

Complaint Investigation Report
Adult Student, Interested Party & Interested Party v. South Portland

November 26, 2012

Complaint #09.036C
Complaint Investigator: Jonathan Braff, Esq.
Date of Appointment: December 18, 2008

I. Identifying Information

Complainants: Adult Student
Address

Interested Party
Address

Interested Party
Address

Respondent: Suzanne Godin, Superintendent
130 Westcott Road
S. Portland, ME 04106

Special Education Director: Kathleen Cox

Student: Adult Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on December 17, 2008. The Complaint Investigator issued a draft allegations report on December 19, 2008. The Complaint Investigator conducted a complaint investigation meeting on January 29, 2009 (originally scheduled for January 12, 2009 but continued due to conflicts in the schedule of the Complainants), resulting in a set of stipulations. On January 8, 2009, the Complaint Investigator received 17 pages of documents and a list of proposed interviewees from the Complainants, supplemented by an additional 14 pages of documents and a 5-page memorandum on February 11, 2009, and on February 4, 2009 received 65 pages of documents and a 5-page memorandum from Kathleen Cox of South Portland School Department (the "District). Interviews were conducted with the following: Kathleen Cox, director of instructional support services; Carol Marcoux, special education coordinator; Rick Milliken, case manager; Mary Lou Connolly, social worker; Gayle Devroy, psychological services

provider; Susan Giencke, Ph.D., psychologist; the Student's aunt (Interested Party I); the Student's aunt (Interested Party II); and the Student.

III. Preliminary Statement

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

IV. Allegations

1. Failure to fully and adequately implement the student's IEP with respect to vocational rehabilitation and case manager referrals in violation of MUSER §IX.3.B(3);
2. Failure to timely conduct a Vineland Adaptive Life Scale evaluation in violation of MUSER §V.2.C(4);
3. Failure to adequately consider input from the legal guardian regarding needed additional evaluation data in violation of MUSER §V.3.A(2);
4. Failure to provide a complete and accurate summary of comments made by the legal guardian in the written notice of the meeting of January 2008 in violation of MUSER App. 1, 34 CFR §300.503(9);
5. Failure to ensure that the adult student and interested parties are present at the IEP team meeting by scheduling the meeting at a mutually agreed on time in violation of MUSER §§VI.2.A and VI.2.H(1)(b);
6. Failure to provide the adult student and interested parties with at least 7 days advance written notice of IEP Team meeting in violation of MUSER §VI.2.A.

Ancillary Allegations

1. Extending the IEP annual review beyond the due date in violation of MUSER §IX.3.D(1)(a).

V. Complainants' Proposed Resolution (from Dispute Resolution Request form)

1. Completing all the testing requested including Vineland (while the Student was a minor) without this rush and causing him more anxiety;
2. Holding the meeting at a mutually convenient time;
3. Making the needs of the Student with multiple disabilities a priority instead of trying to cover up their errors.

VI. Stipulations

1. The most recent IEP for the student is dated 1/3/08 and was due to expire on 1/13/09.
2. At the IEP team meeting of 1/3/08, it was agreed that the student's 3-year reevaluation would be completed by 1/3/09.
3. Under the student's 1/3/08 IEP, the district was supposed to refer the student to Maine Vocational Rehabilitation.
4. The only Advance Written Notice issued by the district of the IEP team meeting scheduled for 12/23/08 was delivered to Interested Party II on 12/11/08.
5. The district rescheduled the 12/23/08 IEP team meeting after obtaining the student's consent to extend the current IEP for an additional 30 days, and then again for an additional 14 days.

