

Complaint Investigation Report
Parent v. Lewiston

November 26, 2012

Complaint #09.045C
Complaint Investigator: Jonathan Braff, Esq.
Date of Appointment: January 16, 2009

I. Identifying Information

Complainant: Parent
Address

Respondent: Leon Levesque, Superintendent
Dingley Building, 36 Oak Street
Lewiston, ME 04240

Special Education Director: Melvin Curtis

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on January 15, 2009. The Complaint Investigator issued a draft allegations report on January 20, 2009. The Complaint Investigator conducted a complaint investigation meeting on February 4, 2009, resulting in a set of stipulations. On January 26, 2009, the Complaint Investigator received 20 pages of documents and a list of proposed interviewees from the student's father ("the Parent"), plus an additional 17 pages of documents on February 17, 2009, and on February 2, 2009 received 19 pages of documents and a 1 page memorandum from Melvin Curtis of Lewiston School Department (the "District"). Interviews were conducted with the following: Keith Bellfleur, program director of Roy House; and the Parent.

III. Preliminary Statement

The Student is xx years old and was found eligible for early intervention when of pre-school age, later transitioning to special education under the eligibility criterion Multiple Disabilities. This complaint was filed by the Parent, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

III. Allegations

1. Failure to provide transportation to and from school as a related service in violation of MUSER §§II.11 and XI;
2. Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a).

V. Stipulations

1. The student was identified as eligible for early intervention services when a pre-school student and then transitioned to special education under the category Multiple Disabilities.
2. Up until December 4, 2008 the student resided with his father in Lewiston, ME.
3. Since December 4, 2008 the student has been residing at Roy House in Dixfield, ME.
4. Since December 4, 2008 the student's father has continued to reside in Lewiston, ME.

VI. Summary of Findings

1. In April 2007, the Student's mother suffered a debilitating stroke and the Student, who had been living with her, came to live with his father (the Parent) in Lewiston, Maine.
2. From April 2007 until December 4, 2008, the Student lived in Lewiston with the Parent and attended Lewiston Middle School, most recently under an IEP dated October 15, 2008.
3. In April 2008, the Student was diagnosed with Asperger's Disorder, ADHD and a Mood Disorder by his treating psychiatrist, Dr. Gina Oliveto.
4. Due to a deterioration of the Student's behavior at home after April 2008, including incidents of theft, destruction of property, threats of violence, cursing and screaming, the Parent submitted an Application for Intensive Temporary Residential Treatment (ITRT) to the State of Maine Department of Health and Human Services (HHS). The application was rejected in November 2008.
5. Based upon the recommendation of Dr. Oliveto, the Parent applied for and the Student was accepted into a residential treatment program at Roy House, operated by Rumford Group Homes in Dixfield, Maine, and began living there on December 4.
6. As of April, 2008, Roy House has not offered an educational program to its residents.

7. The Student's program at Roy House includes regular visits to his father's home, staying overnight one night per week. Those visits are, however, subject to the Student's maintaining good behavior both at home and at Roy House.

8. The Student is presently expected to return to living with the Parent full time by April, 2009, with the number of nights spent sleeping at the Parent's home to increase as April draws nearer.

9. Parents placing their children at Roy House must give medical authorization to Rumford Group Homes, but otherwise continue to maintain parental rights and responsibilities. For example, Rumford Group Homes is not authorized to give permission for a child to go on a school trip.

10. The Rumford Group Homes Placement Agreement expressly provides that parents retain the right to participate in decisions affecting their child's care or treatment.

11. Since December 4, 2008, the Parent has sought to have the District provide the Student with an education, including providing transportation for him back and forth from Roy House to Lewiston Middle School. The District has refused to do so on the basis that the Student is residing in Dixfield, not Lewiston.

12. During an interview conducted by the Complaint Investigator with Keith Bellfleur, Mr. Bellfleur stated that he has been the program director for Roy House since August 2007. Mr. Bellfleur reported that when he began this employment, Roy House had an educational program. He said that some of the children placed there attended the educational day treatment program, while others accessed their education in Dixfield through MSAD #21. According to Mr. Bellfleur, after October 2007 MSAD #21 no longer was willing to provide education to residents of Roy House, and those children not enrolled in the day treatment program there received education through the school districts where their parents resided. Mr. Bellfleur said that Roy House terminated its educational program in April, 2008. Presently, there are four children residing in Roy House. The three children other than the Student all receive education through the school districts where their parents reside, including transportation to and from that district. Mr. Bellfleur said that children at Roy House typically stay for periods of three months to one year. He said there is a tentative discharge plan for the Student targeting April 2009. Mr. Bellfleur further stated that although the Parent signed a medical authorization giving Roy House power to consent to medical treatment for the Student, Roy House had no further authorization to act as parent to the Student. He said, for example, that the Parent would have to sign any documents related to the Student's education, such as an IEP or a permission slip when one was required by the District for the Student to attend an activity

13. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated that since December 4, 2008 the Student has been sleeping at Roy House, except one night per week when he sleeps at home with the Parent. This home visit is subject to the Student maintaining good behavior both at home and at Roy House. There are further possibilities for visits during the week, again based upon the Student's maintaining good

behavior. The goal is to have the Student increase the number of days he spends at home, and as time goes by, the Parent expects the number of home visits will increase.

VII. Conclusions

Allegation #1: Failure to provide transportation to and from school as a related service in violation of MUSER §§II.11 and XI

Allegation #2: Failure to provide a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a)

NO VIOLATION FOUND

20-A MRSA §5201(1) provides that a student of appropriate age may enroll as a student in the school where the student resides as defined in 20-A MRSA §5202. 20-A MRSA §5202(2) states the general rule that a student is eligible to attend schools in the school administrative unit (“SAU”) where the student’s parent resides.¹ In this, the law presumes that the student resides with his parents. *See Hallisey v. Sch. Admin. Dist. No. 77, 2000 ME 143 (2000)*. When a parent sends the student to reside somewhere else, pursuant to 20-A MRSA §5205(2) the student is considered a resident of the SAU where the student resides *if* the superintendent of that SAU determines that it is in the best interest of the student to do so. In making that determination, the superintendent must find that it is undesirable and impractical for the student to reside with his parent, or other extenuating circumstances justify his residence in the unit, and that he is residing there for other than just education purposes. The decision of that superintendent is reviewable by the commissioner of the Department of Education upon the parents’ request.

Thus, the Parent could have approached the superintendent of SAD #21 and requested that the Student be considered a resident of that district. Under the circumstances presented, the superintendent would have considered that the placement of the Student at Roy House was for compelling reasons and not for educational purposes in deciding whether to approve the request. If the superintendent did not approve, the parent could then have asked the commissioner to overrule the decision. In any event, the District was not obligated to provide the Student with educational services once the Parent sent the Student to reside outside of the District’s SAU.

VIII. Corrective Action Plan

None required.

¹ The statute carves out various exceptions for, *e.g.*, students placed by state agencies (§5205(3)), and homeless students (§5205(7)). In addition, when a student is enrolled in a private school by his parents, the SAU in which the school is located must provide equitable services (MUSER §IV.4.G(1)(h)).

