

**Complaint Investigation Report**  
**Parent v. RSU 23**  
**Complaint 19.080C**  
**Complaint Investigator: Jeannette Sedgwick**  
**April 26, 2019**

**COMPLAINT INVESTIGATION REPORT**

The Department of Education received this complaint on March 19, 2019. The complaint investigator reviewed all documents, information, and responses from the parties. On April 10, 2019, the investigator conducted interviews with District staff, including the Director of Special Education, the District's instructional strategist, the Student's general education classroom teacher, the Student's literacy instructor, and the teacher of the functional life skills program. An interview was conducted with the complainant and the Student's grandmother on April 16, 2019.

**FACTUAL FINDINGS**

1. The Student is a ten-year old who qualifies for special education and related services based on the disability of autism spectrum disorder, which was diagnosed when the Student was approximately 2 years old. The Student's teachers describe him as a sweet boy who wants to please and who works very hard.
2. In past years, the Student received special education services in the District's functional life skills program, a classroom within the District's middle school that serves students with a variety of disabilities, including autism.
3. The Student was last evaluated in December 2017. Results of the Wechsler Individual Achievement Test (WIATT-III) demonstrated that the Student was performing very low or low in reading, reading comprehension and fluency, mathematics and math fluency. The Goldman-Fristoe Test of Articulation (GFRA-2), indicated the Student performed at below the first percentile for his age. Another speech and language evaluation, the Clinical Evaluation of Language Fundamentals V(CLEF-5) also indicated that the Student performed below the first percentile in language skills. The evaluator characterized these results as "significant language challenges." Additionally, the BASC-3 showed the Student performed in the at-risk or clinically significant range in the areas of motor movement, attention, internalizing problems, and functional communication.
4. Prior to filing this request for a complaint investigation, the complainant had requested a complaint investigation on December 11, 2018. That request raised the issues of the Student's educational placement in the general education and functional life skills classes; implementation of the Student's IEP; and the Student's progress towards his

- goals. The District and the complainant entered into a mediated agreement (Agreement) on January 4, 2019 and the complainant indicated that the mediation resolved all issues.
5. On March 19, 2019, the complainant filed this request for a complaint investigation, with allegations stemming from the time after the mediation agreement to the date of the request.
  6. Based on the Agreement, the Student's schedule is a hybrid of instruction within the functional life skills program, pull-out reading instruction, and instruction within the general education classroom. Part of the Agreement is that the Student would follow a certain schedule during the day and that he would learn certain academic skills at certain times of the day with particular instructors.
  7. The Student's IEP Team met on January 28, 2019, approximately three weeks after the Agreement, at the parent's request. There were no changes to the Student's IEP at that time "as it continues to be appropriate for [the Student's] needs". The IEP Team discussed ESY services, the curriculum in the life skills program, and the computation of percentage of time with peers.
  8. The service delivery grid on the Student's IEP calls for specially designed instruction (SDI) in reading 60 minutes/5 times each week; writing 30 minutes/5 times each week; Math 45 minutes/5 times each week; and social skills for 30 minutes once a week. The Student is to receive related services of speech/language 30 minutes/3 times each week; speech language consultation for 30 minutes once a month, OT 30 minutes/3 times each week, OT consultation for 30 minutes/ once a month; and ESY, with OT and Speech/Language to continue during ESY.
  9. The functional life skills program uses a curriculum which differs from the curriculum taught in the fourth grade. The curriculum involves social skills, life skills and academics taught in functional situations, such as cooking or with prompts.
  10. District staff stressed that the academic programming within the life skills class contains all aspects of the Student's academics in a functional way, as taught by the special education teacher. For instance, OT skills can be taught through activities like cutting with scissors which may look like "play" but are used in the curriculum to build fine motor strength.
  11. District staff stated that because the Student's skills are lower than grade level, the Student often receives parallel instruction in the general education setting so that he can maintain progress towards his IEP goals. In the general education setting, the Student may receive instruction in a quieter place on a very infrequent basis when the other students are taking a test and when the Student and instructor need to converse.
  12. The District stated that the Student is receiving instruction in accordance with the agreed-upon schedule. There was a single instance when the Student attended a music class for which he was not enrolled.
  13. The Student's teachers stated that sometimes the Student can perseverate on issues for long periods of time, a trait that can impact his learning. The Student is sensitive to light

and sounds and has benefitted from instruction in social pragmatics. District staff expressed concern about the Student's anxiety and social skills in school.