VII. Summary of Findings

1. The Student lives in xx with Interested Party II, and is a xx at South Portland High School. Interested Party I was the Student's legal guardian until he turned 18 on August 16, 2008.
2. On January 3, 2008, the IEP team met and developed an IEP for the Student. Among other things, the team agreed to move up the time for triennial reevaluation from May 12, 2009 to January 3, 2009. With regard to secondary transition, the team agreed that the Student would apply for vocational rehabilitation services with the help of his special education teacher, and would investigate community case management services with the help of his social worker.
3. The annual IEP review date for the Student was January 3, 2009.
4. The District issued a Written Notice on January 7, 2008, along with IEP Team Meeting Minutes, describing the decisions made at the January 3rd IEP team meeting. Neither the Written Notice nor the Minutes references a request by Interested Party I to include the Vineland Adaptive Behavior Rating Scales assessment (the "Vineland") as part of the Student's reevaluation. Interested Party I did not request that the Written Notice or Minutes be amended.
5. After the IEP team meeting, Interested Party I and Ms. Carol Marcoux, special education coordinator, separately spoke with Priscilla Coffin of Maine Vocational Rehabilitation ("MVR"), and scheduled a meeting with the Student on February 6, 2008. The Student completed an application for MVR and an authorization to release information to Ms. Coffin on that date.
6. On May 22, 2008, the Student was notified that he had been found eligible for MVR services, and his name had been placed on a waiting list. On August 18, 2008, Ms. Coffin wrote to the Student and informed him that his name had come off the waiting list and she could now begin to work with him on establishing work goals and developing a plan for employment.

7. In Spring 2008, both Interested Party I and the Student's school social worker, Mary Lou Connolly, were investigating adult services case managers for the Student. They identified a case manager, John Mazzaro, who would be able to work with the Student.

8. The Student signed an agreement for mental health case management services with Mr. Mazzaro on July 22, 2008. Ms. Connolly followed up over the summer and confirmed that Mr. Mazzaro was working with the Student.

9. On January 17, 2008, Interested Party I sent an e-mail to the Student's special education teacher and case manager, Rick Milliken, described as a "follow-up" to the IEP team meeting, and stated "I would even like to request an Adaptive Life Skills test" for the Student. She suggested they have consulting school psychologist Dr. Susan Giencke look at the Student's file, and asked Mr. Milliken to arrange that. She also wrote that perhaps it would be best to move up the Student's reevaluation to late spring 2008.

10. Some time later, Mr. Milliken contacted Dr. Giencke and asked her to look at the Student's file. In May 2008, Dr. Giencke obtained Interested Party I's authorization to review the Student's file. Dr. Giencke spoke with the Student and the Interested Parties about the Vineland, and said she was willing to administer that test. She encouraged Interested Party I to formally request that the test be added to the reevaluation, and to further request that the testing be completed before the Student became an adult.

11. Interested Party I believed that either Dr. Giencke or Mr. Milliken would be following up with regard to adding the Vineland to the list of assessments to be used in the Student's reevaluation, and never formally requested of the District that it be added. Mr. Milliken had not heard further on the subject since his referral to Dr. Geinke, and assumed that Interested Party I was working with Dr. Giencke in regards to any testing issues.

12. The Student signed a consent for evaluation form on December 2, 2008 that did not include the Vineland, and the reevaluation testing began on December 15, 2008.

13. The next communication the District received that Interested Party I was seeking to have the Vineland administered to the Student was in an e-mail from Interested Party I to Ms. Marcoux dated December 16, 2008. On December 19, 2008, the Student signed a consent form for the Vineland to be administered, and Dr. Giencke administered the assessment shortly afterwards.

14. On December 11, 2008, after first discussing the date with the Student, Mr. Milliken approached Interested Party II and asked her whether she and the Student would be available for the annual IEP review on December 23, 2008. After first saying that the Student was now an adult and the question should be directed to him, Interested Party II said she would be available. She also said that Interested Party I would probably not be available on that date. The District delivered an Advance Written Notice form for the December 23, 2008 IEP team meeting to Interested Party II that same day.

15. The District did not give Advance Written Notice to the Student or to Interested Party I.

16. After several e-mails back and forth between Interested Party I and Ms. Cox, it was agreed that the Student's current IEP would be extended and the IEP team meeting rescheduled so that both Interested Parties could attend. On December 18, 2008, the Student signed a document stating his agreement to extend his IEP from January 13, 2009 to no later than January 23, 2009, and to postpone his annual review to no later than January 23, 2009.

17. On December 19, 2008, the District issued a Written Notice to the Student and the Interested Parties concerning the amendment to the Student's IEP, and also issued the IEP cover page with a reference to the amendment.

18. At the mediation session for this complaint, the parties again agreed to extend the IEP and the time for annual review, this time to no later than February 6, 2009. Written Notice of this further amendment was issued to the Student and the Interested Parties on January 16, 2009.

