

**Complaint Investigation Report**  
**Parents v. MeANS**

April 20, 2016

Complaint #16.050C

Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainants: Parents

Respondent: Gordon Donaldson, Board Chair  
9 Martin's Cove  
Lamoine, ME 04605

Special Services Director: Anna Perkins

Student:

DOB:

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on March 3, 2016. The Complaint Investigator was appointed on March 8, 2016 and issued a draft allegations report on March 11, 2016. The Complaint Investigator conducted a complaint investigation meeting on March 28, 2016, resulting in a set of stipulations. On April 3, 2016, the Complaint Investigator received 19 pages of documents from the Complainants, and received a 5-page memorandum and 388 pages of documents from [REDACTED] (the "School") on April 5, 2016. Interviews were conducted with the following: Tonya Arnold, principal of the School; 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 Specific Learning Disability. This complaint was filed by [REDACTED] (the "Parents"), the Student's parents, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

**IV. Allegations**

1. Failure to perform a manifestation determination within 10 school days of a decision to change the Student's placement on February 4, 2016 because of a violation of a code of student conduct, in violation of MUSER §XVII.1.E;
2. Failure to provide sufficient educational services following the Student's suspension on February 4, 2016 so as to enable him to continue to participate in the general education curriculum and to progress toward meeting his annual goals in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a);
3. Failure to provide advance written notice to the Student's parents of the March 4, 2016 IEP Team meeting at least seven days prior to the meeting in violation of MUSER §VI.2.A.

#### V. Stipulations

1. As the result of a physical altercation involving the Student on February 4, 2016, the Student's parents were informed on that date that the Student could not return to school until a risk assessment was performed.
2. At the IEP Team meeting of March 1, 2016, a manifestation determination review to consider the suspension that occurred due to the events on February 4<sup>th</sup> was scheduled for March 4, 2016.
3. The Student's parent did not receive an Advance Written Notice for the March 4<sup>th</sup> review meeting, but at her request the meeting was postponed until March 17, 2016.
4. On March 1, 2016, Ms. Arnold spoke with a psychologist from Kennebec Behavioral Health about the Student, which conversation included personally identifiable information.

#### VI. Summary of Findings

1. The Student lives in [REDACTED] with the Parents, and has been attending [REDACTED] grade at the School.
2. At the end of the school day on February 4, 2016, the Student was involved in an altercation with another student during which the Student choked the other student with sufficient force as to leave marks on the other student's neck. It was reported to the School that the Student's actions were premeditated. Prior to this incident, the Student had not been subject to any disciplinary removal during the school year.
3. The principal of the School, Tonya Arnold, called the Student's mother to report the incident and informed her that the Student would not be able to return to the School until a risk assessment of the Student was performed. The Student's mother asked whether the assessment could be performed by someone from Kennebec Behavioral Health (KBH), an agency which had provided services to the Student in the past, and Ms. Arnold agreed.
4. The following week, the Student's mother called to tell Ms. Arnold that KBH would not be able to do the risk assessment, and asked whether the School had someone who could do it. Ms. Arnold contacted someone who initially agreed to do the assessment, but who

subsequently withdrew. Ms. Arnold then spoke with KBH and identified a provider, Holly Zack, who would be able to do the assessment. In her conversation with Ms. Zack, Ms. Arnold summarized the events of the February 4<sup>th</sup> incident.

5. The Student's file contained a Release given by the Student's mother to KBH, authorizing KBH staff to give, get and discuss records and information with the School.

6. The Student's IEP Team met on March 1, 2016. The School provided Advance Written Notice to the Parents of this meeting on February 25, 2016 (the Student's mother executed a waiver of the seven days' notice requirement), indicating that the purposes of the meeting were annual review of the IEP, discussion of the post-secondary transition plan, and "Other" (with "Other" not further specified). As of March 1<sup>st</sup>, the Student had been removed from school for eight days. Ms. Arnold intended to use the meeting to discuss the risk assessment and to conduct the manifestation determination review. At the meeting, the Student's mother stated that she was not willing to consent to have the risk assessment performed, and was not prepared to hold the manifestation determination review. A meeting was scheduled for the manifestation determination review to be held on March 4, 2016. As of March 4<sup>th</sup>, the Student would be removed from school for 11 days.

7. On March 3, 2016, the Student's mother informed Ms. Arnold that she wanted the March 4<sup>th</sup> meeting to be rescheduled, and provided her with a copy of the request for this complaint investigation. The meeting was rescheduled for March 17, 2016, and Ms. Arnold informed the Student's mother that the Student could return to school on March 7, 2016 pending the meeting on March 17<sup>th</sup>.

