

Complaint Investigation Report
Parents v. Lewiston

July 23, 2009

Complaint #09.095C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents

Address

City

Respondent: Leon Levesque, Superintendent

36 Oak St., Dingley Bldg.

Lewiston, ME 04240

Special Services Director: Melvin Curtis

Student: Student

DOB: XX/XX/XXXX

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on June 16, 2009. The Complaint Investigator was appointed on June 16, 2009 and issued a draft allegations report on June 18, 2009. The Complaint Investigator conducted a complaint investigation meeting on June 29, 2009, resulting in a stipulation. On July 7, 2009, the Complaint Investigator received a 2-page memorandum and 11 pages of documents from the Complainants, and received 72 pages of documents from the Lewiston Public Schools (the "District") on July 1, 2009. Interviews were conducted with the following: Melvin Curtis, director of special education; Anne Sanders, special education coordinator; Althea Walker, principal; Sharon Silver, occupational therapist; Corissa LaPrelle, occupational therapist; Jessica Kearns, teacher; Jennifer Robert, psychological service provider; Donna Fairbanks, speech therapist; and the Student's mother.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Visual Impairment. This complaint was filed by the Student's mother (the "Parent") and the Student's father, the Student's parents (collectively, the "Parents"), alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully and adequately implement the Student's IEP with respect to provision of occupational therapy in violation of MUSER §IX.3.B(3);
2. Failure to ensure that all information obtained during the Student's evaluation was documented and carefully considered in violation of MUSER §V.2.F(1)(b).

V. Stipulations

1. The Student received occupational therapy services on 41 dates from October 2008 through April 2009.

VI. Summary of Findings

1. The Student lives in Lewiston with his parents, twin sister and younger brother, and will be attending xx grade at McMahan School. He began receiving special education services under the category Speech/Language Impairment in xx which category was changed to Visual Impairment when the Student was in xx grade.

2. On October 14, 2008, the Student's IEP team met to develop an IEP for the Student. The IEP team determined to provide occupational therapy ("OT") services to the Student two times per week for 30 minutes each session, reduced from three times per week for 30 minutes each session in the previous IEP, and to conduct an early triennial reevaluation.

3. When the Parents received the Written Notice for the IEP team meeting, they were surprised to read what the IEP team had determined regarding OT. They believed the team's decision had been to continue to provide OT services to the Student three times per week for 30 minutes each session until the reevaluation had been conducted. After the Parents contacted the District to express their surprise and dissatisfaction with the team's reported determination, the team met again on October 24, 2008 and agreed to leave the OT at three times per week for 30 minutes each session until after the reevaluation had been completed.

4. District OT provider Sharon Silver conducted an OT evaluation of the Student on October 14, November 24, and December 11, 2008. In her report of the evaluation, Ms. Silver noted the Student's score of 101 on the Motor-Free Visual Perception Test, and compared that to the score (58) the Student obtained on his previous evaluation of October 27, 2007. Ms. Silver also noted the following scores for the Student on the Developmental Test of Visual Motor Integration: Visual Motor Integration 68; Visual Perception 103; and Motor Coordination 48. Ms. Silver compared the Visual Perception score to the score (incorrectly referenced as 82 rather than actual score 92) the Student obtained on that subtest during the previous evaluation. Although Ms. Silver observed that the Student's scores in the areas of Visual Motor Integration and Motor Coordination were "significantly below average," she did not reference the fact that the Student's scores on those two subtests had decreased in comparison to his scores from the previous evaluation (Visual Motor Integration: 82; Motor Coordination: 82).

