

Complaint Investigation Report
Parent RSU #20

May 29, 2014

Complaint #14.046C
Complaint Investigator: Jonathan Braff, Esq.

I. Identifying Information

Complainant: Parent
Address
City, Zip

Respondent: Brian Carpenter, Superintendent
Box 363
Belfast, ME 04915

Special Services Director: Sharon Goguen

Student: Student
DOB: xx/xx/xxxx

II. Summary of Complaint Investigation Activities

The Department of Education received this complaint on April 17, 2014. The Complaint Investigator was appointed on April 25, 2014 and issued a draft allegations report on April 30, 2014. The Complaint Investigator conducted a complaint investigation meeting on May 9, 2014, resulting in a set of stipulations. On May 9, 2014, the Complaint Investigator received 14 pages of documents from the Complainant, and received a 14-page memorandum and 107 pages of documents from R.S.U. #20 (the "District") on May 23, 2014. Interviews were conducted with the following: the Student's mother.

III. Preliminary Statement

The Student is xx years old and is currently placed at the Sweetser Residential Program ("Sweetser") in Belfast, Maine. This complaint was filed by 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 find the Student eligible for special education services despite evidence that she qualified for those services under the category Emotional Disturbance in violation of MUSER §§II.36 and VII.2.E

V. Stipulations

1. The Student was evaluated by the District for special education eligibility and determined not to be eligible on April 8, 2014.
2. The Student has several diagnoses under the DSM codes.

VI. Summary of Findings

1. The Student was placed at Sweetser on January 9, 2014. She began attending xx grade at Old Town High School in September 2013 having earned 12.5 credits during the prior two years at Hampden Academy, and was on track to graduate with her class. Shortly after the start of the school year, the Student was placed at New Day Crisis Unit in Calais, Maine following an incident where she became disoriented after ingesting psycho-active medication allegedly given to her by a friend at school.

2. In April 2013, the Student was admitted to Spring Harbor Hospital following some superficial self-injurious behavior. She also received crisis support in May 2013 following two reports of stealing. The Student has received the following diagnoses (as recently as November 26, 2013) from her pediatrician, Paula Lockhart, M.D.: ADHD - mixed type, borderline personality disorder, reactive attachment disorder, mood disorder, NOS, and history of PTSD.

3. The Student had been found eligible for a Section 504 plan on December 4, 2012. While she was at Old Town High School, the Student's 504 plan was updated, and she was referred for evaluation to determine eligibility for special education. The Student left Old Town High School and entered New Day Crisis Unit before the referral process could be completed.

4. After the Student began residing at Sweetser, the District held a Section 504 meeting on January 10, 2014. The District explained that the Student would be able to attend Belfast High School with her 504 plan in effect. The Student's mother would not allow the Student to attend that school, stating that she wanted the Student to attend the Sweetser special purpose private school. It was agreed that the Student would be referred for evaluation to determine special education eligibility, and would receive tutoring in the meantime.

5. On February 10 and 11, 2014, an educational assessment of the Student was conducted by Melissa Sylvester of Sweetser. The Student's standard scores on the Woodcock-Johnson III Tests of Achievement were in the range of 89 to 122 (in the average to high average range), with the exception of a score of 72 in writing fluency (in the low range). Ms. Sylvester, in her report of the assessment, stated that she felt the Student "is capable of writing at a faster pace than demonstrated during the Writing Fluency subtest." Ms. Sylvester also commented that the Student "was able to remain focused for lengthy periods of time, up to two and a half hours, and worked with focus and care. When tasks became difficult, [the Student] continued

to put forth her best effort and did not show signs of frustration.” In her summary, Ms. Sylvester stated that the Student “presents as a student with solid academic skills” and that she expected that the Student would have little difficulty completing school work given to same aged peers.

6. As a further component of the Student’s evaluation, on February 11, 2014, the Student was observed by Dan Parker during the Student’s tutoring session. Mr. Parker found that the Student was not distracted from her work, despite various noises in her environment and another student who walked through the room being used for tutoring, yelling at a staff member and slamming doors. Mr. Parker concluded that the Student was able to focus on her academics for an amount of time comparable to her same age peers, that her emotional state seemed comparable to her same age peers, and that he did not observe any behavior that would adversely affect her learning.

7. As a further component of the Student’s evaluation, on March 20, 2014, the Student underwent a psychological evaluation administered by Thomas Evans, a certified school psychologist. The evaluation included a review of records, interviews of the Student and school staff, and administration of the Behavior Assessment System for Children, 2d ed., Teacher Rating Scales (“BASC2 TRS”), the Behavior Assessment System for Children, 2d ed., Self Report on Personality (“BASC2 SRP”), and the Woodcock-Johnson III Tests of Cognitive Ability (“W-J III COG”).

