

**Complaint Investigation Report**  
**Parent v. RSU #54**

May 3, 2016

Complaint #16.053C  
Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainant: Parent

Respondent: Brent Colbry, Superintendent  
197 West Front St.  
Skowhegan, ME 04976

Special Services Director: Ann Belanger

Student: [REDACTED]  
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 24, 2016 and issued a draft allegations report on March 25, 2016. The Complaint Investigator conducted a complaint investigation meeting on April 8, 2016. On April 11, 2016, the Complaint Investigator received 14 pages of documents from the Complainant, and received a 2-page memorandum and 53 pages of documents from R.S.U. #54 (the "District") on April 14, 2016, with 2 more pages of documents on April 15, 2016. Interviews were conducted with the following: Ann Belanger, co-director of special education for the District; and [REDACTED] the Student's mother.

**III. Preliminary Statement**

The Student is [REDACTED] years old and currently has a 504 plan based upon diagnoses of ADHD and depression. 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 find the Student eligible despite evidence that he had one or more disabilities adversely affecting his educational performance in violation of MUSER §§II.10,VII.2;
2. Failure to adequately consider the evaluation conducted by Dr. Barter dated November 6, 2014 in violation of MUSER §§V.3.A(1) and V.6.C(1).

#### V. Summary of Findings

1. The Student lives in [REDACTED] with his sibling and the Parent, and has been attending [REDACTED]<sup>th</sup> grade at [REDACTED] School (the "School").
2. On December 19, 2014, the Student's 504 Team met at the Parent's request in order to review the report of Dr. William Barter, and to consider the possibility of a special education referral. Special education teacher John Soifer attended the meeting. The Team heard reports from the Student's teachers that the Student's homework completion was sporadic and that his grades were low because he was missing assignments. His math teacher reported that the Student volunteered answers enthusiastically, and the biology teacher reported that his grades were moving up. Dr. Barter participated by phone, and reported that the Student was a high functioning individual on the autism spectrum, and that he had a very low processing speed. Dr. Barter recommended that the Student be allowed additional time on assignments and exams, that the length of assignments be modified, and that basic incentives be provided for the Student. There then was discussion about a special education referral, with Mr. Soifer stating that the Student would receive the same accommodations under special education that were already in his 504 plan, with the one possible addition of his attending a structured study hall. The Parent stated that she would consider whether to make that referral.
3. The 504 Team determined that the Student's accommodations in his 504 plan would include: additional time on assignments; shortened length of written assignments; teachers will gain the Student's attention before giving him directions; preferential seating; teachers will review and sign the Student's assignments book daily, and the Parent will also review and sign the assignment book; the Student's English class would be changed to consultant level; the Student will write his assignments in his assignment book and have each teacher sign the book at the end of the class; and the Student will let teachers know if he doesn't understand assignments or needs a quiet space in which to work.
4. Following a subsequent referral by the Parent, the School ordered several evaluations and convened the Student's IEP Team on May 28, 2015 to consider the evaluation reports and determine whether the Student was eligible for special education and related services.
5. The IEP Team reviewed a social work assessment by Laurie Lefebvre, LCSW dated January 22, 2007. Ms. Lefebvre interviewed the Student and the Parent, and reviewed the Student's Developmental Evaluation Clinic chart. In her report, Ms. Lefebvre stated that the Student was "struggling in school with behavior, which is impacting his learning," and offered diagnoses of ADHD, parent-child relation problems, mood disorder and rule out Asperger's disorder.

6. The IEP Team also reviewed the results of the Woodcock-Johnson III Tests of Achievement administered by Kathleen McKay, M.Ed. on December 11, 2012. Scores on the subtests ranged from a high of 126 (word attack) to lows of 73 (writing fluency) and 76 (reading fluency). The Student's broad reading score was 100 (49%) and broad written language score was 96 (38%). In her summary, Ms. McKay wrote that the Student's reading skills were solid overall ("he read slowly, but with accuracy"), his basic math calculation skills were in the average range ("he worked slowly, but with accuracy on basic math facts"), and his writing skills were solid overall ("but with timed fluency tasks, he worked slowly, earning a below average score"). Ms. McKay recommended that the Student should be allowed extra time on assignments to compensate for his need to work at a slower pace.

