

Complaint Investigation Report

Parent v. South

Portland

April 7, 2011

Complaint #11.064C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent

Address

City

Respondent: Suzanne Godin, Superintendent

130 Westcott Rd.

South Portland, ME 04106

Special Services Director: Kathleen Cox

Student: Student

DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on March 2, 2011. The Complaint Investigator was appointed on March 2, 2011 and issued a draft allegations report on March 4, 2011. The Complaint Investigator conducted a complaint investigation meeting on March 22, 2011 (rescheduled from the original date of March 11, 2011 at the Respondent's request). On March 25, 2011, the Complaint Investigator received 7 pages of documents from the Complainant, followed by an additional 6 pages on March 28, 2011, and received a 3-page memorandum and 83 pages of documents from South Portland School Department (the "District") on March 29, 2011. Interviews were conducted with the following: the Student; and the Student's mother.

III. Preliminary Statement

The Student is 16 years old and is currently receiving special education under the eligibility criterion Specific Learning Disability. This complaint was filed by the parent (the "Parent"), the Student's mother, alleging violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

IV. Allegations

1. Failure to fully and adequately implement the Student's IEP with respect to provision of a study period from January 25, 2011 through February 4, 2011 in violation of MUSER §IX.3.B(3);
2. Failure to base the Student's transition plan on the Student's needs, taking into account her strengths, preferences and interests, in violation of MUSER §VI.2.C(3)(a).

V. Summary of Findings

1. The Student lives in South Portland with the Parent, and is presently attending xx grade at South Portland High School.
2. On November 12, 2010, the Student's IEP Team met to conduct an annual review of the IEP. Neither the Parent nor the student attended the meeting. The Team determined that the Student would receive 2.5 hours of weekly direct instruction, along with certain accommodations. The Team also reviewed the Student's transition needs. The Student had previously expressed a desire to pursue employment in the field of child care, however, Jon Beausang, the Student's case manager, reported that the Student had more recently stated that she is unsure of her future plans.
3. The Student's IEP dated November 26, 2010 provides that the Student will receive specially designed instruction in the nature of study support for 2 hours and 30 minutes weekly. The IEP further states, under Section 11b (Child's Post Secondary Goals): [The Student] will pursue full-time employment in child care or another career to be chosen by [the Student] in the future." Under Section 11e (Transition Services), the IEP states that the Student will meet with a guidance counselor to discuss "careers in child care and/or other careers of interest."
4. The Student elected, for her second semester of xx grade, to attend a photography class. On January 31, 2011, Mr. Beausang wrote to the Parent to inform her that, as a result of the Student's decision to take photography during the period when she had previously been receiving her special education study support, the District would be unable to deliver the full measure of those services as set forth in the IEP.
5. Mr. Beausang provided the Student with a Schedule Adjustment Form to change her schedule by dropping photography and replacing it with a workshop block, during which the Student could receive her study support. The form was signed by the Parent on February 3, 2011, and the schedule change was made the next day. The Student began following the new schedule on February 7, 2011.
6. There were a total of 8 school days during which the Student attended photography rather than a workshop period. During this time period, the Student's schedule had a period for science lab, which met on two of the five blocks in the schedule. During the three blocks

when there was no science lab, the Student was scheduled for a study hall, and she used that time (with permission) to work in the special education resource room with a special education teacher, as she had during the first semester. The Student spent a total of five hours in the resource room during the eight-day period when she was not scheduled for a workshop period.

7. During an interview conducted by the Complaint Investigator with the Student, the Student stated the following: During the first semester this year, she went to the special education room for help with her schoolwork during the period she was scheduled for workshop. She also went there during the period when she sometimes has biology lab, which only meets on two out of every five days. Some time during the first semester, she met with Mr. Beausang to discuss her second semester schedule because she wanted to switch her biology class (she was unable to do that because of the rest of her schedule). She doesn't remember discussing her taking the photography elective at that time, and she thinks Mr. Beausang only had her first semester schedule to look at when they met.

During the time that she was taking photography instead of the workshop period, she continued to use the time scheduled for biology lab, on the days when biology lab didn't happen, to go to the special education room and get help with her schoolwork. This allowed her to keep up in her classes, although she would have eventually begun to fall behind if she hadn't gotten switched out of photography.

Some time during xx grade, she remembers telling Mr. Beausang that she thought she would like to work with young children after she finishes school. This year, she told him that she wasn't sure she wanted to do that, and she wasn't sure what else she might want to do.

8. During an interview conducted by the Complaint Investigator with the Parent, the Parent stated the following: She believes that the Student didn't receive the services specified in the IEP because Mr. Beausang, in his January 31, 2011 letter, said that the District would be unable to provide the services. She was aware that the Student was accessing the special education room for study help during her non-biology lab days during the time she was enrolled in the photography class.

With regard to the transition plan in the IEP, it is not accurate that the Student is interested in working with young children; she feels that the District staff just puts something into the IEP and that becomes accepted fact.

VI. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to provision of a study period from January 25, 2011 through February 4, 2011 in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

The Student's IEP provides that she is to receive 2 ½ hours of study support per week in the special education setting. This allegation arises from a choice that the Student made to

schedule an elective (photography) during a period when she previously had been receiving that support. When the case manager saw the Student's schedule and realized there was a conflict (five school days after the second semester began), he promptly notified the Parent of the situation and sent home the form required for the Student to switch out of photography and back to the workshop period. This was accomplished three school days later.

Not only was the time during which this situation existed of very short duration, but the Student nevertheless received the full amount of services required by the IEP. During the first semester, the Student had been receiving study support both during her workshop period and during the period when she sometimes had biology lab, in other words far more than the amount of time required by her IEP. During the eight days she was enrolled in photography, the Student continued to utilize her biology lab period (on the days when there was no lab session) to obtain this support. The Student spent a total of five hours in the special education room during the eight day period, or 2 ½ hours per week.

Allegation #2: Failure to base the Student's transition plan on the Student's needs, taking into account her strengths, preferences and interests, in violation of MUSER §VI.2.C(3)(a)

NO VIOLATION FOUND

The Parent based this allegation on the fact that the transition section of the Student's IEP made reference to an interest in working with young children, which interest the Parent asserted was not held by the Student. The reality is that the Student at one time expressed such an interest, and only recently decided that she was unsure about her vocational goals. The transition section of the Student's IEP is completely consistent with this circumstance, stating as it does that the Student will "pursue full-time employment in child care or another career to be chosen by [the Student] in the future."

It must be pointed out that the decision of the Parent to not attend, or to have the Student attend, the IEP Team meeting at which the IEP was developed meant the loss of an opportunity for them to have further input into it.

VII. Corrective Action Plan

As no violations were found, none is required.