

Complaint Investigation Report
Parent v. CDS-York County

November 23, 2010

Complaint #11.021C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City, Zip

Respondent: Debra Hannigan, Board Chair
146 State House Station
Augusta, ME 04333

Site Director: Susan Motta

Child: Child
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on September 14, 2010. The Complaint Investigator was appointed on September 15, 2010 and issued a draft allegations report on September 20, 2010. The Complaint Investigator conducted a complaint investigation meeting on October 14, 2010 (rescheduled from the original date of October 6, 2010 at the Complainant's request), resulting in a set of stipulations. On October 19, 2010, the Complaint Investigator received a 5-page memorandum and 76 pages of documents from the Complainant, and received 119 pages of documents from Child Development Services ("CDS") - York County (the "Site") on October 20, 2010. Interviews were conducted with the following: Susan Motta, Site Director; Richard Acker, case manager for the Site; Sally Kennedy, case manager for the Site; Debra Hannigan, Board Chair for the Site and CDS State Director; Dr. Mary Morse, special education consultant; Judy Carey, teacher of the visually impaired; and the Child's mother (the "Parent").

III. Preliminary Statement

The Child is xx years old and is currently receiving special education under the eligibility category Multiple Disabilities (Visual Impairment, Developmental Delay and Other Health

Impairment). This complaint was filed by the Parent, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to complete an evaluation of the Child within 60 calendar days of the parent's consent to evaluate on November 30, 2009 in violation of MUSER §V.1.A(3)(a)(i);
2. Failure to conduct an evaluation under Part C of the Child's level of functioning in all developmental areas and an assessment of the Child's unique needs in each of the areas, including identification of services appropriate to meet those needs in violation of MUSER §IV.1.C(1)(b)(iii);
3. Failure to provide early intervention services designed to meet the developmental needs of the Child in violation of MUSER §X.1;
4. Failure to conduct an evaluation under Part B of the Child using a variety of assessment tools and strategies to assist in determining the content of the Child's IEP in violation of MUSER §V.2.B(1);
5. Failure to ensure that the assessments of the Child were selected and administered so that the results accurately reflected the factors being measured in view of the Child's impaired sensory skills in violation of MUSER §V.2.C(3);
6. Failure to conduct an evaluation and assessment of the Child in all areas of suspected disability, sufficiently comprehensive enough to identify all of the Child's special education and related services needs, in violation of MUSER §V.2.C(4), (6) and (7);
7. Failure to utilize the IEP Team as the vehicle for determining what additional data regarding the Child was needed in violation of MUSER §VI.2.J(1);
8. Failure to provide written notice of the refusal to evaluate the Child as ordered by the IFSP team on November 30, 2009 in violation of MUSER App. 1, 34 CFR §300.503;
9. Failure to include all necessary members of the IEP team on March 2, 2010 in violation of MUSER §VI.2.B;
10. Failure to provide special education, related services and supplementary aids and services sufficient to enable the Child to advance appropriately toward attaining her annual goals in violation of MUSER §IX.3.A(1)(d).

V. Stipulations

1. In preparation of the Child's first IFSP, the Site performed only one evaluation – the Hawaii Early Learning Profile.
2. On November 30, 2009, the Child's IFSP team made a determination that the Child should be referred for evaluation by an appropriate specialist.
3. No evaluation of the Child was conducted within 60 days of November 30, 2009.
4. The Site did not issue a Written Notice with regard to a decision to not pursue the evaluation discussed at the November 30, 2009 meeting.
5. The March 2, 2010 transition meeting was not attended by all required members of the Child's IFSP and IEP teams.

6. On or about March 19, 2010, the Site made an administrative decision to not refer the Child for evaluation to an appropriate specialist.
7. The evaluation data reviewed by the Child's IEP team on May 4, 2010 were from assessments that had not been ordered by the Child's IFSP or IEP team.
8. The evaluation data reviewed by the Child's IEP team on May 4, 2010 were from assessments that were not selected and administered so as to accurately reflect the factors being measured in view of the Child's sensory impairments.

