

Complaint Investigation Report
Disability Rights Center v. SAD #17

November 26, 2012

Complaint #09.038C
Complaint Investigator: Jonathan Braff, Esq.
Date of Appointment: December 18, 2008

I. Identifying Information

Complainant: Disability Rights Center
24 Stone Street
Augusta, ME 04338

Respondent: Mark Eastman, Ed. D., Superintendent
1570 Main Street
Oxford, ME 04270

Special Education Director: Marjorie Gray

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on December 18, 2008. The Complaint Investigator issued a draft allegations report on December 22, 2008. The Complaint Investigator conducted a complaint investigation meeting on January 16, 2009 (originally scheduled for January 6, 2009 but continued due to conflicts in the schedule of the Complainant's representative), resulting in a set of stipulations and revised allegations. Complainant responded to the revised allegations with a request to add two new allegations. These were rejected as untimely. On January 21, 2008, the Complaint Investigator received 5 pages of documents from the Complainant, and on January 22, 2009 received 36 pages of documents and a 3 page memorandum from Marjorie Gray of SAD #17 (the "District"). Interviews were conducted with the following: Marjorie Gray, special education director.

III. Preliminary Statement

This systemic complaint was filed by the Complainant, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to provide occupational therapy services during the 2007-2008 school year to all students with IEPs specifying provision of such services in violation of MUSER §§II.11 and IX.3.A(1)(d);
2. Requiring written parental consent before implementing a non-initial IEP as a district-wide practice in violation of MUSER §§IX.3 and V.1.A(4).
3. Coercing parents to state their agreement with the IEP by creating the impression that the district will not implement the IEP until parental consent is obtained as a district-wide practice in violation of MUSER §VI.2.I.
4. Denying parents a meaningful opportunity to review the written IEP and written notice during a period of seven days before the IEP is implemented as a district-wide practice in violation of MUSER App. 1, 34 CFR §300.503.

V. Stipulations

1. During the 2007-2008 school year at Oxford Hills Comprehensive High School, no occupational therapy services were provided to any of the students whose IEPs included occupational therapy services.
- 2(a). During the 2007-2008 school year, SAD #17 employed a form at IEP team meetings titled "Report of the Individual Education Program" that contained boxes for the parents to check indicating whether or not the recommendations of the IEP team were being accepted.
- 2(b). The form also contained a line for the parents' signatures associated with the check-off boxes.
- 2(c). The form further contained the following language: "Note special services for new programs commence when parent consent is obtained, unless otherwise noted."

VI. Summary of Findings

1. During the 2007-2008 school year at Oxford Hills Comprehensive High School, no occupational therapy services ("OT") were provided to any of the students whose IEPs included OT.
2. The District hired an occupational therapist ("OT provider") to provide services at Oxford Hills Comprehensive High School during the 2007-2008 school year, but she resigned the day she visited the District.
3. The District then posted a notice of the opening for an OT provider on its website for the remainder of the 2007-2008 school year. District personnel also contacted agencies and individuals in an effort to secure OT for its students, but were unable to do so. Beginning on June 23, 2008, the District advertised for an OT provider by running a listing on the website "Serving Schools."
4. The District finally hired an OT provider on September 5, 2008.

5. In the Fall of 2008, the District formulated plans to provide compensatory OT for the 4 students that were impacted by the unavailability of OT during the 2007-2008 school year. With only one exception, those plans had been put into place prior to the date this complaint was filed; in the case of that one exception, the plan was put into place the very next day.

6. During the 2007-2008 school year, the District employed a form at IEP team meetings titled "Report of the Individual Education Program" (the "form") that contained boxes for the parents to check indicating whether or not the recommendations of the IEP team were being accepted, along with a line for the parents' signatures associated with the check-off boxes. The form further contained the following language: "Note special services for new programs commence when parent consent is obtained, unless otherwise noted."

7. The District's policy with regard to the use of the form was that parents could be asked if they were comfortable indicating their acceptance or rejection of the IEP team's recommendation, but they were not required to sign that section of the form. The District produced evidence that staff members received training with regard to this policy.

8. The District did not refuse to implement non-initial IEPs based upon parents' refusal to accept the IEP team's recommendation or to sign that section of the form. The District produced evidence that, on a number of occasions, parents attended IEP team meetings with their advocates present and did not sign signaling acceptance. No requests for complaint investigations have been filed by any of those parents alleging a failure to implement IEPs as a result of the parents' refusal to sign the form.

