

Complaint Investigation Report Parents v. South Portland
June 4, 2008

Complaint No.: Complaint Investigator:

Date of Appointment:

08.076C

Sheila Mayberry 4/8/2008

I. Identifying Information

Complainants:

Parents

Address

City

Respondent:

Suzanne Godin, Superintendent 130 Wescott Road

South Portland, Maine 04106

Special Education Director:

Kathleen Cox

Child:

Student

DOB: xx/xx/xxxx

II. Summary of Complaint Investigation

The Department of Education received this complaint on April 8, 2008. The complaint investigator was appointed on April 8, 2008. On or about May 1, 2008 the complaint investigator received 112 pages of documents from the Respondent; none were received from the Parents. Interviews were conducted with Kathleen Cox, Special Education Director, and the Student's Mother.

III. Preliminary Statement

The Student is xx years old and lives with his mother and stepfather in South Portland, Maine. The Student is eligible for special education and related services under the exceptionality of Other Health Impairment. He attended South Portland Schools until his Parents unilaterally placed him at the Aucocisco School in Cape Elizabeth, Maine in March 2007.

IV. Allegations

Failure of the District to conduct an IEP meeting on April 8, 2008, with the Parents' chosen advocates. MUSER § V.I.2.B.(S), 20 USC 1414(1)(8), and 34 CFR 300.321(a).

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V. Summary of Findings

1.

The Student has been diagnosed with social anxiety and has had difficulty attending school regularly since xx grade. He was identified as eligible for special education services in the fall of 2005, while in the xx grade.

2.

During the course of attempting to determine the Student's educational needs and reduce his avoidance of school, the Parents became frustrated with the IEP process and the Student's lack of progress. On March 15, 2007, the Parents unilaterally placed the Student at the Aucocisco School in Cape Elizabeth, Maine.

3.

On March 20, 2007, an IEP meeting was convened to address the Student's placement issues. Faye Gmeiner, the District's out-of-district coordinator, chaired the meeting. It was determined that, in order to properly address placement options, a psychological evaluation was necessary. The Parents consented to the evaluation.

However, the Student's Parents were concerned that Ms. Gmeiner's husband, Dr. John Gmeiner, was a member of the evaluation panel. After Ms. Gmeiner explained that clear boundaries were kept between their professional and personal lives, the evaluation process went forward. The evaluation was completed on May 3, 2007. The IEP team reviewed the evaluation on May 16, 2007. The Parents, however, requested an independent evaluation. The District denied the request.

4.

On June 6, 2007, the District filed a request for a Due Process hearing on the matter. Ultimately, the hearing officer found that the evaluation performed by the three member panel was appropriate under standards articulated in the Maine Special Education Regulations and relevant hearing officer decisions. He held that the Parents were not entitled to an independent educational evaluation at public expense.

5.

On June 16, 2007, Mr. Lou McIntosh, the Parents' lay advocate throughout the IEP process, filed a formal complaint with the City of South Portland, Maine, alleging that under city ordinances, Faye Mainer engaged in conduct involving an actual and apparent conflict of interest. In addition, Mr. McIntosh filed a complaint with the Maine Office of Licensing and Regulation (OL&R), alleging that Dr. Gmeiner engaged in activity involving a conflict of interest. Ultimately, both claims were dismissed. However, in a Letter of Guidance, dated April 1, 2008, the OL&R recommended that Dr. Gmeiner be vigilant when performing psychological evaluations of students at the school where his wife worked in order to avoid either an actual conflict of interest or the appearance of a conflict of interest.

6.

Efforts to resolve the Student's out-of-district placement issues continued informally and formally during the 2007-2008 school year. The last IEP meeting was held on January 15, 2008. Mr. McIntosh did not participate in the informal discussions or at that IEP meeting. A resolution agreement was not forthcoming.

See Case No. 07-111H, *South Portland School Department v Parent*, August 9, 2007.

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7.

The IEP Team agreed to reconvene after the IEP meeting on January 15, 2008. A date for a meeting was difficult to schedule, as serious health problems arose with the Student's father. However, the Team finally scheduled a meeting for April 8, 2008. An Advance Written Notice of the meeting was sent to the Parents with a list of meeting participants. Mr. McIntosh was not on the list of the participants and the Parents did not inform the District that he would be attending.

8.

