

Complaint Investigation Report

Legal Guardian v Greenbush

March 29, 2016

Complaint #16.048C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Legal Guardian

[REDACTED]

Respondent: Gwen Smith, Superintendent
129 Military Rd.
Greenbush, ME 04416

Special Services Director: Kerry Priest

Student:

[REDACTED]
DOB: [REDACTED]

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on February 19, 2016. The Complaint Investigator was appointed on February 24, 2016 and issued a draft allegations report on February 29, 2016. On March 7, 2016, the Complaint Investigator received 30 pages of documents from the Complainant, and received a 6-page memorandum and 135 pages of documents from [REDACTED] School Department (the "District") on March 15, 2016. Interviews were conducted with the following: Lynn Wells, special education director for RSU #22; Lynn Faerber, director of [REDACTED] Child and Family Center ("[REDACTED]"); and [REDACTED] the Student's grandmother and legal guardian (the "Legal Guardian").

III. Preliminary Statement

The Student is [REDACTED] years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by the Legal Guardian, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully perform the actions required under the terms of paragraphs 2 and 3 of the mediation agreement dated December 21, 2015 between the parties.

V. Summary of Findings

1. The Student currently lives in [REDACTED], Maine with the Legal Guardian, and is attending [REDACTED] School (" [REDACTED] ") in [REDACTED] Maine.

2. On November 30, 2015, the Legal Guardian, who at that time lived in [REDACTED], Maine, filed a request for complaint investigation involving the Student against the District, docketed at 16.026C. The draft allegations report for that investigation read as follows:

1. Failure to fully and adequately implement the Student's IEP with respect to providing a gradual transition from [REDACTED] to the [REDACTED] School in violation of MUSER §IX.3.B(3);
2. Failure to adequately consider the harmful effect on the Student when determining that the Student's placement would be at the [REDACTED] School prior to implementing a program for gradual transition to the school in violation of MUSER §X.2.B.

3. The parties to that case participated in mediation on December 21, 2015, resulting in a written agreement. The mediation agreement, signed by both parties, is reproduced below:

1. [REDACTED] School Department will try to work with [REDACTED] school district staff to reach an agreement to allow the student to be transitioned to [REDACTED] beginning on January 4, 2016, with the understanding that the student's guardian is intending to move to a residence within the [REDACTED] school district by February 1, 2016.

2. If the student is accepted as a tuitioned student by the [REDACTED] school district, [REDACTED] School Department will be financially responsible for the services and tuition for the student, including transportation services and occupational therapy services, over a transition period that will be determined by the [REDACTED] school district.

3. [REDACTED] School Department will not pay for the student to attend the [REDACTED] Child and [REDACTED] Center after January 25, 2016, unless the student continues to be placed there pursuant to a transition plan overseen by [REDACTED] school district.

4. If the student is not accepted as a tuitioned student in the [REDACTED] school district, it is the expectation of the parties that the student's guardian will move to a residence in the [REDACTED] school district as soon as feasible. If the guardian is not able to move, the [REDACTED] School Department plans to place the student at the [REDACTED] School.

5. [REDACTED] School Department will try to find an occupational therapist for the duration of the transition period. If the student is accepted as a tuitioned student in the [REDACTED] School District and [REDACTED] School Department is unable to provide occupational therapy during the transitional period, [REDACTED] School Department will be responsible for compensatory occupational therapy services. [REDACTED] School Department agrees that it is responsible for compensatory occupational therapy services from September 2, 2015, through today's date.

6. If [REDACTED] School Department's BCBA seeks consultation with the prior BCBA, the School Department will pay for three consultations not to exceed \$70 per session.

4. Shortly after the mediation, Mr. Priest contacted Ms. Wells, special education director for RSU #22 (the district which includes [REDACTED] and requested that RSU #22 accept the Student on a tuition basis. Ms. Wells responded that RSU #22 would not agree to that request, but would provide services if and when the Student became a resident of RSU #22.

5. The District continued to pay for the Student to attend the [REDACTED] program until Friday January 15, 2016, and anticipated that the Student would begin to attend the [REDACTED] School on Tuesday January 19, 2016 (January 18th being a holiday).

6. The Legal Guardian did not send the Student to attend the [REDACTED] School, but continued to send the Student to the [REDACTED] program until on or about February 23, 2016.

