

Complaint Investigation Report
Parent and Parent v. RSU #2

January 9, 2015

Complaint #15.037C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parent and Parent
Address
City

Respondent: Virgil Hammonds, Superintendent
7 Reed St.
Hallowell, ME 04347

Director of Special Education: Debora Murphy

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on December 4, 2014. The Complaint Investigator was appointed on December 5, 2014 and issued a draft allegations report on December 9, 2014. The Complaint Investigator conducted a complaint investigation meeting on December 23, 2014, resulting in a set of stipulations. On December 23, 2014, the Complaint Investigator received a one-page memorandum and 16 pages of documents from the Complainant, and received 33 pages of documents from R.S.U. #2 (the “District”) on January 2, 2015. Interviews were conducted with the following: Debora Murphy, director of special education for the District; and the Student’s mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by Parent and Parent (the “Parents”), the Student’s parents, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to act upon a referral from the Student's parent in a timely manner by referring the Student to an IEP Team to determine the need for additional evaluations in violation of MUSER §§IV.2.E, V.3.A and VI.2.J(1);
2. Failure to send a consent to evaluate form to the Student's parent within 15 school days of receipt of referral in violation of MUSER §IV.2.E;
3. Failure to complete an initial evaluation of the Student for eligibility within 45 school days of the parent's consent to evaluate on October 1, 2014 in violation of MUSER §V.1.A(3)(a)(i).

V. Stipulations

1. On or around August 26, 2014, the Student's parent told the special education director for the District that a psychological evaluation of the Student had recently been conducted and that she wanted an IEP for the Student.
2. In the above conversation, the special education director stated that before the Student could be considered for special education, she would have to review the psychological evaluation and a classroom observation would have to be conducted.
3. On September 11, 2014, The Student's parent emailed the psychological evaluation to the special education director and asked that the observation of the Student be conducted.
4. On September 15, 2014, the special education director responded to the Student's parent that a meeting could be held to discuss what further evaluations were needed. The Student's parent responded that the Student had recently had OT and PT evaluations, and again asked that the observation be conducted.
5. On September 30, 2014, the special education director provided to the student's parent a referral form and a consent to evaluate form; both forms were signed (although the anecdotal information section of the referral form had not been completed) and returned to the special education director on October 1, 2014.
6. The classroom observation of the Student was conducted on November 23, 2014 and the report of the observation is dated December 1, 2014.
7. An IEP Team meeting was held on December 9, 2014 to consider the evaluations and observation, and the Student was found eligible for special education.

VI. Summary of Findings

1. The Student lives in Richmond with her siblings and the Parents, and has been attending xx grade at Richmond Middle School (the "School").
2. The District's "Referral Procedures and General Education Interventions" policy states that "[s]hould a parent attempt to make a referral orally, professional staff shall assist the parent in

reducing that referral to writing and submitting it to the office of the Director of Special Education.”

3. The Student’s mother attempted to orally refer the Student for determination of eligibility for special education services on August 26, 2014. She was not advised at that time that the referral needed to be in writing, nor was she otherwise assisted in reducing the referral request to writing.

4. A consent to evaluate form was provided to the Parents by the District on September 30, 2014, 24 school days after the date of referral.

5. The Student’s IEP Team met on December 9, 2014, within 45 school days of the date on which the signed consent to evaluate form was received.

6. During an interview conducted by the Complaint Investigator with Debora Murphy, Ms. Murphy stated the following: She is the director of special education for the District. During the August 26, 2014 telephone conversation with the Student’s mother, the Student’s mother told her that an outside psychological evaluation of the Student had been conducted, but that she hadn’t yet received the report. The Student’s mother agreed to send a copy of the report to her when she received it, and said that she wanted an IEP for the Student. The Student already had a 504 plan, so she asked the Student’s mother what more she wanted for the Student. The Student’s mother again said that she wanted an IEP.

She then spoke with the Student’s mother about the referral process, saying that she would do the referral, but that it would have to include a classroom observation of the Student, and that private evaluations don’t always satisfy all the legal requirements. The Student’s mother was clear that she didn’t want District personnel to conduct evaluations of the Student.

She didn’t consider this conversation to constitute a referral because she believed that the referral would only be initiated once the evaluation report had been received. She was seeking to avoid conflict with the Parents over the question of whether the District had to perform its own evaluation, which couldn’t be decided until the Parents’ evaluation report was available.

7. During an interview conducted by the Complaint Investigator with the Student’s mother, the Student’s mother stated the following: When she called to speak with Ms. Murphy on August 26, 2014, she told Ms. Murphy that the Student had received a psychological evaluation over the summer, that the Student had a new diagnosis, and that she wanted the Student to have an IEP. She explained that the Student had struggled last year, particularly in math class, and that the Student was very anxious because she was going to be attending a new school (the School). During the previous year, the Student had attended a Title I math class and had done well there, but the teacher said the Student should continue to be in a special math class and there would be no Title I math class at the School.