19. During an interview conducted by the Complaint Investigator with Rick Milliken, Mr. Milliken stated the following:

He became the Student's case manager in September 2007. He also has delivered direct instruction to the Student in his resource room for ½ hour every other day, working on the Student's writing and organizational strategies goals. He attended the January 3, 2008 IEP team meeting, and in preparation for the meeting he reviewed the Student's file. That was not the first time he reviewed the file. He received an e-mail from Interested Party I on January 17, 2008 asking about an adaptive life skills test and a referral to Dr. Giencke. He sent a responsive e-mail to Interested Party I the next day and then had a telephone conversation with her a few days later about the referral to Dr. Giencke. Later, on May 7, 2008, he received an e-mail from Interested Party I in which she agreed to allow Dr. Giencke to have access to the Student's file and for the Student to consult with her. At that point, he believed Interested Party I's concerns were being addressed.

One of those concerns was that Interested Party I felt that the District was pushing the Student to attend college after he graduated, and Interested Party I thought that that goal was inappropriate for the Student. The District was not "pushing" the Student to attend college, but treating him as any of its other students. Based on Mr. Milliken's experience with the Student, the Student had the skills necessary for him to succeed at Southern Maine Community College. The Student, for example, had a 100 point improvement on his SAT compared with his PSAT. He respected, however, Interested Party I's concerns regarding the Student's anxiety problems, and the Student's relative lack of life experiences.

With regard to the Student's reevaluation, the District did not delay doing the testing; the Student was placed on a schedule with the other special education students and was tested when the schedule allowed. He did not remember discussing the dates of testing with Interested Party I after the January 17th e-mail, and assumed this was being addressed through the meetings with Dr. Giencke. He presented a consent for evaluation form to the Student, who signed it on December 2, 2008.

With regard to referral of the Student to MVR, the District's policy is to put the family in touch with MVR, but thereafter MVR procedures dictate that the family itself must follow

through. Shortly after the January 3, 2008 IEP team meeting, he received a memo that Ms. Marcoux had scheduled the Student to meet with Ms. Coffin from MVR on February 6, 2008.

With regard to the scheduling of the IEP annual review, the January 3rd team meeting had taken place the day after students came back from the winter break. In 2009, students didn't return until January 5th, so the annual review had to take place before winter break. Both his calendar and that of the school were very full in December 2008, and also the evaluations were being completed during that month. On December 9 or 10, 2008, he approached the Student and told him the team was considering meeting on December 23, 2008. The Student said that would be okay but he should check with his aunts. The Student wrote the date down in his daily planner. On December 11, 2008, he went to speak with Interested Party II (who works for the District) and asked whether she and the Student were available to meet on December 23rd. She responded that the Student was now an adult, and he should check with the Student. He replied that this was true, but he wanted to check with her anyway. Interested Party II said that she would be available that day, although she didn't think her sister would be. That same day, he delivered an Advance Written Notice to Interested Party II for a meeting on December 23, 2008. The next school day (four days later), Interested Party II told him that neither she, her sister nor the Student could be available on that date. At that point, even if the other team members had been available, it was not possible to schedule the meeting at an earlier date as the District requires 10 days advance notice before scheduling a meeting, and any date after the winter break would be beyond the annual review due date. He told Interested Party II that the Interested Parties weren't required to be there, and he asked Interested Party II if it would be okay if the team met on December 23rd, agreed to continue the current IEP, and then met again in January with the Interested Parties present. A few days later, he brought a form to the Student to indicate his agreement to extend the current IEP. The Student was in Ms. Connolly's room, along with Ms. Devroy; the door was open. He carefully explained to the Student what the form was to make sure he understood it, and he told the Student he didn't have to sign it then. Ms. Connolly said this to the Student also. The Student was given the opportunity to talk with his aunts before signing.

20. During an interview conducted by the Complaint Investigator with Mary Lou Connolly, Ms. Connolly stated the following:

She is a school social worker for the District and has been working with the Student since xx grade. Regarding referral for an adult services case manager, she made those arrangements. After the January 3, 2008 IEP team meeting, she had several conversations with Interested Party I about this issue, and she suggested that it would be a good idea to find a male case manager for the Student. In the spring, she identified a case manager at Youth Alternatives. She made the initial introduction and then gave Interested Party I the contact information and told her to follow up. She also had Interested Party I sign a form for release of information to the case manager. She spoke with the case manager a few times over the summer, and it appeared that he hadn't done as much with the Student as they had hoped. In the fall, the case manager told the Student he didn't really need the services, and the Student agreed. She has since discussed with the Student what an adult services case manager could do for him, and he is considering resuming the services. She said that the Student is worried about coping after high school, but also feels anxiety about working with a case manager. Most recently, she

identified two new case managers, and the Student agreed to interview them and see whether he feels comfortable with either of them.

