

Complaint Investigation Report
Parents v. SAD #61
11/15/2007

Complaint: # 08.015C
Complaint investigator: Sheila Mayberry
Date of Appointment: September 6, 2007

I. Identifying Information

Complainant: Parents
Respondent: Frank Gorham, Superintendent
SAD # 61
877 Poland Spring
Casco, Maine 04015
Special Education Director: Lisa Hanson
Child: Student
DOB: XX/XX/XXXX

II. Summary of Complaint Investigation

The Department of Education received this complaint on August 24, 2007. The complaint investigator was appointed on September 6, 2007. The complaint investigator received 42 pages of documents from the parents and 137 from the Respondent. Interviews were conducted with the Parent; Lisa Hanson, Special Education Director for School Administrative District # 61 (“District”); Harvey Toews, State Agency Client Coordinator for the District; Michael Opuda, Educational Consultant for the District; Diane Edgecomb, the Student’s Guardian ad Litem; Robin Graffam, Department of Health and Human Services (DHHS) guardian-and case worker; Eric Tony Thompson, Kids’ Peace case worker; Emmie Jones, Family Social Worker; Michelle Hathaway, Director of Margaret Murphy Center (MMC); Lori Melanson, MMC case manager; and Gail Hamilton, MMC Autism Consultant.

The complaint investigation report was delayed due to the rescheduling of the mediation that was held in this matter.

III. Preliminary Statement

The Student is xx years old and lives with his foster mother and father in Harrison, Maine. He attended the Margaret Murphy Center for Children (MMC) while he was under the responsibility of Child Development Services-Opportunities (CDS-Opportunities). His educational programming became the responsibility of SAD #61 on August 29, 2007. The Parents have requested that he remain at MMC during these complaint proceedings. The Student is eligible for special education services under the exceptionality of Autism.

IV. Allegations

1. Failure of the IEP Team to determine the educational needs of the Student by failing to implement an appropriate transition plan from CDS-Opportunities to the public school. MUSER §§ VI.2.J.(2), VI.2.C.(2).

Ancillary Issue: Failure of the District to implement the IEP due to the lack of students in the Student's program at the Songo Locks Elementary School ("Songo Locks"), which impacts the Student's progress on his IEP Social Development Goals. MUSER § IX.3.B.

V. Summary of Findings

1. The Student was removed from his biological mother in February 2001, at the age of xx years, xx month old. He is a state agency client in the custody of DHHS and lives in the foster home of the Parents.
2. The Student was referred to CDS-Opportunities in February 2005. An Individualized Family Service Plan (IFSP) was implemented for the Student.
3. On May 24, 2005, the Student was evaluated by Victoria Dalzell, M.D. Dr. Dalzell reported that, at that time, the Student was functioning between six and 14 months of age. Based upon her examination, Dr. Dalzell diagnosed the Student with mixed developmental delay and Autism. She summarized that

(The Student) does demonstrate having marked impairment in the use of nonverbal behavior such as eye-to-eye gaze, facial expressions, and body postures. He has a failure to develop peer relationships appropriate to developmental level. He has a lack of spontaneous seeking to share enjoyment, interests, or achievements, and lack of social emotional reciprocity. In addition, he has delay in the development of spoken language, stereotyped and repetitive use of language in the form of jargonizing and

echolalia, and a lack of make-believe play. Finally, he has stereotypic preoccupations, such as with water and bubbles. He does have inflexible adherence to specific nonfunctional routines, and he does have stereotyped repetitive motor mannerisms, such as flapping and spinning.

Dr. Dalzell recommended that the Student receive speech, language, and occupational therapies, but also a full developmental therapy program using an ABA approach in his preschool setting.

