

Complaint Investigation Report
Parent v. Biddeford

February 18, 2016

Complaint #16.034C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parent

[REDACTED]

Respondent: Jeremy Ray, Superintendent
18 Maplewood Ave.
Biddeford, ME 04005

Special Services Director: Kathy Pizzo

Student:

[REDACTED]
DOB: [REDACTED]

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on December 31, 2015. The Complaint Investigator was appointed on January 4, 2016 and issued a draft allegations report on January 7, 2016. The Complaint Investigator conducted a complaint investigation meeting on January 29, 2016 (rescheduled from the original date of January 21, 2016 at the Respondent's request). The Complaint Investigator received 53 pages of documents from the Complainant on January 29, 2016, received a 4-page memorandum and 2 pages of documents from [REDACTED] School Department (the "District") on January 22, 2016, and a further 2-page memorandum and 51 pages of documents from the District on February 4, 2016. Interviews were conducted with the following: Kathy Pizzo, special services director for the District; [REDACTED] the Student; and [REDACTED] the Student's mother.

III. Preliminary Statement

The Student is [REDACTED] years old and is currently receiving special education under the eligibility criterion Multiple Disabilities (Other Health Impairment and Emotional Disturbance). This complaint was filed by [REDACTED] (the "Parent"), the Student's mother, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to identify the Student as a student who may need special education and related services and refer her to an IEP Team to determine eligibility despite evidence that she qualified for those services under the categories of Autism, Other Health Impairment and/or Emotional Disturbance in violation of MUSER §§IV.2.A, IV.2.D, VII.2.A, E and J.

Ancillary Allegation 1: Failure to formulate annual goals to address all the Student's identified needs and to provide special education services for the Student to advance appropriately toward attaining those goals in violation of MUSER §§IX.3.A(1)(b)(i) and A(1)(d)(i)

V. Summary of Findings

1. The Student lives in [REDACTED] with her sibling, the Parent and her grandparent, and attends [REDACTED] grade at [REDACTED] School ("[REDACTED]"). She began receiving special education services on October 6, 2015.
2. During the Student's [REDACTED] grade year (2013-14) at [REDACTED] School ("[REDACTED]"), the Student had a total of 53 absences from school, 31 marked as excused due to illness and 22 marked as unexcused. The 10th unexcused absence occurred on March 20, 2014.
3. In the Student's [REDACTED] grade year (2014-15) at [REDACTED] as of October 30, 2014, the Student had 17 recorded absences from school, 10 marked as excused due to illness and seven marked as unexcused. A school team met with the Student and the Parent on November 19, 2014 and developed a plan which provided a number of interventions such as allowing the Student to take breaks, giving the Student access to assistance with school work after school and during lunch, and programming for the Student in the alternative education program. When the Student continued to have unexcused absences, the team met again on February 13, 2015 to modify the plan, including more time in the alternative education program.
4. As of March 3, 2015, despite the District's having followed truancy protocol, the Student had 51 unexcused absences from school.
5. On May 12, 2015, the District received from the Parent a summary of a diagnostic workup for the Student by Laura Slap-Shelton, Psy.D., including diagnoses of Asperger's Disorder, ADHD, and Anxiety Disorder. The District then initiated a referral to special education for the Student, and a meeting was held on May 20, 2015 to determine additional evaluations to be performed in order to determine eligibility. On August 27, 2015, pending the completion of evaluations, the Student was placed on an abbreviated school day at [REDACTED] (two classes per day), with some classes in the alternative education program.
6. A meeting to review evaluations and determine eligibility was held on October 6, 2015. The Student was determined to be eligible and an IEP was developed. The IEP, dated October 13, 2015, in the section describing academic needs, states: the Student is "behind in math and reading. She needs support to remediate skills in these subjects." The IEP contains one

academic goal, involving subtraction of multi-digit numbers. The IEP contains two functional goals, addressing school attendance and social skills. Special education services provided through the IEP include specially designed instruction in math, writing, study skills and social skills. Social work services for 30 minutes per week are also provided as a related service. Among the supplementary aids and services described in the IEP, the Student is provided with a late start to school, an escort for entering and leaving school, an alternative setting for lunch, leaving class early, extra time to complete assignments and coping breaks.

7. The Student's IEP Team continued to meet every month to review the Student's abbreviated school day. On November 6, 2015, the IEP was amended to remove the specially designed instruction in study skills, and to provide a four-day school week. On January 13, 2016, the IEP Team determined to add a third class to the Student's school day.

8. The Student obtained the following scores on the NWEA assessment: Fall 2013 - Reading 229 (81%) and Math 232 (65%); Spring 2014 - Reading 231 (78%) and Math 231 (51%). The District administered a battery of academic assessments to the Student on September 16, 2015. On the Comprehensive Mathematics Abilities Test, the Student scored as follows: Global Mathematics Ability - 68 (1%, very poor); General Mathematics - 60 (< 1%, very poor); Basic Calculations - 52 (< 1%, very poor); Mathematical Reasoning - 82 (12%, below average); Advanced Calculations - 85 (16%, below average); Practical applications - 74 (4%, poor). On the Gray Oral Reading Test, the Student's oral reading quotient was 81 (10%, below average). A psychoeducational evaluation of the Student was conducted for the District on September 30, 2015. The report of the evaluation states that the Student "currently presents with average skills related to reading and writing and significant deficits in math calculation and fluency skills....Deficits in math are likely a reflection of lack of instruction due to [the Student's] non-attendance."

