

Complaint Investigation Report
Parents v. RSU #9

October 25, 2010

Complaint #11.015C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Mother & Father

Address

City, Zip

Respondent: Michael Cormier, Superintendent

115 Learning Lane

Farmington, ME 04938

Special Services Director: Ed Ferreira

Student: Student

DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on August 20, 2010. The Complaint Investigator was appointed on August 25, 2010 and issued a draft allegations report on August 27, 2010, subsequently amended on September 24, 2010. The Complaint Investigator conducted a complaint investigation meeting on September 27, 2010 (rescheduled from the original date of September 10, 2010 as a result of the filing of a Due Process Hearing Request by Respondent, subsequently withdrawn), resulting in a set of stipulations. On October 5, 2010, the Complaint Investigator received 66 pages of documents from the Complainants, and received a 6-page memorandum and 19 pages of documents from Mount Blue Regional School District (RSU #9, the "District"), on October 6, 2010. Interviews were conducted with the following: Brian Foster, assistant special education director for the District; Ben Milster, guidance counselor for the District; Wendy Simpson, teacher for the District; Roger Bolduc, teacher for the District; Maureen Mosher, teacher for the District; the Student's mother; and the Student's father.

III. Preliminary Statement

The Student is xx years old and is currently attending Landmark School in Prides Crossing, Massachusetts. This complaint was filed by the mother & father (the "Parents"), alleging

violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to identify the Student as a child who may require special education and related services and refer him to an IEP Team to determine his eligibility during the period from August 2008 through December 2009 in violation of MUSER §§IV.2.A and D.

V. Stipulations

1. From August 2008 through December, 2009, the District did not complete a Pre-referral Form or Initial Referral Form for the Student that would begin the process of determining the Student's eligibility for special education.
2. On January 22, 2010, the Parents requested that the District evaluate the Student in order to make an eligibility determination.
3. January 22, 2010 represents the only time in the period from August 2008 through August 2010 that the Parents requested that the District evaluate the Student.
4. On February 2, 2010, the Parents removed the Student from the District and on March 2, 2010, the Parents withdrew their request for an evaluation.
5. The Parents have not consented to allow the District to perform an evaluation of the Student since March 2, 2010.

VI. Summary of Findings

1. The Student lives in Farmington with the Parents and two sisters, and is presently attending xx grade at Landmark School, a private, residential school. He was evaluated and considered for special education services in xx, xx and xx grade, each time resulting in a determination of ineligibility. The Parents did not exercise their due process rights with regard to these determinations. While in xx grade, the Student was found eligible for accommodations under Section 504 due to his having received a diagnosis of attention deficit hyperactivity disorder, and he continued to receive those accommodations through xx grade.
2. While the Student was in xx grade, the Parents removed him from the District and sent him to the Farmington Children's School, a private school, to complete the grade.
3. When the Farmington Children's School closed, the Student returned to the District for xx and xx grades (the 2007-2008 and 2008-2009 school years), where he attended Mount Blue Middle School. The Student did not receive Section 504 accommodations during this time.
4. In an e-mail dated December 15, 2008, the Student's father wrote that the Student, in xx grade, was "having the best school year of his life."
5. The Student received final grades in xx grade of Bs in language arts, math and science, an A in social studies, and a D in French.