4. In 2005, the Student began special purpose day treatment programming at MMC. The IFSP, dated March 2006, included developmental therapy, psychological services, speech and language therapy, and occupational therapy.
5. An amended IFSP was implemented on March 1, 2007. The Student received 30 hours per week of developmental therapy, one hour of psychological services per week, 30 minutes of speech therapy three times per week, one hour of occupational therapy twice per week, and one hour of physical therapy per week. The IFSP did not identify current levels of performance for annual goals. However, in an MMC progress report dated April 17, 2007, it was reported that the Student had mastered 19 of 36 goals and made progress in the remaining 17.
6. On May 9, 2007, a PET meeting was held to discuss the Student's transition from CDS-Opportunities to the District. Staff members from the District, CDS-Opportunities, and MMC, as well as the Parents, and the Student's DHHS state guardian, were present at the meeting. After a discussion regarding the needs of the Student, the PET determined that the Student would receive a self-contained level of special education services in the public school setting, starting in the fall of 2007. He would receive "pervasive" adult support. The Team also agreed to convene prior to the beginning of the 2007-2008 school year to plan the transition and to approve the complete IEP.
7. The PET minutes from the May 9, 2007 meeting reported that the Student was at grade level in most areas. The main deficits were in comprehension "as he tends to memorizes (sic) material and use scripts." He was able to read at grade level and had strong memory skills. The minutes also stated that, "He can have good conversations but is geared toward adults and ignores peers." He had been meeting all goals and objectives. Also, it was reported that there had been no incidents of aggression or tantrums for the previous four to five months. Michelle Hathaway, Director of MMC, reported to the Team that the Student had been grouped with other students with similar needs and abilities. She stated that he did well in groups of four to five. The Parents reported that the Student would withdraw when large changes were made. They stated that they wished the Student could have one more year at MMC and were concerned about regression once he was placed in the public school system. The District's Special Education Director, Lisa Hanson, explained that the District's programming for students with Autism had been in effect for over four years in Bridgton, Maine. She stated that the students received pervasive adult support and that their instruction was provided in small group or one-on-one settings, as

needed. Recess support had been given and could be done in a small group. Since new students with special needs were coming into the District in the fall of 2007, the program was going to be expanded to the Songo Locks School.

8. An IEP, dated May 9, 2007, was sent to the parents on May 29, 2007. It indicated that the Student would be attending Songo Locks. The IEP indicated that the Student would be receiving 30 hours per week of developmental therapy, 30 minutes of speech therapy three times per week, one hour of occupational therapy two times per week, and one hour of physical therapy once per week. He was also to receive one hour of psychological services per week. These services were to be provided in "Regular Ed. and Special Ed. settings." The following comment addressed the extent to which the Student would not be participating with non-disabled students:

"Due to the severity of (the Student's) autism with associated interfering behaviors, he requires an ABA based program in a less stimulating, distracting environment for most academics and self-care. He will participate in snack, lunch, and recess times with his class as well as some classroom parallel work time at his skill level based on his need for sensory arousal increase/decrease & a more highly structured, quiet environment based on his current level of stereotypy and other interfering behaviors."

9. Among the many goals and objectives included in the IEP dated May 9, 2007, was a "Social Development" goal. It stated, "Given social and play opportunities throughout the day, (the Student) will label and describe the emotions of peers and staff and use at least 4 play actions for each of 4 play sets as measured by instructional data by 2/29/2008." Another goal, referred to as "Social Competence," stated, "Given social interaction opportunities, (the Student) will play board games, approach peers appropriately to play with him, and comment during free and structured play periods to peers and staff as measured by instructional data by February 29, 2008."
10. In the Consent for Placement document, dated May 24, 2007, the District stated that it disagreed with the Parents' wishes that the Student remain at MMC for an additional year. The District stated that it disagreed with this request because it was not the least restrictive alternative and that the District had an educational program for students with Autism.
11. A PET meeting was convened on June 14, 2007. All components of the IEP were agreed upon. The Team was informed that the Songo Locks program would have a census of five students and that pervasive adult supervision would be provided. A date of August 28, 2007 was set to discuss transition planning into the Songo Locks School. The minutes of the meeting reflected the Parents' concern over the way the Student would be transitioned into the Songo Locks program.

