



STATE OF MAINE
DEPARTMENT OF EDUCATION
23 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0023

PAUL R. LEPAGE
GOVERNOR

February 20, 2014

JAMES E. RIER, JR.
ACTING COMMISSIONER

Michael Cormier, Interim Superintendent
RSU#40
P.O. Box 701
Union, ME 04862

RE: Complaint Investigation #14.037CS, "Disability Rights Center v. RSU #40"

Dear Mr. Cormier:

This request for a systemic complaint investigation was filed on January 2, 2014. The complaint alleged that your school district had a policy, practice or procedure of applying improper criteria, including criteria applicable to determinations of eligibility for special education services, when determining whether a student who has been found eligible for such services also requires certain related services. Attached to the request for the complaint was an "Occupational Therapy Eligibility Form" appearing to support the allegation that this practice had been followed in at least some instances. A complaint investigation meeting was held in this case on February 3, 2014, resulting in the following stipulations:

1. During the period from January 2, 2012 to January 2, 2014, the District used the "Occupational Therapy Eligibility Form" attached to the Complaint for some students during the course of the IEP Team's deliberations concerning the need of an identified eligible student for occupational therapy as a related service in order to benefit from his or her special education program.
2. During the period from January 2, 2012 to January 2, 2014, the District used the Maine DOE "Speech/Language Eligibility Form" for some students during the course of the IEP Team's deliberations concerning the need of an identified eligible student for speech/language therapy as a related service in order to benefit from his or her special education program.

At the meeting, Mr. Opuda also described a proposal to resolve the complaint, later submitted to the Department in written form. The proposal was to engage in a review of student records calculated to identify those students at risk for having been denied one or more of the related services in question (speech/language, occupational therapy ("OT") and physical therapy ("PT")) during the legally applicable period (two years prior to the filing of the request for investigation), and to then convene the IEP Teams for those students and, using appropriate criteria, reconsider the issue of whether those students need related services in order to benefit from their special education. To the written proposal was attached two forms which RSU #40 (the "District") proposed to utilize in making those determinations.

Following the complaint investigation meeting, and after further discussions with the complaint investigator, Jonathan Braff, Esq., regarding the resolution proposal, you and the Department arrived at a resolution agreement. The terms of that agreement are as follows:

I. RSU #40 (the "District") will identify all students evaluated for speech/language, OT and/or PT during the legally applicable time period (January 2, 2012 through January 2, 2014).

2. The District will review the student records of each of the identified students and further identify those students for whom an IEP Team determination was made to not provide one or more of the related services for which the student was evaluated.

3. The District will further review the student records of the students identified in step 2 above to further identify those students who continue to be residents of the District, enrolled in the District and currently IDEA eligible. Those students will comprise the pool of students who are at risk for having been denied one or more of the related services due to the application of improper criteria (the "At Risk Pool").

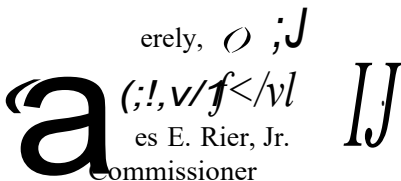
4. The District will convene an IEP Team meeting for each of the students in the At Risk Pool as soon as practicable but before the end of the current school year, unless a later date is agreed to by the student's parents and the District. At the meeting, the IEP Team will review existing evaluations, observations and classroom performance and again consider whether the student needs the related services previously denied in order to benefit from his/her special education. The proposed forms may be used to guide this determination insofar as they contribute to the IEP team's understanding of the child's educational and functional needs, but the IEP team will not use specific test scores as absolute qualifiers for services. Where a determination is made to provide a related service previously denied the student, the student's IEP will be amended to include the service.

5. For those students in the At Risk Pool for whom the IEP Team determines to provide a related service previously denied to them, the IEP Team will proceed to determine the extent to which those students are entitled to compensatory services for the previous denial of services, i.e., the extent to which the deprivation of the related services harmed the student educationally and the appropriate amount of additional services necessary to compensate for that harm.

6. At the end of each month, the District will provide to the Department a copy of the Written Notice of each of the IEP Team meetings conducted in accordance with this agreement during the month.

7. The Department shall, as soon as is practicable, issue guidance to the special education field on the subject of the proper procedure for determination of whether or not to provide related services to a student eligible for special education services.

I appreciate your district's efforts in arriving at this resolution, and expect that it will result in positive outcomes for your students receiving special education services.

Respectfully,

James E. Rier, Jr.
Commissioner

JER:JB:dt:sb

- c: Karen Etheridge, Special Services Director, RSU 40
- Michael Opuda, Consultant
- Amy Tchao, Esq.
- Karen Farber, Disability Rights Center, Interested Party
- Jonathan L. Braff, Esq., Complaint Investigator
- Pauline Lamontagne, Esq., Due Process Coordinator
- Susan J. Parks, C.A.S., Due Process Consultant
- Janice Breton, Special Services Director, Maine DOE