

Complaint Investigation Report
Parents v. Deer Isle-Stonington CSD
Complaint 19.040C
Complaint Investigator: David C. Webb
December 28, 2018

The Department of Education received this complaint on November 4, 2018. The complaint investigator reviewed all documents, information, and responses from the parties. An interview with the Parents was held on December 13, 2018. Interviews with the District's Special Education Administrator, as well as the Student's special education teacher, classroom teacher, and educational technicians were held on December 13, 14, and 21, 2018.

FACTUAL FINDINGS

1. The 14-year old Student is in the eighth grade. She is regarded as a conscientious student and a hard worker who always completes her homework. The Student qualifies for special education and related services as a student with a Specific Learning Disability.
2. The Student's April 26, 2018 IEP stated that:
 - the Student is presently working at a 4.5 grade math level, and that she needs resource room instruction to address her weaknesses in problem solving, numerical operations and math fluency;
 - [The Student's] delays in math and diagnosis of SLD interfere with her ability to learn in the mainstream classroom;
 - Due to her identification of SLD in reading and math and her low processing speed, [the Student] has problems with organizational skills that need special instruction in the resource room and support in her regular education classes to organize her work and day.
3. At the Student's April 26, 2018 IEP team meeting and annual review, Katharine Shrader, the Student's special education teacher, reported that the Student:
 - "...consistently needs to review the previous lesson and then hear how the next lesson is building on previous knowledge;"
 - "...needs to work on making the basic math facts in all operation areas;"
 - "...struggles to maintain focus if there are a lot of different things happening in her area of instruction..."
4. The Student's IEP team determined that the Student would receive specially designed math instruction in the resource room for five 50-minute sessions per week with the Student's special education teacher. The team also determined that the Student would receive the balance of her instruction in the regular education classroom with the following modifications and supports to be provided in all classes, as needed:
 - Alternative channels for instruction;

- Break down directions into small steps and provide a list of steps in writing;
 - Allow alternative assignment methods;
 - Provide copies of notes for lectures.
5. On August 20, 2018, the District sent a form letter to the Parents stating that the District would be utilizing a “Push In” model and would therefore be changing the location of the specially designed instruction provided to the Student to the regular education classroom. The letter noted that the District “would not be changing the special education services identified in the IEP but may be changing where they are provided.” The August 20, 2018 letter noted that some IEPs may need to be amended to reflect time in the classroom, and that “your child’s Special Education Case Manager...Kathy Shrader...will contact you in the near future to explain the amendment process and answer any questions.”
 6. In an interview with the Complaint Investigator, the Parents stated that no one from the District contacted them with regard to this letter prior to the start of school on September 4, 2018.
 7. In an interview with the Complaint Investigator, Katharine Shrader, the Student’s Special Education Case Manager, said that the Student’s IEP Team did not make the decision to take the Student out of the resource room.
 8. The Student attended the first three days of school, September 4-6, 2018, in the regular education math class.
 9. The Parents stated that the Student felt stressed and upset when she was placed in the regular education math environment and came home crying and saying: “I am stupid”.
 10. A meeting was requested by the parents to address their concerns about this placement. An IEP team meeting was held on September 7, 2018 at which the Parents “expressed their concerns about [the Student’s] math instruction and that she should remain with the pull-out program to build her confidence in math skills.”
 11. Pursuant to the September 7, 2018 Written Notice, the IEP team determined that the Student would return to the “pull out [resource room class] at this time” and that no changes or amendments would be needed.
 12. In an interview with the Complaint Investigator, the Parents said that shortly after the Student returned to the resource room to receive her specially designed math instruction the Student told them that she was not receiving instruction in her math class because her teacher was frequently interrupted by another student with serious behavior issues. In addition, the Student reported that Ms. Shrader regularly talks on the phone or with other adults during the time that she is scheduled to provide math instruction to the Student.
 13. In an interview with the Complaint Investigator, Katharine Shrader stated that she was the only staff person in the resource room during her scheduled instruction time with the Student. Ms. Shrader said that a new “distracted” student with a severe learning and emotional disability came in to the resource room during the Student’s instruction time. Ms. Shrader reported that this happened on “maybe five” occasions.