8. On February 8, 2016, the School emailed the Student's mother stating that school assignments and materials could be picked up or mailed home, that the Student could speak with school staff for clarification on assignments or explanation of new material, and that the Student could access [REDACTED] Academy online for math work using a computer at the public library if there was no internet access at home. On February 12, 2016, one of the Student's teachers emailed two large assignments, one for humanities and one for science. Although they contained links to webpages, the teacher suggested that the Student's mother could print the materials herself and give them to the Student, or else have the Student go to the library to consult other resources. On March 1, 2016, the School provided the Student with a set of math assignments and offered to provide tutoring.

9. During an interview conducted by the Complaint Investigator with Tonya Arnold, Ms. Arnold stated the following: She is the Principal at the School. The incident of February 4, 2016 came to her attention when she noticed a couple of students running by her window and yelling at one another. She went to investigate what was going on, and someone told her that three students were involved in a fight, one of them the Student. She had a staff member take a walk with the Student and help him calm down. Another student, a girl, was in the bathroom cleaning her bloody nose. The girl told her that the Student had been telling her all day that he was "going to get" a third student, a boy, which she understood to mean that he was planning to physically fight with that boy. The girl said that when she and the Student were on the way to the bus at the end of the school day, the Student suddenly moved up to where the boy was walking and elbowed him. They started to fight, the girl got between them to try to stop it, and

that's when she got the bloody nose. The Student then pushed the boy against the wall and started choking him. The girl said she pulled the Student off of the boy. She then spoke to the Student, and what he told her matched what she had heard from the girl. She later called the boy's home (the boy was already on the bus by the time she was speaking with the girl) and spoke with the boy and with his mother. The mother reported that there were red marks on the boy's neck. She also spoke with a teacher who had seen the boy after he got on the bus, and the teacher said that the boy was rubbing his neck and that he had seen red marks there. She also spoke with another student who said he had seen the incident, that he had seen the Student choking the boy and the girl trying to pull him off of the boy.

The School Policy and Procedures Manual states that if there is an incident involving a substantial risk of injury or death, then the School can require a risk assessment of the student(s) responsible. She believed the February 4<sup>th</sup> incident was in that category, and so she told the Student's mother that there would need to be a risk assessment before the Student could return to school. She believed she needed that assessment in order to protect the safety of the students and also to help put appropriate supports in place for the Student. She expected that the assessment would be completed within a short period of time.

As she was talking with the Student's mother about finding someone to do the assessment, she tried to emphasize that she wanted it to be done quickly so the Student could get back to school. She spoke about the manifestation determination having to be done within a certain time, and that there needed to be a meeting. She believes that the Student's mother should have known that the March 1, 2016 meeting was going to include the manifestation determination review. When, at the meeting, the discussion turned to this topic, the Student's mother didn't seem surprised.

The Student's mother appeared to be very stressed at the meeting. She discovered that there were things going on with the Student that the Student's mother had not shared with the School. She knew that the Student had been in the hospital, but she didn't know why. She hadn't seen any dangerous behavior from the Student before February 4<sup>th</sup>; the only problems were his being off-task and disrespectful. They talked at length about the risk assessment. She told the Student's mother that she just needed a written clinical recommendation to protect the School and to help program for the Student. She explained that just a verbal discussion wouldn't be sufficient to protect the School. She told the Student's mother that she had never encountered a family that wasn't willing to go ahead with a risk assessment. She said that if the Student's mother's concern was about private information that might be disclosed during the assessment, then that information could be redacted from the assessment report and she would accept just a summary.

At the end of the meeting, Ms. Perkins asked the Student's mother where she stood; the Student's mother said she would have to think about it. She explained to the Student's mother the need to make the manifestation determination within 10 days, and offered several dates for the next meeting; the Student's mother agreed to March 4<sup>th</sup>. She expected that she would find out at the March 4<sup>th</sup> meeting whether the Student's mother would agree to the risk assessment, and that KBH would figure out a way to provide some kind of written summary to the School that the Student's mother would find acceptable.

There was also discussion at the March 1<sup>st</sup> meeting that, while the Student's disability was Specific Learning Disability, it sounded like there were other things going on with him. She suggested that at the March 4<sup>th</sup> meeting the Student's mother could share some of that information. She also told her that the School would do its best to provide educational services until the Student could return, including tutoring. The Student's mother asked what would happen if she didn't agree to the risk assessment. She answered that she didn't know as it had never happened before, and asked why the Student's mother wouldn't want to do it. She again emphasized that the School didn't need any particular type of format, just a written statement from a clinician that the School could use to develop a safety plan.