5. Ms. Silver presented her report at an IEP team meeting on January 6, 2009. When the Parent pointed out that some of the Student's test scores had actually decreased since the last evaluation, Ms. Silver asked to see a copy of the previous report. Ms. Silver then acknowledged that some of the Student's scores had decreased. The team considered this fact and the fact that the low scores indicated a continuing deficit, and agreed that the Student should continue to receive OT three times a week.
6. On or about March 13, 2009, the Parent requested from the District information about how many OT sessions the Student had actually received since October 2008, and what the Student's OT schedule was. The Parents received this information on April 16, 2009.
7. Between October 24, 2008 and April 16, 2009, there were 62 days when the Student was scheduled to receive OT with Ms. Silver. The Student had 41 OT sessions with Ms. Silver during that period. There were 11 dates when Ms. Silver was unavailable because she was attending an IEP team meeting (including one meeting regarding the Student), and four dates when Ms. Silver was absent or attending a workshop, for a total of 7.5 hours when the Student was available to receive OT but Ms. Silver was not. In addition, there were two dates when the Student was absent, two snow days, one date when the Student attended a whole school assembly and one date when the Student attended a special event taking place during the scheduled OT time.
8. As a result of a meeting on April 27, 2009, the parties agreed that the District would contract with the Student's private occupational therapist, Corissa LaPrell, to provide make-up OT sessions to compensate for sessions that the Student had missed for the above reasons.
9. Ms. LaPrell conducted 7 make-up sessions with the Student of one hour each, for a total of 7 hours.
10. Ms. Laprell was told to use Ms. Silver's room when she had her sessions with the Student, and Ms. Silver expressed concerns about Ms. Laprell's use of Ms. Silver's equipment and materials, and possible exposure of Ms. Silver's personal student information to Ms. Laprell. Due to the Parents' belief that Ms. Silver's behavior around these concerns was causing anxiety in the Student, as well as other questions the Parents had regarding how Ms. Silver conducted her therapy sessions, the Parents requested that the District replace Ms. Silver with another therapist for the Student's remaining sessions. When the District declined to do so, the Parents asked the District to discontinue any further sessions with Ms. Silver as of April 30, 2009.
11. The Student did not receive any further OT sessions with Ms. Silver after April 30, 2009.
12. During an interview conducted by the Complaint Investigator with Sharon Silver, Ms. Silver stated the following: During the 2008-2009 school year, she was employed by the District as an occupational therapist, and evaluated the Student and provided therapy to him during that year. It was her opinion that the Student should have been receiving occupational therapy twice a week. This is what a student in the District needing occupational therapy typically receives. Other students with more serious issues than the Student only get OT

twice a week. At his previous school, the Student had been receiving therapy twice a week, but then the therapist went on maternity leave and the school increased the frequency to three times a week to make up for the interruption in services. After that, the Parents insisted that three times a week was what the Student needed.

The Parent wanted her to patch the Student's eye, but didn't provide medical clearance for this activity. She told the Parent that she wouldn't be able to do the patching until she received clearance from the Student's physician. She made a mistake in the note requesting that clearance by referring to the wrong eye to be patched, but she always knew which eye was supposed to be patched.

With regard to the evaluation report, she always tries to emphasize the positive rather than the negative in her reports, so she highlighted only those areas where the Student had improved. All the Parent could see was the negative. There were areas where the Student scored lower on the evaluation she performed than he had on the previous evaluation, but an evaluator can give a student the same test three years in a row and see those kinds of discrepancies. They're not necessarily significant.

With regard to Ms. LaPrell using her office, she only covered her desk and file cabinet because she didn't have a locking file cabinet and she wanted to ensure that other students' personal information was kept confidential. She never told the Student anything about Ms. LaPrell not touching or using her equipment and materials. Ms. LaPrell was only supposed to be working on eye exercises, so that should not have been a problem anyway.

She never had any issues working with the Student nor did the Student have any problems working with her. The Parent said she didn't trust her, but she never tried to get to know her.

13. During an interview conducted by the Complaint Investigator with Corissa LaPrell, Ms. LaPrell stated the following: She is an occupational therapist and has been working privately with the Student once a week for the last three years. The Student's condition is quite involved, and she works with the Student on more than just vision issues. During the last few years, the District has occasionally contracted with her to help with overflow. In April 2009, she was contracted with the District to provide occupational therapy for the Student to cover as many hours that the Student had missed during October through April as possible. She ended up providing seven sessions of one hour each.

She was present at the IEP team meeting of January 2009 when Ms. Silver presented the results of her reevaluation. The evaluation report only referenced scores from the previous evaluation that documented improvements, and other information from the previous evaluation was not presented. The Parent pointed this out, and Ms. Silver said she didn't have information about the earlier evaluation. She was given the previous report and she looked it over. There was discussion about why some of the scores were lower, and there was contention over the amount of services the Student should receive: 60 minutes per week versus 90 minutes per week. She supported the Parents' request for 90 minutes, while Ms. Silver argued for 60 minutes, saying the Student was doing really well now. Ultimately, the team agreed to keep services at 90 minutes.