7. The IEP Team also reviewed the psychological evaluation report of Dr. Donna Benjamin dated January 4, 2013. Dr. Benjamin administered the WISC-IV to the Student with the following results: verbal comprehension – 87 (19<sup>th</sup> %, low average); perceptual reasoning – 112 (79%, high average); working memory – 97 (42%, average); processing speed – 83 (13%, low average); full scale IQ – 93 (32%, average). Subtests of note include vocabulary – 5 (5%) and coding – 6 (9%). Dr. Benjamin reported that these results confirm problems with vocabulary and processing speed, but that the Student's general ability index score was average. Dr. Benjamin also administered the BASC-2, soliciting ratings from the Student, the Parent and the Student's teacher. Dr. Benjamin reported that ratings results suggested some problems with inattention and overactive behaviors, although the Student's adaptive behaviors are rated as less independent at home than at school. Dr. Benjamin stated that the Student "requires ongoing support for written expression tasks, a reduction in the amount of written work, and extended time to complete assignments," and provided a number of writing strategies that might be used with the Student.

8. The IEP Team also reviewed the neuropsychological evaluation report of Dr. Anne Uecker dated September 20, 2013. Dr. Uecker, discussing previous evaluations which she reviewed, noted that one evaluator had some concern that the student might have Asperger's disorder, but that several other evaluators did not see evidence of an autism spectrum condition. Dr. Uecker further commented that the Student has consistently scored lower in verbal comprehension compared to perceptual reasoning, with low scores in vocabulary. Dr. Uecker noted that the Student had some difficulty with elaborated word knowledge and verbal fluency, although he performed with above average proficiency in reading comprehension. In conclusion, Dr. Uecker reported that the Student does not have a learning disorder, but shows symptoms associated with a reduction of function including some poverty of speech, affective flattening and difficulty with task initiation and motivation. Dr. Uecker viewed these as related to a depressive disorder, stating that the Student does not present as an individual with Asperger's disorder. Dr. Uecker recommended a school meeting to discuss accommodations and learning strategies, and that a speech/language evaluation be conducted.

9. The IEP Team also reviewed the results of a speech/language evaluation conducted by Leona Sinclair, M.S., CCC-SLP, dated March 28, 2014. On the CELF-4, the Student's subtest scores were all in the average range. Ms. Sinclair reported that the Student was "soft spoken, fluent, and used good sentence structure, vocabulary and articulation. He communicated in complete sentences and seemed to think very carefully."

10. The IEP Team also reviewed the report of a classroom observation conducted by Jennifer Dorman, a special educator, on March 27, 2014. Ms. Dorman reported that the Student demonstrated the ability to communicate effectively with peers and adults, that he was active in his group when assigned a cooperative learning project, and that he asked for help when necessary. Ms. Dorman observed no adverse effect from the Student's behavior or learning issues or from his speech/language patterns.

11. The IEP Team also reviewed the neuropsychological evaluation of Dr. Uecker dated September 24, 2014. Dr. Uecker interviewed the Parent and had her complete the Vineland Adaptive Behavior Scales and the Achenbach Child Behavior Checklist. Dr. Uecker also obtained Achenbach report forms from two of the Student's teachers. Dr. Uecker interviewed the Student's school counselor, who reported that the Student generally presented as not motivated, and typically had a lack of facial expression, although he engaged more when the topic was sports. Dr. Uecker interviewed the Student and administered the Million Adolescent Clinical Inventory, the Test of Memory and Learning-2, and the Vineland. Dr. Uecker reported that the Student's memory scores were in the average range, and offered the following diagnoses: Depressive Disorder NOS; Unspecified Neuro cognitive Disorder; Social (Pragmatic) Communication Disorder and ADHD NOS. Among her recommendations, Dr. Uecker suggests that the Student be recognized as a student with the disability category Other Health Impairment, and that the category Emotional Disability be considered as well, that the Student have the opportunity to work in small group settings, and that speech/language therapy be considered with a focus on receptive and expressive language, especially pragmatic language.