VI. Summary of Findings

1. The Child lives in Saco with the Parent, and is presently attending a pre-school program at the Morrison Development Center. She began receiving special education services under the category Established Condition (cortical visual impairment) when she was xx old.
2. In August 2008, when she was xx of age, the Child was diagnosed with cortical vision Impairment ("CVI"), with her vision measured at 20/400.
3. On October 29, 2008, the Site conducted a home visit with the Child and Parent and administered the Hawaii Early Learning Profile ("HELP"), resulting in scores that reflected "scattered skills in all areas, with strengths in social and self-help skills." The staff members conducting the assessment were aware that this assessment had no adaptations for the visually impaired.
4. On November 20, 2008, the Child's IFSP Team found the Child eligible for early intervention services under the category Established Condition (cortical visual impairment), and developed an IFSP, dated December 4, 2008, that specified early intervention services provided by a speech pathologist once per week at 60 minutes per session, along with vision services, physical therapy and occupational therapy which were to be provided privately.
5. At an IFSP review held on July 27, 2009, the IFSP Team reviewed a report from early intervention provider Andrea Simoneau who stated that the Child's "progress has been slow and the gap between her functional age for communication and her chronological age is widening." The IFSP Team determined to increase early intervention services to 32 visits of 60 minutes each over a 6 month period, along with hippotherapy and physical therapy which were to be provided privately.
6. On November 30, 2009, the Child's IFSP Team conducted its annual review. The team determined that the Child should be evaluated by a specialist, Dr. Pawletko of the Perkins School for the Blind. After an initial delay on the Site's part in contacting Dr. Pawletko, Dr. Pawletko responded on January 10, 2010 to an e-mail from the Site, saying that the evaluation would be better done by someone with expertise in CVI, and recommended Dr. Mary Morse in New Hampshire. The Site went about setting up the evaluation with Dr. Morse, who was then recovering from surgery, and obtaining payment approval from CDS central administration for the evaluation.

7. On March 2, 2010, the Child's IFSP Team held a transition meeting to prepare for the Child's transition to Part B services. Those present at the meeting were the Parent and two case managers (one for Part C and one for Part B) from the Site. The Team determined that the Child was eligible for Part B services based on evaluations in the areas of OT, PT and Speech, along with the Oregon Project for Preschool Children Who Are Blind or Visually Impaired assessment (the "Oregon Project") administered by the Child's vision service provider. An IEP was not developed at the meeting.
8. On March 16, 2010, the Parent wrote to CDS State Director Debra Hannigan asking for her assistance in going forward with Dr. Morse's evaluation. Ms. Hannigan wrote to Susan Motta on March 17, 2010, asking whether the Site had ordered the evaluation at an IFSP Team meeting and saying that CDS would not pay for the evaluation if the Team did not order it. Ms Motta wrote back the following: "We didn't 'order' it, but I believe the team 'agreed' to it as being a good and useful evaluation. I understand the difference, but when staff get confronted with these things in the context of a meeting, it's hard for them to say no especially when the 'experts' are saying that this is something the child needs."
9. On March 19, 2010, Ms. Motta wrote to Dr. Morse that the Site would not be contracting with her to do the evaluation because there was sufficient data to enable the Part B eligibility determination to be made without it. The Site notified the Parent of this decision by letter dated April 6, 2010.
10. On March 22, 2010, Ms. Hannigan wrote to Ms. Motta that "if the evaluation is not necessary to do eligibility then it is not required that CDS pay for it. If it was ordered...to provide FAPE, then [the Site] needs to get it done in a timely manner, but not necessarily from the provider the parent has found." Ms. Motta responded that, based on Ms. Hannigan's prior e-mail, the Site had already told Dr. Morse that it would not be contracting with her.
11. On May 4, 2010, the Child's IFSP/IEP Team met again to conduct an IFSP review and to continue the transition meeting. Present at the meeting were the Parent, the Parent's advocate, case managers, the preschool director of the Morrison Development Center where the Child would be attending her preschool program, and a number of providers and teachers.
12. At the meeting, the Team reviewed results of two assessments of the Child: the Battelle Developmental Inventory (the "Battelle") and the Rossetti Infant & Toddler Language Scale (the "Rossetti"). The IEP Team had not ordered the performance of either of these assessments; they were requested by the Morrison Center. The Written Notice of the meeting states that "the team acknowledges the effect of [the Child]'s cortical visual impairment on the following test scores is unknown, at this time, and questioned their validity. However, it was determined that we would accept them for eligibility purposes at this time."
13. According to the Texas School for the Blind and Visually Impaired, the Battelle is considered inappropriate for severely visually impaired children. The Rossetti has no adaptations or special instructions for individuals with disabilities.