6. During the xx grade, the Student participated in the Maine Educational Assessments (“MEAs”), and obtained scores that partially met requirements in reading and science, and did not meet requirements in math.
7. The Student began the xx grade (2009-2010 school year) at Mount Blue High School. His 1st quarter academic grades (for the quarter ending November 6, 2009) were as follows: Earth Science – F; Humanities-English – A-; Humanities-Social Studies – A-; Algebra I – C-. The Student’s 2nd quarter academic grades (for the quarter ending January 22, 2010) were as follows: Earth Science – F; Humanities-English – Incomplete; Humanities-Social Studies – Incomplete; Algebra I – D+.
8. On December 15, 2010, the Parents and the Student attended a staffing to discuss the Student’s school performance. The recommendations that were developed at the staffing included having the Student keep an assignment book, attend an after-school program that offered help with the Student’s class work, and become a better self-advocate when he needed extra help.
9. On January 22, 2010, the Parents wrote a letter to the District requesting that the Student again be evaluated for special education eligibility. In response, the District, on February 1, 2010, completed an Initial Referral Form for the Student to begin this process.
10. On February 2, 2010, the Parents removed the Student from the District and began to home school him. On March 23, 2010, the Student began attending the Landmark School, a private, residential school for students with language-based learning disabilities, to which he returned for his xx grade school year.
11. On March 2, 2010, the Parents withdrew their consent for an evaluation, and have not provided consent for evaluation to the District since then.
12. During an interview conducted by the Complaint Investigator with Ben Milster, Mr. Milster stated the following: He is a school guidance counselor at Mount Blue High School and the Guidance Director for the District. The Student was not on his caseload, but he was acquainted with the Student’s father and occasionally received phone calls from the Student’s father when the Student’s guidance counselor, Gerri Chesney, was unavailable. These phone calls began after the first quarter of the 2009-2010 school year. Initially, the Student’s father called to discuss problems with the Student’s behavior at home, particularly with regard to getting him out of bed in the morning and into school. The Student’s father later expressed frustration with how the Student’s xx grade year was going, particularly with regard to the Student’s science teacher, Doug Hodum. The Student was not doing well in that class. The Student was also struggling in his Algebra I class, and the Student was transferred from the college preparatory class to the college preparatory intermediate class on November 12, 2009.

The Student’s father had several meetings with Ms. Chesney during November and December, and they discussed the options of having a staffing meeting and of referring the Student for evaluation for special education or Section 504 eligibility. He believes he also discussed that option with the Student’s father. The Student’s father’s response was that he

would think about it and talk to the Student's mother and the Student. Ms. Chesney continued to push the idea of having a staffing meeting, and the Student's father finally agreed to do so. Ms. Chesney was unavailable on the date it was scheduled, December 15, 2009, and he facilitated the meeting in her absence.

The meeting was attended by the Student, the Parents and the Student's teachers. The Student's father said that getting the Student to school in the morning was no longer as much of an issue. The Student said his classes were too challenging for him. The Student's mother said that she and the Student's sister were giving the Student a lot of help with his written homework. Mr. Hodum said the Student was "shutting down" in his class, not doing his work and not accepting Mr. Hodum's offers of help. The Student's English and social studies co-teachers said that they saw two different students in their class: sometimes the Student would be engaged, participating in discussion and doing well; and sometimes the Student would "shut down." They invited the Student to attend a study hall that they offered for students in their class. The Student's math teacher said the material in the Student's original math class was too difficult and came too rapidly for the Student. He said that the Student had been doing better after he transferred to the intermediate level class, but that he needed to continue to focus.

The Student's father read a report he had received from Iris Silverstein, M.D., a developmental behavioral pediatrician, dated a few days earlier. The Student's father talked about the Student's attention deficit disorder, frustration and anxiety. The Student's father told them that the Student might be undergoing another psychological evaluation.

It was agreed at the meeting that: the Student would begin keeping an assignment book - he would present it to his teachers to make sure he had correctly recorded his assignments, and he would also share it with the Parents so they knew what the Student's assignments were each day; the Student would self-advocate when he needed help and would accept help when offered; and the Student would attend an after-school program on Tuesdays and Thursdays to get extra help with his schoolwork.

At the meeting, there was discussion about whether to refer the Student for an eligibility determination for special education or Section 504. The Parents were very clear that they were going to wait to have the Student's psychological evaluation completed before deciding whether to request the referral.

He considers the issues presented at the meeting to be typical for freshman students. The Student's first quarter grades didn't raise any red flags. There was no indication that the Student was not fully capable of managing the standard curriculum. The first indication of a problem came in November when the Student's father reported difficulty with getting the Student to go to school. The District followed normal procedure in pursuing meetings between the Student or the Parents and the Student's guidance counselor, and offering a staffing or a referral for evaluation in response to the Student's father's reports of the Student's frustration and anxiety. These are all standard interventions for a student struggling in his classes. He doesn't believe there was anything more that the District should have been doing for the Student.

