

Complaint Investigation Report
Soifer v. RSU #54

February 5, 2013

Complaint #13.037C

Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: John Soifer
61 Academy Cr.
Skowhegan, ME 04976

Respondent: Brent Colbry, Superintendent
196 West Front St.
Skowhegan, ME 04976

Special Services Director: Ann Belanger

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on December 26, 2012. The Complaint Investigator was appointed on December 28, 2012 and issued a draft allegation report on January 3, 2013. The Complaint Investigator conducted a complaint investigation meeting on January 18, 2013 (rescheduled from the original date of January 7, 2013 at the Respondent's request), resulting in two stipulations. On December 26, 2012, the Complaint Investigator received a two-page memorandum and 13 pages of documents from the Complainant, plus one additional page on January 18, 2013, and received a three-page memorandum and 23 pages of documents from R.S.U. #54 (the "District") on January 28, 2013. Interviews were conducted with the following: Ann Belanger, co-director of special services for the District; Antoine Morin, special education teacher for the District; John Soifer, special education teacher for the District; Elizabeth Ireland, special education teacher for the District; and Gordon Small, teacher for the District.

III. Preliminary Statement

The Student is xx years old and is currently receiving special education under the eligibility criterion Specific Learning Disabilities. This complaint was filed by John Soifer, the Student's public school case manager, as an Interested party, alleging violations of the Maine

Unified Special Education Regulations {MUSER), Chapter 101, as set forth below. The Student's father granted express written permission to Mr. Soifer to receive personally identifiable information about the Student.

IV. Allegations

1. Failure to fully and adequately implement the Student's IEP with respect to provision of assessment accommodations in connection with a math assessment conducted on 11/16/12, in violation of MUSER §IX.3.B(3).

V. Stipulations

1. The Student was proctored by Mr. Morin, a special education teacher, during the time he was taking the math quiz on 11/16/12.
2. The IEP dated 10/20/12, attached to the complaint, was the IEP in effect at the time the Student was taking the quiz.

VI. Summary of Findings

1. The Student lives in Norridgewock with his father, and is attending xx grade at Skowhegan Area High School (the "School"). He has been receiving special education services since November 2005.
2. The Student's IEP dated October 20, 2012 lists, as needs of the Student (Section 3.D), "remediating assessments when warranted," as well as "improved math skills." In Section 8, the following assessment accommodations are provided: "can use notes/formulas/reviews for all assessments; allow verbal prompts for all assessments;...allow assessments in special education setting;...modified (differentiated) content for assessments corresponding to differentiated curriculum from instruction." The IEP further states that these accommodations "are available for [the Student] at all times unless exempted by the case manager."
3. On November 16, 2012, the Student went to a special education classroom to take a math quiz. Two other students were present in the classroom to take the quiz, and the quiz was proctored by Antoine Morin, a special education teacher. Mr. Morin administered the quiz by providing a short review of relevant concepts to the students prior to presenting to them the quiz questions. Students worked on their answers individually, although there were one or two occasions when one of the students announced the answer that student had gotten, and asked Mr. Morin to confirm that it was correct. Mr. Morin did not indicate whether such answers were or were not correct. Mr. Morin continued to proctor the quiz, and did not observe the students looking at one another's papers or otherwise sharing answers.
4. The answers of the three students to the quiz questions were substantially identical, including one incorrect answer that appeared on all three answer sheets. When the regular education teacher, Gordon Small, asked one of the students about the quiz, that student told him that the students took the quiz as a group. Mr. Small understood this to mean that

the students had collaborated on their answers, and he therefore asked the students to retake the quiz with no penalty attached to this, In the interim, a score of "0" appeared in the Student's record for this quiz.

5. Following meetings involving Mr. Morin, Mr. Small and others, Mr. Small retracted his request that the Student retake the quiz. Instead, he proceeded to combine the Student's score on the quiz with his score on a section of a subsequent unit test covering the same material. This resulted in the Student's quiz score (94%) being combined with his score from the section of the unit test (61%), yielding a final score of 78%. This score was entered in the Student's record.

6. During an interview conducted by the Complaint Investigator with Antoine Morin, Mr. Morin stated the following: He is a special education teacher at the School, and has had the Student in his G-5 math lab classroom approximately once every other week for 80 minutes, when he provides support to the Student for math assessments and homework.

On November 16, 2012, he administered a math quiz to the Student and two other students. As part of the accommodations to which those students were entitled, he prefaced each section of the quiz with a mini-lesson on the concepts covered by that section. He did not explain how to do the specific problems on the quiz, but discussed the concepts underlying those problems and provided sample problems. He then read the quiz questions relating to each mini-lesson aloud, and the students worked individually on the answers to those questions. While the students were working on the quiz problems, there was some discussion about the methods to be used to solve those problems, but he would not give them answers nor tell them whether an answer was correct or not (once or twice a student asked whether a certain answer was correct). To his observation, the students did not look at one another's answers nor otherwise collaborate on the answers.

