

Complaint Investigation Report
Parents v. RSU #34

June 28, 2010

Complaint #10.101C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainants: Parents
Address
City, Maine

Respondent: David Walker, Superintendent
156 Oak St.
Old Town, ME 04468

Special Services Director: Loretta Robichaud

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on May 26, 2010. The Complaint Investigator was appointed on May 27, 2010 and issued a draft allegations report on June 2, 2010. The Complaint Investigator conducted a complaint investigation meeting on June 17, 2010 (rescheduled from the original date of June 16, 2010 at the Complainants' request), resulting in a set of stipulations. On June 17, 2010, the Complaint Investigator received 19 pages of documents from the Complainants, and received a 4-page memorandum and 14 pages of documents from RSU #34 (the "District") on June 22, 2010, followed by three additional pages of documents on June 23, 2010 that had been inadvertently omitted from the original submission. Interviews were conducted with the following: the Student's mother.

III. Preliminary Statement

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

IV. Allegations

1. Failure to ensure that the Student's parents were present at the April 27, 2010 IEP team meeting by refusing to schedule the meeting at a mutually agreed on time in violation of MUSER §VI.2.H(1)(b);
2. Failure to amend inaccurate or misleading information contained in the Written Notice of the April 27, 2010 IEP team meeting at the Student's parents' request within a reasonable period of time, or else notify the Student's parents of a refusal to do so, in violation of MUSER §XIV.8.

V. Stipulations

1. Prior to April 27, 2010, the Student's mother provided a list of dates on which she would be able to attend an IEP team meeting.
2. April 27, 2010, the date on which the IEP team meeting was held, was not one of the dates on the Student's mother's list.
3. The District included the following statement in the Written Notice of the April 27, 2010 meeting: "The Parents wanted it noted that they could not attend the IEP meeting and the IEP meeting was held anyway."

VI. Summary of Findings

1. The Student lives in Old Town with the Parents and his siblings, and will be attending xx grade at Old Town Elementary School next year. He began receiving special education services under the category Other Health Impaired in xx grade.
2. The Student's IEP team met on April 28, 2009 to develop the Student's first IEP, which had an effective date of May 8, 2009. The IEP listed April 27, 2010 as the Date of Annual IEP Review.
3. On March 23, 2010, the Student's case manager, Roberta Littlefield, called the Student's father and informed him that the IEP team was required to hold its annual review, suggesting the date of April 12, 2010.
4. The next day, the Student's mother called Ms. Robichaud to report that the Parents would not be able to attend a meeting on April 12th due to the Student's father's work schedule. The Student's mother suggested either April 7th or 10th instead. Later that day, Ms. Littlefield called the Parents and informed them that the meeting was being rescheduled to April 7, 2010.
5. On March 25, 2010, the Student's mother told Ms. Littlefield that the Parents were no longer available to meet on April 7th due to the Student's father's work schedule, requesting the date of April 13th instead. Later that day, Ms. Littlefield called the Student's mother and said that April 13th was not available to the District due to scheduling conflicts.

6. Ms. Littlefield explained to the Student's mother that the annual review had to be held no later than April 27, 2010 and, after discussing other potential dates that were not convenient for both parties, the Student's mother agreed to have the meeting rescheduled to April 27th.

7. On March 25, 2010, the District sent to the Parents Advance Written Notice of the IEP team annual review scheduled for April 27, 2010.

8. The District had a school vacation during the week of April 19, 2010. When school resumed on April 26, 2010, Ms. Robichaud found a letter dated April 22, 2010 from the Student's mother, stating that the Parents were no longer available to meet on April 27th, and suggesting several dates in mid-May as alternative meeting dates.

9. That day, Ms. Robichaud called the Student's mother and explained to her that the District was legally required to hold its annual IEP review by April 27th, so that the meeting could not be further delayed. Ms. Robichaud offered to hold a subsequent meeting which the Parents could attend to discuss any necessary amendments to the new IEP. The Student's mother expressed her opinion that the District was violating the Parents' rights.

10. The IEP team met on April 27, 2010 to conduct its annual review, without the participation of the Parents. A new IEP was developed with an effective date of May 8, 2010. At the close of the meeting, Ms. Robichaud directed Ms. Littlefield to contact the Parents and ask whether they wished to provide a statement of parental concerns to be recorded in the new IEP and to schedule a meeting to discuss amending the IEP.

11. Later that day, Ms. Littlefield called the Student's mother and scheduled a further IEP team meeting for May 21, 2010. The Student's mother told her that she wanted it noted in the IEP that the Parents were unable to attend, that they had tried to have the IEP team meeting rescheduled, but that the District held the meeting anyway.

12. In the Written Notice for the April 27th meeting, and in the new IEP, the following statement appeared: "The parents want it noted that they could not attend the IEP meeting and the IEP meeting was held anyway." The Parents did not request that this statement be amended.

13. The IEP team met again on May 21, 2010 with the Parents in attendance, and several amendments were made to the IEP as a result of the meeting.

14. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Student's father received a phone call from Ms. Littlefield about holding an IEP team meeting on April 12, 2010. The next day, she called Ms. Robichaud and told her the date was not good for them; the Student's father had to work that day. They got a message from Ms. Littlefield that the meeting was being rescheduled to April 7, 2010, a date she had suggested to Ms. Robichaud. The next day, she went to school and told Ms. Littlefield that April 7th was not a good date after all (the Student's father had to work that day), and she suggested April 13th instead.

Later that day, Ms. Littlefield called and said that the District could not hold the meeting on April 13th, but that the District was legally required to hold the meeting by April 27th at the latest. They discussed other dates in April that were not available to both sides before she finally agreed to have the meeting on April 27th. Although the Student's father would be tired from his day of work, she expected that he would be able to attend.

The Parents later learned that the Student's father would have to work longer hours on April 27th than they expected, and she therefore wrote a letter to the District (so that there would be a written record) telling them that the Parents would not be available on April 27th, and suggesting several dates in May. The Parents were also available on April 28, 2010, but when she suggested that date in her conversation with Ms. Littlefield, Ms. Littlefield told her that April 27th was the absolute deadline.

On April 27th, she had a conversation with Ms. Littlefield in which she told her that she wanted it noted in the IEP that the Parents had tried to change the meeting date because they were unable to attend, but that the District refused and held the meeting without them. When she read the Parents' statement in the IEP and Written Notice, she didn't think it said what she had requested, but she didn't ask that it be amended.

She doesn't want to attend meetings without the Student's father because she finds the meetings intimidating and doesn't think she does well by herself. The Parents also want to bring a friend with them (who attended a previous meeting) for additional support.

VII. Conclusions

Allegation #1: Failure to ensure that the Student's parents were present at the April 27, 2010 IEP team meeting by refusing to schedule the meeting at a mutually agreed on time in violation of MUSER §VI.2.H(1)(b)

NO VIOLATION FOUND

MUSER §VI.2.H(1)(b) requires that school districts "take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including...[s]cheduling the meeting at a mutually agreed on time and place." This obligation is a critical one, as the IEP meeting "serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions." MUSER §VI.2.I. The obligation on the district, however, is to "take steps" to ensure the parents' participation; the regulations do not preclude the holding of an IEP meeting without the parents' participation. Indeed, MUSER §VI.2.H(4) expressly addresses the district's obligation when the meeting is held without the parents being present, including keeping "a record of its attempts to arrange a mutually agreed on time and place." The District complied with that requirement, and provided documentation of its attempts to the complaint investigator.

The documentation provided by the District, and corroborated by the Student's mother, demonstrates that good faith efforts were made to schedule the meeting at a mutually

convenient time. The District offered a number of alternative dates to the Parents, to at least two of which (April 7th and 27th) the Parents agreed only to later declare that they could no longer attend. By the time the District became aware that the Parents could not attend on April 27th, another legal requirement came into play that made it necessary for the District to proceed whether or not the Parents decided to attend.

MUSER §IX.3.D(1)(a) requires that the IEP Team review an IEP “not less frequently than annually.” The Student’s previous IEP was developed at a meeting on April 28, 2009, and that IEP listed the annual review date deadline as April 27, 2010. This circumstance distinguishes the present case from that provided by the Parents in support of their complaint, *J.N. v. District of Columbia*, 53 IDELR326 (2010). In that case, the parent attempted to reschedule an IEP team meeting that she was unable to attend, which attempts the school district ignored. The court found no evidence that the district “did anything to respond to or accommodate [the parent]’s timely and reasonable requests to reschedule.” *Id.* In the present case, the District did not ignore the Parents – after several attempts to find a mutually convenient date, the District ultimately ran up against a concurrent legal obligation (which they explained to the Parents) which prevented any further delay in holding the meeting. *See also Adult Student, Interested Party & Interested Party v. South Portland*, 09.036 (ME DOE 2009)(the school district properly declined to reschedule an IEP meeting to a date beyond the annual review deadline). The District further accommodated the Parents by scheduling an IEP team meeting after the annual review to provide an opportunity to the Parents to discuss any requested amendments to the new IEP.

Allegation #2: Failure to amend inaccurate or misleading information contained in the Written Notice of the April 27, 2010 IEP team meeting at the Student’s parents’ request within a reasonable period of time, or else notify the Student’s parents of a refusal to do so, in violation of MUSER §XIV.8

NO VIOLATION FOUND

Under MUSER §XIV.8, a parent who believes that information in an educational record is inaccurate or misleading may request that the information be amended. Although the Parents did not believe that the statement contained in the Written Notice and IEP fully conveyed the Parents’ position stated by the Student’s mother in her phone conversation with Ms. Littlefield, the Parents did not, after reading those documents, request that the statement be amended. In the absence of such a request, the District cannot be said to be in violation of this provision.

VIII. Corrective Action Plan

No corrective action is required.