



Illinois State Board of Education

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Tony Smith, Ph.D.
State Superintendent of Education

December 19, 2018

Ms. Elizabeth Keenan
Chief Officer
Office of Diverse Learner Supports and Services
Chicago Public School District 299
42 West Madison Street, 3rd Floor
Chicago, IL 60602

and

Dr. Janice Jackson
Chief Executive Officer
Chicago Public School District 299
42 West Madison Street, 2nd Floor
Chicago, IL 60602

Re: [REDACTED] Complaint
Elementary School
Case Number 2018-0490

Dear Ms. Keenan and Dr. Jackson:

The Illinois State Board of Education, Special Education Services Division, has completed its investigation of the complaint lodged by Ms. Julie Welsh in regard to the special education services for her client, [REDACTED]. Authority for conducting this investigation is the Individuals with Disabilities Education Act, P.L. 108-446, 34 CFR, 300.151 - 300.153.

The review focused on the following requirements:

23 Illinois Administrative Code, 226.220(a), which states

The development, review, and revision of each child's IEP shall conform to the requirements of 34 CFR 300.324 and 300.328. The additional requirements of this Section shall also apply.

- a) *When an IEP has been developed or revised, the district shall provide notice in accordance with 34 CFR 3200.503(b) and (c) immediately to the parents, and implementation of the IEP shall occur no later than 10 school days after the provision of this notice or by the beginning of the following school year if the IEP is developed or revised with fewer than 10 school days remaining in the school year. If the new or revised IEP requires extended-year services, those services shall be provided in accordance with the provisions of the IEP.*

23 Illinois Administrative Code, 226.300, which states in relevant part

Each local school district shall, in conformance with the requirements of 34 CFR 300.39 and 300.115, ensure that a continuum of placements is available to meet the needs of children with disabilities for

special education and related services. With respect to the home instruction and instruction in hospitals and institutions referenced in 34 CFR 300.39 and 300.115:

- a) *The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.*
- b) *When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, the IEP Team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies:

 - 1) *the child's medical condition;*
 - 2) *the impact on the child's ability to participate in education (the child's physical and mental level of tolerance for receiving educational services); and*
 - 3) *the anticipated duration or nature of the child's absence from school.**
- g) *In accordance with Section 14-13.01(a) of the School Code, services required by the IEP shall be implemented not later than five school days after the district receives the physician's statement.*

Background and Summary of Allegations

According to the *Request for State Complaint Investigation* form, the complainant alleged that the district did not follow proper procedures for providing home/hospital services. Specifically, the district failed to develop and provide an interim program in the student's home between March 20, 2018 and June 18, 2018. The complainant also alleged that the district refused to provide home/hospital services, despite the submission of a physician's statement on May 2, 2018.

Action Taken in Response to the Complaint

During the course of the investigation, telephone and email communications regarding the issues in the complaint occurred with the complainant and representatives of the district's Office of Diverse Learner Supports and Services (ODLSS).

Student Information

During the 2017-18 school year, the fifth grade student was eligible for special education and related services under the specific learning disability (SLD) and other health impairment (OHI) disability categories. At an Individualized Education Program (IEP) team meeting convened on March 20, 2018, the IEP team determined that the student required a therapeutic day school placement in order to meet his behavioral/emotional needs.