He believes that he administered the quiz in a way that met the Student's needs as required by the Student's IEP. Although there may have been several subsequent meetings to discuss how math assessments are going to be administered in the future to accommodate the needs of special education students, those meetings will not result in a change to the methods he used in administering the quiz on November 16th.

At one of those meetings, involving Mr. Small, Mr. Wilson (the principal of the School) and himself, Mr. Small decided on a method for grading the Student's November 16th quiz. He did not participate in this decision as the grading of the quiz was not his responsibility.

17. During an interview conducted by the Complaint Investigator with Ann Belanger, Ms. Belanger stated the following: She is a co-director of special services for the District. She reviewed with Mr. Morin the method he used in administering the math quiz to the Student and two other students on November 16, 2012. She was satisfied that Mr. Morin's methods were appropriate. Her only concern in that regard was with the lack of adequate advance notice Mr. Morin received regarding the quiz and the students who would be taking it.

The math department has since agreed that they will provide more advance notice of the contents and purpose of each assessment and will identify which students are to take the assessment, so that the teacher administering the assessment has time to review those students' IEPs and better prepare before the assessment is given. She is also working on getting the special education math teachers to spend more time in the regular education classrooms so they have a better knowledge of what their students are working on.

Mr. Soifer was under the impression that the Student had initially been given a score of zero on the math quiz, but he was mistaken. Until a grade is assigned by the teacher, the computer registers the assessment score as zero as a place holder; once the grade is entered it replaces that zero. Mr. Morin met with Mr. Small and they came up with a formula to assess the student's performance on the quiz. The score that came out of that meeting was entered in the Student's record.

8. During an interview conducted by the Complaint Investigator with John Soifer, Mr. Soifer stated the following: He is a special education teacher at the School, and has been the Student's case manager since the Student was in the xx grade. He spoke with Mr. Morin about the math quiz and reviewed Mr. Morin's written description of the methods he used to administer the assessment. Based on that information, he feels that the Student's accommodations were being implemented exactly as intended. He believes that all of the special education teachers at the School use those same methods when administering assessments to students with similar assessment accommodations.

He doesn't know whether it was as a place-holding default setting or was intentional, but for considerable period of time the Student saw a score of "0" when he looked at the record of his quiz grade. He believes that this had a psychological effect on the Student and affected his school performance for a couple of weeks. He heard comments from other teachers that the Student "shut down" during that period.

He understands that the Student's quiz grade was eventually adjusted using a formula that combined the Student's performance on the quiz with his performance on another assessment, but he is not satisfied with that resolution. He thinks that the Student should have received his actual score on the quiz, and his actual score on the later assessment, with the option to retake that second assessment as provided by the Student's IEP.

He also believes that the math quiz did not reflect the "modified (differentiated) content for assessments corresponding to differentiated curriculum from instruction" provided by the IEP. The quiz given to the Student was identical to the quiz given to all other students in that class. Only the supports provided to the Student were different. In the classroom, differentiated instruction often takes such forms as providing formulas for the student to use in solving problems (rather than their having to reply on their memories), fewer problems to solve, and practice problems leading up to the actual problems. He agrees, however, that the methods used by Mr. Morin replicated some of those techniques. He also agrees that the score achieved by the Student on the quiz (94%) suggests that the Student didn't require differentiated content of the quiz beyond the supports provided by Mr. Morin.

9. During an interview conducted by the Complaint Investigator with Elizabeth Ireland, Ms. Ireland stated the following: She is a special education teacher and the head of the special education department at the School. She has the Student in one of her classes, but she has not worked with him very much in math. After the math quiz became an issue, she discussed with Mr. Morin the methods he used in administering the quiz, and she read his written summary of the events of that day. She believes that Mr. Morin administered the quiz in a manner that was appropriate for the assessment accommodations in the Student's IEP.

She also spoke about the issue with Mr. Small, who was concerned because he believed that the quiz was not worked on individually by those students but was done as a group. She understands that Mr. Small graded the Student's quiz by averaging in the relevant portion of a test that was given at the end of that unit. She doesn't think that it was appropriate to do that, because so long as the quiz was given in a manner consistent with the Student's accommodations the Student should have received whatever score he was entitled to without modification.