With regard to the December 23rd IEP team meeting, she said that on December 15, 2008 she saw the Interested Parties at school, and they were both upset about not being able to be at the meeting. She explained that there was a legal timeline that dictated when the meeting had to be held, but that it was possible for the IEP team to reconvene after the meeting in order to consider their input. She offered to talk to Mr. Milliken about this, but then e-mails started to be exchanged, followed by the filing of this complaint.

She feels that over time the District staff has come to better understand Interested Party I's concerns with the Student's life skills, partly because Interested Party I began to articulate her concerns more clearly. She thinks communication has improved on both sides.

21. During an interview conducted by the Complaint Investigator with Gail Devroy, Ms. Devroy stated the following:

She is a school psychological services provider, and administered the Student's triennial evaluation. At the beginning of the school year, she checks the school's data base and then checks in with the case managers to determine which students are due for reevaluation. She was aware that the Student's triennial evaluation date had been moved up from May 2009 to December 2008. She never heard anything about moving it up earlier than that. On December 2, 2008 she was notified by Mr. Milliken that the Student had signed the consent for evaluation form. She conducted the evaluation on December 15 and 17, 2008. On December 19, 2008, she began reviewing the test results with the Student and Ms. Connolly, but was interrupted by Mr. Milliken, who came in to talk to the Student about extending the IEP date. Ms. Connolly asked the Student several times whether he was comfortable signing the consent to extend form. The Student replied that he was and that this was what his aunts wanted. She didn't hear the Student ask to first talk to his aunts before signing. The first time she heard anything about the Vineland being given as part of the reevaluation was when this complaint was filed. When she was going over the test results with the Student and the Interested Parties on February 3, 2009, Interested Party I told her the Vineland was something Interested Party I spoke to Dr. Giencke about, and didn't expect her to know anything about it.

22. During an interview conducted by the Complaint Investigator with Carol Marcoux, Ms. Marcoux stated the following:

She has been Coordinator for Instructional Support for the District for five years. In that capacity, she chaired the January 3, 2008 IEP team meeting. She doesn't recall anyone asking for a Vineland assessment for the Student at the meeting. She first became aware that this was something Interested Party I wanted when she received an e-mail from Interested Party I in December 2008. This is also when she learned that Interested Party I wanted to have testing begin earlier; the only discussion about this at the January 3rd meeting was that testing should be moved up from May 2009 so that it would be completed by the time of the annual review. She wasn't aware of the e-mail to Mr. Milliken in January or of any meetings with Dr. Giencke.

With regard to MVR, she said that MVR contacts her when a representative is coming to the school, and she tells them which students need to meet with the representative. She did this for the Student, putting his name on the list of students with whom Ms. Coffin would be meeting. The Student kept that appointment, and then he and his family had to follow up, which they did. Ms. Coffin copied her on correspondence to the Student, so she remained aware of his progress in that area.

Regarding the December 23, 2008 IEP team meeting, she said that when the Interested Parties informed the District they weren't able to attend the meeting on that date, she spoke with Mr. Milliken about it. He told her that he had first checked with the Student and then with Interested Party II. They both said they would be available, although Interested Party II said her sister might not be. Mr. Milliken said that when he asked Interested Party II whether it would be okay if the team met as scheduled on December 23rd and then met again in January to get the Interested Parties' input, Interested Party II said it was totally up to Interested Party I.

She said that the Interested Parties had done a good job with the Student, and may have made him look more capable than he is.

23. During an interview conducted by the Complaint Investigator with Kathleen Cox, Ms. Cox stated the following:

She has been Director of Instructional Support for the District for the last two years, and before that was Assistant Director. She was not directly involved with the issues presented by this complaint until shortly before the complaint was filed, when she began receiving e-mails from Interested Party I. Until that time, she was not aware of any request that the Vineland be administered to the Student, or that his testing be done earlier than provided in the current IEP. She believes that if Interested Party I had requested the Vineland at the January 3, 2008 IEP team meeting, the District would have agreed to do it.