9. The District's Child Find policy states that "all children...who are in need of special education and supportive assistance, including...children who have the equivalent of 10 full days of unexcused absences during a school year...are identified, located and evaluated."

10. In response to the events concerning the Student described above, the District took the following actions to systemically address implementation of the District's Child Find policy:

a) In May 2015, Ms. Pizzo met with the Principal and Assistant Principal of [REDACTED] to review the school's Child Find obligation, particularly as it relates to children not making satisfactory progress given general education interventions;

b) In August 2015, the director and assistant director of special education for the District provided all new staff for the District with information about the District's Child Find and Referral/Pre-referral policies, a practice which is planned to continue in preparation for the next school year;

c) Beginning in September 2015, the special education coordinator at [REDACTED] has attended weekly meetings to discuss students who have 10 or more absences, including whether they should be referred to special education.

11. During an interview conducted by the Complaint Investigator with Kathy Pizzo, Ms. Pizzo stated the following: She is the special services director for the District. Since the Student's IEP has been in place, the Student has had only six unexcused absences, three since her scheduled was increased. The Student now attends school from 9:00 until 1:30, every day except Tuesday. The Student says that she needs that one day a week off from school for mental health reasons. The Student understands that, even though the length of her school her day was increased, if she can only attend for part of that schedule on a given day that is okay.

The Student has been attending her social work sessions, and the social worker reports that more recently the Student has been engaged and is connecting with her. The social worker is one of the people at [REDACTED] to whom the Student will go if she needs support. A teacher in the alternative education program is another one of those people. The Student takes two of her classes in the alternative education setting.

There hasn't been any discussion at the Student's IEP Team meetings about tutoring or a computer-based program at home. Those were both provided to her before the Student was identified as eligible for special education, although the Student was unavailable for tutoring on approximately 50% of the scheduled sessions. The IEP Team hasn't yet discussed summer programming for the Student, but it would be available if the IEP Team determined that the Student needed it.

It's difficult to assess the extent to which the Student's skill levels suffered as a result of her absences at [REDACTED]. The Student hadn't previously had the academic evaluations that were conducted when the Student was referred to special education. She believes that the goal for the Student now is to get her to attend and engage with school on a regular basis, to build her academic skills but also to prepare her to engage in full-time employment after she finishes school.

12. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: When the Student was enrolled in [REDACTED] and the District would call to ask why the Student was not in school, she would tell them that the Student was depressed, was sitting on her bed staring out the window, and that she couldn't get the Student out the door. Staff members at [REDACTED] told her that they could see that the Student was depressed.

The Student missed so many days in [REDACTED] that she doesn't believe the Student learned anything while she was there. Math is a particular area of weakness for the Student; the Student is not good at telling time or making change, for example. The Student can read, but it's so hard for her to concentrate that she often has to re-read passages to understand them. She thinks that if the Student could do computer-based learning at home under supervision by [REDACTED] she could make up some of the work she missed. She has also asked the District for a tutor for the Student so she could work at home, and for the Student to receive instruction over the summer. When the District provided a tutor for the Student last year, the Student had a hard time working with that tutor because they sent a male even though she had requested a female.

The Student's schedule initially required her to be in school from 10 to 1:45, and there was a Saco Health Care worker who came to the home and helped the Student get out and go to school. The District pressured the Student in January to add another class (they told her she needed to get enough credits so she could graduate), so her day now begins at 8:30, and that's too early for the health care worker to get to the house. The Student's attendance hasn't been as good since then. The Student also needs to adjust to the new schedule, and the Student is having a hard time with the P.E. class that she chose to add in January (alternating with a music class).

13. During an interview conducted by the Complaint Investigator with the Student, the Student stated the following: Her many absences while at [REDACTED] gave her negative feelings about school. Her teachers didn't like her and were mean to her because she was out of school so much. They thought she was a bad kid. They didn't understand about her anxiety-related issues, like requiring her to give a presentation in front of the whole class. [REDACTED] also didn't offer her many options, like attending on a shortened schedule.

Missing so much school also made her fall further behind in math. She wasn't a very good math student to begin with, and missing so much instruction made her fall even further behind. She started the year in a pre-algebra class, but she couldn't understand what was going on. Now she's in a special math class, and it is helping her to catch up; they started with something small and are gradually building from there. She doesn't have the same problem in her other subjects. She always liked English class, so she's doing pretty well there. In social studies, she has difficulty paying attention consistently but she tries to do her best.

She has been attending two of her classes in the alternative education program, and she likes that better than regular classes; there are fewer students and it's easier for her to get help when she needs it. Also, her sessions with the school social worker have been helpful. She sees another social worker outside of school, and that will continue during the summer.