14. The Team developed a transition plan and an IEP at the meeting. The IEP, dated June 5, 2010, provides for: specially designed instruction five times per week for 3 hours per session; speech/language therapy and OT two hours per week; instruction from a teacher of the visually impaired one hour per week plus one hour per week consultation; physical therapy; hippotherapy; a one-on-one aide; extended school year services; and other services. The Team also ordered an evaluation of the Child's CVI "to assess the impact this is having on her development and what would be the most effective treatment strategies."

15. Shortly after the meeting, the Child's transition plan began to be implemented at the Morrison Development Center.

16. Dr. Morse conducted a Functional Visual Assessment of the Child on July 1, 2010. Dr. Morse's report of the evaluation contains the following statements:

- Currently, [the Child] functions as a child with a very severe visual impairment. At times, she appears blind while at other times there are short bursts of visual attention and interest.
- It may take years to know the full impact of CVI on [the Child]'s functioning but a major area of reassurance for parents with children who have similar visual handicaps is that the visual behaviors do not get worse. Rather, with good programming, these behaviors typically improve.
- At this point in time,...[the Child] seems to rely on hearing more than she does on her vision or her tactile sensory systems. The over reliance on hearing, inefficient use of her hands and dependency on physical and verbal prompts are of concern....It is critical that [the Child] learn that her hands are valuable tools and that she can learn about the world when she uses both of them.
- [The Child] is very young which makes it very difficult to prognosticate.
- Development of a non-symbolic object communication system to be transitioned into a more symbolic system at a later time [is recommended]....Typically, it takes several months to establish such a system....It usually takes about a year before many children realize their motor actions have communicative meaning.
- Luckily for [the Child], her vision teacher, mother and other providers began the use of scripting language at a very early age....Continued use of scripting during high learning times [is recommended]. This has been very successful and continuation is strongly encouraged.

Dr. Morse, in the report, also strongly suggests that the Child's team receive training on her recommendations.

17. On August 10, 2010, the Child's IEP Team met to consider Dr. Morse's evaluation report. The Team determined to develop a program for training on an object communication system, and that an object communication system should be in place no later than January 1, 2011. The Team also reviewed and made changes to the IEP goals.

18. A further amendment to the IEP was made by agreement on September 28, 2010 to have the special educator provide family training and consultation to the regular education teacher.

19. During an interview conducted by the Complaint Investigator with Sally Kennedy, Ms. Kennedy stated the following: She is a case manager for the Site working with three-to-five year olds. She became the Child's case manager, beginning with the transition meeting of March 2, 2010 at the Parent's home. Richard Acker, the child's birth-to-three case manager, was also present.