24. During an interview conducted by the Complaint Investigator with Susan Giencke, Ph.D., Dr. Giencke stated the following:

She is a private practice psychologist specializing in developmental disabilities, contracted to the District for 18 hours per week. She had prior experience with Interested Party I when she worked with Interested Party I's daughter. She first became aware of the Student when Mr. Milliken showed her an e-mail that he had received from Interested Party I and asked her to review the Student's file. At that point, she was busy with a personal issue and didn't believe there was any urgency attached to this request. She finally was able to review the file in spring 2008. She then spoke with the Interested Parties, and asked Interested Party I why she wanted to have a Vineland assessment (which is usually used with the mentally retarded population) given to the Student. Interested Party I said she believed the Student was in that category, but Dr. Giencke told her his scores no longer supported that diagnosis. She explained that the Student's scores had improved over time, and that this doesn't happen with mental retardation. She told the Interested Parties that the Student's correct diagnosis was

anxiety disorder, and that the next step should be getting a mental health case worker assigned to the Student. She then wrote a letter to the Department of Mental Retardation and Mental Health requesting that a case worker be appointed for the Student. She also told Interested Party I that if she still wanted the Vineland, she would be willing to do it, and Interested Party I should formally request that it be added to the list of assessments being used in the triennial reevaluation. She further suggested that Interested Party I request that the Student's reevaluation be done earlier. She felt that the Vineland could be of assistance when the Student entered adult services. She also explained that the Vineland can help inform the decision whether a child will require a legal guardian after he becomes an adult, and for this reason also she suggested that the test be administered before the Student became an adult. She checked in summer 2008 and determined that a mental health case worker had been appointed. She assumed that Interested Party I had made the request for the Vineland and for moving up the testing.

Her next involvement was when she was asked to administer the Vineland in December 2008. The Vineland was administered in three parts: Ms. Connolly solicited information from the Student's teachers; Dr. Giencke solicited information from the Interested Parties, and then from the Student himself. The three groups' assessments yielded three different scores: in the mid-80s from the teachers; in the mid-70s from the Student; and 68 from the Interested Parties. She felt that there was probably some truth in each group's perception. She believes that the teachers' scores accurately reflected what they were seeing from the Student in the classroom. The Student, on the other hand, was unsure of his capabilities. The Interested Parties thought that the Student "puts on a good face" in school, but that he is less capable than he appears. She suspects that the Student puts all of his energy into keeping things together during the school day, and then crashes when he gets home. She also was not convinced that Interested Party I accepts that the Student is not mentally retarded. Interested Party II provides the Student with a lot of support at home, cooking and cleaning for him and making sure that he looks properly groomed when he leaves the house in the morning. She suggested to the Interested Parties that they "cut the leash a little bit" with the Student, giving him "permission to fail." She also suggested that the Student remain at school for another year, concentrating on acquisition of life skills.

25. During an interview conducted by the Complaint Investigator with Interested Party I, Interested Party I stated the following:

During the January 3, 2008 IEP team meeting, she requested that an adaptive life skills assessment be performed for the Student as part of the triennial evaluation. She did not know the name "Vineland" at that time. There were 13 people from the District at the meeting, and there were many side conversations taking place. District personnel were talking about college for the Student, but she didn't think the Student was ready adaptively. She believed he wouldn't be capable of living in a dorm and caring for himself. She thought it was important for the District to get a more accurate picture of the Student's limitations. This was also why she wanted the testing moved up from May, 2009; she asked that the testing be done soon after summer break. She said that this was the first meeting concerning the Student attended by Ms. Marcoux, and Mr. Milliken had become his case manager only at the beginning of that year. She was surprised when Mr. Milliken said at the meeting that he had

only just read the Student's file the night before. She hoped that the adaptive assessment would show them "the other side" of the Student.