14. The Student has just completed Level 1 of his reading program, which indicates that the Student's skills are progressing well with direct, 1:1 instruction but that his skills remain well below grade level.
15. The complainant understands that she had signed the mediation agreement that agrees to have the Student attend the life skills program until the time stated in the mediated agreement. She expressed her concerns that the life skills program does not fit the Student's needs because he has higher academic skills than what is being taught in the class, that the Student is getting too many breaks, and that there is too much "play time." For instance, the Student already knows how to brush his teeth and so there is no need to teach him that skill in class when he is so far behind his grade level academically. The complainant stated that she believes the Student learned a great deal when he was taught in a 1:1 situation and will be able to progress in his academic skills with more 1:1 direct instruction. She stated that she would like more emphasis on writing, which she does not see occurring in the functional life skills class.
16. The Student's grandmother stated that her concerns included the Student's lack of progress. She does not think the IEP Team should be relying on the two-year old evaluations and that the Student has the capability to achieve at a much higher rate than he is currently achieving based on his ability to learn quickly and ability to retain information. The Student has attended the life skills program for years and the program has not taught him the basics such as writing his last name and other important daily skills. She is currently teaching him multiplication tables after school.
17. The complainant and the grandmother believe that the Student should be working at least 30 minutes straight without a break and that he needs to be challenged more. They remain concerned that the Student's reading, writing and mathematics skills are well below those of his peers. They do not have concerns about his social skills.

## DETERMINATIONS

The agreement entered into on January 4, 2019 (Agreement), specifies six terms, one of which the complainant alleged the District is not following:

Allegation 1: Agreement # 3: “The Student will receive instruction in [the general education] class during the block 7 schedule in the updated schedule, except up to twice per month when the Student will receive instruction in the [life skill class] during this time period.” The complainant alleges that the Student’s schedule has varied from the schedule agreed to in the Mediation Agreement. **COMPLIANCE FOUND.**

Specifically, the complainant stated that

- (a) the Student has attended special education classes that are not in the agreed-upon schedule.

The Student attended an adaptive music class, which is not on his schedule, on January 4, 2019. This occurred before the agreement was signed and implemented. The District stated that this was an error in scheduling. There has been no deviation from the Agreement regarding this allegation.

- (b) has been removed from the general education class in the afternoons.

According to the Agreement, the Student attends science and social studies in the general education class in the afternoons. The Student is not always working on the same social studies or science curriculum as the class, however, as he receives alternate instruction on some occasions. When interviewed, the general education teacher stated that when the class was taking an assessment and the Student was participating in instruction that required talking, the Student would receive that instruction outside of the classroom. To her recollection, that had only occurred twice or three times and the Student is attending class with his peers at all other times. The Agreement has been followed with regard to this allegation.

- (c) Has not received 1-1 reading instruction with the reading specialist.

The complainant retracted this allegation because the Student is receiving reading instruction. The complainant stated that she is pleased with the Student’s progress in reading.

- (d) Has not received direct instruction in reading/writing/math/social studies/science in the life skills program.

The complainant disagrees with the District that the curriculum in the functional life skills meets the time requirements as specified on the IEP. The complainant would like to see the subjects being instructed individually as specified on the IEP. Additionally, the complainant states that the curriculum is not meeting the times that are specified in the IEP.