She was not involved in the decision to cancel the evaluation by Dr. Morse, and believes that the decision was made at the CDS central office. The basis for the decision was that the evaluation data the team had were sufficient to determine the Child's eligibility and to develop educational programming for her. At the meeting on May 4, 2010, the Parent again requested the evaluation, and the IEP Team determined that it was appropriate. Ms. Motta again took the matter to the CDS central office. The difference on May 4 was that the entire team was present, including a person from Morrison Center. Hearing from that person and the other providers, it was apparent that the evaluation by Dr. Morse would be an important component of the Child's educational programming. Also, the focus of the March 2 meeting was on eligibility; the team didn't develop the IEP until May 4.

20. During an interview conducted by the Complaint Investigator with Richard Acker, Mr. Acker stated the following: He is a case manager for the Site working with birth-to-three year olds. He became the Child's case manager once the Parent decided to access speech language services for the Child (the Parent's original focus was on OT).

The Site staff members were under the impression that when a child was referred with an established condition, the staff didn't need to use a standardized assessment (with standard scores), but could instead use a criterion-based assessment (with age ranges). For a child like the Child, the HELP would give a more realistic picture than the Battelle; a lot of the Battelle is visual (e.g., tracking a light, watching a piece of red string). One component of the HELP is a parent questionnaire, asking about the child's self-help skills, early communications skills and mobility. When the assessment was given, the Child's vision therapist, Judy Carey, was also present. The evaluators had her input as well, including the results of the Oregon assessment that Ms. Carey had administered, an assessment that Catholic Charities (Ms. Carey's employer) typically uses for the visually impaired child. The data collected were used to inform the outcomes written for the Child's IFSP.

When the annual review of the IFSP took place, information was gathered from the individuals working with the Child, including Ms. Carey, as well as suggestions and information from the private provider the Parent was using through Visiting Nurses Service ("VNS"). It is the Site's practice that, whenever a Parent is using outside persons to provide services to a child, the Site works hard to forge a relationship with those providers. The Site wants to look at the whole child, because children develop skills in all developmental areas simultaneously.

The meeting in December 2009, where the Team began to discuss the FAPE process, was the first time the Site heard about experts outside Maine who could provide a clearer picture of what the Child's true skill levels were. This information came from Ms. Carey, who as the Team's vision expert was guiding everyone else regarding how to work with a child with CVI. If the Site had received this information earlier, it would have been considered. In his

opinion, had Dr. Morse's evaluation been conducted in January instead of July, the Child might be further along today than she is, although he doesn't know whether the evaluation repertoire would have been the same for a child 6 months younger. There was an issue regarding who was going to approve payment for Dr. Morse's evaluation. Dr. Morse was requesting numerous things, e.g., a video of the Child, reports from providers and the day care center, which she needed before she performed her observation of the Child. He doesn't know if those same items would have been requested at the earlier date.

21. During an interview conducted by the Complaint Investigator with Susan Motta, Ms. Motta stated the following: She is the Site Director for the Site. When the Child first was referred to the Site, the Site was under the impression that a child who came with a diagnosed disability was automatically eligible. Therefore, the Site believed that it didn't have to use the Battelle, and could use a more informative tool like the HELP. The Site didn't know of Dr. Morse or the evaluation tools that she uses until November 2009. Nobody on the Site's staff has experience with CVI, and none of the Child's private providers, or the people at the Division of the Blind, told them about Dr. Morse.

She doesn't know whether the Child would have been old enough in November 2009 for Dr. Morse to have evaluated her or, if so, what tools Dr. Morse would have used. She also doesn't know what the impact on the Child's rate of progress would have been if the referral had been made at that point. She doesn't believe it would have changed the placement or the service providers, although their strategies might have been a little different. The Child had two sets of providers – CDS and the private providers – who were not working together. The VNS providers in particular did not seem open to collaboration, although the child's vision therapist was. For the most part, the private providers were working from the medical model, and were not receptive to anything from the coaching point of view.