"(The Parent) questions how we transition into a program that is not yet operational? (sic) Is there any way we can have a gradual

transition? Michael Opuda discussed options. Visits when school is empty, riding on the bus with fun activity at school, gradual introduction to longer period of time, CDS support to come to school during the summer. Physical space has been identified in the building and may be available as empty room shortly after school is out on June 18th. (The Parent's) concern is still that (sic) issue will be in separating from MMC. She supported him on modified day schedule that took 6 months to become a full time day at MMC. Michelle Hathaway says she has transition recommendation documents available. it (sic) was determined that there would be another meeting to discuss issues of transition prior to the start of school."

12. The Prior Written Notice, dated June 22, 2007, reflected the agreement in the Student's IEP and stated that the PET would meet prior to the start of the 2007-2008 school year to discuss a transition plan.
13. The final IEP, dated June 14, 2007, reflected the PET agreements. It was noted that the Parents were concerned about a one-day transition to public school, as well as concerns regarding transportation, the amount of therapy services he would receive, and whether he would receive them immediately upon starting in public school. The IEP also included a behavior plan. The goals and objectives were the same as those outlined in the IEP dated May 9, 2007. A copy of the IEP was sent to the Parents on August 20, 2007.
14. In a letter to the Parent, dated August 16, 2007, Lisa Hanson and June Conley, the Principal of Songo Locks, informed the Parents that they were expecting to see the Student for a visit on either August 22, 2007 or August 23, 2007, during one of the blocks of time set aside for student visits. The letter stated that the District Staff had been in contact with MMC regarding the Student's transition. They reported that staff had been to MMC to observe him and had discussed the possibility of having MMC staff work one-on-one with the Student for the first few weeks of the school year.
15. A Notice of IEP Meeting, dated August 13, 2007, indicated that an IEP meeting was scheduled for August 20, 2007. It was thereafter rescheduled for August 28, 2007.
16. On or about August 23, 2007, the Parents submitted a request for a stand-alone mediation, which was thereafter scheduled for September 10, 2007.
17. On August 24, 2007, the Department of Education received a Dispute Resolution Request from the Parents.
18. An IEP Team meeting was convened on August 28, 2007. The Team held an extensive discussion regarding how and when to transition the Student to Songo Locks. The Team determined that "A plan for transition/transfer from CDS-Opportunities services and programming at the Margaret Murphy Center to SAD #61 was agreed by the Team. (The Student) will begin at MMC working with both MMC and SAD #61 staff. Following a

formal visit to SAD #61 on 9-26-07, the transition Team will meet to determine a transfer date. Upon full transfer to SAD #61 and MMC staff, fading of the MMC staff out as soon as possible.” (sic). A Written Notice, dated August 28, 2007, repeated the determinations of the IEP Team.