13. During an interview conducted by the Complaint Investigator with Roger Bolduc, Mr. Bolduc stated the following: He is a math teacher at Mount Blue High School, and had the Student in his Algebra I CP class from September through mid-November 2009. He believes he and the Student had a good relationship. The Student struggled in his class, with issues including: 1) the class was fast-paced, and the Student seemed to need more time to absorb the new material and to grasp new concepts. The Student seemed to process information more slowly than many of the other students in the class. The class might finish with the material on the blackboard and he would go to erase it, but the Student was still working his way through it; 2) the Student sometimes had trouble maintaining his focus. Sometimes the Student seemed to be in a daze, and when he refocused the Student, the Student would get frustrated that he had missed things; 3) the Student didn't always grasp new concepts, and sometimes was unable to complete assignments because he didn't understand; 4) the Student had some gaps in the background of information he brought to the class, although this was not unusual for xx grade students generally; 5) the Student often took bathroom breaks, and this meant that he missed class instruction time. The Student's problems were not that unusual for students just entering xx grade; half of the students in the class had some or all of these issues. There is typically a sorting process that takes place at the start of the year, where some students may find that they were placed in a math class that doesn't best suit their abilities and learning style.

He discussed the Student's performance with the Parents. They decided to leave him in the class but give him extra help. He worked with the Student one-on-one after class. The Student seemed able to grasp the concepts, but was just a little slower and had some gaps in his knowledge base. He also convinced the Student to cut down on the number of bathroom breaks. Later, when the Student was still having difficulty keeping up with the class, they decided to move him to the Algebra I CPI class.

He is not sure whether the Parents discussed referring the Student for special education, but he would only have been in favor of doing that if the other alternatives (the extra help, moving the Student to the other class) were unsuccessful. It made more sense to first find out if the Student could be successful in the CPI class before considering referral.

14. During an interview conducted by the Complaint Investigator with Wendy Simpson, Ms. Simpson stated the following: She is a language arts teacher at Mount Blue Middle School, and had the Student in her class during his xx and xx grades. At the start of xx grade, the Student was on a "watch list" with the Student Assistance Team, both because he came to the school from a school outside the District and because he presented some behavior issues. The behavior issues were less significant during xx grade.

She put in a lot of time with the Student, spending time with him after school and providing extra tutelage. The Student struggled with the mechanics of writing. He could express himself well verbally, but sometimes had trouble putting his ideas into writing. It was sometimes hard to tell whether the Student was really having difficulty or just didn't want to try. The Student also exhibited some hyperactivity, but he had good intelligence and was generally motivated to learn. There were times when the Student had the patience and energy to work with her, but at other times he would reject her offer of help. This was typical for

students in that age group. During xx grade, as the Student matured, he began to understand what was expected of him and appreciate that she was there to try and help him. The Student ended the year well, getting Bs and As in his 2nd and 3rd trimester.

She had many phone calls and meetings with the Parents. The Parents expressed what she felt was a normal degree of frustration with the Student's behaviors and what they saw as a lack of academic progress. They were supportive of her work with the Student. She doesn't remember any discussion of special education for the Student. She believes the Parents saw the Student as someone who just needed extra help, rather than needing special education.

The Student came to talk with her at least five times after he started in the high school. They were not positive conversations. The Student said he didn't want to go to school, and wanted to drop out. He was having a conflict with his science teacher, and this seemed to be having a very negative effect. It made the Student feel unsuccessful, and once he got down on himself, the Student stopped caring about his other classes as well. She felt sad to see the Student fall apart and lose the self-esteem he had built up in the middle school. She also spoke with the Parents during this time, and they told her that the Student had really gone downhill, and had lost the forward momentum he had built during xx grade. She doesn't recall that there was any discussion about special education during these conversations.

15. During an interview conducted by the Complaint Investigator with Maureen Mosher, Ms. Mosher stated the following: She is a special education teacher at Mount Blue Middle School, and often came into regular education classrooms to work along with the teachers. The Student was in both a language arts and a math class that she worked in during his xx grade.