With regard to the decision to not go ahead with Dr. Morse's evaluation in March, 2010, Debra Hannigan, acting as Board Chair for the Site, asked her whether the Site had enough data to find the Child eligible without that evaluation. When she replied that it did, Ms. Hannigan said that there was no need to do the evaluation. When the IEP was being developed, the importance of Dr. Morse's evaluation became clear and she decided to proceed with it. The Site has now agreed to hire Dr. Morse to provide training to those at the Site who are working with the Child. She wanted the training to also extend to the child's contracted providers, but Ms. Hannigan didn't approve this.

22. During an interview conducted by the Complaint Investigator with Debra Hannigan, Ms. Hannigan stated the following: She is the CDS State Director, and became the acting Board Chair for the site on May 10, 2010. When Ms. Motta contacted her in early March 2010 about the evaluation by Dr. Morse, she was unaware that the Child's IFSP Team had already ordered that the evaluation be done. She asked Ms. Motta whether the Child's IFSP Team had all the information it needed in order to make the eligibility determination. When Ms. Motta replied that it did, she told Ms. Motta that it would not be necessary to have Dr. Morse conduct her evaluation.

The training by Dr. Morse has been authorized, and all those providers who are currently working with the Child, as well as the Parent, will participate.

23. During an interview conducted by the Complaint Investigator with Judy Carey, Ms. Carey stated the following: She is a teacher of the visually impaired, employed by Catholic Charities. She began working with the Child when the Child was approximately 15 or 16 months of age, prior to the Child's referral to the Site. At that point, the child wasn't doing a lot to explore her environment. One part of her work with the Child focused on trying to get the Child to use her vision. This involved creating an environment where there weren't a lot of background stimuli, and the Child could look at just one particular toy. She would spotlight the toy and encourage the Child to use her vision and reach out for it. She also was working on tactual development with the Child. The Child was a little opposed to actually using her hands to feel things, and she gave the Child a lot of experience with a variety of textures, to build tolerance for feeling those different textures on her hands.

She had worked with a child with CVI before she began working with the Student. She attended workshops on CVI about 4 years ago, which included training on conducting a CVI assessment. The assessment was informal, and involved 10 steps. Once the Site became involved in providing services to the Child, she shared the results of that assessment with the Site. At the November 30, 2009 IFSP Team meeting, the Team, for the first time, discussed having an outside person do an assessment of the Child in preparation for planning for the Child's transition to Part B. The CVI assessment she had conducted only looked at the visual component, not the cognitive or communication aspects of the Child's development. She was not an expert in these areas.

The Team was looking for some understanding of what programming would be appropriate and available for the Child after transition. She believes that everyone on the Team felt that their programming had been appropriate for the Child up until that point, but communication was always a concern, and was sort of the missing piece to the Child's programming. She suggested that Dr. Pawletko might do the evaluation, although she wasn't sure that Dr. Pawleko did evaluations of very young children. She knew of Dr. Morse, but she knew Dr. Morse was elderly and wasn't sure that Dr. Morse was still actively practicing, so she didn't offer her name. Also, while she knew that Dr. Morse had some background in CVI, she wasn't aware that Dr. Morse held herself out as an expert in CVI. She doesn't know whether Dr. Morse advertises her services in the state of Maine. In the next week or so after the November 2009 meeting, she e-mailed some colleagues asking whether they knew if Dr. Morse was still active, and whether there was anyone else they could suggest who could conduct the evaluation. By the time Dr. Pawletko responded with the suggestion that Dr. Morse conduct the evaluation, she heard the same thing from her colleagues.

She is unable to say whether, if the communications programming suggested by Dr. Morse in her report had been started earlier, the Child would be further along than she is now. There were many other areas in which the Child was delayed and was receiving services. She found Dr. Morse's suggestions helpful, but they will be much more helpful once Dr. Morse conducts her training. The providers will be able to see how they can use the information in Dr. Morse's report.

24. During an interview conducted by the Complaint Investigator with Mary Morse, Ph.D., Dr. Morse stated the following: She is a special education consultant and certified in four different areas, including as a teacher of the visually impaired. She is well published and considered an international expert on CVI.

