

Complaint Investigation Report
Parents v. Winthrop

November 18, 2016

Complaint #17.021C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents

Respondent: Gary Rosenthal, Superintendent
17A Highland Ave.
Winthrop, ME 04364

Special Services Director: Susan Hunt

Student: Student
DOB: [REDACTED]

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on October 20, 2016. The Complaint Investigator was appointed on October 21, 2016 and issued a draft allegations report on October 26, 2016. The Complaint Investigator conducted a complaint investigation meeting on October 27, 2016. On October 31, 2016, the Complaint Investigator received 12 pages of documents from the Complainants, with another 64 pages of documents received on November 1, 2016. Interviews were conducted with the following: Susan Hunt, special services director for the District; [REDACTED] the Student's father; and [REDACTED] the Student's mother.

III. Preliminary Statement

The Student is [REDACTED] years old and is currently receiving special education under the eligibility criterion Autism. This complaint was filed by [REDACTED] and [REDACTED] ("the Parents"), who are the Student's parents and legal guardians, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to comply with the mediation agreement of February 8, 2016 by failing to have Coach Van Tassel contact parents before meetings and failing to work to improve the relationship between the Student and Coach Van Tassel, enforceable under MUSER §XVI.3.B(8).

V. Summary of Findings

1. The Student lives in [REDACTED] with the Parents and attends [REDACTED] grade at [REDACTED] School (the "School").
2. On January 21, 2016, the Parents filed with the Department a request for mediation, stating that there had been a breakdown in communication between a coach and the Student, who was involved in the School sports program, and between the coach and the Parents.
3. The parties attended mediation on February 8, 2016, resulting in a mediation agreement (the "Agreement"). The Agreement states, in relevant part: "2. Both parties will work to help [REDACTED]'s relationship with Coach MacArthur improve; 3. Before meeting with the Parents, Student and coach, the coach will give parents a 'heads up' about what will be discussed. Coach will write down the issues for [REDACTED]'s exit interview."
4. During the early part of the 2016-17 school year, the Student was a member of the School cross-country team coached by Ed Van Tassel. Mr. Van Tassel was also the Student's P.E. teacher. There were several private conversations between the Student and Mr. Van Tassel which the Student found distressing. The Parents learned of these interactions only after the Student's mother attended a race at Lisbon and the Student, who was very upset because Mr. Van Tassel had refused to allow him to participate in the race, disclosed them to her. Mr. Van Tassel had not notified the Parents of any of these interactions.
5. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: He [REDACTED] used to run cross country when he was younger. The Student has run for Mr. Van Tassel for a number of years, and has developed a strong relationship with him. The Parents have always been available to Mr. Van Tassel when he needed them. This year, the relationship between Mr. Van Tassel and the Student became strained when the Student didn't take part in summer races because the Student was working two jobs. Then Mr. Van Tassel became frustrated with something the Student said at the Lisbon track meet which suggested to Mr. Van Tassel that the Student was only concerned with his individual performance and not with the team's performance, so he told the Student to sit on the bus because he wasn't going to be allowed to run.

The Student's mother showed up and the Student told her he wasn't allowed to run. The Student was very upset, and he told his mother about other things that were going on involving Mr. Van Tassel, including his telling Mr. Van Tassel about bullying that was going on in his P.E. class and which Mr. Van Tassel wasn't addressing. The bullying involved another student taunting the Student with anti-police rhetoric. Also, there was an incident

when the Student complained about back and knee pain and Mr. Van Tassel wouldn't allow him to leave the room until he called his doctor. The Student explained to Mr. Van Tassel that he had just gotten a new doctor and that he didn't have the insurance information, so he needed to call the Parents. The Student said that Mr. Van Tassel told him he was ■ now and he didn't need to call his parents.

He doesn't believe that Mr. Van Tassel has the right to tell the Student that he can't run in a race, and he doesn't understand why Mr. Van Tassel didn't call the Parents to discuss these several issues. If Mr. Van Tassel thought the Student needed to see a doctor, he could have just picked up the phone and had that conversation with them. When the Student did the right thing and told Mr. Van Tassel about the bullying, Mr. Van Tassel should have done something about it, and should have called the Parents to let them know what was happening. Mr. Van Tassel's actions are not within the spirit of the Agreement.

6. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: There has been a history of issues with the Student's athletic coaches. In spring 2015, there were issues with the baseball coach. She spoke with Ms. Hunt, who said they would put something in the IEP and all coaches would be informed. The athletic director, Joel Stoneton, would be put in charge of making sure the coaches were aware of this requirement. Despite those assurances, the same kind of problems arose the next year with the basketball coach, Mr. MacArthur. At that point, she felt she had to pursue mediation.

In considering the language of the agreement at the mediation, she understood that paragraph 3 of the Agreement did not apply solely to Mr. MacArthur, but would apply to any future coach of the Student. She thought that the parties were making sure going forward that all coaches would know the importance of communicating with the Parents. Mr. MacArthur was having sideline conversations with the Student without first speaking with the Parents about his concerns, so that they could speak with the Student to help him understand what the coach wanted to talk about. The Student is unable to process that kind of information from the coach in the moment, and his responses may be misunderstood. The Student also isn't able to communicate his feelings to the Parents after he has one of these conversations with a coach; they just see evidence of his frustration, such as the Student tearing his fingernails.

She believes that the incidents with Mr. Van Tassel violated the Agreement because he should have first communicated with the Parents before talking with the Student about the Student's physical condition, or the Student's attitude about teamwork, or about the Student's complaints of being bullied.

7. During an interview conducted by the Complaint Investigator with Susan Hunt, Ms. Hunt stated the following: She participated in the mediation. Her understanding of the language of paragraph 3 of the Agreement was that if a coach needed to have a private conversation with the Student, the Parents would be informed and would be allowed to be a part of the meeting, or at least know what was going to be discussed. Although the mediation addressed an issue with the basketball coach holding an exit interview with the Student without the Parents being present, the language of the Agreement was broader than just that coach.

The District never got a copy of the Agreement after the mediation until this complaint was filed. Mr. Stoneton discussed the Agreement with Mr. MacArthur, but he didn't realize that it applied to other coaches also. He thought that coaches just needed to follow the IEP requirement about sports events schedule changes, so he never told Mr. Van Tassel about the Agreement. She agrees that Mr. Van Tassel violated the Agreement by not notifying the Parents before having private conversations with the Student.

VI. Conclusions

Allegation #1: Failure to comply with the mediation agreement of February 8, 2016 by failing to have Coach Van Tassel contact parents before meetings and failing to work to improve the relationship between the Student and Coach Van Tassel, enforceable under MUSER §XVI.3.B(8)

VIOLATION FOUND

MUSER §XVI.3.B(8) authorizes parents who are a party to an agreement reached during a due process mediation to enforce the agreement through the Department's complaint investigation process. The Parents filed this complaint seeking to enforce paragraphs 2 and 3 of the Agreement.

Paragraph 2 of the Agreement, on its face, clearly applies only to Mr. MacArthur, and therefore did not trigger a duty on the District's part with respect to Mr. Van Tassel.

Paragraph 3 of the Agreement, on the other hand, is ambiguous as to whether it applies only to Mr. MacArthur or to all coaches of the Student. Both parties, however, understood paragraph 3 to apply not only to Mr. MacArthur. Therefore, Mr. Van Tassel was obliged, before having private meetings with the Student about his physical condition, his team spirit or his complaints of being bullied, to notify the Parents and inform them about what he would be discussing with the Student. The District acknowledges that Mr. Van Tassel did not comply with this obligation.

VIII. Corrective Action Plan

Within 20 days from the date of this report, the District will confirm in writing to the Department, with a copy to the Parents, that the following plan will be faithfully implemented: 1) the District will provide a copy of the Agreement to Mr. Stoneton, and explain to him that paragraph 3 is intended to apply to any coach working with the Student; and 2) at the beginning of any sports season in which the Student is participating, there will be a meeting involving the coach(es) of that sport, Mr. Stoneton, the Student and the Parents at which Mr. Stoneton will explain to the coach that, before the coach meets with the Student individually, the coach must inform the Parents about what will be discussed.