The Student was a unique learner, with some real strengths but with some weaknesses as well, particularly around written expression. The Student fell somewhere in the middle of his class in terms of academic performance. The Student was great with verbal tasks, but had difficulty getting his thoughts down on paper. Nevertheless, she didn't observe the Student struggling to any great extent, certainly not as much as her special education students. The Student's teachers made certain accommodations and modifications to support the Student, as they did with many of the students in their classes, and the Student's needs were being met.

The Student also received additional help from her in the after-school program. She would go over a few sample problems with the Student, showing him how to do them. Then she would go work with other students while the Student worked by himself. She would come back to the Student and look over his work. Where the Student answered incorrectly, she would work through the problem with him until she believed he understood the concept. She did not simply give him the answers to problems.

She spoke informally with the Student's father many times over that year. They discussed the Student's learning weaknesses, but they never discussed referral for special education. The Student's father was glad that the Student was having a good year, and he said that things had really turned around for the Student. The Student's father did express disapproval with how the District had treated the Student in the past.

16. During an interview conducted by the Complaint Investigator with Brian Foster, Mr. Foster stated the following: He is the assistant special education director for the District. He was aware that the Student was receiving extra help from teachers in xx grade, but there were other students in that grade who struggled and also got help. Some of the parents of those students arranged for private tutoring for them. The need for extra support by itself doesn't necessarily lead to a special education referral. The approach in middle school is inclusionary, and Ms. Mosher was in the regular education classroom helping students who, like the Student, were not identified as special education students. The teachers saw the Student as a bright student who just needed a little extra help.

With regard to the Student's performance on the MEAs, the District does not rely on any one assessment in making the determination to refer a student for evaluation. A poor showing on the MEAs coupled with a failure to progress in the regular curriculum could certainly trigger a referral, but that wasn't the case with the Student.

With regard to the Student's transition to high school, such transitions frequently create anxiety in parents. Staff members tell parents that the people at the new school are not any less caring, it's just that there are different things to care about. Also, the students will be in a different place developmentally. In high school, there are different level classes that the District tries to match up with students' different abilities. Staff members have to see how students handle their work load, their homework, etc. The school offers learning labs and an after-school program for students who need extra help with their schoolwork.

The Student was not someone that any staff members or the Parents brought to his attention during the Student's xx grade. Neither did the Parents seek him out as xx grade was coming to an end. The Student seemed to have the tools and ability at that time to be able to make the adjustment to xx grade. Nothing jumped out as presenting a real concern. He did not hear from the Parents until December 2009, when the Student's father called him to discuss the Student's problems with science class. Even then, it was presented as more of a personality conflict than a learning issue. He suggested that the Student's father discuss the matter with the school principal.

17. During an interview conducted by the Complaint Investigator with the Student's father, the Student's father stated the following: He felt that xx grade was a particularly strong year for the Student, and that the Student felt like he was accomplishing things. Nevertheless, school was still very stressful for the Student, which was reflected in the Student's behavior at home, and also in the Student's frequent tardiness and absences. It was often hard to get the Student to go to school, and many of the absences were "mental health" days, when the student just needed a break from school. He doesn't recall speaking to anyone at the school about the reasons for the tardiness and absences.

The Student's final grades in xx grade were mostly Bs, with an A in social studies and a D in French. The Student, however, was getting a lot of additional help. He went to the after-school program, usually at least once and often twice a week. The Student also figured out that he could do his homework during recess instead of at home, where he was allowed to stop working if it got too painful. The Student also worked with the Title I teacher in the

mornings, and received extra support from some of his classroom teachers. Towards the end of the year, the Student reported that Ms. Mosher was basically just giving him the answers to his homework questions. The Student was essentially receiving the same kind of supports he had been getting in grade school under his Section 504 plan.

He does not recall discussing the possibility of a special education referral with any staff members during the Student's xx grade, although he told some of them that the Student had been evaluated in elementary school and found not eligible. He also told them that he disagreed with the results of that testing.

