

Parent v. Acton School Department
Complaint 20.012C
Complaint Investigator: Jeannette Sedgwick
October 1, 2019

COMPLAINT INVESTIGATION REPORT

The Department of Education received this complaint on August 8, 2019.¹ Acton Public Schools (“Acton” or “District”) is a school district that provides elementary school education to students who reside in Acton and sends all other students to other school systems through school choice agreements. Acton is responsible for providing a free appropriate public education for the Student. The Student was educated within the Sanford Public School system (“Sanford” or “school”) during the 2018-2019 school year.

On September 11, 2019, the investigator interviewed Acton’s special education director and Sanford’s special education director, social worker, and the Student’s case manager/special education teacher. The investigator interviewed the parent on September 13, 2019. The complaint investigator reviewed all documents, information, and responses from the parties.

Based on the parent’s written request for an investigation, this state complaint investigation involves Acton Public School’s responsibility to provide a free appropriate public education for the Student during the 2018-2019 school year.²

FACTUAL FINDINGS

1. The Student is sixteen years old and qualifies for special education and related services based on the qualifying disability of autism.
2. The Student’s most recent evaluations, including the WISC-V and the WJ-III, indicate that the Student’s processing speed and working memory are below average, that “he will require more time to process information, that his mathematics scores are below

¹ The complainant filed a version of this complaint on July 17, 2019, but requested that the Dispute Resolution Office of the Maine Department of Education (“Department”) contact the United States Department of Education, Office for Civil Rights prior to opening the complaint. After receiving information through a FOIA request regarding OCR’s investigation, the Department opened the state complaint investigation.

² The U.S. Department of Education, Office for Civil Rights, entered into a resolution agreement with Sanford Public Schools where the Student attended during the previous school year, the 2017-2018 school year, based on a complaint filed at that office. That investigation included, among other things, an inquiry regarding the educational programming and the Student’s interactions with his peers during that school year.

average, and that his FSIQ is 75. Information from the Vineland Adaptive Behavior Scale (Vineland-II) indicates that the Student's communication, socialization, and adaptive behavior are in the "low" range.

3. In the beginning of the 2018-2019 school year, the Student received his educational programming at the Sanford Public High School.
4. The Student's IEP in place during the 2018-2019 school year included the following:
 - Present level of academic performance: "[The Student] receives instruction in the resource room for academic support and support in executive functioning skills. [The Student] has great basic math skills. He has difficulty with more complicated word problems.... Once he has had the opportunity to practice a skill he can maintain it. [The Student] is able to work independently, with frequent check-ins to ensure he is on task and focused."
 - Present levels of functional/Developmental Performance: "[The Student] wants to be social, and wants to make friends but has some difficulty appropriately interacting with others... He needs to be able to apply what he knows about expected and unexpected behaviors. [The Student] participates in social skills group. He is an active participant in groups. He tries to fit in but sometimes doesn't know how to initiate interaction with peers."
 - Measurable goals in writing, executive functioning, and social behavior.
 - Specially designed instruction in mathematics and executive functioning in the special education setting.
 - Speech and language services 60 minutes each week.

The Student does not exhibit behaviors that impact his learning or the learning of others. He participated with his non-disabled peers 50% of the time. At the time the IEP was written, the Student had a projected date of graduation in June 2021.

5. The Student's IEP was implemented during the 2018-2019 school year by Sanford Public Schools. Stanford staff reported that the Student is beloved by the staff and students in the school. Staff provided examples of multiple positive interactions between the Student and peers in the hallways and in class. They also reported that peers and adults at the school had strong relationships with the Student and that the Student's positive and engaging manner made him a success at school.
6. The Student attended school until approximately mid-October, 2018, when the parent told the school the Student was ill and could not attend. The Student missed several classes in the first few weeks of school.
7. Acton's special education director, who started working for the District at the beginning of the 2018-2019 school year, communicated with the parent on September 20, 2018 about the parent's concerns regarding the social skills program. Around that time, the parent revoked consent for the social skills program, citing personnel issues as the reason for revocation. Acton's special