She has no record of being told that the Student can't go online to do schoolwork; the Student had always been able to do his work. The Student had been out of school before and teachers had sent the same kinds of assignments with no problem. She wasn't aware if the Student had not received math assignments before March 1<sup>st</sup>, but the Student's mother hadn't asked for it. She offered tutoring to the Student's mother at least twice, but the Student's mother never asked for it.

She spoke with Holly Zack at KBH about conducting the risk assessment and asked her to attend the March 1<sup>st</sup> meeting, but she was unable to stay until the meeting started. She told Ms. Zack that she wanted her to connect with the Student's mother. Ms. Zack wanted to know about the incident, and she told Ms. Zack that there was a release in the Student's file. She described the incident and discussed what the School was looking for. Ms. Zack asked whether the Feb. 4<sup>th</sup> incident was part of a pattern of behavior and she said no. She said that the behavior data for the Student showed that he was doing better. She didn't go into a lot of detail, saying Ms. Zack could get more information from the Student's mother.

10. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: She didn't know that the March 1, 2016 IEP Team meeting was going to be a manifestation determination review. Ms. Perkins described the meeting in an email as a "check-in." When the School tried to bring up the manifestation determination at the meeting, she said she didn't know what that was about and wasn't prepared. The School said it had to be done within a certain time, and that they would have to reschedule another meeting to do it. Several dates were considered and March 4<sup>th</sup> was the only mutually agreeable date. She initially agreed to that date, but after speaking with an advocate, she believed that she was entitled to seven day's notice. Also, the School had asked her for a lot of information about the Student's mental health needs, and that wasn't enough time to pull all of that together.

She had given the Student's teachers information about the Student's mental health issues before that meeting. There had been other incidents before February 4<sup>th</sup>, but they weren't documented. There was an incident when the Student stole a teacher's knife, intending to use it to inflict self-harm. She asked for an IEP Team meeting to discuss the mental health issues in October, but she was told the School staff didn't have time at that point. She met with the Student's special education teacher, Brian Andre. She told him about the Student's mental health issues, that she was concerned that the Student would exhibit aggressive behavior in school, and that she wanted support in school for the Student. Mr. Andre said that if the Student did become aggressive, he would manage the Student's behavior. She also discussed

the Student's mental health needs at the January 2016 IEP Team meeting after the Student's third hospitalization – what his triggers were and what staff should be on the lookout for. At that point, the Student was doing pretty well at school.

When Ms. Arnold first spoke about the risk assessment, the Student asked Ms. Arnold whether KBH could do it. She then spoke with people at KBH who told her they could not do it, and she passed that along to Ms. Arnold. She asked Ms. Arnold whether the School had someone who could do it, and told her that she wanted to speak with that person before she consented to the assessment. Prior to March 1<sup>st</sup>, she didn't understand what a risk assessment was, although Ms. Arnold tried to explain to her what it meant. The Student has a lot of mental health services in place. She spoke with some of his providers, and they explained that it represented a clinical opinion of the risk presented by a child at school. February 4<sup>th</sup> was the first significant issue that occurred at school, and she thought that requiring the risk assessment was too drastic. She understands that a risk assessment is done only after supports are put in place and proven unsuccessful. She made it clear at the March 1<sup>st</sup> meeting that she was not going to consent to a risk assessment. She suggested at the meeting that the Team should meet with the Student's providers and develop a plan to support him, but the School rejected that suggestion.

After the incident on February 4<sup>th</sup>, she received an email from the Student's advisor about school work he could be doing and Ms. Arnold suggested that the Student do school work online. The assignments that were sent had links to online resources. The Student wasn't able to do this school work online because he's not able to access the internet at home due to his mental health issues. She explained this to the Student's teacher in an email. Also, she doesn't allow the Student to bring technology home from school because of concerns about property destruction. He needed to have hard copy assignments and perhaps tutoring as well. Tutoring was mentioned as something that could be discussed if the Student was still out of school after the February break. At the March 1<sup>st</sup> meeting, Ms. Arnold said that if no risk assessment was performed, then the Student would not be welcomed back into school and the School would provide tutoring. The Student didn't get any math assignments until the March 1<sup>st</sup> meeting. Those were assignments he could do, and he spent about two hours on them, but probably didn't finish. The Student is still behind in his school work.

She spoke with Holly Zack of KBH about the conversation she had with Ms. Arnold. She told her that Ms. Arnold described the incident on February 4<sup>th</sup> to her, identifying the Student by name. Ms. Zack was under the impression that Ms. Arnold had her consent to have the conversation with her. Ms. Zack agreed to meet with her and discuss the risk assessment.