12. The IEP Team also reviewed the results of a classroom observation conducted by Karen Cyr on May 14, 2015. Ms. Cyr reported that the Student began the assignment after instructions were given, and that he worked independently for most of the period. Ms. Cyr reported the comments of his teacher that the Student was very capable of completing more challenging work, and that he can work on assignments in class without assistance. Ms. Cyr noted that the Student was missing many homework assignments in many of his classes, that he was not passing Biology due to missed assignments, and that many of his assignments were marked late. She also noted that the Student was passing most of his tests. Ms. Cyr stated that she observed no adverse effects during her observation, that the Student was passing most of his classes with minimal assistance, but that there was evidence of poor homework completion.

13. The IEP Team also reviewed a behavior assessment from school psychologist Peggy Bickford, M.S. dated May 22, 2015. Ms. Bickford reviewed two reports by Dr. Uecker and the report of Dr. William Barter dated December 18, 2014, and obtained BASC-2 rating scales from four of the Student's teachers. Ms. Bickford noted that the Student's NWEA scores demonstrate average math (52%) and reading (67%) skills. Although one of his teachers commented that the Student usually completes all assignments, and had improved on getting work done on time, the other three all reported difficulty with work completion, saying he completes work when motivated to do so, particularly by sports eligibility, but often chooses not to complete assignments. All the teachers attributed the Student's low grades to

incomplete work or missing assignments, or failing to prepare for tests. On the Student's social interactions, all the teachers reported that the Student did not appear to be having difficulties in the social realm. Ms. Bickford described the results of the BASC-2 rating scales as indicating that the Student demonstrates "no more adjustment problems than the typical high school freshman male student" (although one teacher rated him with elevated attention and learning problems), and found no patterns that indicated that the Student suffered from an autism spectrum disorder. In her summary, Ms. Bickford stated that she found no support for "the presence of an adverse effect from any behavioral or developmental disorders impacting [the Student]'s academic performance," and that there did not appear to be a need for any specialized instruction or accommodations to support the Student.

14. The IEP Team considered the results of the NWEA assessment given in Fall 2014, on which the Student received the following scores: Math 233 (48%); Reading 230 (71%).

15. At the time of the IEP meeting, the Student was passing all of his classes except for Biology for which the Student had one major assignment that needed to be made up.

16. The IEP determined that the Student was not eligible for special education and related services based upon findings that the Student was not evidencing adverse effect as a result of any disability, and did not require special education services. The Written Notice of the meeting indicates that the Student has a 504 plan and that there would be a 504 meeting in the fall.

17. During an interview conducted by the Complaint Investigator with Karen Cyr, Ms. Cyr stated the following: She is a special education teacher at the School, and was assigned to be the Student's case manager last year for purposes of conducting the evaluation and making the eligibility determination. She also conducted an observation of the Student, and found that he followed directions and was able to do the classwork independently. She has had no direct involvement with the Student since last year's eligibility IEP Team meeting.

She remembers the Student's mother saying at the eligibility meeting that the Student didn't understand a lot of his schoolwork, but that wasn't what she heard from the Student's teachers. They reported that the Student was able to fully participate in classroom activities, that he understood grade level work, and that he was capable of doing the work once he chose to do it. The Student's teachers offered him extra help after school, but he only occasionally took advantage of that. His English teacher said that the Student had more ability than would warrant his placement in consultant English class. The Student's NWEA scores were really strong; the School doesn't typically see scores like that for a student with a disability. Those scores show that the Student was retaining what he had learned and there was some mastery. Everyone present at the eligibility meeting agreed with the result with the exception of the Student's mother and the Student's outside case manager. She thinks the Student's mother must have been seeing something at home that they didn't see at the School. The Student ended up passing and getting credit for all of his classes last year.

18. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: The Student is not doing well in school this year. He is passing history,

art and gym, but is failing physics, algebra and English. Last year, he started getting down on himself and giving up, so he didn't turn in many of his assignments. This year he has been turning them in, but he is failing due to low grades on those assignments, low lab grades and low test scores. He is getting help this year in math and physics from a volunteer tutor provided by the District and also has two study halls, and that is why he is able to get his homework done in those subjects. In history, he hasn't had any major writing assignments. The Student is working harder this year, and she has been on him to work harder. Last year she spent a lot of time working with the Student on his homework, but this year he does most of it at school so she only needs to work with him a little bit.