19. A mediation was held on September 18, 2007. No agreement was reached on the timing for the Student’s transition to Songo Locks.
20. A proposed resolution, dated September 20, 2007, which addressed the issue of transition to the District, was submitted by the District as part of its submission to the complaint investigator. This proposal referenced a date of October 22, 2007, by which the Student would have physically transferred to Songo Locks. Staff from MMC would continue work with the Student at Songo Locks for as long as necessary. The Parent did not respond to this proposal, but reported to the complaint investigator that the pre-scheduled date was not acceptable.
21. In an interview with the complaint investigator, the Parent stated that on September 21, 2007, the transition team, which included the District’s special education teacher, and its Autism consultant, MMC staff who worked with the Student, as well as the Parents, met at MMC to discuss details of the Student’s transition into the District. The team reached an agreement by which the MMC staff and the District staff would work with each other, first at MMC, and then gradually physically transition the Student into the District. The Parent stated that the team did not know how long the process would take or what the exact next step would be. She also stated that she had learned that there was only one student who was in the Songo Locks program. The Parent stated that this was at odds with the IEP goals of helping the Student to socialize with his peers.
22. The Parent also stated that confusion over the Student’s transition plan developed over the summer. She stated that the IEP Team had agreed that a transition Team would meet to discuss transition plans, and that the District staff would participate with MMC staff by working with the Student at MMC and then at Songo Locks. However, the Parent stated that she learned that no special education teacher had been appointed by the District to go to MMC. She stated that she also learned that the program at Songo Locks had not become fully operational, in that only one student was in the program. She stated that she had serious concerns about the Student’s transition and whether a program would actually be in place by the time school started. She also stated that the District had proposed a one-day transition to the school. She received a letter from Ms. Hanson indicating that the Student would be visiting on either August 22 or August 23, 2007. She believed that this was an unacceptable transition since the Student was known to have had severe problems with transition and change. She stated that the staff at MMC had created a transition plan for the Student but that the District was not interested in it until she became very vocal about the issue. She stated that although the District had proposed a good plan after a request for a complaint investigation was filed, the fact that they included a date certain for the Student to be fully transferred to Songo Locks was unacceptable to her. She wanted the IEP Team to continue to meet and determine if the Student was ready for the final move. The Parent also claimed that an IEP Team meeting that had been scheduled

for September 27, 2007 was cancelled by Lisa Hanson at the mediation on September 18, 2007, since everyone knew that there had not been any transition work done and the Student would not be ready. When Harvey Toews, the state agency client coordinator, called her to confirm the meeting, she reminded him that Ms. Hanson had cancelled it. She said that everyone on the Team had taken the meeting off their calendars because they had been told it was cancelled. Finally, she stated that the District had not called her to reschedule the IEP Team meeting.

23. In an interview with the complaint investigator, Michelle Hathaway, director of MMC, stated that the PET agreed to form a transition Team to help the Student transition to Songo Locks. She stated that MMC agreed to have the District's staff go to MMC and work with the Student on his program. She stated that the transition Team was to have met during the summer and to have begun working on the plan. However, the District did not present anyone to MMC, and it was not until August that the District's educational technicians started coming to MMC. However, MMC did not want to take supervisory responsibility for the technicians and requested that the District send supervisory personnel with the educational technicians. It was not until September 21, 2007, that the first transition Team meeting was held. MMC and District staff members, including special education teachers and consultants who would be working with the Student at Songo Locks, were present at the meeting. The District's special education director was not present. Ms. Hathaway stated that the meeting was very productive. It was agreed that District educational technicians could work with the Student in areas that would not be educational per se, i.e. working on colors. Only when the Special Education teachers from the District were present were the educational technicians allowed to work on maintenance programs in areas that the Student had mastered, so he would not regress. It was also agreed that MMC staff would work on the acquisition items of this IEP, i.e. those things that he had not yet mastered. The Team agreed that another meeting was required to confirm a date to have the Student visit Songo Locks. However, the Team understood that this was an IEP Team decision. Therefore, until the IEP Team met, no further timing decision could be made.
24. In an interview with the complaint investigator, Lisa Hanson, the District's Special Education Director, stated that the District had complied with all of the IEP Team decisions. She explained that during the Spring of 2007, she was notified of incoming students needing day treatment-level special education services. She stated that these services for students with Autism had been provided at the District's Brook Elementary School in Bridgton, Maine. When it became apparent that all of the four to five incoming students would be better served if they were closer to the Songo Locks Elementary School, the District expanded its programming to that facility. She stated that, because three of the four incoming students had not started on the day school began, there was only one student actually present in the program. She stated that, if that were the situation by the time the Student arrived at Songo Locks, the IEP Team would need to convene to discuss the Student's options, including attendance at the Brook Elementary School. Ms. Hanson also stated that, based upon the agreement of the IEP Team on August 28, 2007, she thought the Student was to visit Songo Locks on September 26, 2007, but he did not arrive. She also denied that she cancelled the IEP Team meeting scheduled for

September 27, 2007, and was not pleased when the Parent informed Harvey Toews, the District's State Agency Coordinator, that the Parent had informed him that she wanted to cancel the meeting.