- education director established a meeting with the parent for September 25, 2018 and communicated with Sanford Public School staff to consider other options for providing this service.
8. On the day of the meeting, the parent cancelled the September 25, 2018 meeting with Acton's special education director and the IEP Team from Sanford. The special education director contacted the parent over the next few weeks but did not hear from the parent until October 17, 2018, after which Acton responded to the parent via email and phone. The parent again initiated contact with the Director on October 23, 2018, and a meeting was scheduled for November 1, 2018.
 9. On October 25, 2018, Acton staff received a phone call from the Student's parent who stated that she was keeping the Student out of school and that she did not feel the Student was safe at Sanford High School.
 10. On October 25, 2018, the parent also emailed staff at Sanford stating she would no longer communicate with Sanford staff and that the Student was home sick and under a doctor's care.
 11. On November 1, 2018, the Director discussed multiple educational options for the Student's educational programming with the parent at a meeting at the parent's home. The parent told the Director that she would not send the Student to Sanford for his educational programming. That same day, Sanford staff emailed the parent's caseworker to ask about the Student, who had missed the last 10 days of school, 7 of which were unexcused absences.
 12. The Student was receiving excellent grades in his classes as of October 25, 2018. He earned an 87, 100, a "Pass", and 96 in his classes and was missing assignments for biology class, which could be made up for credit. School personnel reported that the Student does very well in his educational programming.
 13. Sanford Public School staff communicated with the family's caseworker in early November 2018 to express their concerns about the Student's well-being. Staff reported to DHS and the family's caseworker that they had significant concerns about the Student's well-being.³
 14. The parent filed her request to homeschool the Student on October 30, 2018. The school received the request to homeschool on November 13, 2018 and understood that to mean that the parent was homeschooling the Student.
 15. During interviews for this investigation, the parent stated to the investigator that she understood that homeschooling meant that the Student would not go to school and that she, the parent, would be responsible for his education. The parent stated that she had realized within a few weeks that she is not able to homeschool the Student. The

³ The staff at Sanford Public Schools stated that they reported this Student's situation to DHS at least two dozen times in the past year and that DHS has not responded to their concerns. Email documentation from this investigation shows that school staff believed the family's caseworker, an employee of Maine Behavioral Healthcare, shared these concerns about the welfare of the Student.

- complainant wrote in her request for a complaint investigation that she had requested a state complaint investigation so that the Student would receive a new IEP.
16. The parent has not enrolled the Student in Acton Public Schools since filing the intent to homeschool.
 17. During an interview with the complaint investigator, Acton's special education director stated that she had initiated several conversations to determine what the parent's concerns were. Documentation supports these statements.
 18. When interviewed, the special education teacher who had worked with the Student stated that the Student benefitted from his educational programming. At the end of October 2018, he was making progress towards all of his goals. The special education teacher also gave examples of how the Student positively interacted with his non-disabled peers every day while in the halls and in the school store.
 19. The social worker who had worked with the Student stated that the Student was making strides in his social skills, particularly through his participation in the social skills group, before the parent revoked consent for participation. She stated that the Student was learning specific skills about how to interact with others based on his disability.
 20. In an interview with the investigator, the parent told the investigator that the Student is depressed and sleeping all the time. She stated that she could not homeschool him because she is not a teacher. She stated that she believed that "school is not in the cards" for the Student and that the Student should be kept away from his peers. She expressed her concern that peers and the teachers bully the Student, but could not explain further or give examples of how this had occurred. The Student has asked her to return to school and she has told him that he cannot. She stated that she believes his disability of autism "does not work in the high school setting." She also stated that she believes that Acton could educate the Student in the elementary school with an individual tutor, but did not explain why this would be appropriate for the Student. The parent stated that she will not allow him to attend any high school setting because she has heard people talk about how bad all high schools are. When asked what was "bad" about high schools, the parent could not elaborate about what was bad about them except that all high schools are too dangerous, with "lots of violence going on". The parent stated that she wanted an education for the Student, just not an education in a private or public school. The parent stated that she did not believe the Student needed to be socializing with his peers.
 21. In an interview with Acton's special education director, the director stated that upon starting her position at Acton Public Schools, she has established a practice of closely monitoring the students who receive special education at schools outside of the District. She attends IEP Team meetings, meets students in person, and maintains contact with families of children with disabilities. The special education director at Sanford and the special education director at Acton communicate regularly to monitor Acton's students with disabilities who attend Sanford Public Schools. Acton's director stated that she has

made every effort to attempt to engage this parent and offer educational opportunities for the Student.

Other relevant facts are included in the determinations below.

DETERMINATIONS

The parent's decision to homeschool the Student impacts the scope of this investigation. Regulations state that students with disabilities "who are enrolled in home instruction programs do not have an individual right to receive some or all of the special education and related services that they would receive if enrolled in a public school."⁴ The determinations below are based on the provision of services to the Student from the beginning of the 2018-2019 school year until November 13, 2018, when the parent's letter of intent to homeschool was received by Acton Public Schools.

The complainant alleged that the District did not provide a free appropriate public education (FAPE) because of the following:

1. The goals and services on the Student's IEP during the 2018-2019 school year were not appropriate to address the Student's educational and functional needs.

MUSER VI(2)(J)(4). COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND.