The first several weeks of xx grade, the Student was doing very well, but then the teachers increased their demands. The first difficulties the Student encountered were with his science assignments. The Student was required to read an article and summarize it, which involved three of the Student's weakest areas – reading, summarizing and writing. He brought this to the science teacher's attention, but the teacher was unwilling to modify the assignment for the Student. The Student was struggling in everything except music and art. In humanities, the first quarter went pretty well because there wasn't a lot of writing required, but that changed in the second quarter. The Student's good grades in the first quarter were due in part to an extraordinary amount of help the Student was getting at home. He doesn't know if there were supports available to the Student in the high school, but if there were, the Student wasn't taking advantage of them. There was no Title I teacher or a Ms. Mosher to look after him. There was an after-school program where students could get help with their homework, but the students had to sign up for it at the start of the day; if not enough students signed up, there wouldn't be any session that day. At first, he would remind the Student to sign up, but then he started to feel that those reminders were interfering with the Student's becoming responsible for himself, and he stopped. He's not sure if the Student ever attended one of those sessions.

He knew that things were getting bad when the Student started refusing to go to school, and he began talking to people at school about this problem in mid- to late November. He told the vice principal that the Student was missing school because it was a "hostile environment." The vice principal was surprised, but he didn't explain to the vice principal what that meant. He discussed the Student's struggles with the guidance counselors, Ms. Chesney and Mr. Millster, telling them that the Student couldn't do his writing assignments and couldn't keep up in math. Ms. Chesney said that the Student was in high school now, and needed to "buck up." She looked at it as a responsibility issue, which was not very helpful. They might have said a staffing was one possibility, and he said he had to think about it. Mr. Millster may have suggested further evaluation and he said he didn't want the Student to have to go through testing again. Due to their past experiences, where the testing produced results of questionable accuracy and where the District's decisions were contradictory to what both the Parents' consultants and the District's own evaluators were saying, the Parents had lost faith and confidence in the District's willingness and ability to give the Student what he needed.

He eventually agreed to the staffing meeting, where he told the staff members about the Student's struggles. They suggested that the Student keep an assignment book, but said that the Student was going to have to be responsible for it; the science teacher said he was not

willing to check it at the end of science class to make sure the Student had correctly written the assignment. At the end of the meeting, he told Mr. Millster he would consider referring the Student for more testing.

The Parents sent the Student's file to the Learning Disabilities Association of Maine, and the Association told them to request a reevaluation. He realized from the materials the Association sent that they had a valid basis for requesting it, and thought that maybe the result would be different this time. Around this time, they also learned about the Landmark School. At that point, their primary concern was with getting the Student the help he needed to be successful, so they were pursuing two paths at once – seeking the Student's admission into Landmark School and pursuing testing with the District.

He believes that the District should have referred the Student for testing at the end of the xx grade. The Student's scores on the MEA assessment in xx grade should have gotten their attention. It should have been obvious that the Student was only successful in xx grade because of all the support he was getting, and that those supports would not be available to the Student in high school. The District should have known that placement of the Student in the Humanities class in high school was a mistake, as it was an unstructured environment and the Student needs structure to be successful. The District also should have known that with all the help he was getting in math in xx grade, the Student wouldn't be able to keep up in the CP level algebra class. The Parents didn't question these placements at the time, however; their knowledge that they were inappropriate is all hindsight.

18. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Student's problems in xx grade started in late September or early October. She saw a change in the Student's willingness to go to school, and to do schoolwork. The Student started the year with the attitude that he was really going to try and make this work, and he did try. He started having difficulty with his science work, and the teacher was inflexible regarding the issues with which the Student had the most trouble. Most of the time, she would go in to talk to the Student's teachers, they would understand what the Student needed and they would help him if they could. She came to feel like she was the Student's own special education department. It got to a point where it was clear that the system wasn't working, that the teachers couldn't meet the Student's needs. That's when the Parents decided to remove the Student from school.

The Student found writing especially difficult. Teachers gave her permission to scribe for the Student, and both she and the Student's sisters would help him with writing assignments. Even with their help, the Student had a hard time getting his words out to be put on paper. If she could see how hard this was for the Student, the teachers should have been able to see it, too. At the staffing meeting, the staff's recommendation was that the Student should keep an assignment book, but this also involved writing.

She knew into which classes the Student was being placed before the year began. In language arts, the Student is very verbal and she thought that the Humanities class would give the Student the opportunity to do well. She agreed to put the Student in the CP algebra class because the students in the CPI class weren't as bright as the Student, and she didn't want the

Student to feel stupid. When he began to struggle, they involved the Student in the decision about which class he should be in. The Student initially said he wanted to try to make it in the CP class. The teacher in that class knew the Student and they had a good relationship. She thought it would be a good match.