14. Ms. Shrader also reported that she was interrupted two to three times by other adults in the room and that she made an emergency call to another student on one occasion for no more than 20 minutes.
15. Ms. Shrader said that on or about October 30, 2018, she put a “no interruption” sign on her door which has prevented any further interruptions since that time.
16. In an interview with the Complaint Investigator Christy Chatto-Hutchinson, an Educational Technician II for the District who has worked with the Student, said that the Student is more distractible than other students and that she was aware of this other student coming into the resource room during the Student’s math instruction time period. Ms. Chatto-Hutchinson said that this other student could be “very disruptive...bouncing balls etc...” and was in the resource room quite frequently. She said that she could “see where the Parents were coming from.”
17. Steve Malcolm, an Educational Technician II for the District, worked with the Student for the first two months of the 2018-2019 school year. In an interview with the Complaint Investigator, Mr. Malcolm said that he worked closely with the Student’s regular education teachers to ascertain the key elements of the lesson plans, and then adapted the lessons in ways that would make it easier for the Student to understand. He said that he was aware of the accommodations and supports in the IEP and believes that these accommodations were made by himself and the Student’s regular education teachers, thereby allowing the Student to access her mainstream programming.
18. Mr. Malcolm said that it was “not unusual” for Ms. Shrader to be interrupted in the resource room; however, he is not sure how often that it happened.
19. In an interview with the Complaint Investigator Mary Rees-Nutter, the Student’s regular education Social Studies teacher, said that the Student receives the support of an educational technician who sits next to her in class to help her with understanding questions and breaking down assignments. Ms. Rees-Nutter said that she gives the Student additional supports in class including note taking, multimedia help with assignments and extra study time. Ms. Rees-Nutter said that her lectures are short and that typically her lecture notes would be no more than several sentences. Ms. Rees-Nutter said that she has noticed that the Student’s literacy speed and attention to detail has improved since the beginning of the school year.

DETERMINATIONS

1. Failure to fully and adequately implement the Student's IEP in violation of MUSER §IX.3.B(3);
2. **Ancillary issue:** Changing the Student’s specially designed instruction in math from the resource room to the regular education setting, contrary to the Student's IEP and MUSER §IX.3.B(3).

NON-COMPLIANCE FOUND; DENIAL OF FAPE FOUND

Children with disabilities are afforded certain rights and protections under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, and the Maine Unified Special Education Regulations (“MUSER”). These rights include the development of an

Individualized Education Program (“IEP”), and the delivery of special education services and supplementary aids in the least restrictive environment. MUSER IX(3), MUSER X(2).

Determinations with regard to special education services and supports must be made by an IEP Team that includes representatives from the school district and the student’s parents. MUSER VI (2)(B). Required items within an IEP include a student’s present level of academic and functional performance, measurable annual goals, the extent to which a student will participate with non-disabled peers, and a statement of special education and related services that the student needs to meet these goals. MUSER, IX(3)(A)(1).

The Student’s April 26, 2018 IEP called for specially designed instruction in math in the resource room for five 50-minute sessions per week with Katharine Shrader, her special education teacher. The Student’s IEP developed on April 26, 2018 specifically noted:

“The Student is working at a 4.5 grade math level, and that she *“needs resource room instruction* to address her weaknesses in problem solving, numerical operations and math fluency...the [The Student’s] delays in math and diagnosis of SLD *interfere with her ability to learn in the mainstream classroom...* [Due] to the Student’s identification of SLD in reading and math and her low processing speed, [the Student] has problems with organizational skills that *need special instruction in the resource room* and support in her regular education classes to organize her work and day. (emphasis added).

On August 20, 2018 the District sent a form letter to the Parents stating that the District would be changing the location of the Student’s specially designed instruction according to a new “Push In” model and that the Student’s math instruction would be moved from the resource room to regular education classroom. The August 20, 2018 letter stated that “some IEPs may need to be reviewed and possibly changed” and that the Student’s case manager “will contact you in the near future.” The District, however, did not follow up with the Parents and no IEP team meeting was held prior to Student commencing her math class in the regular education classroom on September 4, 2018.