## **VII. Conclusions**

**Allegation #1:** Failure to perform a manifestation determination within 10 school days of a decision to change the Student's placement on February 4, 2016 because of a violation of a code of student conduct, in violation of MUSER §XVII.1.E

**VIOLATION FOUND**

MUSER §XVII.1.E requires that, when a disciplinary incident results in a decision to change the placement of a student (i.e., remove the student from his regular school program for more than 10 school days), the school unit, the parent, and other relevant members of the student's IEP team must meet within 10 school days to conduct a manifestation determination review. The purpose of this review is to determine whether the student's conduct was a manifestation of the student's disability, or resulted from the student's IEP not being implemented.

Although the decision to remove the Student was open-ended in that it was not known when the risk assessment would be completed or what the results would be, it was reasonably foreseeable that it would result in the Student being out of school for more than 10 days, and therefore it started the clock running on the 10-day meeting requirement. March 3, 2016 represented the date on which the student had been removed for 10 school days, so the March 1, 2016 meeting would have satisfied the requirement. Although Ms. Arnold believed that the Student's mother should have understood that the March 1<sup>st</sup> meeting was intended to include the manifestation determination review, the Student's mother claimed to not have understood, and the Advance Written Notice didn't expressly provide notification of that intent as it did when the School issued the Advance Written Notice for the rescheduled meeting on March 17, 2016; that Notice indicated under the "Other" designation "Manifest Determination Meeting." The fact that the Student's mother objected when the March 1<sup>st</sup> meeting turned to the subject of the manifestation determination lends credence to her claim that she was unaware and unprepared.

Although the School did not technically comply with the regulatory requirement to make the manifestation determination within 10 school days, it was apparent that both Ms. Arnold and Ms. Perkins were aware of the requirement and took steps to comply. Only the absence of clear notice to the Student's mother kept the meeting from going forward on March 1<sup>st</sup>. Under these circumstances, no corrective action will be required, although the School should make note of the importance of providing information as to the scope of an "Other" designation on the Advance Written Notice.

**Allegation #2:** Failure to provide sufficient educational services following the Student's suspension on February 4, 2016 so as to enable him to continue to participate in the general education curriculum and to progress toward meeting his annual goals in violation of MUSER §§XVII.1.B(2) and XVII.1.D(1)(a)

**NO VIOLATION FOUND**

The School provided to the Student's mother descriptions of academic assignments on which the Student could work during the time he was out of school. Those assignments included links to various web pages, but provided alternative means of accessing the necessary resources. The School also provided math assignments for the Student which did not require access to the internet, but the Student only completed some of that work. The School offered to provide tutoring to the Student, but the Student's mother failed to respond to that offer.

Under the circumstances, the School did enough to enable the Student to participate in the curriculum. As to the Student's IEP goals, they were focused on staying on task and work completion. It appears that tutoring would have been helpful in allowing the Student to make

progress with respect to those goals, and the School offered and was prepared to provide such tutoring.

**Allegation #3:** Failure to provide advance written notice to the Student's parents of the March 4, 2016 IEP Team meeting at least seven days prior to the meeting in violation of MUSER §VI.2.A

**VIOLATION FOUND**

The meeting on March 4, 2016 was scheduled during the meeting on March 1<sup>st</sup>, when the Student's mother objected to proceeding with the manifestation determination. No Advance Written Notice was given, but the Student's mother had approved the date and fully understood the purpose of the meeting, so that the lack of an Advanced Written Notice form did not adversely affect the Student or his mother. The Student's mother's objection was based on the failure to provide her a full seven days to prepare for the meeting. In any event, as the meeting did not take place on March 4<sup>th</sup>, and the Student was back in school the following school day (March 7<sup>th</sup>), there were also no adverse consequences for the Student or his mother attached to the shortened time period.

**Ancillary Allegation #1:** Failure to obtain parental consent before disclosing personally identifiable information to an unauthorized party in violation of MUSER §XIV.11

**NO VIOLATION FOUND**

An issue arose during this investigation as to whether the Parents had consented to Ms. Arnold's release of personally identifiable information to Ms. Zack on March 1, 2016. The Student's mother claimed that the Release she signed for KBH and provided to the School authorized only the disclosure of information by KBH to the School, and not the other way around. The Release is clear, however, that it authorized KBH both to give to and get information from the School. Ms. Arnold was justified in believing that the Release authorized her to have the conversation with Ms. Zack.

**VIII. Corrective Action Plan**

The violations found were technical in nature and revealed neither a lack of awareness of the regulatory requirements or intent to avoid the requirements on the part of the School. Furthermore, there was no (or very little) adverse impact on the student – he returned to school after being out 12 days (only two days after the period when the manifestation determination review was required to be held) - and no adverse impact on the parent (she cancelled the meetings for which she felt she was not prepared). Accordingly, no corrective action is required.