Complaint Investigation Report

Legal Guardian v Greenbush

March 29, 2016

Complaint #16.048C

Complaint Investigator: Jonathan Braff, Esq.

I. <u>Identifying Information</u>

Complainants: Legal Guardian

Respondent:

Gwen Smith, Superintendent

129 Military Rd.

Greenbush, ME 04416

Special Services Director: Kerry Priest

Student:

DOB:

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 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 Child and Family Center ("Complaint"); and the Student's grandmother and legal guardian (the "Legal Guardian").

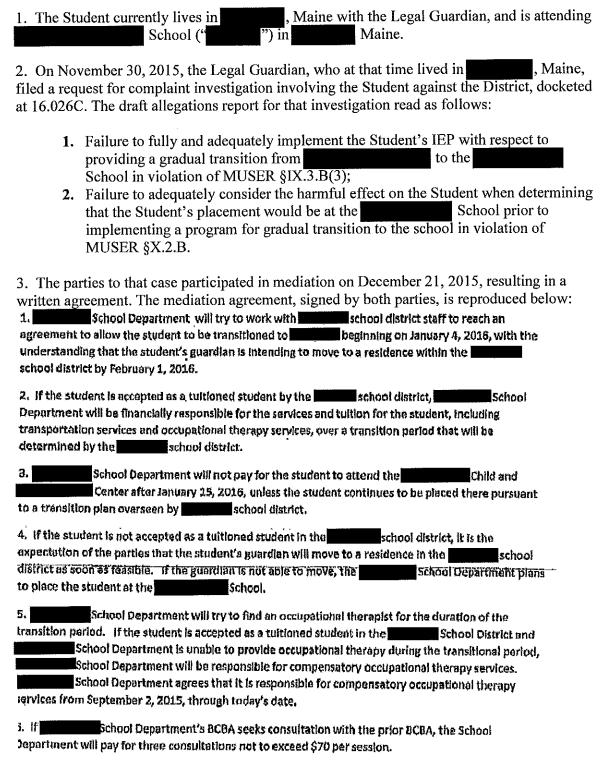
III. Preliminary Statement

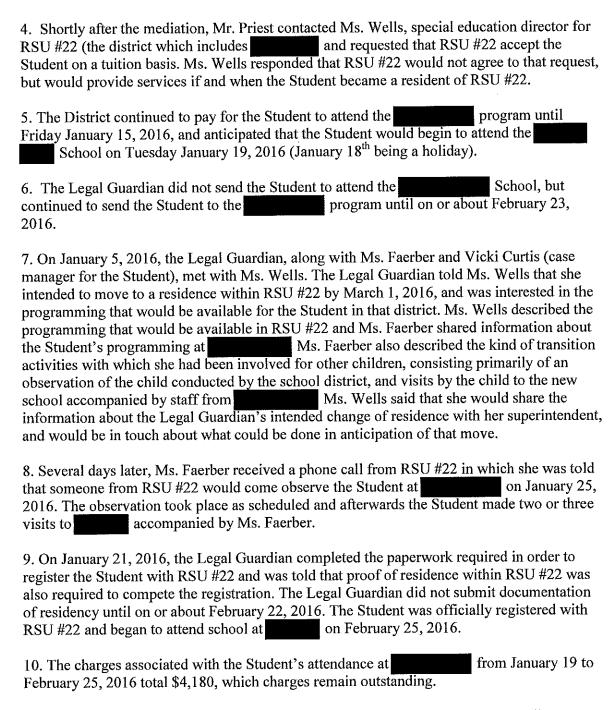
The Student is years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by the Legal Guardian, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

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. <u>Summary of Findings</u>





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. Farber and Ms. Curtis. The Legal Guardian told her that she was preparing to move to a house in the end of February 2016. The Legal Guardian asked whether she could send someone to to observe the Student, and then begin to transition the Student to 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 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 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 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 services, and the services that were available in RSU #22. She described the typical transition process for students entering public school from the public school with the student to help him/her get acclimated, and staff from the public school coming to 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 the student of the student she was very supportive, and said that she

2016.

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.

that the Student needed transition activities. About one week after the meeting with Ms. Wells, she received a phone call from RSU #22 to observe the Student, but saying that they wanted to have someone come to 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 to see the building, meet the teacher in whose classroom her to bring the Student to 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 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." for one or two days in the week after February break, and The Student attended then began attending 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 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 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 until January 25, 2016. Once the observation was completed, they started the process School in The Student began of transitioning the Student to and spent the other ½ day at ½ day with someone from attending

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

The Student then began attending

for the full day on February 25,

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 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	for services
provided to the Student is clear: if RSU #22 was to agree to a	scept the Student on a tuition
basis, the District would continue to pay for	ervices 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 services to	the Student until January 15,
2016. As indicated above, RSU #22 did not agree to accept the	ne Student on a tuition basis, and
therefore the District's obligation to compensate	ended on January 15, 2016.
The District's obligation under those circumstances was to pro-	rovide educational services to the
Student at the School starting on January 19,	
was prepared to do. The Legal Guardian chose to not take ad	vantage of any services offered at
that school but made her own choice to keep the Student at	

VII. Corrective Action Plan

As no violations were found, none is required.