With regard to tutoring, she tried that last year but she didn't like her tutor very much. She likes to take her time with school work, and with a tutor she always has someone looking over her shoulder. She's not really interested in doing additional on-line academic work during the regular school year, but she would like to do on-line work during the summer. She doesn't want to attend in-school summer sessions because she would lose the chance to do different things during that time.

VI. Conclusions

Allegation #1: Failure to identify the Student as a student who may need special education and related services and refer her to an IEP Team to determine eligibility despite evidence that she qualified for those services under the categories of Autism, Other Health Impairment and/or Emotional Disturbance in violation of MUSER §§IV.2.A, IV.2.D, VII.2.A, E and J
VIOLATION FOUND

MUSER §IV.2.A requires that each SAU maintain and implement policies and procedures to ensure that all children, including children who have the equivalent of 10 full days of unexcused absences, who are in need of special education and related services be identified, located and evaluated. Although the District maintained a policy to this effect, it failed to implement that policy in the instance of the Student. As early as March 2014, the Student had accumulated 10 full days of unexcused absences and yet, although the District instituted several appropriate (although ultimately unsuccessful) interventions, no effort was made to consider whether the Student should be referred to special education. This situation continued to persist through the 2014-15 school year, until the Parent ultimately obtained and shared with the district a neuropsychological evaluation which diagnosed the Student with several conditions which potentially qualified the Student for special education services. A referral to special education was then made, approximately 14 months after the Student first potentially qualified for such referral based on her unexcused absences from school.

The Student is now getting services and an abbreviated school day schedule to help the Student improve her attendance. The many days the Student did not attend [REDACTED] however, resulted in the Student losing academic skills or not progressing. This was acknowledged, as to the Student's math skills deficit, by the District's own school psychologist. Under these circumstances, the Student is entitled to receive compensatory services to redress the loss of instruction she experienced.

The situation is complicated, however, by the simultaneous need to support the Student in her efforts to attend school regularly and for a full school day. The Student's IEP Team, therefore, will be required to consider, at the next meeting scheduled to review the Student's abbreviated school day, how and to what extent additional instruction will be provided to the Student. The Team should consider, among other options, the use of tutoring, computer-based instruction and summer programming to provide this additional instruction. Hopefully, the Student will feel able to participate in these discussions in order to develop a program in which she feels she can be successful.

Additionally, although the District implemented several worthwhile initiatives to better inform new District staff members and building administrators of [REDACTED] of the District's Child Find and Referral policies, particularly with regard to students with excessive unexcused absences, those efforts did not include all current teaching staff of [REDACTED]. The District will therefore be required to provide training on these matters to all [REDACTED] teaching staff.

Ancillary Allegation #1: Failure to formulate annual goals to address all the Student's identified needs and to provide special education services for the Student to advance appropriately toward attaining those goals in violation of MUSER §§IX.3.A(1)(b)(i) and A(1)(d)(i)

VIOLATION FOUND

The regulations surrounding the development of a student's IEP require that the IEP contain a statement of annual goals designed to meet the student's needs resulting from the student's disability, and a statement of special education services to be provided that will enable the

student to advance towards attaining those goals. In the Student's IEP dated October 13, 2015, the Student is identified as having academic needs in the areas of math and reading. While the IEP does include a goal (addressed to one particular computational skill) and provision of specially designed instruction in math, there is neither an annual goal nor any instruction provided in the area of reading. Although the IEP provides specially designed instruction in writing, which is not identified in the IEP as an academic need of the Student, there is no annual goal relating to that instruction. Likewise, specially designed instruction had initially been provided in the area of study skills without a corresponding annual goal, although the November 2015 amendment removed that item of service.

To address these deficiencies, the District will be required to direct the Student's IEP Team to consider again the specific academic needs of the Student related to her disability, and to amend the IEP as necessary to ensure that services are being provided to meet all the Student's academic needs, with one or more annual goals stated to correspond with each area in which instruction is being provided.

VII. Corrective Action Plan

At the next scheduled IEP Team meeting, the Student's IEP Team will review the Student's academic needs, identifying each specific area of need, and then identifying goals and services that correspond to each of those needs. The IEP Team will also consider the amounts and nature of compensatory academic instruction to be provided to the Student, bearing in mind the dual goals of remediating academic skill deficits while encouraging greater school attendance. As documentation of the fulfillment of this obligation, The District will provide to the Due Process Office and the Parent a copy of the Written Notice and amended IEP that results from that meeting.

In addition, the District shall provide in-service training to all regular and special education teaching staff of [REDACTED] as soon as is practicable, regarding the District's policies on Child Find and Referral/Pre-Referral of Students with Disabilities, including the obligation to consider referral of students who are not making satisfactory progress given general education interventions, as well as students who have 10 or more unexcused absences from school. Such training will include the distribution of a written memorandum on these matters.

Documentation of the in-service training shall include: the name and qualifications of the presenter; an agenda of the training; hand-outs for the training; names and titles of those who attended the training; and anonymous evaluations of the training. The District will submit this documentation, along with a copy of the written memorandum, to the Due Process Office and the Parent.