30 minutes of the Student's therapy was supposed to be one-on-one, but it wasn't happening with any consistency. The Parents asked for a schedule of services so they could observe some of the sessions, but it was never provided. The Parents ultimately discovered that the one-on-one sessions were scheduled for Tuesday, a day when Ms. Silver is often required to attend IEP meetings.

After the Student would work with Ms. Silver on some of those Tuesdays, he would report to her that Ms. Silver told him not to do things the way she had shown him, but to do it the way Ms. Silver wanted it to be done. For example, the Student was having trouble with letters "b" and "d." She was working with the Student on this problem using the "handwriting without tears" curriculum used by many of the teachers at the Student's school, and she had been told that Ms. Silver was using this method as well. At the IEP team meeting, Ms. Silver claimed that she was using the "handwriting without tears" method. Despite this, the Student would tell her "I can't do it this way. Ms. Silver wants me to do it her way." Usually, it wouldn't matter that much which technique was being used, but it made the Student very anxious that he was getting instruction using two different methods, and when the Student gets anxious he sometimes has a "meltdown."

The Student was supposed to have his left eye patched during therapy. Ms. Silver made it clear that she wouldn't do the patching without a doctor's order, and then she wrote a note referencing the wrong eye to be patched. She thinks it is unusual to require a doctor's note for this. It was clear at the IEP team meeting that Ms. Silver was uncomfortable with the patching and didn't see a reason to do it. The Student reported that Ms. Silver attempted to patch the wrong eye, and then asked the Student to put it on because she wasn't sure how to do it.

She started to do the Student's make-up sessions on May 1, 2009. At first, the District didn't have any space available for her, so the District asked her to use Ms. Silver's room for these sessions. It was a "disaster." The room was a mess, and there were sheets covering everything. The Student reported to her that Ms. Silver told him that Ms. LaPrell mustn't touch her stuff, and that the Student needed to "be my eyes" and report to her everything that Ms. LaPrell does and anytime Ms. LaPrell touches her stuff. The Student was very upset about this and was obsessing about it. The first 15-20 minutes of every session were spent talking about this issue. She doesn't believe the Student would make this up. That would not be like him, and "be my eyes" doesn't sound like words he would use.

14. During an interview conducted by the Complaint Investigator with Anne Sanders, Ms. Sanders stated the following: She is the special education coordinator for the District. At the IEP team meeting of January 6, 2009, Ms. Silver acknowledged that the Student had received some low scores, but didn't point out that the scores were lower than on the last evaluation. She believes Ms. Silver wanted to emphasize that the Student was making some progress. The Parent, however, was focused on those scores that were lower than the last time. She recalled that Ms. Silver could not remember at the meeting what the previous evaluation report had shown, and may have asked to look at the report. Ms. Silver had been talking about reducing the number of OT sessions for the Student to twice a week, focusing on the favorable reports the team had received from the Student's teachers and the progress he had

made on some of the tests. After the team considered the lower scores and the fact that the Student was still an involved child, however, it determined to maintain the Student at three OT sessions per week.

There was a lag time from when the Parent requested information about the number of days the Student had not received OT, due in part to Ms. Silver not being as quick to provide the information as she could have been. Once the District became aware of the number of days that had been missed, the District was careful to try and not schedule IEP team meetings for Tuesday when Ms. Silver would have to be involved in the meeting. The last day the Student would have been available for OT would have been June 11, 2009. From May 1 through June 11, 2009, there would have been 12 dates when the Student would have been scheduled for OT with Ms. Silver.

She believes that Ms. Silver was using the "handwriting without tears" method with the Student. The District encouraged Ms. Silver and Ms. LaPrell to collaborate regarding their work with the Student, but she doesn't know if they did so. She is aware that some of the distrust that was created between Ms. Silver and Ms. LaPrell and between Ms. Silver and the Parent came from things that the Student was reported to have said about Ms. Silver, and she suspects that the Student may have been manipulating the situation somewhat.

With regard to the condition of the OT room when Ms. LaPrell was supposed to use it, she entered that room on one occasion with Ms. LaPrell. She observed that there was a sheet over the file cabinet and the desk, but the room was not messy and there was nothing covering the OT equipment. She does not believe it should have been difficult for Ms. LaPrell to work in the room under those conditions.