Timeline of Events and Documentation Reviewed

<p>July 2017 Procedural Manual</p>	<p>The <i>Home or Hospital Placements</i> section of the district's <i>Procedural Manual Guidance on Providing Special Education and Related Services to Students with Disabilities</i> (page 62), states:</p> <p><i>The continuum of placement options includes instruction in the home or hospital setting when a student is unable to attend a school elsewhere due to a medical condition. A nurse and the ODLSS Home/Hospital Manager must be members of the IEP team that makes this placement decision.</i></p> <p><i>In addition, when a student has a medical condition that will cause an absence of</i></p>
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	<p><i>two or more weeks of school or on-going intermittent absences, the student's IEP team should consider the need for home or hospital services. In such cases, home or hospital services must be based on a written statement from a physician that specifies: (1) the student's medical condition; (2) the impact on the student's ability to participate in education (the student's physical and mental tolerance for receiving educational services); and (3) the anticipated duration or nature of the student's absence from school.</i></p> <p><i>The main goal of home/hospital services is to provide the student access to instruction while he/she is away from school managing his/her illness. This program strives to keep the student current with classroom instruction and facilitate his/her return to the classroom setting. The amount of instructional and related service time will not be less than five hours per week, unless a physician in writing states otherwise, and will only occur on regularly scheduled [district] school days. Homebound instruction generally begins after regular school hours and ends by 7:00 p.m.</i></p>
<p>March 19, 2018 Emails</p>	<p>A Business Operations Coordinator in the district's ODLSS sent emails to four therapeutic day schools requesting that each review the student's referral to determine if their program had an opening appropriate for the student.</p>
<p>March 20, 2018 Initial IEP</p>	<p>The following information is documented:</p> <p><u>Relevant Transition Information:</u></p> <p><i>...Based on data collected, which indicates that [the student] has not made any significant progress toward accessing the general education curriculum due to his severe, disruptive behaviors, the team has determined that a separate day school would be appropriate for him to attend.</i></p> <p><u>Justification of Placement in the Least Restrictive Environment:</u></p> <p>The team considered and rejected the following placement options:</p> <ul style="list-style-type: none"> • General education setting full time with supplementary aides and services; • General education with special education support 20% or less of the school day outside the general education setting; • General education with special education support 21-60% of the school day outside of the general education setting; • General education with special education support over 60% of the school day outside of the general education setting in a general education school. <p>The team accepted full time special education services in a separate day school (100% removal) with social work and speech language services. The potentially harmful effects of this placement include decreased access to the instructional opportunities available in integrated settings, diminished access to the full range of the curriculum, lack of opportunities for appropriate role models, and isolation from peers.</p>
<p>March 22, 2018</p>	<p>The district received an email from the director of admissions at Therapeutic Day</p>

Email	School A, which indicated that the school was not the best fit for the student.
March 23, 2018 Email	The district received an email from the clinical director of Therapeutic Day School B, which states: <i>[The student] seems appropriate for our program and did a tour of the school, but his mom says that she has a couple of other schools to look at before deciding. She said that [Therapeutic Day School B] was not on her 'short list' of schools...</i>
April 10, 2018 Email	The district received an email from the district liaison of Therapeutic Day School C, which indicated that the parents toured the school, but, after reviewing the student's referral, it was determined that the student required a therapeutic setting that could provide more support around his emotional/behavioral needs, as well as his social skill development.
April 16, 2018 Email	In an email to the district's director of due process and mediation, the complainant stated: <i>I believe [the student] has been accepted at [Therapeutic Day School D], but they will not have an opening until the summer program. The family is interested in homebound services in the interim. Please contact me regarding the logistics.</i>
April 20, 2018 Email	The director of due process and mediation responded and indicated that she would "look into the status of [Therapeutic Day School D]." The director of due process and mediation further indicated that the parent must have the necessary forms for home/hospital services completed by a physician and submit the forms for review and approval by the district nurse.
April 23, 2018 Emails	The complainant requested the home/hospital form. In response, the director of due process and mediation attached both of the district's home/hospital forms and requested that the forms be sent to her attention upon completion by a physician or psychiatrist.
Undated District Forms	The district submitted a copy of two forms utilized for home/hospital instruction. Form 1 is titled "Medical Referral for Adjustment of Educational Program" and indicates that specific sections must be completed by a physician, including physician information, student eligibility, teaching instructional delivery site, and transition back to school. Form 2 is titled "Psychiatric Referral for Adjustment of Educational Program" and is generally similar to Form 1, except the instructions require that specific sections be completed by a psychiatrist, instead of a physician.
April 23, 2018 District Form	A "Medical Referral for Adjustment of Educational Program" form was completed on behalf of the student by a physician (pediatrician). The form states that the diagnoses affecting school attendance were social anxiety, generalized anxiety disorder (GAD), and attention deficit hyperactivity disorder (ADHD). Further, the form includes a section for pertinent information, which includes how the student's medical condition affects the student's ability to attend school and states: <i>Has social anxiety disorder and is not able to deal effectively with everyday experiences. [The student] has impairment in communication and emotional and behavioral dysregulation, he would benefit from therapeutic environment where</i>