As to whether the Student's accommodations required that the quiz being given to the Student had to be differentiated in some way from the quiz given to regular education students, that would depend on the supports that were being given to the Student. The Student has memory deficits, so that if the Student were given notes, formula cards and/or example problems at the time he was taking the quiz, the content of the quiz might not need to be differentiated.

As a result of the dispute surrounding this quiz, there have been conversations among the special education department staff as to how to better educate regular education staff members about these assessment accommodations so that a common understanding might result.

10. During an interview conducted by the Complaint Investigator with Gordon Small, Mr. Small stated the following: He is in his first year as a math teacher at the School, and the Student (as well as the two other students who took the math quiz) is in his class. On the day of the quiz, he notified Mr. Morin that the three students would be coming to take the quiz. He assumed that, although the students would be provided with certain prompts, they would be taking the quiz on an individual basis.

When he graded the quizzes at the end of the day, he discovered that all three answer sheets were exactly the same, including the same mistake appearing on all three. The work also looked unlike what he had seen before from those students. He asked one of the students why the quiz sheets looked the same, and she told him that they had taken the quiz together as a group. He later spoke to Mr. Morin (the quiz was given just before the Thanksgiving break, and it took a while before he was able to connect with him), who told him that the students appeared not to understand the material, so he did the quiz with the group on the board.

Having the students work on the quiz as a group was not consistent with his expectations, and neither did the IEP accommodations include working on assessments as a group, so he offered to allow the students to retake the quiz individually without any penalty. As Mr. Morin had remediated a deficit in the students' understanding of the concepts being tested, this would be a way of assessing if their understanding had improved after remediation. He reviewed the

situation with Mr. Campbell (his department head) and Mr. Wilson, both of whom supported his taking that position. Mr. Soifer, however, objected to the Student retaking the quiz. He then attended a meeting with Mr. Wilson and Mr. Morin to discuss the grading of the quiz, and from that meeting came a solution to the problem. The students had subsequently taken a unit test (administered to the students in the special education classroom) which included a section covering the same material as appeared on the quiz. The students' scores on that section of the test were combined with their scores on the quiz, and the combined scores were recorded as their grade on the quiz. This was explained to the students. The students also received their full scores on the unit test. There was also discussion at the meeting that in future test problems would not be worked out for a group of students on the board. He knows that Mr. Campbell had further discussions on the subject of assessment accommodations with members of the special education department.

He did not understand from Mr. Morin's description of how the quiz was administered (he felt that Mr. Morin was vague about how he administered the quiz) that the students worked on the quiz problems individually after receiving a general review of the concepts underlying the problems from Mr. Morin, and he believes that neither Mr. Wilson nor Mr. Campbell had that understanding. If he had understood this to be the case, he would have responded differently to the quiz grading, although he would still have had concerns about the answers being identical.

VII. Conclusions

Allegation #1: Failure to fully and adequately implement the Student's IEP with respect to provision of assessment accommodations in connection with a math assessment conducted on 11/16/12 in violation of MUSER §IX.3.B(3)

NO VIOLATION FOUND

There is no dispute that the November 16, 2012 math quiz was administered to the Student in a manner consistent with the Student's IEP assessment accommodations. The complaint underlying this investigation was with regard to the grading of the Student's quiz.¹ Although grading of tests is a matter within the responsibility of the classroom teacher, were a teacher to penalize a special education student for having received designated accommodations this could violate the rights of the student to those accommodations. That is not what happened in this instance, however.

Mr. Small's response to the Student's quiz was based on the fact that the three students' quizzes all showed identical answers (including one identical wrong answer), and his misunderstanding of the methods used by Mr. Morin in administering the quiz. Mr. Small intended that the Student's quiz answers would be the result of the Student's individual efforts, rather than the combined efforts of the group of three students taking the quiz. He

¹ Although Mr. Soifer also raised an issue regarding a failure to differentiate the quiz contents in order to meet the Student's needs, there was no evidence presented that the Student required such differentiation provided he received the other accommodations implemented by Mr. Morin during the administration of the quiz. To the contrary, the 94% scored by the Student on the quiz, which represented his individual work according to Mr. Morin, strongly suggests that such differentiation was not needed.

believed that not to have been the case, and his belief was supported by the description provided by one of the students and by the students' answers themselves. Mr. Small, having found Mr. Morin's description of his methodology to have been vague on the details. Given his understanding and the basis for it, Mr. Small's grading of the Student's quiz was not unreasonable.

Mr. Soifer's complaint regarding the quiz appears to have highlighted a need for more and better communication between the special education staff and regular education staff with regard to assessment accommodations. Steps have already taken place to address this need, and further efforts are being considered. The improved communication should help avoid similar misunderstanding in the future.

VIII. Corrective Action Plan

As no violations were found, none is required.