She believes that the Site should have been able to find her as a resource for the Child if they had looked. She has been hired by the Site in the past (10 years or so ago), but she doesn't recall if any of those children had CVI involvement (she consults in a number of areas). Certainly, Ms. Carey should have known about her and been able to recommend her to the Site. According to Jean Small of Catholic Charities, there are three people in Maine with training in CVI, although she doesn't know if they have the same training and knowledge that she does.

By the time the Site contacted her, in January 2010, she was on medical leave. The date she eventually performed the evaluation of the Child, July 1, 2010, was the earliest date she was physically capable of doing it. Even at that date, she was only able to conduct the evaluation because her husband was able to drive her to Maine. The Child's evaluation was the only one she did all summer.

She uses a qualitative format for her CVI evaluations that triangulates information from three different sources: 1) information from the family; 2) medical/neurological information; and 3) data from assessments such as the Battelle and Oregon Project. She may use the same educational diagnostic instruments, but she uses the information differently. Instead of just reviewing the medical/neurological information, she looks at how those processes impact the scores obtained on the assessments. Rather than take those results at face value, she asks why the child functions at that certain level.

Having done the evaluation, the next step is to provide training to those working with the Child. At the training, she teaches staff about: neurology and the eye; the effect of damage to the brain on how one interprets what one sees; and how vision affects everything one does. There has been a significant delay in putting that training in place. She should have started in September, but she only recently received the contract from the Site. She needs to help the staff reorganize the Child's environment. The Child's classroom is too noisy and the teachers wear perfume, and both of these things interfere with the Child's learning.

The biggest issue for the child is communication; the Child needs to be given a way to understand the people with whom she interacts. The staff needs to learn another language, called an object communication system; the Child has the capacity to use objects to communicate. There is no real way to make up for the lost time in teaching this to the Child. She is unaware of the services that the Child was receiving before she conducted the evaluation, and is therefore unable to comment on them.

25. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: When the Site came to conduct the initial evaluation, she had a sense that the HELP was not the best tool for assessing the Child, but she didn't know what else

was available. Even the Oregon Project assessment used by Ms. Carey was not appropriate for the Child – it is aimed at children with severe loss of vision, and not children with CVI. The November 30, 2009 meeting was the first time that she learned of the existence of an out-of-state expert, Dr. Terese Pawletko, who could conduct a different sort of evaluation. This information came from Ms. Carey.

The initial efforts to schedule this evaluation were directed at Dr. Pawletko. Only on January 6, 2010 did the Team learn from Dr. Pawletko that she was not an expert in CVI, but that Dr. Morse had that expertise. By that time, Dr. Morse was on medical leave, and the earliest the evaluation could have been scheduled was May 3, 2010. Had the evaluation been done at that time, then by now the Child's communication device would already be in place, everyone would have been trained in its use, and the Child would have been learning how to use it and start communicating her needs. As it is, she still sometimes has to guess what the Child needs and wants.

The Child could have started at the Morrison Center with the device in place, and this would have made the transition easier for her, although the transition was not too bad. Had the evaluation been done earlier, it would have benefitted the Child's speech therapists, at the Site and at Morrison, and made the therapy more effective. She believes that the Child lost a large chunk of learning and development time. The Child could be a totally different child, better able to communicate.