There was an after-school program twice a week to help students with homework, but students had to sign up for it at the beginning of the day in the school lobby. The Student can barely remember to get dressed in the morning, and the lobby is a very chaotic place at that time. Eventually, they just gave up on getting him to access that program.

She feels that the Parents have been trying to help the Student succeed for a long time, and the District has not been giving the Student what he needs. In order to save the Student and save his self-esteem, they decided to look elsewhere. The Student tried so hard in xx grade, but he still failed. He needed a different kind of system. The Parents just didn't have faith in the District, and didn't think it was worth putting the Student through the grueling testing process again

VII. Conclusions

Allegation #1: Failure to identify the Student as a child who may require special education and related services and refer him to an IEP Team to determine his eligibility during the period from August 2008 through December 2009 in violation of MUSER §§IV.2.A and D.

NO VIOLATION FOUND

MUSER §IV.2.A requires school districts to maintain and implement policies and procedures to ensure that children in need of special education are identified and evaluated (often referred to as "child find"). MUSER §IV.2.D provides that once a child that may require special education is identified, the district must refer the child to an IEP team to determine that child's eligibility for special education. The Parents, in this complaint, assert that the District should have identified and referred the Student during his xx and xx grade years, prior to the time that they themselves requested the referral. In making this assertion, the Parents rely on the Student's academic struggles, particularly with writing, that they believe should have been apparent to the District.

The key element of the child find requirement, for a student experiencing academic difficulty, is the recognition that the student is struggling to such a degree that he might need special education. Both the Parents and the Student's teachers agree that the Student had a successful xx grade year. During that year, the Student's teachers made accommodations and provided extra support sufficient to enable the Student to not only earn good grades, but to feel a personal sense of achievement. The Parents suggest that the fact that those accommodations and supports were provided establishes that the Student needed special education, but this presupposes that such additional help is not a part of regular education. Ms. Mosher, however, stated that the teachers' accommodations and support for the Student were of the sort provided to many of the students in their classes. Ms. Mosher did not feel that the

Student's struggles placed him outside the mainstream of his class's range of academic performance, and were not at the level of her special education students. Ms. Simpson described the Student's behavior as improving and said that he matured during that year. There is nothing to suggest that the Parents believed, and they certainly did not express the belief, that the Student needed special education at that time. To the contrary, they agreed to the Student's placement in higher level classes in language arts and math for xx grade.

It is, of course, clear that the Student's success in xx grade did not carry over to cc grade. The Parents now claim that the District should have predicted that lack of success, and anticipatorily referred the Student for special education evaluation, even though they (the Parents) did not do so. It seems not unreasonable, however, after the Student had just completed what the Student's father described as "the best school year of [the Student's] life," to have given the Student the opportunity to engage with the xx grade curriculum and attempt to carry that success forward. One could easily imagine that the designation of the Student as requiring special education, at the point that he had just completed his "best school year," would have been discouraging and had a negative effect on the Student as he began high school. The reasonableness of the District's conduct must be judged as of the time it occurred, not with the hindsight brought by later events.

The Student's distress in xx grade did not begin immediately, and when the Student began to falter, the District responded appropriately. His teachers offered additional assistance, and the Parents were offered the alternatives of a staffing meeting and/or a referral for special education evaluation. The Parents did not immediately accept these suggestions, or the offer to move the Student to a less rigorous math class, but eventually agreed to change the math class, to convene the staffing meeting and then, later, to the referral. Without allowing the District the opportunity to conduct the evaluation, make an eligibility determination and, if the Student was found eligible, to develop an appropriate program for him, the Parents withdrew the Student from the District and withdrew their consent for the evaluation. While acknowledging the Parents' degree of concern for the Student and their distrust of the District based upon the previous findings of ineligibility, nevertheless, the Parents cannot both refuse to allow the District the opportunity to evaluate the Student and at the same time fault the District for not doing so.

VIII. Corrective Action Plan

As no violation was found, none is needed.