A student's IEP must "provid[e] personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction."⁵ In order to fulfil the responsibility to provide a meaningful educational benefit, Districts must offer an IEP "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances."⁶ Accordingly, IEP Teams must develop or revise IEPs in order to provide students with disabilities a free appropriate public education.⁷

The Student, who is a 16-year old with autism, was educated at Sanford Public Schools during the 2018-2019 school year. The IEP Team at Sanford created an IEP that would have

⁴ 20-A MRSA §5001-A. "Should a child enrolled in a home instruction program, who chooses to enroll in specific day school classes at the public school, request access to special education and related services in a public school within their SAU, the provisions of 20-A 05-071 Chapter 101, Maine Unified Special Education Regulations... shall apply and the Individual Education Program Team will meet to develop an individual service plan for services provided in a public school." MUSER IV(2)(H)(3).

⁵ *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 203 (1982).

⁶ *Andrew F. v. Douglas Cty Sch. Dist.*, 137 S.Ct. 988, 1000 (2017).

⁷ MUSER VI(2)(J)(4).

provide a free appropriate public education to the Student during the 2018-2019 school year. However, the Student was not in school to receive that programming.

The Student's IEP contained measurable goals based on the Student's needs as reflected by recent evaluations. The Student's disability affects the ways he interacts with his peers and the delivery of instruction on the IEP was reasonable for the Student to achieve his goals. These goals included responding in appropriate high school expected manners, creating appropriate relationships, and monitoring his behaviors that would otherwise impact his education. Specialized instruction for the Student included skills to reach his goal of improving navigating social situations to better build relationships with his peers.

Given the Student's low scores on mathematics and reading evaluations, the academic goals on the IEP, which included preparing an organized outline before proceeding with writing projects and learning specific mathematics skills through multi-modal learning processes, also created the opportunity for a meaningful educational benefit. A writing sample provided to the investigator demonstrated that writing is a relative strength of the Student, as was documented in his IEP. The goals for mathematics were also well defined: the Student would "apply knowledge and demonstrate mathematics skills by using multi-modal learning to demonstrate skills in the areas of number sense, multiplication/division, operations with decimals, and operations with fractions."

During the few weeks the Student was in school during the beginning of the 2018-2019 school year, the Student's IEP was implemented faithfully and the Student was reported to be thriving. When the parent decided to homeschool the Student, the District could no longer provide the services on the Student's IEP because the Student was no longer enrolled.

There has been no violation of law or regulation regarding this allegation.

2. The District did not review and revise the Student's IEP during the 2018-2019 school year to determine whether the Student's annual goals were being achieved, address any lack of expected progress toward the annual goals and in the general curriculum, and did not consider information provided by the parent. MUSER VI(2)(J)(5).

COMPLIANCE FOUND; NO DENIAL OF FAPE FOUND.

Regulations mandate that Districts must review and revise IEPs to determine whether a student with disability is achieving his annual goals and address any lack of expected progress toward the annual goals and the general curriculum. When revising IEPs, the IEP Team must take into consideration the information provided by the parent.⁸

As stated above, the parent filed an "Intent to Homeschool" with the District on November 13, 2018. The parent has not enrolled the Student in public school. Therefore, the IEP Team did not have the opportunity to review the Student's progress in goals on the IEP after mid-November 2018. From the beginning of the 2018-2019 school year to November 13, 2018, the Student was making progress in his goals and the general curriculum and therefore, there was

⁸ MUSER VI(2)(J)(5).

no requirement or need for the IEP Team to meet. The parent could not attend the IEP Team meeting that was scheduled during this time.

Acton's special education director attempted several times from September 2018 to November 2018 to initiate independent discussions with the parent about her unwillingness to send the Student to high school. In addition, Acton made multiple efforts to engage the parent in consideration of other educational opportunities when the special education director held a meeting at the parent's house. The parent was unwilling to speak with the members of the IEP Team from Sanford, who comprised nearly the entirety of the IEP Team.

It appears from the documentation and information gained in this interview that the parent wishes the Student to stay at home with her and have no contact with peers or teachers in the high school setting. The Student's educational evaluations and the parent's description of the Student's personality do not align with the parent's expectation that school is "just not in the cards." Rather, special education laws and regulations mandate that students with disabilities who are enrolled in public schools must be integrated with their non-disabled peers to the maximum extent that is appropriate for the child. The parent's proposals to have the Student educated by himself at home, or receive individualized instruction by a tutor within the elementary school setting, are not legally sound and would not benefit the Student.

Based on information gained in this investigation, the Student wants to return to school. Both Acton and Sanford want the Student to attend school. The Student's parent also wants him to receive an education. The Department notes that pursuant to law and regulation, the Student may continue to receive special education services when the Student becomes re-enrolled in Acton Public Schools. Because the parent reported that being isolated at home during this placement dispute has negatively influenced the Student's well-being, the Department encourages the parent to reconsider the needs of the Student to receive educational services in the least restrictive environment that allows him to interact with his peers.

Because there is no violation of law or regulation, this complaint investigation is closed and no corrective action is required.