25. In a memorandum sent to the complaint investigator, Ms. Hanson stated that on or about September 5, 2007, support staff from the District started working with the Student at MMC each day, one in the morning and one in the afternoon. She stated that they began observing, then "very slowly were allowed to do a few activities with (the Student)." They were there for six weeks as of October 15, 2007. The MMC director emailed the District and reported that the Student had made "significant gains" and that they wanted to present some new goals and objectives to the IEP Team. She reported that on October 9, 2007, one of the District staff members reported to Ms. Hanson that they were informed by MMC staff that they had "reviewed (the Student's) maintenance data" and that, due to regression, they could no longer work with the Student, they would only be allowed to observe him. She stated that she had learned that some of the MMC staff, as well as the Student, had been sick and that his schedule had changed abruptly that week.
26. In an interview with the complaint investigator, Harvey Toews, the State Agency Client Coordinator for the District, stated that he specifically called the Parent to remind her about the IEP meeting scheduled for September 27, 2007. He stated that the Parent told him that she wanted to cancel the meeting. He stated that he was surprised by this and asked her if she was sure she wanted to cancel it, to which she replied in the affirmative. Thereafter, the meeting was cancelled.
27. In an interview with the complaint investigator, the District's Autism Consultant, Gail Hamilton, stated that since the September 21, 2007 transition Team meeting at MMC, the District's staff had been working with the Student at MMC on maintaining his progress. She explained the MMC staff believed that they needed to work on the Student's new "acquisition" material. She stated that the transition Team process did not fit well with her sense of how the Student should be transitioned into the District. She indicated that the Parent stated at the September 21, 2007 meeting that she did not think it was necessary to hold another IEP Team meeting, which had been scheduled on September 27, 2007. Ms. Hamilton stated that she felt the decision-making process was in the air and no progress was being made to actually transition the Student to Songo Locks. She stated that she believed that the Student had adjusted well to the District's staff who had been working with him and that it was not just a matter of how to physically transition him. She stated that there had been a visitation date of September 26, 2007, but that the mother cancelled the visit.
28. In an interview with the complaint investigator, Michael Opuda, the District's special education consultant, stated that during the summer, MMC did not allow the District staff to go to MMC and work directly with the Student. He stated that there was an issue of liability, and that therefore, the plan for the District staff to work with the Student could not be fulfilled at that time. He stated that after the mediation session was held on September 18, 2007, the District submitted a proposal to the parents regarding how to

transition the Student to Songo Locks School. He stated that they had not heard a response to that proposal.

VI. Conclusions

Allegation No. 1: Failure of the IEP Team to determine the educational needs of the Student by failing to implement an appropriate transition plan from CDS-Opportunities to the public school. MUSER § VI(2)(J)(2), VI(2)(C)(2). **No Violation Found**

This issue relates to the transition of the Student from CDS-Opportunities into the District's Songo Locks School. Under the Maine Unified Special Education Regulations (MUSER) § VI.2.C.(2), the District has the responsibility for the facilitation and plan development of the IEP for a student entering public school from a Child Development Services program.

MUSER § VI.2.J.(2) also describes the major responsibilities of the IEP Team. This includes a determination of the present levels of performance and educational needs of the child in all affected academic and non-academic areas.

In the present case, it is immediately apparent that the District has attempted to develop an appropriate program for the Student. It has also attempted to work with the Parents to develop an appropriate transition plan for the Student's move from MMC into the District. Although there were two prior IEP meetings during the spring and summer of 2007 to discuss the Student's transition, the August 28, 2007 IEP meeting clearly demonstrates the efforts on the part of the District to try and work with all parties in this regard. This included having District staff work with MMC staff at MMC in order to have the Student get to know his new teachers and educational technicians. The plan was then to have the MMC staff go with the Student to Songo Locks in order to reduce the possible regressive effects this would have on the Student. Instead of an immediate physical transition into the District facility, the Student would first visit the school on a few occasions first. The IEP Team agreed that no set date would be determined until there was agreement that he was ready for a complete transition.