When she read the minutes of that meeting, and didn't see any reference to an adaptive life skills assessment, or to doing testing early in the fall, she sent an e-mail to Mr. Milliken raising these concerns. She also requested that Dr. Giencke, who had worked with one of the Student's sisters (the Student has two sisters both of whom reside with Interested Party I), become involved with the Student's testing. After he received the e-mail, Mr. Milliken called her and they had a long conversation about the Student, although not about the Vineland. When she didn't hear anything further, she herself called Dr. Giencke to discuss what was happening with the Student and asked her to become involved. Dr. Giencke told her she would review the Student's file and get back to her. Dr. Giencke later called and said she had twice tried to look at the Student's file, and both times the file was not available; Dr. Giencke thought someone else may have been working with it. Dr. Giencke suggested that she formally request of the District that Dr. Giencke be given access to the file, and she sent in that authorization. There was then a meeting on the last day of school between Dr. Giencke, Ms. Connolly, Interested Party II and herself. They talked about an adult services case manager for the Student, and they talked about doing the Vineland. She believed Dr. Giencke would be doing the Vineland when the testing started in the fall; she doesn't recall Dr. Giencke telling her she needed to formally request that it be added to the reevaluation list. She believed that her e-mail to Mr. Milliken should have been sufficient to put the District on notice that she was requesting the assessment (and also requesting that the testing take place earlier in the fall). In the fall, she was more focused on one of the Student's sisters, and she assumed that Mr. Milliken was taking care of her requests. She also doesn't believe the Student ever signed the consent to evaluate form on December 2, 2008, and she never received a copy of it.

With regard to MVR, she spoke with Priscilla Coffin shortly after the January 3rd meeting, and made arrangements for the Student to meet with her the next time Ms. Coffin came to the school. Ms. Coffin told her the MVR referral process should have started the year before, because of the long waiting list for MVR services. She doesn't know whether Ms. Marcoux also spoke with Ms. Coffin.

With regard to an adult services case manager, she had several conversations with Ms. Connolly about this. Ms. Connolly said she would be looking into it, but then Ms. Connolly didn't contact her again. Ms. Coffin gave her some ideas for case managers, and she herself contacted the Youth Alternatives agency. She denies ever signing a release of information for Ms. Connolly to provide information to Mr. Mazzarro in June, 2008, and notes that Mr. Mazzarro didn't begin working with the Student until July, 2008.

With regard to the December 23, 2008 IEP team meeting, she first learned about it on December 16, 2008. She was at the school talking to Ms. Connolly when Interested Party II came up to her and told her about the scheduled meeting. Interested Party II said Mr. Milliken had given her an envelope at school on December 11, 2008 that she opened later that evening. It contained a notice of a meeting on December 23rd. Interested Party II said that was her first notice of the meeting date. The next school day was December 16th, and Interested Party II said she told Mr. Milliken earlier that day that neither she nor Interested

Party I could be available on the 23rd. According to Interested Party II, Mr. Milliken said that was okay because neither of them had to be there.

26. During an interview conducted by the Complaint Investigator with Interested Party II, Interested Party II stated the following:

She thinks Interested Party I discussed doing the Vineland at the January 3, 2008 IEP team meeting. She doesn't remember anyone's response to the suggestion. She was not involved in further discussions about it, or with the MVR or case manager; her sister did all that.

Mr. Milliken probably did say something to her while she was working about a December IEP team meeting. She doesn't remember if he gave her a specific date or asked her if she was available. She's very busy when she's working and it's hard for her to focus on anything else. She remembers telling Mr. Milliken that the Student was now xx years old, and was his own legal guardian. Later, Mr. Milliken put an envelope near her work station. She took it home and opened it that night, and learned that the District had scheduled a meeting for December 23, 2008 at 7:30 a.m. In the past, the District had always called in advance and suggested a few possible dates, to make sure that the family could attend the meeting. The problem with the scheduled date was that she had work that day starting at 7:00 a.m., and also the Student had school beginning at 7:30 a.m.

The next time she was at the school, she told Mr. Milliken that neither she, Interested Party I nor the Student was able to attend the meeting. Mr. Milliken said the team could just meet for a few minutes and get the new IEP started. She said she couldn't meet even for a few minutes. A day or two later, Ms. Marcoux came up to her while she was working and asked her if the December 23rd date was a problem. She said it was a problem for her, Interested Party I and the Student. She didn't like having this conversation in a public place, while she was trying to work. On December 18, 2008, the Student met her outside the school at the end of the day, and showed her a consent to extend the IEP form that he had signed. He said he was in a meeting with Ms. Connolly and Ms. Devroy when Mr. Milliken came into the room and asked him to sign it. He was shocked and upset. He said he asked whether his aunts knew about this. He said they told him the clock was ticking, and he agreed to sign it. After he finished telling her this he called Interested Party I to tell her about it.

She thinks the District could have tried to work with them a little more; they acted like the meeting had to be on that day. She also believes the testing hadn't been completed at that point.

