

Complaint Investigation Report
Parent v. Scarborough Public Schools
Complaint 20.003C
Complaint Investigator: Jeannette Sedgwick
September 9, 2019

COMPLAINT INVESTIGATION REPORT

The Department of Education received this complaint on July 17, 2019. The parties signed a mediation agreement on June 26, 2019 and the complainant filed this complaint because of alleged failure to comply with the mediation agreement. The complaint investigator reviewed all documents, information, and responses from the parties. On August 6, 2019, the investigator interviewed the parent and on August 16, 2019, the investigator interviewed the special education director, who participated in mediation and signed the mediation agreement.

FACTUAL FINDINGS

1. The mediation agreement (“Agreement”) contained the following terms relevant to this complaint:
 - *During ESY, the District will provide 90 minutes per week each of Speech/Language Services and Occupational Therapy.*
 - *During ESY, the District will send academic packets to the student and track his work completion. The District will provide 3 hours of consult for this purpose over the course of ESY.*
2. Based on the terms of the Agreement, all services should have been completed during the District’s ESY program, which ran from July 8, 2019 through August 15, 2019.
3. When one of the two service providers told her that they could no longer provide services to the Student, the parent filed this complaint.
4. Services did not begin at the beginning of ESY, which started only approximately five days after the Agreement was signed.
5. Speech/language services and occupational therapy services have been delivered both as a co-treat model and as individualized delivery.¹ During a co-treat service delivery session, the therapist worked on both speech and occupational therapy for the Student. Those sessions are 45 minutes long. The District states that co-treat sessions have the functional equivalent of 90 minutes total, because even if they are 45 minutes long, both speech and OT skills are being addressed at the same time.

¹ A co-treat model is one where therapists simultaneously carry out a therapy session utilizing and combining their separate areas of expertise.

6. The parent stated in the request for a complaint investigation and during the interview that the services being provided, and the academic work sent home in packets did not meet the Student's needs or goals. She acknowledged that academic packets had been sent home during ESY.
7. The District's special education director stated that she sent two academic packets to the Student during ESY. Prior to sending these, the Director consulted with the Student's teachers and the Student's files to determine what type and amount of work should be sent home. The director explained that she spent more time preparing these documents than the 5 hours specified in the agreement because she had consulted with the Student's educators and reviewed the goals on the Student's IEP to create meaningful work.
8. Email documentation demonstrates that the District attempted to arrange for some services to be provided in a clinic setting during the established timeframe. After the parent told the District that she would not be able to bring the Student elsewhere for services, the District proceeded to arrange for in-home services.
9. Most services were completed; however, the District stated that it still owed 2 co-treat sessions and 6 speech sessions because they were not provided during the timeframe specified in the Agreement.

DETERMINATIONS

1. The parent alleged that the services of occupational therapy and speech/language are not totaling 90 minutes in combination not per discipline as stated in the agreement.

NON-COMPLIANCE FOUND.

Mediation agreements created through the IDEA mediation process are legally binding agreements that can be enforced either through the Department of Education or a state court of competent jurisdiction.² Participation in mediation is voluntary on the part of both the parents and the school district and cannot be used to deny or delay a parent's right to a due process hearing.³

Here, the mediated agreement between the District and the parent ("Agreement") specifies an exact number of minutes each week, 90 minutes, that speech/language is to be provided to the Student. The Agreement also states the exact number of minutes of occupational therapy the Student should receive. The Agreement establishes a very specific timeframe during which the services should have been provided, during ESY of 2019 which occurred from July 8, 2019 through August 15, 2019.

² MUSER XVI(3)(A)(6).

³ 34 CFR 300.506 (b)(1)(ii); *Letter to Decker*, 19 IDELR 279 (1992); *Letter to Harkin*, 213 IDELR 263 (1989).

The District has provided, through a contracted company, co-treat sessions where OT and speech/language services are taught in the same 45-minute block. Documentation does not show full details of the conversation about the place of services and the Agreement is silent about how the services would be delivered. The special education director stated that she offered to set up services in a clinic setting. The parent declined to have services for the Student occur in a clinic setting and the director established at-home services.⁴ The provider of one of the services ceased working with the Student at home at some point in the summer.

The language of the Agreement does not support the interpretation that the services provided with the co-treat model equal the services that were specified in the Agreement. In addition, three occupational therapy sessions and six 90-minute speech/language sessions are still owed to the Student.

2. The parent alleged that the academic packets sent to the Student under the terms of the agreement (a) do not address the Student's IEP goals, and (b) that the District withheld a laptop so that OT goals in the IEP (Google classroom) could not be addressed.

COMPLIANCE FOUND.

The Agreement does not state any specifics about the Student's IEP goals or use of a laptop. The Agreement states only that the District would send home academic work, which it has done. These allegations are not stated in the Agreement and therefore are not issues to be enforced. There is no law or violation concerning this allegation.

CORRECTIVE ACTION THAT MUST BE COMPLETED BY THE DISTRICT

1. The District must provide 6 hours of speech/language sessions and 6 hours of OT sessions to the Student prior to **November 15, 2019**. Services must be provided in a setting outside the Student's home and the District must provide transportation to the services, if needed. Documentation in the form of service provider notes or invoices must be provided to the Department to demonstrate that these services have been completed no later than November 15, 2019.

⁴ It is not clear from the documentation if the Parent believed she had to transport the Student to the clinic, and that is why she requested at-home services instead of services in a clinical setting.