	<p><i>he can have intensive ST [speech] therapies, OT [occupational therapy] and needs to work with staff knowledgeable about [the student's] learning disabilities, how to deal with his emotional/behavioral dysregulation, and how to treat children with complex emotional and language disabilities so they don't cause more harm to him.</i></p> <p>The start date for the anticipated absence was listed as March 21, 2018 with the end date to be determined.</p>
May 7, 2018 Email	<p>The complainant sent an email to district representatives, which indicates that the "homebound" form was attached. The complainant also requested an update on Therapeutic Day School D.</p> <p>The director of due process and mediation responded to the complainant's email with the following:</p> <p><i>We will be reaching out to [Therapeutic Day School D] today for a status in this matter.</i></p> <p><i>With regards to the homebound forms, I have reviewed them and there does not seem to be any mention regarding what is precluding the student from being able to attend school. Rather, it seems that this form is being used to recommend a separate day school setting. I am forwarding them onto our homebound coordinator, however, I wanted to prepare you that she may not be able to accept them as they are currently completed.</i></p> <p><i>I am sorry if I did not previously mention my concerns when you sent me these last week.</i></p>
May 18, 2018 Email	<p>The complainant requested an update on the student's homebound services, stating that it had been two weeks since the forms were submitted and much longer than that since he had been out of school.</p>
May 21, 2018 Email	<p>The director of due process and mediation responded to the complainant and shared a communication from the district's homebound manager, which states:</p> <p><i>The student's pediatrician completed the attached referral and a pediatrician cannot offer a psychiatric diagnosis. A psychiatric referral should be submitted for district review, if this student is currently receiving care for a psychiatric diagnosis of social anxiety and generalized anxiety disorder. A psychiatrist is the only doctor who has specialized training in the diagnosis and treatment of mental illnesses. Should your client continue to request homebound services, we will need the forms completed by the appropriate provider.</i></p>
May 25, 2018 Email	<p>After various email communications over multiple dates, the program director of Therapeutic Day School D notified the district's business operations coordinator that the student was accepted. The email states:</p> <p><i>For some reason I cannot find the acceptance sheet, cover sheet on [the student]. We would like him to begin on June 18th. His parents will be coming on June 7th to fill out paperwork...</i></p>
September 2018 Procedural Manual	<p>The district's Procedural Manual was updated. The only noted revision to the <i>Home or Hospital Placements</i> section of the manual (page 67) is specific to the</p>

	<p>last sentence and states:</p> <p><i>...Homebound instruction generally begins after regular school hours and ends by 7:00 p.m., but this must always be determined by a student's IEP team based on his/her individual special education needs.</i></p>
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Findings/Conclusions

Issue 1 - Development, Review, and Revision of IEP {34 CFR §300.324}

The following violation is found as explained below:

Complainant Information

The complainant alleged that the district failed to develop and implement an interim program in the student's home between March 20, 2018 and June 18, 2018. According to the complainant, the district determined that the student required a therapeutic day school placement at an IEP team meeting convened on March 20, 2018. However, the district was unable to secure a therapeutic day school placement until June 18, 2018. As such, the parents notified the district that the student would remain at home until a therapeutic day school placement could be found and, according to the complainant, the district agreed, but did not offer to provide homebound services.

District Information

The district denied this allegation, stating that there was not a need for an interim program. According to the district, the parties worked together to locate a mutually agreeable therapeutic day school placement that could implement the student's March 20, 2018 IEP. The district reported that as early as March 23, 2018, the student was accepted to a therapeutic day school and could have enrolled at and attended the therapeutic day school at district expense. The district stated that the therapeutic day school was in communication with the parent and informed her that the student could enroll and attend.

Summary and Discussion

The district contends that they were never put on notice that an interim placement for the student might have been necessary because the student was accepted to Therapeutic Day School B and could have started attending immediately. The district further contends that the student could have attended Therapeutic Day School B for the remainder of the 2017-18 school year, until an opening at Therapeutic Day School D became available in June 2018. However, the district did not submit any documentation in which information regarding the student's acceptance to Therapeutic Day School B is explicitly stated. The March 23, 2018 email from the clinical director of Therapeutic Day School B states that the parent had toured the school and that the student "seems appropriate" for the program, but does not provide confirmation that the student was accepted or include a start date. Further, there is no documentation to verify that information regarding the student's acceptance to Therapeutic Day School B was communicated to the parent. The district acknowledged in a November 28, 2018 response that there were never any direct communications between the district and the parent regarding the student's potential placement at Therapeutic Day School B.