7. On January 5, 2016, the Legal Guardian, along with Ms. Faerber and Vicki Curtis (case manager for the Student), met with Ms. Wells. The Legal Guardian told Ms. Wells that she intended to move to a residence within RSU #22 by March 1, 2016, and was interested in the programming that would be available for the Student in that district. Ms. Wells described the programming that would be available in RSU #22 and Ms. Faerber shared information about the Student's programming at [REDACTED]. Ms. Faerber also described the kind of transition activities with which she had been involved for other children, consisting primarily of an observation of the child conducted by the school district, and visits by the child to the new school accompanied by staff from [REDACTED]. Ms. Wells said that she would share the information about the Legal Guardian's intended change of residence with her superintendent, and would be in touch about what could be done in anticipation of that move.

8. Several days later, Ms. Faerber received a phone call from RSU #22 in which she was told that someone from RSU #22 would come observe the Student at [REDACTED] on January 25, 2016. The observation took place as scheduled and afterwards the Student made two or three visits to [REDACTED] accompanied by Ms. Faerber.

9. On January 21, 2016, the Legal Guardian completed the paperwork required in order to register the Student with RSU #22 and was told that proof of residence within RSU #22 was also required to complete the registration. The Legal Guardian did not submit documentation of residency until on or about February 22, 2016. The Student was officially registered with RSU #22 and began to attend school at [REDACTED] on February 25, 2016.

10. The charges associated with the Student's attendance at [REDACTED] from January 19 to February 25, 2016 total \$4,180, which charges remain outstanding.

11. During an interview conducted by the Complaint Investigator with Lynn Wells, Ms. Wells stated the following: She is the special services director for RSU #22. On December 21, 2015, she spoke with Mr. Priest about the Student. Mr. Priest asked whether RSU #22 would agree to accept the Student on a tuition basis. He said that the Legal Guardian might be moving into her district, but he didn't tell her that the Legal Guardian already had a house there; she understood that the move was a possibility, not a certainty. Mr. Priest also didn't mention anything about the mediation agreement. She spoke with her superintendent about

Mr. Priest's request and then called Mr. Priest to tell him that RSU #22 was not willing to accept the Student on a tuition basis, but would provide services to the Student if and when the family moved within RSU #22,

Soon after the conversation with Mr. Priest, she received a phone call from the Legal Guardian about the Student coming to RSU #22, and she set up a meeting for January 5, 2016 to discuss this. On January 5th, she met with the Legal Guardian, Ms. Faerber and Ms. Curtis. The Legal Guardian told her that she was preparing to move to a house in [REDACTED] before the end of February 2016. The Legal Guardian asked whether she could send someone to [REDACTED] to observe the Student, and then begin to transition the Student to [REDACTED]. The Legal Guardian also gave her the mediation agreement to read. She agreed to send someone to observe the Student, but the earliest she was able to do this was January 25, 2016.

Mr. Priest sent a letter to her dated January 20, 2015 in which he asked whether RSU #22 could provide compensatory OT services to the Student, for which the District would reimburse her district. She wrote back on January 29, 2016 that she knew the Student would be moving to RSU #22, but that he was not currently a resident. She also wrote that she did not have enough staff to provide those compensatory services.

After January 25th, the Student visited [REDACTED] with Ms. Faerber a few times, but he was not attending there. On February 8, 2016, she gave the Legal Guardian paperwork to enroll the Student with RSU #22. The Legal Guardian filled out the form and returned it (without the required proof of residency) on February 11, 2016. At that time, she had a conversation with the Legal Guardian about when the Student would begin attending [REDACTED], and they agreed upon the date of February 25, 2016. The Legal Guardian provided proof of residency during the week of February 22, 2016, and the Student was officially enrolled in RSU #22 on February 25th.

12. During an interview conducted by the Complaint Investigator with Lynn Faerber, Ms. Faerber stated the following: She is the director of [REDACTED]. She attended a meeting with Ms. Wells, Ms. Curtis and the Legal Guardian on or about January 5, 2016. Ms. Wells told them that she had received a phone call from Mr. Priest asking RSU #22 to accept the Student on a tuition basis prior to the Legal Guardian's move to RSU #22, that the superintendent had said no to that request, but that RSU #22 would provide educational services to the Student if and when the Legal Guardian moved there. The Legal Guardian made it very clear that she wanted the Student to be out of the District, and that she was definitely going to move by March 1, 2016. She told Ms. Wells that she knew to which house she would be moving, but that she needed to do some maintenance work to the house before she could move.