The only problematic issue is that the IEP Team gave to the transition team the sole responsibility to determine when the Student could make the complete physical transfer to Songo Locks. Although this may appear to be a reasonable solution, since the people working with the Student would have the best information about a final transition, it did not work and did not accomplish the charge given to it by the IEP team. The District, the parents and MMC continued to disagree on when the Student should transition into the District.

Since the transition plan itself, as described in the IEP, is appropriate, there is no violation of the MUSER. However, the IEP Team should be convened as soon as possible to resolve the dispute among members of the transition team and the District, and determine a date certain by which the Student will make the transition to public school, considering his individual needs.

It is noteworthy that the District attempted to settle this matter by submitting a proposal for the Student's transition into the District by October 22, 2007. However, there was no discussion at an IEP meeting regarding this deadline. The last IEP meeting, on August 28, 2007, did not have a determination regarding how the *IEP Team* would determine when the Student would be ready.

Although an IEP Team meeting had been scheduled for September 27, 2007, the meeting was cancelled. The reason for canceling the meeting is unclear. However, even if the reason for canceling this meeting was based upon the belief that the parents requested the meeting to be cancelled, there is nothing in the regulations that completely restricts the District from holding an IEP meeting without the parents' participation. As long as the District carries out its due diligence in notifying the parents of the meeting, and making efforts to get the parents to the meeting, including by teleconference, a district can hold the meeting without the parents. MUSER § VI.2.H.(4). In this case, in order for the IEP Team to make a determination as to when the Student should transfer to Songo Locks, an IEP meeting needed to be convened.

Ancillary Issue: Failure of the District to implement the IEP due to the lack of students in the Student's program at the Songo Locks Schools, which impacts on the Student's progress on his IEP Social Development Goals. MUSER Section IX.3.B.(3). **No Violation Found**

MUSER § IX.3.B.(3) requires that a Student's IEP be implemented as soon as possible following the IEP Meeting. All identified children with disabilities shall have a current IEP in effect at the start of each school year.

In this case, the Student's IEP incorporates social development goals, which include social interactions with his peers.¹ The District's special education programming has included a day treatment program at its Brooks Elementary School in Bridgton, Maine. Historically, students transitioning from CDS-Opportunities have gone into that program. In the spring of 2007, when it became apparent that three to four new special needs students would be entering the District in the fall of 2007, the District expanded its day treatment programming to the Songo Locks School. By the beginning of the school year, only one student had been placed at that location. The other students whom the District had anticipated arriving from CDS-Opportunities programs, including programs at MMC, had not arrived. Therefore, this left only one student with whom the Student could interact.

The lack of students in the Songo Locks program leaves the District in a predicament. The IEP is being implemented. However, no transition date has been determined. Since the Student has not transitioned into the program yet, no breach of the IEP has occurred. Once the Student has been transitioned, and if the student census is still too low, then the District

¹ The IEP stated: "Given social and play opportunities throughout the day, (the Student) will label and describe the emotions of peers and staff and use at least 4 play actions for each of 4 play sets as measured by instructional data by 2/29/2008." Another goal, "Social Competence" stated, "Given social interaction opportunities, (the Student) will play board games, approach peers appropriately to play with him, and comment during free and structured play periods to peers and staff as measured by instructional data by February 29, 2008."

must convene an IEP Team meeting and assess the impact on the Student's individual program needs due to the low census, and determine a course of action.

VII. Corrective Action Plan

As there are no violations, none is required.

VIII. Recommendations

1. It is strongly recommended that the District convene the IEP Team immediately to
 - a. determine the process and the date for the Student's final transition into the District and;
 - b. determine how the Student's IEP goals, regarding social development, will be reached if there is still low student census in the Songo Locks program when the Student is finally transitioned.