The Illinois Administrative Code at 23 IAC 226.330 allows a public agency to place students in state-operated or nonpublic special education facilities when an IEP team determines that no less restrictive setting on the continuum of alternative placements will meet the student's needs, but the local school district maintains responsibility for ensuring implementation of the IEP. Further, 23 IAC 226.220(a) requires that when an IEP is developed or revised, implementation shall occur no later than 10 school days. The student's March 20, 2018 IEP required a therapeutic day school placement, but based upon the information provided, it cannot be confirmed that the district ensured implementation of the student's IEP no later than 10 days after the IEP was developed.

Issue 2 - Continuum of Placement Options {23 IAC 226.300}

The following violation is found as explained below:

Complainant Information

The complainant alleged that the district refused to provide home/hospital services, despite the submission of a physician's statement on May 2, 2018. According to the complainant, on or about April 16, 2018, the parents inquired about starting home/hospital services and, on or about April 23, 2018, the district sent the parents the home/hospital forms for completion. The parents submitted the completed forms to the district on or about May 2, 2018 and received notification from the district on May 21, 2018 that the request for home/hospital services was denied.

District Information

According to the district, home/hospital services were not provided to the student during the identified time frame because the district did not have documentation that home/hospital services were warranted. Specifically, the district did not receive the parent's request for home/hospital services until May 7, 2018. Further, the district stated that the request did not indicate a need for such services. The district contends that the completed homebound request form indicated a need for a separate day school, not for homebound services.

Summary and Discussion

The district has established different procedures for the provision of home/hospital services due to a medical condition and home/hospital services due to a psychiatric condition. However, these requirements are not documented in either the district's July 2017 procedural manual or the district's updated procedural manual for the 2018-19 school year.

Based upon the information provided, the district's Psychiatric Referral for Adjustment of Educational Program does not meet the requirements of the Illinois School Code. Specifically, the 105 ILCS 5/14-13.01(a-5) states: *In order to establish eligibility for home or hospital services, a student's parent or guardian must submit to the child's school district of residence a written statement from a physician licensed to practice medicine in all of its branches, a licensed physician's assistant, or a licensed advanced practice nurse stating the existence of such medical condition, the impact on the child's ability to participate in education, and the anticipated duration or nature of the child's absence from school.* While the district has the authority to develop and utilize forms for documenting a student's need for home/hospital services, the district must consider any request for home/hospital services, medical or psychiatric, that is completed by a physician licensed to practice medicine in all of its branches, a licensed physician's assistant, or a licensed advanced practice nurse.

Corrective Action

The district must:

1. Convene an IEP team meeting on behalf of the student in order to consider the need for compensatory education services for the period between the March 20, 2018 IEP team meeting and June 18, 2018 when the student began attending a therapeutic day school.
2. Revise the district's Referral for Adjustment of Educational Program forms to reflect the requirements of 105 ILCS 5/14-13.01. Specifically, the instructions should indicate that the forms may be completed by a physician licensed to practice medicine in all of its branches, a licensed physician's assistant, or a licensed advanced practice nurse.
3. Disseminate the revised forms to the ODLSS district representative for each building, along with accurate information regarding the requirements for home/hospital instruction.
4. Provide assurances that the practice of requiring the "Psychiatric Referral for Adjustment of Educational Program" to be completed by a psychiatrist will be discontinued.

The following materials will serve as verification of compliance with all parts of the corrective action order:

1. A copy of the formal IEP paperwork that clearly describes the team's consideration of, and decision regarding, compensatory education services.
2. A copy of the district's revised Referral for Adjustment of Educational Program forms.
3. Verification of the dissemination of the identified information, including a listing of staff and administrators who received such information, an explanation of the method of dissemination, and a copy of any materials provided.
4. The above-referenced statement of assurance. The statement should be written on district letterhead and signed by an individual that has the authority to provide such assurances.

The above listed materials should be sent to my attention, Special Education Services Division, no later than **February 15, 2019**.

Cooperation from both parties during this investigation is appreciated. Use of this complaint process does not preclude an eligible party such as a parent, school district, or a student from requesting a special education due process hearing. If you have any questions regarding this response, I can be reached at (217) 782-5589 or khandy@isbe.net.

Sincerely,



Principal Education Consultant
Special Education Services Division

cc: Ms. Julie Welsh, Complainant
Ms. Katie Ilijic, Chicago Public School District 299, ODLSS
Mr. Luis Rodriguez, Chicago Public School District 299, ODLSS
Ms. Elizabeth Wagman, Chicago Public School District 299, ODLSS