informing Principal that Student absences were to be marked excused; however, they were still being marked unexcused.
19. On January 12, 2022, Supervisor2 sent email to Parent1 referencing meeting described above took place and if School2 was open to accepting Student, District1 was willing to pay tuition. However, while waiting for further observation and response from District2, Student absences would no longer be excused as of January 17, 2022. Supervisor2 stated the plan was to inform Principal all absences from November 17, 2021 through January 14, 2022, would be excused. Supervisor2 stated Schoology was not a viable or district supported method to provide long-term education for Student.

20. On January 12, 2022, Parent1 responded to above email from Supervisor2 suggesting Student could attend school via Zoom as Student had done so on snow days.
21. On January 12, 2022, Parent1 sent email to District1 School Board President stating Supervisor2 indicated Student absences would no longer be excused as of January 17, 2022, despite Principal verbally stating all absences would be excused. Parent1 also stated Parent1 was in process of transferring Student to District2 due to ongoing issues with School1.
22. On January 13, 2022, Parent1 emailed Supervisor2 to allege other parent (Parent2) had before Parent1 regarding a decision Parent2 had made for Student to return to School1 for in person instruction on January 11, 2022. This issue of Parent notification had been an ongoing issue. Despite joint custody, Parent1 alleged Parent2 had received information prior to his being informed. The matter of Parent1 and Parent2 notification of all information (...to be the exact same information and delivered to each in the same timeframe) had been clarified to School1 staff in a meeting by Supervisor 1 with Parent 1 in attendance on August 25,2021. It was again stated that all information must be duplicated to Parent 1 & Parent 2 in an IEP meeting for sibling of Student being served by same School in another location. (see State Complaint 22-04). Parent1 stated Student would not be returning to in-person learning because none of the ongoing issues noted in this Complaint and SC 22-04 (State Complain on behalf of sibling, served by School 1. both Complaints were filed on February 15, 2022.) had been resolved.
23. On January 13, 2022, Parent1 sent email to School Board President again regarding attendance dispute and recapping ongoing issues with School1 staff.
24. The Principal and Teacher stated that the Student had a separate folder in Schoology until January 17, 2022, the date absences would no longer be excused. However, after January 17, 2022, general classroom work was still posted and available to the Student.
25. On January 20, 2021, Parent1 sent another email to District1 School Board President describing incident of School staff “stalking” Parent1’s social media and subsequent alleged threat by spouse of staff member, who is also a District1 employee.
26. On January 26, 2022, Parent1 emailed Supervisor2 regarding Supervisor2 informing Parent1 Schoology could no longer be single means of education for Student. Parent1 inquired about the status of referral of Student to School2. Parent1 indicated Parent1 had contacted School2 and School2 told Parent1 that School2 was waiting on paperwork from School1/District1.
27. Parent1 stated the “other options” for providing education for Student, which were mentioned multiple times in previous emails, had not been shared with Parent1 to date.
28. On January 26, Parent sent email to School Board President requesting a conversation regarding content of previous email contents and lack of progress toward resolution of alleged issues including safety of Student2, sharing information with Parent2 before Parent1, cyberstalking by staff member and alleged threat by staff member. .

29. On January 27, 2022, Supervisor2 emailed District2 for a status update regarding the Student's referral. Supervisor of Special Services (Supervisor3) of District2 stated in an email that Student would be appropriate for School2 in District2.
30. On January 27, 2022, Supervisor2 invited Parent1 to an administrative meeting via Zoom. Parent1 requested the meeting be rescheduled, as Parent1 was awaiting a call from an advocate. Parent1 requested all information or links to be discussed at the meeting be sent to Parent1.
31. On January 31, 2022, Superintendent emailed Principal and Assistant Superintendent to convene an administrative meeting regarding Parent1's recent letter to Board President, suggesting dates of February 1 and February 4, 2022.
32. On February 11, 2022, Supervisor2 requested meeting with Parent1 to discuss educational options for Student.
33. In a letter dated February 4, 2022, Parent1 received notice from Visiting Teacher (District1) stating Student had been absent from school an excessive number of days. A meeting with Attendance Review Hearing was set for February 18, 2022. Parent1 was invited to attend. If Parent1 did not attend, District1 "...would assume Parent1 accepts the decision for us to file charges in court."
34. On February 15, 2022, Parent1 responded to email from Supervisor2 and requested the meeting to discuss educational options via Zoom on Thursday, February 17, 2022 at 12:00 p.m. Principal and Teacher stated Parent1 informed them Parent1 had relocated the family to District2.
35. On or about February 17, 2022, Parent1 relocated family to District 3. Parent1 had thought new residence was within District 2; however, discovered it was District 3.
36. In District1's response to the filed state complaint, District 1 indicated District1 was Student's District of Residence until February 17, 2022. District1 stated an IEP meeting was held on that date and Parent1 informed IEP team Parent1 had relocated family to District2.
37. In District1's response to the state complaint, District1 also addressed Parent1 of staff harassment and stated it "...had been investigated and managed appropriately." District1 in the Response also stated failure to send minors to school due to unsubstantiated allegations was not an exemption of compulsory attendance requirements.
38. On March 10, 2022, Parent1 attempted to enroll Student in School3 in District3 (the new district of residence), However, District3 needed to request files and paperwork from District1.
39. On or about the week of March 14, 2022, Parent1 visited School3 and determined Student would attend School3.