8. Mr. Evans reported that the Student seemed to attend well to tasks and persist through difficulty in the testing environment. The Student scored in the average range or above on all of the clusters in the W-J III COG, with the exception of a below average score (23rd percentile) in the General Information cluster. The ratings from the BASC2 TRS indicated average, age-typical behaviors in most areas, with the exception of somatization (tendency to be overly sensitive to and complain about relatively minor physical problems). The ratings from the BASC2 SRP suggested age-typical perceptions and behavior in most areas, with the exception of Relations with Parents.

9. Mr. Evans described his interviews with staff members from the Student’s prior two high schools as showing that the Student was a “quiet though socially-connected student who generally works well in class but presents difficulty completing work outside of class at times.”

10. In the summary of the evaluation report, Mr. Evans stated that while many of the Student’s challenges seem to center around the relationship with her mother, the Student’s behavior at school “on a day-to-day basis... looks average and age-typical historically year-to-year.” Citing the Student’s “history of difficulty organizing, completing and returning work outside of class, working independently, sustaining attention to tasks, and following directions,” Mr. Evans suggested that the Student’s IEP Team should consider her for eligibility under the “Other Health Impairment” category, and made recommendations for such things as providing a copy of classroom notes or other visual supports, limiting distractions through seating, and writing out directions. He also recommended that the Student continue to work with a counselor on such things as forming and maintaining healthy relationships, and thinking ahead of the consequences of her actions.

11. The Student's IEP Team met on April 8, 2014 to review the evaluations and make a determination as to eligibility. At the meeting, one of the Student's tutors reported that the Student had been placed in honors level algebra II, had earned 0.5 credits in physics, that the Student was always polite and always did her homework, and that she saw nothing to indicate that the Student could not be successful in a public school setting.

12. The Team completed the Maine DOE Learning Disability Evaluation Report and Adverse Effect Form, and the District's own Emotional Disturbance Evaluation Report. The results were that the Student did not have a learning disability or exhibit the characteristics of an emotional disturbance, and that there was no adverse effect on educational performance resulting from the Student's disability. Based on these findings, the District determined that the Student was not eligible for special education services.

13. The District offered to have the Student begin attending Belfast Area High School immediately, and revised her 504 plan to include monitoring of the Student's internet use, notification of the office whenever the Student was not in her assigned area, directed study, regular communication with a clinician at Sweetser, and various classroom accommodations. The Student's mother disagreed with the District's determination, and stated that she wanted the Student to attend the Old Town Regional Program when she returned home to live.

14. At present, the Student remains at Sweetser and has received no educational services since April 8, 2014. The Student is expected to return home on June 15, 2014.

15. During an interview conducted by the Complaint Investigator with the Student's mother, the Student's mother stated the following: The Student has had multiple instances of behavioral problems, and has served many three-hour detentions. She stole property on several occasions while attending school in Hampden, and was suspended for stealing while in xx grade. In xx grade, one day the Student walked out of school and went to the supermarket. On another occasion, the school reported that they couldn't find the Student and she was missing for 1½ hours. In xx grade, the Student stole another student's iPod. She agrees that the Student's behavior has been good while at Sweetser, but she believes that is because the Student wants to get out of that place.

The Student's ability to maintain focus has always been an issue. The Student needs assignments broken into manageable segments. Schools have been willing to do this, but the Student needs to be in classes with fewer students so there will be fewer distractions. The Student also needs help with organization of her work. The Student doesn't usually refuse to do work; she can be a good kid. Typically, the Student works really hard at the end of the school year to make up her missed assignments and ends up passing her classes.

The Student is very impulsive, and will decide to do something on the spur of the moment without thinking through the consequences. The Student has several times used Facebook while at school to try and make contact with her biological parents (the Student is adopted). When she did have contact with the parents, the Student's grades immediately suffered. The Student may also choose to do her work inappropriately. For example, the Student had an assignment to make a poster reflecting her thoughts and feelings on the subject of animal rights. After looking at what the Student had done so far, the teacher told her to add emotional

words to the poster. The Student wrote on the poster the words “emotional words.” The Student received a B+ on the assignment, even though it was turned in three days late. The teacher told her that if it had been on time, it would have gotten an A. When asked about the “emotional words,” the teacher told her “Well, she tried.”