Ms. Murphy said that she would need to see the new evaluation, and asked her if she wanted to email it. She responded that she did not yet have the report, but would get it to Ms. Murphy as soon as she got it. Ms. Murphy also said that not enough testing had been done on the

Student and that a classroom observation of the Student would need to be conducted. Ms. Murphy said that she could get something in the mail to her so that the observation could be conducted. She understood this to mean a consent to evaluate form, which she was familiar with from previous experience with her other children. She did not receive a consent to evaluate form, or any other paperwork, from the District until a referral form and consent to evaluate form were given to her on September 30, 2014.

During the August 26, 2014 conversation, Ms. Murphy did not say anything about having to put a referral into writing, or say anything else about making a “referral.”

The Parents are not seeking compensatory services in connection with this complaint investigation. She has had experiences with the District in the past when she was able to get the attention of District administrators only after threatening to file a complaint. She feels that this was the case this time too. She wants the District in the future to work collaboratively with parents and do what they are supposed to do for children without parents having to use such threats.

VII. Conclusions

Allegation #1: Failure to act upon a referral from the Student’s parent in a timely manner by referring the Student to an IEP Team to determine the need for additional evaluations in violation of MUSER §§IV.2.E, V.3.A and VI.2.J(1)

Allegation #2: Failure to send a consent to evaluate form to the Student’s parent within 15 school days of receipt of referral in violation of MUSER §IV.2.E

VIOLATION FOUND

MUSER §IV.2.E requires that each school administrative unit (“SAU”) have a local policy, consistent with the rule, on referral of students to an IEP Team. It further requires that, when it is determined that additional evaluations are needed to enable the IEP Team to make a determination of the student’s eligibility for special education services, the SAU must send a consent to evaluate form to the student’s parents within 15 school days of the receipt of referral. In addition, although the rule requires that a referral must be submitted in writing, it further provides at MUSER §§IV.2.E(1) that “[a]n oral referral shall be reduced to writing by designated school personnel.”

The District, pursuant to the above rule, has adopted a policy titled “Referral Procedures and General Education Interventions.” The policy states that a parent “may refer his or her child to the IEP Team at any time,” It further states that, should a parent attempt to make a referral orally, “professional staff shall assist the parent in reducing that referral to writing.”

In this case, it is evident that the Student’s mother, on August 26, 2014, was seeking to refer the Student to special education. Her repeated statement that she wanted an IEP for her daughter made that clear. Rather than waiting to receive the evaluation report, Ms. Murphy was obligated to promptly assist the Parents to reduce their referral request to writing, and then to schedule a meeting to review the available information concerning the Student and

determine what more was needed to enable the determination as to the Student's eligibility for special education services. The team could certainly have decided to proceed on the basis that the Parents' private evaluation would hopefully suffice and to order for the time being only a classroom observation. Once that determination was made, a consent to evaluate form for the observation would have to have been sent to the Parents within 15 school days of the referral date (by September 17, 2014). If the Parents' evaluation report was delivered after that meeting, and if it turned out that the report was in some way insufficient, a second consent to evaluate form could have been sent out to allow the District to conduct a further evaluation. While Ms. Murphy's motivation in deciding to not treat the August 26th conversation as a referral may have been well-intentioned, it resulted in a 10 school day delay in the referral process.

Allegation #3: Failure to complete an initial evaluation of the Student for eligibility within 45 school days of the parent's consent to evaluate on October 1, 2014 in violation of MUSER §V.1.A(3)(a)(i)

NO VIOLATION FOUND

The Parents' signed consent to evaluate form was stipulated to have been received by the District on October 1, 2014. MUSER §V.1.A(3)(a)(i) requires that a student's initial evaluation procedure, including a meeting to review evaluations and determine eligibility, be completed within 45 school days from the receipt of parental consent for evaluation. The IEP Team meeting to review the Student's evaluations and determine eligibility was held on December 9, 2014, 42 school days from the date the District received the consent.

VIII. Corrective Action Plan

The District shall, without unnecessary delay, prepare and circulate to all District special education personnel a memorandum concerning the obligation of staff members to respond promptly to a parent's oral referral to special education by assisting the parent to reduce the referral to writing, proceeding to a determination of what additional information must be obtained and then sending to the parent a consent to evaluate form in no more than 15 school days from the date of the referral. The District shall document compliance by providing to the Due Process Office a copy of the memorandum with a list of all those staff members to whom it was circulated, along with their job title.