The Agreement is that the Student would be attending the life skills class. The Student attends the program for the morning hours, approximately three hours each day. Although the District's response did not include exactly how the Student is receiving a full 60 minutes of reading, 30 minutes of writing, and 45 minutes in mathematics within the life skills class, the curriculum in that program is an integrated program that teaches all of these subjects through activities and instruction. The District has followed the Agreement regarding this allegation.

The complainant also alleges the following **after January 4, 2019**, the date of the mediation agreement:

Allegation 2: The District has not provided a free appropriate public education (FAPE) because the Student has not been receiving academic instruction in the functional life skills (FLS) program, has not made progress in his goals or towards the general education curriculum, and is academically performing below grade level. MUSER II (14); 34 CFR 300.101(a). **COMPLIANCE FOUND.**

The Agreement states that the IEP Team will meet some time after the schedule for the 2019-2020 school year is released but before the 2019-2020 school year begins to discuss ways to implement the concepts of the agreement into the Student's 2019-2020 schedule.

The complainant remains concerned about the Student's education outside of the general education classroom. Her concerns are that the life skills class is not appropriate for the Student, for both academic and social reasons. The complainant raised this same concern in 19.048C and she and the District signed an agreement that establishes that some parts of the Student's academic programming will take place in the functional life skills class. The Agreement was signed approximately eight weeks prior to filing this complaint. Where the IEP Team met approximately very soon after a mediation Agreement was signed, prior to a time when progress could be measured, and where the Agreement calls for another IEP Team meeting to occur before the start of the 2019-2020 school year to discuss educational programming, there is no violation of law or regulation.

Between the time of January 4, 2019 and April 20, 2019, progress reports show that the Student is progressing towards his goals. The date for achieving his goals is December 6, 2019 and after the first three months of the year, on March 8, 2018, the Student is partially meeting his goals of using pronouns correctly, drawing mathematical objects such as squares and rectangles, creating bar graphs, attending to and completing occupational therapy-directed activities to improve fine motor strength and dexterity, and adding two-digit numbers requiring regrouping,

as well as many others. In the first quarter with these goals, the Student has not yet made progress in his goal of participating in collaborative conversations about a variety of grade level topics with peers and adults and the goal of improving articulation to speak audibly to express thoughts, feelings and ideas clearly in conversational speech.

Allegation 3: The parent requested an IEP meeting in February 2019 because of lack of progress and the Student's anticipated need for academic programming and the District did not respond. MUSER IX(3)(D)(1).

**COMPLIANCE FOUND.**

The District provided a written notice for a meeting on January 28, 2019 which states that the IEP Team discussed potential changes to the IEP. The Student's IEP was not changed at this time based on the Agreement, which had been signed just a few school days prior to the meeting. The Team also discussed how the curriculum in the functional life skills program was meeting the instruction described in the Student's IEP. The complainant also requested that the IEP Team meet in February 2019.

IEP teams must meet at least annually. IEP Teams should also meet because of a lack of progress and the Student's anticipated need for academic programming. The District has fulfilled these requirements. In this particular circumstance, where the complainant signed an agreement for educational programming approximately four weeks prior to a request to meet, where the IEP Team met approximately one to two weeks prior to the request, prior to a time when progress could be measured, and where the Agreement calls for another IEP Team meeting to occur before the start of the 2019-202 school year to discuss educational programming, there is no violation of law or regulation.

Allegation 4: The District amended the Student's IEP, specifically, the Student's LRE percentage, outside of the IEP process and without parental input. MUSER IX(3)(C)(2)(d)(6). **COMPLIANCE FOUND.**

The complainant stated that the District changed the IEP and the Student's educational programming without parental input because the LRE percentage changed. In February 2019, the complainant and the District discussed the Department of Education's guidance regarding calculation of LRE on IEPs, which impacted the Student's LRE calculation. On March 6, 2019, the District wrote to the complainant to clarify the services listed in the IEP as taking place in the special and general education settings in the manner specified in the Agreement. There was no change in programming; the change in LRE was a slight clerical modification the District made in accordance with Departmental guidance.

As there are no violations of law or regulation, no corrective action is required by the District.