The Student tells her that he doesn't understand a lot of his schoolwork. The Student needs to receive additional explanation. He is a very black and white thinker. He can read, but he doesn't grasp the concepts in what he reads. He struggles with expressing himself in writing. He needs one-on-one attention in order to be able to understand his schoolwork. She wants the Student to be able to attend a structured study hall, where there would be fewer students and a staff member available to help those students with their schoolwork. She thinks that the Student should be receiving specially designed instruction in English and math, and shouldn't be taking physics. Last year the Student was in English I but was moved to consultant English (a lower level); this year the Student is in English II and is struggling. He isn't being given tools like those identified in Dr. Benjamin's evaluation report to help him with his writing. Last year the Student was in Algebra I and was moved to Pre-algebra; this year the Student is again in Algebra I and is struggling.

She has asked that the Student be allowed to use books on tape. She doesn't know if this will help the Student to comprehend the material, but she feels that different strategies should be tried to find out what works. She also wants the Student to get help with study skills, including learning how to study for tests. He also needs instruction in how to write a research paper. The Student had a project for history that involved doing a research paper or power point. When she looked at what the Student had prepared she saw that he had cut and pasted resource material into his power point. The Student said he didn't know that he was supposed to put it into his own words.

The Student's teachers say that he is lazy, but that isn't true; he works very hard. He is highly motivated by sports, but this year he hasn't been able to play sports due to his poor grades.

With regard to Dr. Barter's evaluation report, she was confused about this. She was thinking about the 504 meeting, and the report was considered at that meeting.

## **VI. Conclusions**

**Allegation #1:** Failure to find the Student eligible despite evidence that he had one or more disabilities adversely affecting his educational performance in violation of MUSER §§II.10,VII.2

**NO VIOLATION FOUND**

The Student's IEP Team had ample evaluative evidence to consider in making the eligibility determination. Although there were several reports that contained various diagnoses (they ranged among ADHD, depressive disorder and autism spectrum disorder), the reports of the Student's teachers (including his passing grades in all but one class), the observations of the Student in classroom settings and the tests of academic achievement all supported the Team's conclusion that the Student was not evidencing adverse effect of any disability. The primary academic concern was with regard to failure to complete assignments, but that appeared to be a function of motivation (when participation in sports was on the line, the Student got the work done). Even if work completion had been viewed as constituting adverse effect, however, the Student's deficits with respect to extra time needed for assignments, need for extra academic support, etc., were being addressed through accommodations in the Student's 504 plan.

In order to find a Student eligible to receive special education services, an IEP Team must find the existence of a disability, which disability has an adverse effect on the Student's educational performance, and which results in the Student requiring special education services. MUSER §X.2. Here, the IEP Team found, based on the information available to them at the time, that the Student's disability was not having an adverse effect on educational performance, and that whatever needs the Student had were being adequately addressed through regular education interventions so that there was no need for special education services.

The Student's mother reported that this year the Student's struggles have taken on a different aspect – that he is completing the work but is getting failing grades. If it has not already done so, the District ought to consider whether a new referral to special education is warranted, but that was not the Student's presenting situation when the IEP Team made its determination on May 28, 2015.

**Allegation #2:** Failure to adequately consider the evaluation conducted by Dr. Barter dated November 6, 2014 in violation of MUSER §§V.3.A(1) and V.6.C(1)

**NO VIOLATION FOUND**

The Student's mother, during the interview for this investigation, stated that she had been confused when she made this allegation. She was thinking of the 504 meeting, where Dr. Barter's evaluation had been considered. Furthermore, Dr. Barter's evaluation was reviewed and explicitly considered by Ms. Bickford as part of her evaluation of the Student, and Ms. Bickford's evaluation was considered by the IEP Team on May 28<sup>th</sup>.

## **VII. Corrective Action Plan**

As no violations were found, none is required.