38. On March 21, 2022, Student was officially enrolled and began physically attending School3.

CONCLUSIONS

A. Provision of FAPE between December 17, 2021 and February 17, 2022

School1 acquiesced to a virtual program which School1 knew would not provide Student with FAPE instead of sending a PWN rejecting Parent1's request.

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), and 14 DE Admin Code § 923.1.2.

“Free appropriate public education means 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 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 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 potential.”

14 Del. C. § 3101(5).

Additionally, the IDEA requires a prior written notice (PWN) be sent to parents whenever the local education agency (LEA) “proposes to initiate or change; or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.” 20 U.S.C.A. § 1415(b)(3). School1's failure to provide Parent1 a PWN was a procedural violation of the IDEA. See, *Jalen Z. v. Sch. Dist. of Philadelphia*, 104 F. Supp. 3d 660, 671 (E.D. Pa. 2015). “[A] procedural violation of the IDEA is not a per se denial of a FAPE; rather, a school district's failure to comply with the procedural requirements of the Act will constitute a denial of a FAPE only if such violation causes substantive harm to the child or his parents.” *C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 66–67 (3d Cir. 2010) (internal citations omitted). Substantive harm may be found where a procedural violation “results in a loss of educational opportunity for the student, seriously deprives parents of their participation rights, or causes a deprivation of educational benefits.” *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249 (3d Cir. 2012) (internal citations omitted).

On December 17, 2021, Parent1 informed School1 that Student would no longer be attending in-person and requested virtual learning. Parent1 communicated concerns about the safety of

Student2, who also attended School1. Parent1 had ongoing unresolved issues with District1 and School1 regarding bullying, access to information and DeSSa eligibility as described in State Complaint 22-04. At that point, Parent1 was calling into question the provision of FAPE for Student2 and asking for a change to virtual learning for both Student1 and Student2. School1 agreed provide work to Student via Schoology but not instruction in the short-term. School1 never discussed or documented a timeline. District1 acknowledged using Schoology was not a long-term solution to provide Student education. There was no evidence of an IEP meeting or PWN identifying a change in placement when Schoology was implemented as the sole source of educational services for Student. Nor was there evidence of an IEP meeting or PWN when School1 decided to stop providing Student with educational services through Schoology and stopped excusing Student's absences.

Student had access to full participation in virtual learning from December 16 - December 22, 2021 and January 3-7, 2022, as all students in District1 engaged in virtual learning provided due to Covid-19 surge.

Schoology did not provide Student with FAPE, **for this reason I find District1 in violation of the IDEA and corresponding state and federal regulation related to the provision of FAPE, from December 17, 2021, through February 17, 2022, exclusive of December 17-23, 2021, and January 3-7, 2022, when all District students had access to virtual learning due to surge in Covid-19.** Once School1 decided to move Student back to in-person learning, School1 needed to issue Parent1 a PWN explaining why and they failed to do so. However, this procedural violation of FAPE did not lead to substantive violation of FAPE because of the continued phone and email contact between School and Parent1.

CORRECTIVE ACTION

To address the regulatory violations noted in this Decision, the Department directs District1 to take the following corrective actions:

Student Level Correction Actions

1. Based on the time period from January 10, 2022, through February 17, 2022, the Investigator has calculated that 26 days of compensatory education services are owed to Student. District1 shall provide these services to Student by **December 15, 2022.**

District1 can meet this obligation in a number of ways such as reimbursing Parent1 for outside services/tutoring, paying fee to another LEA to provide additional services to Student etc.

District1 must communicate with Parent1 (and other LEA if decided upon) and develop a plan to provide all compensatory days to Student ~~October 15, 2022~~ by **December 15, 2022.** District1 shall

provide this plan and timeline to the Director of Exceptional Children Resources by **May 31, 2022**

District Level Corrective Action

- 1. On or before May 31, 2022**, District1 shall review the regulations related to notice of meeting and prior written notice. District1 shall provide professional development to all special education staff and administrators who work for District1. The related documentation (sign in sheet, agenda, copy of handouts and/or PowerPoint, etc.) shall be provided to the Department's Director of Exceptional Children Resource Workgroup **by May 31, 2022**.

By: /s/ REDACTED
Assigned Investigator