9. Beginning January 5, 2009, the District altered the form so that it no longer contains the check-off boxes, signature lines or language regarding special services for new programs commencing only when parent consent is obtained. Use of the old form was discontinued and the staff was notified of this.

10. During an interview conducted by the Complaint Investigator with Marjorie Gray, Ms. Gray stated that she has been the special education director for the district since 1986. Ms. Gray confirmed that the documentation submitted to the Investigator regarding programs to provide compensatory OT services represented all of those students affected by the lack of an OT provider during the 2007-2008 school year.

VII. Conclusions

Allegation #1: Failure to provide occupational therapy services during the 2007-2008 school year to all students with IEPs specifying provision of such services in violation of MUSER §§II.11 and IX.3.A(1)(d)

VIOLATION FOUND

There was no factual dispute that OT services were not provided. Free appropriate public education ("FAPE") is defined to include provision of related services. MUSER §II.11. OT

is listed as a related service in MUSER §XI. The IEP teams of the students that were impacted by this state of affairs had made a determination that the students required OT services in order to receive a FAPE. The unavailability of those services thus denied FAPE to those students, and constitutes a violation of applicable law. The efforts of the District to recruit and hire an OT provider during the time period in question (see MUSER §X.2.A(5)) do not negate this violation.

In addition to the District's obligation to make good faith efforts to hire a provider, the District was also obligated under MUSER §IX.3.B(3) to reconvene the IEP teams, within 30 days of the date each IEP was developed, to identify alternative service options. As the complaint did not contain allegations of a systemic failure to follow this procedure, it was not a subject of this investigation.

MUSER §IX.3.B(3) further requires that the IEP teams determine appropriate compensatory services for those students denied services due to the lack of a provider. The District produced evidence that it had hired an OT provider and had mostly completed the process of developing programs to provide compensatory OT services to the students with IEPs specifying OT by the time this complaint was filed. For this reason no corrective action will be required for this violation.

Allegation #2: Requiring written parental consent before implementing a non-initial IEP as a district-wide practice in violation of MUSER §§IX.3 and V.1.A(4).

NO VIOLATION FOUND

This allegation concerns the use of the District's Report of the Individual Education Program. Despite the presence in the form of boxes by which parents could indicate whether or not they accepted the recommendation of the IEP team, signature lines below the boxes, and the language "Note special services for new programs commence when parent consent is obtained, unless otherwise noted," there was no evidence that the District at any time refused to implement a non-initial IEP because a parent failed to sign indicating acceptance of the IEP team's recommendation. To the contrary, the District produced evidence of IEPs where the parents did not sign the form indicating acceptance, including several where the parents were represented by advocates, and no complaints have been filed alleging a failure to implement those IEPs. Furthermore, the District as a policy matter did not require that the parent sign the form indicating acceptance or non-acceptance, and trained its staff in regard to this policy.

Allegation #3: Coercing parents to state their agreement with the IEP by creating the impression that the district will not implement the IEP until parental consent is obtained as a district-wide practice in violation of MUSER §VI.2.I.

Allegation #4: Denying parents a meaningful opportunity to review the written IEP and written notice during a period of seven days before the IEP is implemented as a district-wide practice in violation of MUSER App. 1, 34 CFR §300.503.

NO VIOLATION FOUND

The investigation uncovered no evidence: that the District actually refused to implement non-initial programs based on a parent’s refusal to sign the Report of the Individual Education Program; that it directly coerced a parent to sign the form; or that any parents did mistakenly believe that their signed acceptance was required before the program would be implemented. Accordingly, the District’s use of the form did not amount to a violation of law.

Nevertheless, the combination of the boxes and signature lines by which parents could indicate whether or not they accepted the recommendation of the IEP team, and the language “Note special services for new programs commence when parent consent is obtained, unless otherwise noted,” could have created the impression that the program resulting from the IEP team meeting (which was “new” compared to the previous IEP) would not commence if the parents did not check and sign that they accepted the team’s recommendations. Parents could thus have felt pressured to sign indicating their acceptance so that services could begin to be provided, even though they may not have been certain that they agreed with the program. This, in turn, could have deprived parents of the opportunity to consider, reflect on and seek assistance in evaluating the program during the seven-day window provided by the Written Notice (see MUSER App. 1, 34 CFR §300.503). Those parents could further have believed they lost due process rights to challenge the program, since they knew the District would be able to offer proof that they agreed with it at the time of the IEP team meeting. For this reason, continued use of the form would be discouraged. The District has, however, already discontinued the use of the form and has notified staff that a new form, not containing the offending language, will replace it.

VIII. Corrective Action Plan

None is required.

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