When the issue of the eye patch arose, Ms. Silver said to her that she wasn't comfortable working with the patch without more explicit direction from the Student's doctor. She wanted direction regarding whether or not the eye should be patched for the whole session, whether it should be patched only for the one-on-one sessions, and which exercises were to be used with the eye patch. As part of that desire to have explicit direction, Ms. Silver asked her to confirm with the Parent which eye was to be patched, and she relayed that request for confirmation to the Parent. Ms. Silver also spoke with Mr. Curtis about this issue, and Mr. Curtis supported Ms. Silver's wanting a doctor's prescription before using the eye patch. Knowing Ms. Silver's background and level of expertise, she does not believe that Ms. Silver didn't know how to use the Student's eye patch nor was unsure which eye was supposed to be patched. She wishes that the Parent and Ms. Silver had been able to communicate directly about this issue, instead of going through various administrators, and she encouraged both of them to do this.

15. During an interview conducted by the Complaint Investigator with Althea Walker, Ms. Walker stated the following: She has been the principal of MacMahon Elementary School for the past six years. When she told Ms. Silver that the Parent had complained to her that the Student said that Ms. Silver had asked him to spy on Ms. LaPrell, Ms. Silver became very upset. Ms. Silver denied the allegations, told her they were ridiculous, and said she didn't know what to do about them. She believes the Student is capable of embellishing a story to

get an emotional response from the Parent. She also recalled that at the beginning of the year, the Parent came to her and denigrated everyone that had worked with the Student at Montello Elementary School.

16. During an interview conducted by the Complaint Investigator with Melvin Curtis, Mr. Curtis stated the following: He is the director of special education for the District. He went to the school's OT room himself and observed the conditions present there. There were sheets spread over the shelves and desk, but it is a large room, and there was still table space and a lot of floor space for an OT provider to use. He did not feel that the sheets significantly detracted from the utility of the room. Both Ms. LaPrell and Ms. Silver were contracted service providers with the District at one time, before Ms. Silver became an employee of the District. He believes the two of them did not get along well when they were both contracted providers, and that there remains "bad blood" between them.

17. During an interview conducted by the Complaint Investigator with Jessica Kearns, Ms. Kearns stated the following: She is a xx grade teacher at MacMahon Elementary School, and had the Student in her class this year. During the time that Ms. Silver was working with the Student, when Ms. Silver came to her classroom to get the Student, he would always go willingly and gave Ms. Silver a hug. Even after Ms. Silver stopped working with the Student, he would give her a hug when he saw her.

18. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: After she received the information regarding how many OT sessions had been missed during the school year, she attended a meeting on April 27, 2009. The District first offered to provide make-up sessions during the summer, but she declined that offer because she thought that another OT session per week in addition to the private OT sessions would feel like punishment to the Student. Then the District offered to reimburse the Parents for the cost of the co-pay associated with the Student's private OT sessions during the summer, but she declined that because it wouldn't result in the Student getting any additional OT. Finally, the District offered to pay for Ms. LaPrell to come to the Student's school on Fridays and provide make-up OT sessions, and she accepted that offer. Later that day, the Student had an OT session with Ms. Silver, and when he came home he told her that Ms. Silver had told him that she didn't want Ms. LaPrell "touching her stuff." The Parent thought that it was inappropriate for Ms. Silver to be sharing that with the Student. The next day, the Student again saw Ms. Silver, and when he came home he told the Parent that Ms. Silver this time told the Student that he was to be "her eyes" and should report to her if Ms. LaPrell "touches her stuff." The Student was very concerned by these comments, and repeatedly made comments to the Parent such as "What are we going to do? Cori can't use Ms. Silver's stuff."

The following day she went to the school and spoke with the principal, describing what Ms. Silver had said to the Student and asking that someone other than Ms. Silver provide the Student's OT for the remainder of the year. Ms. Walker told her she would discuss the matter with Mr. Curtis. Ms. Walker later told her that Mr. Curtis said that Ms. Silver was the school's OT provider, and that only Ms. Silver would be able to provide the Student with OT. At that point, she told Ms. Walker that she didn't want the Student to get any more OT from

Ms. Silver. April 30, 2009 was the last day the Student received OT, other than the make-up sessions with Ms. LaPrell.