They then discussed the type of services the Student was receiving at [REDACTED], and the services that were available in RSU #22. She described the typical transition process for students entering public school from [REDACTED], which consists of her going to the public school with the student to help him/her get acclimated, and staff from the public school coming to [REDACTED] to observe the student. She told Ms. Wells that the Student probably wouldn't need an extended transition period because RSU #22's program was not that different from the program at [REDACTED]. Ms. Wells was very supportive, and said that she

thought transition would be of great benefit to the student. Ms. Wells said she would have to tell the superintendent that the Legal Guardian would be moving to RSU #22 at some point, and discuss what RSU #22 staff could do in the meantime about transition. She left the meeting feeling very positive about RSU #22, and believing that Ms. Wells was in agreement that the Student needed transition activities.

About one week after the meeting with Ms. Wells, she received a phone call from RSU #22 saying that they wanted to have someone come to [REDACTED] to observe the Student, but that no one was available to do this until January 25, 2016. The observation took place on the 25th, and she thought this meant that RSU #22 had agreed to accept the Student on a tuition basis prior to the Legal Guardian's move; the Legal Guardian told her this was not the case, however.

The week following the observation, she got a call from RSU #22 saying that they would like her to bring the Student to [REDACTED] to see the building, meet the teacher in whose classroom the Student would be placed, and generally look things over to identify anything that might be a trigger for the Student. She went with the Student to [REDACTED] on two or three days in early February for a couple of hours. They sat in on a few different activities, including morning group time and free choice time. The ed tech who would be working with the Student joined them during the visits. Around this same time, Ms. Wells told her that the Student was not enrolled in RSU #22, saying "He's not our student."

The Student attended [REDACTED] for one or two days in the week after February break, and then began attending [REDACTED] full time.

13. During an interview conducted by the Complaint Investigator with the Legal Guardian, the Legal Guardian stated the following: Mediation with the District took place over winter break. She spoke with Ms. Wells during the break and after the mediation about the Student transitioning to RSU #22. She met with Ms. Wells, Ms. Faerber, and Ms. Curtis a few days after the break was over. She showed the mediation agreement to Ms. Wells. Ms. Wells called her the next day to say that her superintendent had agreed to accept the Student.

She changed her official residence to the [REDACTED] address on February 1, 2016. That address is her mother's home. She registered the Student with RSU #22 sometime in the first week of February, knowing that she and the Student would be living in [REDACTED] by March 1, 2016. RSU #22 told her they were aware that the Student was going to attend school there. Ms. Wells told her that she was unable to get someone to go observe the Student at [REDACTED] until January 25, 2016. Once the observation was completed, they started the process of transitioning the Student to [REDACTED] School in [REDACTED]. The Student began attending [REDACTED] ½ day with someone from [REDACTED] and spent the other ½ day at [REDACTED]. The Student then began attending [REDACTED] for the full day on February 25, 2016.

The Student hasn't received OT since May 2015, but she doesn't wish to pursue that claim. She only wants [REDACTED] to be compensated for the services they provided from January 15 to February 25, 2016.

VI. Conclusions

Allegation #1: Failure to fully perform the actions required under the terms of paragraphs 2 and 3 of the mediation agreement dated December 21, 2015 between the parties.

NO VIOLATION FOUND

This complaint was filed pursuant to MUSER §XVI.2.B as an action to enforce the mediation agreement between the parties. The Legal Guardian alleges that the District failed to fulfill its obligations under the agreement by failing to compensate [REDACTED] for services between the dates of January 19 and February 25, 2016. The District's obligation under the agreement begins with its attempting to reach an agreement with RSU #22 to allow the Student to begin transitioning to that district on January 4, 2016 on a tuition basis. Mr. Priest fulfilled that obligation by contacting Ms. Wells and requesting that RSU #22 accept the Student on a tuition basis. Ms. Wells, after speaking with her superintendent, responded to Mr. Priest and told him that RSU #22 was not willing to accept the Student on that basis.

The District's obligation under the agreement to compensate [REDACTED] for services provided to the Student is clear: if RSU #22 was to agree to accept the Student on a tuition basis, the District would continue to pay for [REDACTED] services to the Student for whatever period of time was established by RSU #22 for the Student to transition to its school; if RSU #22 was to not agree to accept the Student on a tuition basis, the District would only be required to pay for [REDACTED] services to the Student until January 15, 2016. As indicated above, RSU #22 did not agree to accept the Student on a tuition basis, and therefore the District's obligation to compensate [REDACTED] ended on January 15, 2016. The District's obligation under those circumstances was to provide educational services to the Student at the [REDACTED] School starting on January 19, 2016, which the District asserts it was prepared to do. The Legal Guardian chose to not take advantage of any services offered at that school but made her own choice to keep the Student at [REDACTED]

VII. Corrective Action Plan

As no violations were found, none is required.