The Student doesn't make good choices when it comes to making friends; she seeks out individuals with behavior issues. The Student was spending time with a boy who had raped one of the Student's friends. The Student also tends to make false accusations; she reported that a guidance counselor loved her and accused him of wanting her to become part of his family.

The Student's 504 plans haven't worked in the past. Hampden and Old Town had provisions in their plans similar to those offered by the District, and the schools still couldn't keep track of the Student. If there had been more supervision, the Student wouldn't have been able to take that pill, and wouldn't have been missing for 1½ hours. Old Town promised that there would be teachers in the hallways watching out for the Student, but the Student knows how to get around those kinds of things; at home, she once jumped out of the bathroom window. The Student needs smaller classes in a smaller school, with staff that is trained to work with students that have mental health issues. The teachers need to understand that, on a given day, the Student may need space to work through some issues. A smaller school will make it harder for the Student to just slip out and not be noticed.

VII. Conclusions

Allegation #1: Failure to find the Student eligible for special education services despite evidence that she qualified for those services under the category Emotional Disturbance in violation of MUSER §§II.36 and VII.2.E

NO VIOLATION FOUND

MUSER §VII.2.E defines Emotional Disturbance as a condition which exhibits one or more of a set of characteristics over a long period of time and to a marked degree “that adversely affects the child's educational performance.” The characteristics are described as follows:

- a) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- c) Inappropriate types of behaviors or feelings under normal circumstances;
- d) A general pervasive mood of unhappiness or depression;
- e) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to students who are ‘socially maladjusted,’ unless it is determined that they have an emotional disability.

Of the above characteristics, the only one that correlates with the information contained in Mr. Evan's psychological evaluation is (e), referred to on the BASC2 as somatization. It is unclear, however, whether the Student has that characteristic "to a marked degree." More significantly, there is little evidence that this characteristic creates an adverse effect on the Student's educational performance. There was nothing in the investigation to suggest that the Student missed significant amounts of school time as a result of headaches or other physical ailments, such that her ability to make progress in her classes was impaired.

To the contrary, it appeared that the Student was making good progress academically, missing time from school primarily as a result of incidents involving theft or drug use. Those behaviors on which the Student's mother focuses - drug use, stealing and elopement - are better characterized as social maladjustment than emotional disturbance. As such, those behaviors do not support a finding of disability under that category. *See Springer v. Fairfax County School Board*, 134 F.3d 659 (4th Cir., 1998)(A student's stealing, cutting classes, elopement, drug use and reckless behavior constituted social maladjustment and did not make him eligible for special education under the category emotional disturbance).

Although the Student's IEP Team did not consider the Student specifically for the disability category Other Health Impaired, despite Mr. Evans' suggestion in his evaluation report that it do so, that category (MUSER §VII.2.J) requires a finding of "limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as...attention deficit hyperactivity disorder...and adversely affects the educational performance." The Student had received a diagnosis of ADHD, but although the Student's mother recounted a history of the Student having difficulty with focus, this was not corroborated in either the psychological testing, reports of the Student's teachers or Mr. Parker's observation of the Student. It might be noted that the observation and the teachers' interactions with the Student all took place in the context of the Student receiving tutoring, where the distractions were fewer (although still present). Even if adverse effect could be found to exist, however, this would not entitle the Student to special education services; the Student must still be found to need special education by reason of her disability. *See Mr. and Mrs. I v. M.S.A.D. No. 55*, 480 F. 3d 1, 8 (1st Cir., 2007).

"Special education" means specially designed instruction. MUSER §II.36. There was no indication that the Student required specially designed instruction. Rather, the Student's suggested needs were in the nature of accommodations, *e.g.*, breaking assignments into smaller parts, monitoring of the Student's whereabouts, special seating, etc. Such accommodations do not amount to specially designed instruction. *See L.J. v. Pittsburg Unified School District*, 114 LRP 22240 (Student found not eligible where general education accommodations allowed the student to be successful in the classroom). The District, while finding the Student ineligible for special education, proceeded to revise her 504 plan to include such things as eyes-on supervision during computer use, monitoring the Student's presence in her assigned area and notifying the office if she was not present, verifying directions, providing redirection when off task and regular communication with the Sweetser clinician. Those accommodations appear to have adequately addressed the Student's identified needs, and would have gone into effect but for the Student's mother's decision that

she did not trust the District to implement the plan, or trust the Student to not find ways of circumventing them. As a result, the Student has gone without any educational services for the last three months of the school year.

VIII. Corrective Action Plan

As no violations were found, none is required.