VII. Conclusions

Allegation #1: Failure to complete an evaluation of the Child within 60 calendar days of the parent's consent to evaluate on November 30, 2009 in violation of MUSER §V.1.A(3)(a)(i)

Allegation #7: Failure to utilize the IEP Team as the vehicle for determining what additional data regarding the Child was needed in violation of MUSER §VI.2.J(1)

Allegation #8: Failure to provide written notice of the refusal to evaluate the Child as ordered by the IFSP team on November 30, 2009 in violation of MUSER App. 1, 34 CFR §300.503

VIOLATION FOUND

There is no dispute that the IFSP Team ordered an evaluation on November 30, 2009 that was not conducted until July 1, 2010. Within the 60 day time frame dictated by MUSER §V.1.A(3)(a)(i), it was discovered that the individual best qualified to conduct the evaluation was Dr. Morse, but that she was unavailable to do so until well after that time frame had expired. At that point, the IFSP Team needed to make a determination as to whether to proceed with having Dr. Morse doing the evaluation despite the delay, and document that decision in a Written Notice.

The Site also did not use the IFSP Team process in March 2010 to make the decision to not proceed with Dr. Morse's evaluation. Whether or not Ms. Hannigan was aware, at the time

that the decision to not proceed was made, that the IFSP Team had previously ordered the evaluation, the decision as to what additional data are needed to determine a child's eligibility is a major responsibility of the child's IFSP team (MUSER §VI.2.J(1)). Additionally, the Site did not provide notice to the Parent of that decision in a Written Notice. In similar fashion, the Site, in April, decided to conduct two further evaluations that were not discussed in the framework of an IFSP Team meeting, as required by MUSER §VI.2.J(1), and the decision was not documented in a Written Notice.

Allegation #9: Failure to include all necessary members of the IEP team on March 2, 2010 in violation of MUSER §VI.2.B

VIOLATION FOUND

MUSER §VI.2.C(1) requires that a CDS Site must conduct an IFSP Team meeting, at least 90 days prior to the 3rd birthday of a child whose eligibility for early intervention services has been established, for the purposes of developing an IFSP or IEP for implementation when the child turns 3. For the Child, the date by which this meeting was to be held was March 6, 2010. The meeting of March 2, 2010, when the Child's eligibility for Part B services was established, was presumably held to meet this requirement. Only the Parent and two case managers were present, however. No person who would be providing services to the Child was in attendance, as required by MUSER §VI.1.B(1)(e) and (f). More importantly, it was not until May 4, 2010, only 32 days before the Child turned 3, that a meeting was held at which the Child's IEP was developed. The appropriate persons were present at that meeting.

Allegation #2: Failure to conduct an evaluation under Part C of the Child's level of functioning in all developmental areas and an assessment of the Child's unique needs in each of the areas, including identification of services appropriate to meet those needs in violation of MUSER §IV.1.C(1)(b)(iii)

Allegation #4: Failure to conduct an evaluation under Part B of the Child using a variety of assessment tools and strategies to assist in determining the content of the Child's IEP in violation of MUSER §V.2.B(1)

Allegation #5: Failure to ensure that the assessments of the Child were selected and administered so that the results accurately reflected the factors being measured in view of the Child's impaired sensory skills in violation of MUSER §V.2.C(3)

Allegation #6: Failure to conduct an evaluation and assessment of the Child in all areas of suspected disability, sufficiently comprehensive enough to identify all of the Child's special education and related services needs, in violation of MUSER §V.2.C(4), (6) and (7)

VIOLATION FOUND

The Parent's complaint contained the statement, with regard to the Child's initial evaluation, that the Site "was required to perform, or provide for, a multi-domain evaluation to determine appropriate EIS – an obligation it did not meet." During the investigation, it became clear that the HELP was, in fact, a multi-domain evaluation, but that what the Parent was complaining about was that the HELP did not accurately reflect the factors being measured in

view of the Child's visual impairment – the subject of Allegation #5. There was no dispute that the HELP had no adaptations for the visually impaired. Similarly with regard to the Battelle and the Rossetti, used to inform the development of the IEP, the issue was not the absence of evaluative data per se, but that the data was unreliable because the assessments were not adapted for the Child's disability. While it is noted that Dr. Morse stated that she also utilizes the Battelle and the Oregon Project as part of her CVI evaluations, she views those results in combination with other information about the child's visual and cognitive processes to gain a sense of why a child is functioning at that level. Without that perspective, those evaluations were, by themselves, inadequate to address all of the Child's unique needs.

