

Complaint Investigation Report
Parents v. Baring

April 26, 2016

Complaint #16.051C
Complaint Investigator: Jonathan Braff,
Esq.

I. Identifying Information

Complainants: Parents



Respondent: Kenneth Johnson, Superintendent
P.O. Box 190
Eastport, ME 04631

Special Services Director: Elizabeth Cushing

Student:

DOB: [REDACTED]

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on March 17, 2016. The Complaint Investigator was appointed on March 17, 2016 and issued a draft allegations report on March 22, 2016. The Complaint Investigator conducted a complaint investigation meeting on April 12, 2016, resulting in a set of stipulations. On April 19, 2016, the Complaint Investigator received 79 pages of documents from the Complainants, and received a four-page memorandum and 12 pages of documents from [REDACTED] (the "District") on April 22, 2016.

III. Preliminary Statement

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

IV. Allegations

1. Failure to provide related services in the nature of transportation so as to enable the Student to benefit from his education program in violation of MUSER §§IX.3.A(1)(d)(i) and XI;

2. Failure to reimburse the Student's parents for transporting the Student in order for him to attend his educational program in violation of MUSER §XI.

V. Stipulations

1. The District reimbursed the Student's father for transportation he provided to the Student during the 2014-15 school year at the rate of \$0.555 per mile.
2. During the summer of 2015, the District told the Student's parents that the District would arrange transportation for the Student during the 2015-16 school year.
3. The day before school started for the 2015-16 school year, the District called the Student's father and told him that there were problems with arranging transportation, and asked if he could drive the Student for the first day of school, saying the District would reimburse him for mileage.
4. Later that day, the District told the Student's father that problems were continuing with arranging transportation for the Student, and he would have to continue to drive the Student until further notice.
5. The Student's father has been transporting the Student back and forth to a bus stop in [REDACTED], a distance of 18 miles each way, during the current school year.
6. The Student's IEP does not contain a provision for transportation.

VI. Summary of Findings

1. The Student lives in [REDACTED] with the Parents, and has been attending [REDACTED] grade at [REDACTED] Learning Center ("[REDACTED]"). [REDACTED] is a general purpose private school.
2. The District does not have a [REDACTED] school, and so families living in the District may choose a [REDACTED] school which their child will attend. The Parents chose to send the Student to [REDACTED], after having applied and been accepted, for both the 2014-15 and 2015-16 school years.
3. The Student was evaluated in March 2013 using the WIAT III assessment and received scores of 65 in math fluency – subtraction, and 66 in math fluency – addition. In [REDACTED] grade, the Student received specially designed instruction in math in the special education setting, and would have received specially designed instruction in the Skills for Success class in [REDACTED] grade had he attended public school.

VII. Conclusions

Allegation #1: Failure to provide related services in the nature of transportation so as to enable the Student to benefit from his education program in violation of MUSER §§IX.3.A(1)(d)(i) and XI

Allegation #2: Failure to reimburse the Student's parents for transporting the Student in order for him to attend his educational program in violation of MUSER §XI
NO VIOLATION FOUND

A SAU is required to provide transportation to and from a school program as a related service whenever a child with a disability requires such transportation to access his/her special education program. In this case, the Student is not receiving a special education program as he is attending [REDACTED], a general purpose private school, and therefore the District is not obligated to include transportation as a related service in the Student's IEP.

For [REDACTED] school students who are not receiving special education services, pursuant to 20-A M.S.A. §5401, a SAU is not legally required to provide transportation. By the same token, the District is not legally required to reimburse the Parents for the transportation they have provided.

Ancillary Allegation #1: Failure to provide the Student with a special education program by supporting his attendance at a general purpose private school in violation of MUSER §XII.3.A(3)

VIOLATION FOUND

MUSER §XII.3.A(3) prohibits a SAU from placing a child with an IEP at a general purpose private school; SAUs may only place such children at public schools or at private schools approved by the Department of Education for provision of special education (special purpose private schools). [REDACTED] is not a special purpose private school.

Although the Student's IEP Team did not place the Student at [REDACTED], the District is nevertheless paying for the Student to attend there. The Department has interpreted such economic support for a placement as tantamount to the District's making the placement, and therefore as violating this regulation. The District will therefore be directed to discontinue providing financial support for the Student to attend [REDACTED] for so long as the Student remains a student with a disability under MUSER. The District will explain to the Parents as soon as practicable that they must choose to either remove the Student from special education, in which case the District will be able to continue to pay for educational services received by the Student from [REDACTED], or else choose to place the Student at a public school program where the Student can receive his special education program.

VIII. Corrective Action Plan

The District shall, within 30 days from this date, certify to the Department, with notice to the Parents, that either the Parents have withdrawn the Student from special education, or else that it has discontinued paying all or some of the educational costs of the Student's attendance at [REDACTED].