27. During an interview conducted by the Complaint Investigator with the Student, the Student stated the following:

He remembers signing two consent for evaluation forms. He was tested on two days in December, about two weeks before winter break. When Mr. Milliken told him about the meeting scheduled for December 23, 2008, he said he had to check with his aunts first. He also wrote the date in his planner. On another day, he was with Ms. Connolly and Ms. Devroy and was just about to leave when Mr. Milliken came into the room. Mr. Milliken

asked him to sign a form to extend the meeting date. He felt this was abrupt and he was not prepared for it. He said he had to check with his aunts first. He was worried that he was late and might miss his bus. He remembers Ms. Connolly asking him whether he was sure he was okay with signing the form, and telling him he could talk with his aunts first. He decided it was probably what his aunts wanted. At the end of the day, he showed the form to Interested Party II and she wasn't happy about it. She told him that the school was pressuring him. He told Interested Party II that he was upset.

He wishes he would receive more of his school-related information, instead of it just going to his aunts.

VIII. Conclusions

Allegation #1: Failure to fully and adequately implement the student's IEP with respect to vocational rehabilitation and case manager referrals in violation of MUSER §IX.3.B(3);

NO VIOLATION FOUND

The Student's January 3, 2008 IEP provided that the Student would apply to MVR with the help of his special education teacher, and would investigate community case management services with the help of his social worker. Almost immediately after the meeting, Interested Party I contacted Ms. Coffin at MVR to initiate that process. Ms. Marcoux also provided the Student's name to Ms. Coffin for inclusion on the schedule for her next visit to the school. The District fulfilled its obligation and the Student got the services he was supposed to, regardless of the fact that Interested Party I may have gotten there first. Similarly, both Ms. Connolly and Interested Party I were engaged during spring 2008 in securing a case manager for the Student. Again, it is not important who made the first contact; the District provided whatever assistance was required of it, in a reasonably timely fashion, to enable the Student to access these services.

Allegation #2: Failure to timely conduct a Vineland Adaptive Life Scale evaluation in violation of MUSER §V.2.C(4);

Allegation #3: Failure to adequately consider input from the legal guardian regarding needed additional evaluation data in violation of MUSER §V.3.A(2);

Allegation #4: Failure to provide a complete and accurate summary of comments made by the legal guardian in the written notice of the meeting of January 2008 in violation of MUSER App. 1, 34 CFR §300.503(9);

NO VIOLATION FOUND

Neither the January 3, 2008 IEP nor the Written Notice from that meeting references a request by Interested Party I that the Vineland be included in the Student's triennial reevaluation. Interested Party I recalled requesting an adaptive life skills assessment during the meeting, but acknowledged that the meeting was crowded, with many conversations taking place

simultaneously. Of the other interviewees present at the meeting, only Interested Party II recalled any discussion of such a test. Most importantly, Interested Party I did not request that the IEP or Written Notice be amended to reflect such a request, as was her right under MUSER §XIV.8. She did send an e-mail to Mr. Milliken two weeks after the meeting, but this coupled a request for an adaptive life skills test (not a request for amendment of the IEP or Written Notice) with a request to consult with Dr. Giencke. Mr. Milliken did not ignore the e-mail; he spoke to Interested Party I on the telephone (and both parties to the conversation agreed it did not include discussion of the Vineland) and then contacted Dr. Giencke. Dr. Giencke did not perceive the request as urgent, and was focused on a personal issue, so that she did not respond right away. Interested Party I mistakenly assumed that Mr. Milliken had never contacted Dr. Giencke, and she called Dr. Giencke herself. In due course, Dr. Giencke reviewed the Student's file and consulted with the Interested Parties. She did not recommend the Vineland, in fact she told the Interested Parties the Student was not really in the assessment's target population. She did, however, agree that it could be of some use and said she would administer the test if the Interested Parties wished her to. Dr. Giencke recalled telling Interested Party I that if she wanted to have that test included in the Student's reevaluation, she should make a formal request to the District. Interested Party I did not do so, believing that her earlier e-mail to Mr. Milliken should be sufficient. For his part, Mr. Milliken was aware that Interested Party I was consulting with Dr. Giencke and assumed that her concerns were being addressed. Under the circumstances, the District cannot be said to have failed an obligation to administer the test. As soon as the District became aware that Interested Party I wanted that assessment to be administered, it took steps to make it happen.