The Child's primary disability is her CVI. This profound impairment has effects that reach many domains. Without an evaluation that specifically assessed how the Student uses her vision and the impact of the Child's vision disability on her development and learning, the IFSP and IEP Teams were unable to identify all of the Student's special education and related services needs. The Site appeared to believe that, so long as the Child's disability was sufficiently documented to enable an eligibility decision to be reached, no additional (and no more reliable) information was required. This overlooks the equally important purpose served by obtaining valid, reliable data – to enable comprehensive, sound educational programming. An evaluation includes gathering information "that may assist in determining ... the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum, or, for preschool children, to participate in appropriate activities." MUSER §V.2.B(1)(b).

There is doubt as to whether the Site should reasonably have become aware of the services of Dr. Morse in being able to provide the necessary evaluation when the Child first came to the Site's attention. The Site clearly was aware that the assessment it was using was of limited value in the case of the Child. Ms. Carey, the source from whom the Site expected to receive guidance on working with a CVI child, was present for the initial evaluation, however. Ms. Carey was aware that communication was "the missing piece" in the Child's programming, but only made the suggestion to obtain an evaluation from Dr. Pawletko (who, as it turned out, lacked expertise in CVI) on November 30, 2009, when the Team began to focus on the Child's Part B programming. Once the Site became aware of Dr. Morse from Dr. Pawletko in January 2010, it moved to set up an evaluation, before deciding not to go forward with it in March 2010. That decision was improperly based upon the belief that the evaluation was unnecessary where the Child's eligibility could be determined without it.

The Site again changed its mind, and the evaluation went forward on July 1, 2010. As disclosed by Dr. Morse, however, given that the Site only became aware of her services in January 2010, the evaluation could not have occurred any earlier than July 1, 2010 due to her medical condition.

Allegation #3: Failure to provide early intervention services designed to meet the developmental needs of the Child in violation of MUSER §X.1

Allegation #10: Failure to provide special education, related services and supplementary aids and services sufficient to enable the Child to advance appropriately toward attaining her annual goals in violation of MUSER §IX.3.A(1)(d)

NO VIOLATION FOUND

These allegations are based solely on the Site's not having the information regarding appropriate programming in the area of communication provided by Dr. Morse until after the completion of her evaluation. No evidence was provided or uncovered that any of the providers' services being provided prior to that evaluation were inappropriate. Assuming the evaluation had been conducted during the first months after the Child became known to the Site, it is possible that the appropriate communication services could have been initiated. As pointed out by Ms. Carey, however, the Student had delays in multiple areas for which she required early intervention services. The Child may well have benefitted from Dr. Morse's suggestions being available to the Team when the Child turned three in June, 2010 and transitioned to Part B services. Dr. Morse's unavailability until July 1, 2010, however, made that impossible. It is hoped and expected that the staff training to be provided by Dr. Morse will proceed without any unnecessary further delay.

VIII. Corrective Action Plan

The Site shall promptly arrange to conduct professional training for its staff on the subjects of: 1) the IFSP Team as the decision-making entity for determination of what additional evaluative data is required; 2) the importance of evaluations, not just for determining eligibility, but to inform educational programming; 3) the need to ensure that evaluations are selected and administered so that the results accurately reflect the factors being measured in view of the child's impaired sensory skills; 4) the need to document any proposal to initiate or change an evaluation in a Written Notice; 5) the necessity for completing an evaluation within 60 days from receipt of a parent's consent; and 6) the Team members required to be present at IFSP and IEP Team meetings. Documentation of the training shall include: the names and qualifications of presenters; the agenda for the training; all hand-outs for the training; names and job titles of those who attended the training; and anonymous evaluations of the training. The Site will submit this documentation to the Due Process Office, the Parent and the Parent's advocate.