

Complaint Investigation Report
Disability Rights Center v. Augusta

November 2, 2010

Complaint #11.024CS
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Disability Rights Center
24 Stone Street
Augusta, ME 04338

Respondent: Cornelia Brown, Superintendent
12 Gedney Street
Augusta, ME 04330

Special Services Director: Donna Madore

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on September 22, 2010. The Complaint Investigator was appointed on September 24, 2010 and issued a draft allegations report on September 29, 2010. The Complaint Investigator conducted a complaint investigation meeting on October 13, 2010, resulting in a stipulation. On October 18, 2010, the Complaint Investigator received a 3-page memorandum and 2 pages of documents from the Augusta School Department (the "District"). Interviews were conducted with the following: Donna Madore, director of special education for the District.

III. Preliminary Statement

This complaint was filed by Disability Rights Center ("D.R.C."), alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Making non-individualized educational program determinations for eligible children, including determinations of the extent to which each eligible child will participate with non-disabled children in the regular class, that fail to address the unique needs of each child resulting from the child's disability in violation of MUSER §§IX. 3.A, X.2.A(2);

2. Failure to ensure that educational program decisions are made by each eligible child's IEP Team, including the parents, in violation of MUSER §§VI.2.J(4), X.2.B.

V. **Stipulations**

1. The decision that all xx and xx grade special education students at Cony High School whose IEP provided only for specialized instruction in language arts, math or both would receive their specialized instruction during the time that they would ordinarily attend social studies class was made administratively and not by each student's IEP Team.

VI. **Summary of Findings**

1. During the summer of 2010, administrators of Cony High school reworked the school's daily schedule for xx and xx grade students in order to increase instructional time. As a result, there was no longer sufficient unstructured time to permit students whose IEP provided for specialized instruction to receive that instruction without interfering with their participation in one of their content area classes, whether academic or one of the unified arts classes.
2. On or about August 18, 2010, the District sent a letter to the parents of each student receiving special education in xx and xx grade whose IEP provided for specialized instruction in language arts or math, stating that their specialized instruction would occur during the block originally scheduled for social studies. The letter went on to explain that the specialized instruction would incorporate, as much as possible, elements of the social studies curriculum. The letter invited any parents who had questions or concerns to contact one of the school administrators.
3. The students involved in this program all had IEPs providing both that: they were to receive specialized instruction in language arts and/or math; and they were to participate in the regular education language arts and/or math class.
4. On or about September 30, 2010, the District sent another letter to those same parents again explaining the pull-out program, and offering to schedule an IEP Team meeting for any parent who had concerns about this program.
5. During an interview conducted by the Complaint Investigator with Donna Madore, Ms. Madore stated the following: She is the director of special education for the District. The District takes an inclusionary approach to special education. For most students, rather than removing them from their regular education class in a subject in which they are struggling, the IEP Team chooses to have them continue in the class while supplementing it with pull-out for specialized instruction. To enhance a student's ability to be successful in the regular education class, the IEP Team will try to identify what is interfering with a student's ability to access the regular education instruction, such as problems with decoding, fluency or comprehension. The teacher in the regular education class will then individualize instruction as much as possible. Where the student continues to struggle, the IEP Team might determine

to have a special education teacher go into the regular education classroom and support the student. Only when that approach doesn't sufficiently address the student's needs will the IEP Team determine that the student should not participate in the regular education classroom, but receive pull-out specialized instruction only.

The decision to pull students out of social studies class came about as a result of a decision to restructure the schedule for the xx and xx grade students in order to increase instructional time during the day. As a result, for students that needed pull-out, their specialized instruction would have to take place during one of their classes. Since language arts, math and science were all subjects in which students received state-wide assessments, it was decided that these students would be pulled out of social studies. For every one of those students, their IEPs said that they were to participate in the regular education class in the subject in which they were also receiving specialized instruction.

VII. Conclusions

Allegation #1: Making non-individualized educational program determinations for eligible children, including determinations of the extent to which each eligible child will participate with non-disabled children in the regular class, that fail to address the unique needs of each child resulting from the child's disability in violation of MUSER §§IX. 3.A, X.2.A(2)

Allegation #2: Failure to ensure that educational program decisions are made by each eligible child's IEP Team, including the parents, in violation of MUSER §§VI.2.J(4), X.2.B

NO VIOLATION FOUND

The cornerstone of special education is the student's *individualized* education program (IEP), in which specially designed instruction is provided in a way that addresses the unique needs of the student. MUSER §§IX. 3.A, X.2.A(2). The development of the IEP, and, in particular, the decision as to the extent to which the student will participate with nondisabled students, is the responsibility of the IEP Team. MUSER §§VI.2.J(4), X.2.B. Accordingly, any decision about whether a student who required specialized instruction in a subject should also participate in the regular education class for that subject must be made by the student's IEP Team. That procedure was followed in this case.

The decision, on the other hand, as to which block of a student's schedule should be used for the student's specialized instruction is not necessarily a decision impacting the student's special education needs, and therefore may appropriately be made administratively. This was the case with regard to the choice made by the District, for students whose IEP Teams had determined that they should not be pulled out of the subject in which they were to receive specialized instruction, as to whether those students would miss unified arts, science, social studies or lunch in order to receive their specialized instruction. Of course, if this decision in some way conflicted with some other provision of any student's IEP, an alternative solution would have to be found. No information was presented that suggested that this had occurred, or that the District was unwilling to revise its program if it did. After the filing of this complaint, the District sent a follow-up memorandum to the parents offering to convene an

IEP Team meeting to discuss any concerns the parents had with the impact of the pull-out program on their child.

VIII. Corrective Action Plan

As no violations were found, none is needed.