On April 8, 2008, the participants of the IEP Team arrived at the meeting location at around 7:45 a.m. At one point, Special Education Director Kathleen Cox arrived. Upon seeing Mr. McIntosh, she left the room. Shortly thereafter, she returned to the room and announced that the meeting had been cancelled, stating that she felt the District needed to be represented if Mr. McIntosh was going to participate.

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9. In an interview with the complaint investigator, Ms. Cox stated that her decision to cancel the meeting was based upon her belief that the District, as well as Faye Gmeiner, the District's out-of-district coordinator, were potentially at legal risk, given the history of legal and professional disputes raised by Mr. McIntosh's complaints against Ms. Gmeiner and her husband, Dr. Gmeiner. She stated that she did not think it was in the District's best interests to conduct the IEP meeting without legal representation. Ms. Cox explained that the ordeal surrounding the conflict of interest allegations brought by Mr. McIntosh were very difficult for the Gmeiners and the District. She did not want to put Ms. Gmeiner in a potentially difficult position at the

IEP meeting on April 8, 2008. She stated that there was no written policy regarding notification by parents of the intended participation of advocates at an IEP meeting or the cancellation of IEP meetings when parents bring advocates or other individuals to IEP team meetings without prior notice.

VI. Conclusions*

In an interview with the complaint investigator, the Student's Mother stated that she was taken by surprise at the cancellation of the meeting. She reported that Mr. McIntosh had represented them in all the IEP meetings the year before. There was only one which he was unable to attend, the meeting held in January 2008. She never received any inquiry from the District regarding who she would be bringing to the IEP meeting. She assumed that she was allowed to bring Mr. McIntosh and did not think to provide advance notice. She noted that, at the meeting in January 2008, the District had not notified her about the attendance of an administrative staff member from the Cummings School, the potential placement being considered by the District at that point. She did not know who the gentleman was at that meeting.

Allegation No. 1: Failure of the District to conduct an IEP meeting on April 8, 2008, with the Parents' chosen advocates. MUSER §V.I.2.B(5), 20 USC 1414(1)(B) and 34 CFR 300.321(a). NO VIOLATION

In addition to having required team members attend IEP meetings, Maine Unified Special Education Regulations (MUSER) § VI.2.B(5) allow, at the discretion of the parent

expertise or the school administrative unit, "other individuals who have knowledge or special
VI. regarding the child, including related services personnel as appropriate." Also, the
determination of knowledge or special expertise of an individual described in MUSER §
2.B(5) is to be made by the party (parent or public agency) who invites the individual to
be a member of the IEP Team. MUSER § VI.2.B(8).

other Although parents need not provide advance notice if they intend to invite any
regarding individuals to IEP team meetings, a district may be allowed to implement a policy
prior notification of the attendance of parental advocates at IEP meetings. It must be in
writing and distributed to affected parents.

In the present case, the District has no policy that requires parents to give prior notice of their intention to bring an advocate with them to IEP team meetings. Rather, the District merely provides the Advance Written Notice to the parents, which states that they can bring, at their discretion, “other participants who have knowledge or special expertise regarding the child.”

Mr. McIntosh's unannounced attendance at the IEP meeting on April 8, 2008 created an untenable and perplexing problem for the District. Although his role as an advocate was understood, his participation in the conflict of interest complaints he personally filed with municipal and state agencies against Ms. Gmeiner and her husband, Dr. Gmeiner, raised potentially serious legal concerns for the District. From the District's perspective, he was no longer just an advocate; he was also a plaintiff. His filing of ethics complaints demonstrated an individual interest in the District's affairs outside of the Student's IEP process. The Parents had not been a named party to any of these complaints. In the mind of the Special Education Director, his participation in the April 2008 IEP meeting could have raised issues which she would not have been able to address appropriately without the District's legal counsel present. Her instinct to contact legal counsel and cancel the meeting was appropriate given the circumstances of his involvement in the other matters. In any event, it was not the District's intent to exclude Mr. McIntosh from the IEP meeting, but rather to reschedule the meeting to allow the attendance of the District's legal counsel.

Given that the MUSER is clear and unequivocal regarding parents' rights to have an advocate of their choosing at IEP meetings, the conclusion that the District did not violate the regulation is specific only to this case and shall not be viewed as educational policy or precedent in any other matter.

VII. Corrective Action Plan

No corrective action plan is required.

* The following Conclusions have been adopted by the Commissioner of Education.