

Complaint Investigation Report
Parent v. Hancock Public Schools
Complaint 18.031C
Complaint Investigator: Jeannette Sedgwick
December 7, 2017

The Department of Education (Department) received this complaint on October 13, 2017. The complaint investigator reviewed all documents, information, and responses from the parties and conducted interviews with the complainant and the District on November 27, 2017 and November 28, 2017, respectively. The issue in dispute is whether the District followed the mediation agreement (Agreement) with regard to transportation.

The District has complied with laws and regulations regarding the allegations in this complaint.

FINDINGS

1. On September 21, 2017, the parties participated in a mediation arranged by the Department's Due Process Office. On that date, the parties entered into an Agreement that the complainant and the District signed on the day of mediation.
2. The Agreement contains the following language in #2: "School has the option to provide individual transportation to [the Student] with a staff member or a hired driver. If this occurs, [the complainant] will be informed of the identity of the driver.... The transportation will be door to door without stops." [hereinafter referred to as *Section A*].
3. The Agreement contains the following language in #4: "The IEP Team will develop a transportation plan for [the Student] should she require transportation after December 13, 2017, and will include a goal for transportation as a related service." [hereinafter referred to as *Section B*].
4. Written Notice dated September 29, 2017, a few days after the mediation agreement, states the following:
 - "The Student's "IEP will be amended to include transitionally-based, special transportation for Monday mornings and afternoons as well as Wednesday mornings (3 of 10 one-way trips per week) until December 13, 2017, in order to accommodate [the Student's] transition..."
 - "The Student's IEP will be amended to include a functional goal for transportation, which is as follows: By 12-13-17, given a reasonable adjustment period (11 school weeks requiring Student attendance), [the Student] will access 10 of 10 potential rides (both morning and afternoon transportation services) for 5 of 5 regular school days per week from a baseline of 0 of 10 rides as recorded by teacher data tracking. This goal is added in order to maintain MUSER compliance and as agreed to in mediation occurring on 9.21.17."
5. The District amended the Student's IEP to include the changes in transportation and a goal pertaining to transportation as referenced in the Written Notice.

6. The complainant filed this complaint because she believed that the District did not follow the Agreement by adding transportation as a goal prior to December 13, 2017 and because she believed a transportation plan had been put into effect prior to December 13, 2017.
7. The parties continue to disagree about the Student's capabilities to be transported to school given the Student's disabilities, which include emotional disturbance, depressive disorder and generalized anxiety disorder-NOS. Both parties stated that after December 13, the Student will likely be transported by the complainant.
8. The District has arranged an IEP meeting to occur within the first two weeks of December, in order to discuss the Student's needs for transportation after December 13, 2017.
9. The time period relevant to the issues in this complaint is from the date of the Agreement, September 21, 2017, to December 13, 2017.

CONCLUSIONS

Allegation 1 – NO VIOLATION FOUND

The complainant alleges that the District has not adhered to the mediation agreement dated September 21, 2017 resolving Complaint 18.019M, specifically with regard to the District establishing and including a transportation plan/goal on the Student's IEP without any discussion at an IEP Team meeting (#4 on the mediation agreement).

Allegation 2 – NO VIOLATION FOUND

The complainant alleges that the District has not adhered to #4 on the mediation agreement in terms of time because the transportation plan is in effect but should be in effect after December 13, 2017.

Mediation agreements may be enforced through the state complaint investigation process. MUSER XVI(3)(8). Discussions that occurred during the mediation process must remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. 34 CFR 300.506; MUSER XVI(3)(6). Therefore, through the complaint investigation process, there can be a determination whether there has been compliance with the language of a mediated Agreement.

In essence, the parties in this case disagree about when a transportation goal should be included in a Student's IEP when an Agreement specifies two timeframes for the provision of transportation services. The parties agreed to District-provided transportation for the Student between the date of the Agreement and December 13, 2017 and also agreed to discuss the need for transportation for the period after December 13, 2017.

Based on the plain language of the Agreement and understood within the context of the entire agreement, the relevant language should be read as follows:

Section A - Between September 21, 2017 and December 13, 2017, the District has the option to provide District-sponsored transportation to the Student by a certain transportation provider. Transportation provided during this time would occur after the complainant and Student were informed of the driver within specific timeframes.

Section B - The Student's IEP Team will meet at some unspecified time after the date of the Agreement to determine whether the Student will require transportation after December 13, 2017. During that meeting, the IEP Team would discuss whether the Student would require transportation after December 13, 2017. If the Team decided to include transportation as a goal on the Student's IEP for services after December 13, 2107, the team would include a goal for transportation on the IEP.

Section A of the Agreement grants the District the authority to provide transportation to the Student between September 21, 2017 and December 13, 2017. The District provided transportation to the Student during this timeframe in accordance with the Agreement. The District sent Written Notice to the parent and amended the IEP with a transportation goal when it provided this service.¹ The District stated that the transportation goal was intended to reflect transportation services in effect from September 21, 2017 – December 13, 2017. The District believed this step was necessary to comply with the terms of the Agreement and to comply with District practice to ensure that services are related to a goal in the Student's IEP. In other words, in order to provide transportation as a service to the Student, it is District policy that the Student's IEP includes a goal that corresponds to that service.

The complainant understands that the Agreement allowed the District to transport the Student during the short period of time between September 21, 2017 and December 13, 2017. The complainant believed, however, that transportation could take place without a corresponding goal on the Student's IEP. The complainant stated that she thought the Agreement stated that a transportation goal would only be included after December 13, 2017 if the Team decided transportation was necessary. The complainant interpreted *Section B* of the Agreement (#4) to mean that no plan for transportation would be in effect until after December 13, 2017.²

The complainant's interpretation of the Agreement, that the transportation specified in the Agreement would not necessitate a goal, is understandable. Also understandable is the complainant's desire to fully partake in the IEP process, including being involved in creating goals for the Student. Yet when the District provided transportation to the Student and included a measurable goal to do so after mediation, it adhered to the terms of the Agreement and complied with District practice of ensuring that the service was connected to a goal in the Student's IEP. In doing so, the District also complied with special education regulations stating that IEPs should include related services for a child "to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general

¹ The mediation agreement did not state that the terms of the Agreement would be incorporated into the IEP.

² Underlying this disagreement may be a difference in opinion as to whether the complainant or the District is responsible for establishing goals and systems for monitoring progress towards those goals. The District is ultimately responsible for creating the IEP, which includes systems to measure progress toward goals. MUSER VI(2)(I).

education curriculum... [and] to be educated and participate with other children with disabilities and non-disabled children.” MUSER IX(3)(A)(1)(c).

There was no violation when the District included a transportation goal in the Student’s IEP to reflect the terms of that Agreement. The District has scheduled an IEP Team meeting to discuss the Student’s needs for transportation after December 13, 2017. The District has complied with the terms of the Agreement and no corrective action is necessary.