Allegation #5: Failure to ensure that the adult student and interested parties are present at the IEP team meeting by scheduling the meeting at a mutually agreed on time in violation of MUSER §§VI.2.A and VI.2.H(1)(b);
NO VIOLATION FOUND

MUSER §§VI.2.A and VI.2.H(1)(b) speak to the obligation on the District's part to ensure that a student's parents are present at an IEP team meeting. In the case of an adult student, that obligation runs towards the student. Once the date of December 23, 2008 had been targeted as a proposed date for the IEP team meeting, Mr. Milliken checked with the Student, who was then an adult, and the Student told him he should check with his aunts. He then spoke with Interested Party II, who initially confirmed the date. Although she said that Interested Party I probably would not be available, Interested Party I was not then the Student's legal guardian, and the District could conclude that the Student's presence along with the aunt with whom he lived would be sufficient. The District promptly delivered Advance Written Notice to Interested Party II, and at that point the District had fulfilled its obligations under MUSER with regard to scheduling the meeting at a mutually agreed on time. The District's problem, once they became aware of an issue concerning the date, was that the date chosen was the last date available before the annual review deadline. The District could have avoided the problem by targeting a date in the first instance that was not right up against the deadline, thereby leaving themselves some room to accommodate the schedule of other participants. The District also helped create the issue by attempting to communicate with Interested Part II while she was busy at work; she may not have fully realized what time

the proposed meeting was to take place. This method of communication should be discouraged.

Allegation #6: Failure to provide the adult student and interested parties with at least 7 days advance written notice of IEP Team meeting in violation of MUSER §VI.2.A.

VIOLATION FOUND

Under MUSER §VI.2.A, the District was required to provide Advance Written Notice to the Student (who was then an adult), using the state-mandated form. The District was not required to provide this form to the Interested Parties, although it did so to Interested Party II. Mr. Milliken’s conversation with the Student, along with having the Student enter the date in his daily planner, does not substitute for the form, which contains additional information beyond simply the date of the meeting.

Ancillary Allegation #1: Extending the IEP annual review beyond the due date in violation of MUSER §IX.3.D(1)(a)

VIOLATION FOUND

MUSER §IX.3.D(1)(a) provides that districts shall ensure that students’ IEPs are reviewed “not less frequently than annually” to determine whether annual goals are being achieved. It has been the stated policy of the Department of Education that IEPs may not be extended beyond this annual review due date (see Informational Letter No. 84 (2/13/08), Q and A p. 31)¹. Although it certainly may have been preferable to have one or both of the Interested Parties in attendance at the IEP team meeting, neither was a parent or legal guardian, and they were therefore not essential members of the team. The IEP team could have proceeded with the meeting and made decisions based upon the information presented, while also agreeing to reconvene at a later date and consider additional input from the Interested Parties. Alternatively, the meeting date could have been moved up, with the Student and Interested Parties waiving the 7 days advance notice (see MUSER §XIX.2.A). The District created the

¹ See <http://www.maine.gov/education/speced/documents/muserqanda.pdf>

If at annual review, the re-evaluations have not been completed, can the current IEP be amended - extended until that time that evaluations are completed (the re-evaluation date would go over the 45 school days)?

No, you cannot extend the annual review. A new IEP must be written. (Revised May 2008)

May an SAU extend an IEP under amendment for a couple of weeks for extenuating circumstances such as completion of the three-year-evaluation?

IFSP/IEP extensions that cause an IFSP/IEP to go beyond an end date of one year, that are intended to be bridges between annual documents, are not allowable. As the oversight agencies, the Department of Education and the CDS State IEU cannot authorize its use as a vehicle to commit public funds.

IFSP/IEP amendments are permissible as long as they occur within the year span of the document. The team that makes the amendment must meet all the requirements unless the SAU and the parents agree to make amendments without an IEP team meeting.

potential for this dilemma to arise when it chose as the meeting date the last permissible date, leaving no margin for error.

IX. Corrective Action Plan

The District shall issue a written memorandum to all special education staff responsible for scheduling and chairing IEP team meetings regarding the responsibility to comply with Maine Special Education Regulations as to: a) the issuance of Advance Written Notice to all parents and adult students at least 7 days before an IEP team meeting; and b) the strict requirement to conduct an annual review of all IEPs within the annual review deadline.

The District will submit a copy of the written memorandum, together with a list of the names and job titles of all those to whom the memorandum was issued, to the Due Process Office, the Complaint Investigator, the Student and the Interested Parties.