She was also not confident that Ms. Silver knew how to do the Student's visual exercises. At a previous meeting, Ms. LaPrell had asked Ms. Silver whether she used a certain book of visual exercises. Ms. Silver was unfamiliar with the book and asked Ms. LaPrell for the author and title. The first day she sent in eye patches with the Student for Ms. Silver to use, the Student reported that Ms. Silver said she couldn't use the patches because she didn't know how to use them, and didn't know which eye to patch. When she asked Ms. Silver about this at the April 27, 2009 meeting, Ms. Silver said that she knew which eye was to be patched, but she was checking to see whether the Student knew. Ms. Silver then sent home a note asking for a doctor's prescription for the patching, and Ms. Silver's note referenced the wrong eye. Also, she spoke with Ms. Sanders and told her that, if necessary, she would come in and show Ms. Silver how to use the patch. Ms. Sanders told her later that when she relayed this offer to Ms. Silver, Ms. Silver had said that she wasn't sure which eye was supposed to be patched, and asked Ms. Sanders which was the correct eye.

After Ms. LaPrell began using the OT room for the Student's make-up sessions, Ms. LaPrell told her the room was really messy and it was difficult for her to work there. She went with Ms. LaPrell to look at the room on two occasions. The first time, the room was somewhat messy, and there were sheets spread over different areas of the room. There was not a lot of work space available for Ms. LaPrell to use. The second time, the sheets were still there, but the room was a little neater. Besides making the room unappealing to work in, the sheets reinforced for the Student Ms. Silver's admonition about Ms. LaPrell not using Ms. Silver's things, and made the Student's transition to the OT activity more difficult.

She wanted someone who was knowledgeable and who behaved appropriately to be doing OT with the Student. She did not believe Ms. Silver was that person.

VII. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to provision of occupational therapy in violation of MUSER §IX.3.B(3)

VIOLATION FOUND

The Student's IEP called for three 30 minute OT sessions per week. When the Parent finally (after a regrettably long delay in the District's providing the information) obtained the Student's schedule and record of services, she discovered that there were 15 dates when the Student was available to receive OT but Ms. Silver was not available to provide it. A deficit of 7.5 hours of service is a substantial amount and constituted a failure to implement the IEP, thus warranting the provision of compensatory service. The District recognized this, however, and contracted to have Ms. LaPrell provide this compensatory service. In total, Ms. LaPrell provided 7.0 hours of service, which sufficiently made up for the deficit.

As to the additional 6 hours of OT that the Student did not receive after April 30, 2009, this resulted solely from the Parent's decision to discontinue the service. While some of the Parent's reaction to Ms. Silver's conduct is understandable (Ms. Silver's concern for protecting the confidentiality of her students' personal information was laudable, but covering most of the work area with sheets was both ineffective and unwelcoming; to the extent that Ms. Silver involved the Student with her concerns about her work area, it was clearly inappropriate), there was no firm evidence that the Student's OT sessions with Ms. Silver were not providing a benefit and enabling the Student to advance appropriately toward attaining his annual goals. Accordingly, no violation was associated with the Student's termination of OT on April 30, 2009.

A word must be said about the harmful effects of the animosity between the two OT providers involved in the Student's care. Whenever a student is receiving services both through a district and privately, it is important that the providers collaborate to ensure consistency in methodology and strategy. Not only did that not take place here, but the distrust between the providers infected the relationship between the Parent and Ms. Silver. Much of the Parent's apprehension regarding the service being provided by Ms. Silver might have been alleviated had the Parent been willing and able to communicate directly with Ms. Silver in a collaborative and supportive way.

Allegation #2: Failure to ensure that all information obtained during the Student's evaluation was documented and carefully considered in violation of MUSER §V.2.F(1)(b)

NO VIOLATION FOUND

This allegation is based on the failure of Ms. Silver to include in her evaluation report references to scores on the previous evaluation that were higher than those she obtained herself, indicating at best a lack of progress and at worst a weakening of skills. To the extent that such omission may have rendered the evaluation report incomplete, it was nevertheless remedied by the Parent's calling it to the IEP team's attention. MUSER §V.2.F(1)(b) is directed at school districts, not providers, and dictates that all information obtained during a student's evaluation be "documented and carefully considered." It is clear that, once the IEP team understood the full significance of the scores obtained on the evaluation, it carefully considered this information in determining to maintain the Student's OT at three sessions per week.

VIII. Corrective Action Plan

No corrective action is required.