The Parents promptly notified the District about their concerns, and the District convened an IEP team meeting on September 7, 2018. At this meeting, the IEP team determined that the Student would return to the “pull out” class and that no changes or amendments would be needed to the April 26, 2018 IEP. The Student missed a total of three days of her resource-room math instruction during her placement in the regular education setting.

MUSER VI(2)(I)(2) provides that all members of the IEP Team are equal participants and are charged with making “joint, informed decisions...with regard to the extent to which the child will be involved in the general curriculum and participate in the regular education

environment...” By changing the location of the Student’s math instruction without involving her IEP Team, the District violated MUSER VI (2)(B). The District’s unilateral placement in the regular education setting is especially troublesome in light of the numerous references in the April 26, 2018 IEP with regard to the Student’s challenges in math and her need for resource room instruction.

Unfortunately, the District failed to fully provide the Student’s math instruction even after the Student returned to the resource room. Ms. Shrader acknowledged to the Complaint Investigator that she was the only staff person in the resource room during her scheduled instruction time with the Student. She stated that another “distracted student” with a severe learning and emotional disability came in to the resource room during the Student’s instruction time on “maybe five” occasions. Ms. Shrader also reported that she was interrupted two to three times by other adults in the room and that she made an emergency call to another student on one occasion for no more than 20 minutes. Ms. Shrader said that on or about October 30, 2018, she put a “no interruption” sign on her door which has prevented any further interruptions. It is unclear why this sign was not placed on the door before this time.

Christy Chatto-Hutchinson, an Educational Technician II for the District, was familiar with the other student with behavior issues that interrupted the Student’s math instruction time. Ms. Chatto-Hutchinson said that this other student could be “very disruptive...[including] bouncing balls in the room.” Ms. Chatto-Hutchinson said that this other student was in the resource room “quite frequently”. Steve Malcolm, an Educational Technician II who worked with the Student for the first two months of the 2018-2019 school year, said that it was “not unusual” for Ms. Shrader to be interrupted in the resource room by this student.¹

MUSER §IX.3.B(3) provides in relevant part as follows:

Each school administrative unit shall implement a child with a disability's Individualized Education Program as soon as possible following the IEP Meeting but no later than 30 days after the IEP Team's initial identification of the child as a child with a disability in need of

¹ During their interview with the Complaint Investigator, the Parents alleged that the Student was not receiving some of the regular classroom accommodations, e.g. getting copies of lecture notes from the teachers. Mr. Malcolm, the Student’s Ed Tech, said that he was aware of the accommodations and supports in the IEP and believes that these accommodations were made by himself and the Student’s regular education teachers, thereby allowing the Student to access her mainstream programming. Additionally, Ms. Shrader noted that lecture notes were not routinely prepared since typically the regular education teachers were not formally “lecturing” to students. Mary Rees-Nutter, the Student’s regular education Social Studies teacher, said that the Student receives the support of an educational technician who sits next to her in class to help her with understanding questions and breaking down assignments. Ms. Rees-Nutter said that she gives the Student additional supports in class including note taking, multimedia help with assignments and extra study time. Accordingly, there is insufficient evidence to support a finding of any violations of the implementation of the Student's IEP within *the regular education* setting under MUSER §IX.3.B(3).

special education and supportive services... If a school unit is unable to hire or contract with the professional staff necessary to implement a child's Individualized Education Program, the SAU shall reconvene an IEP Team to identify alternative service options.

In this case, the District violated MUSER §IX.3.B(3) by failing to insure that the Student's Special Education teacher was fully available to implement the Student's specialized math instruction in her IEP. This oversight is especially troublesome in light of the District's unilateral placement of the Student in the regular education setting earlier in the year. Rather than taking steps to implement the Student's IEP according to its terms, the District allowed the Student's teacher to be interrupted on numerous occasions during her instruction time, thereby disrupting the Student's receipt of a FAPE.

The evidence supports a finding that the Student was denied a total of 20 hours of Specially Designed Instruction time in math.²

3. Failure to provide qualified staff in violation of MUSER §X.2(5); **NO VIOLATION; NO DENIAL OF FAPE FOUND.**

MUSER §X.2(5) provides in relevant part:

Qualified Staff. Special education and/or related services provided to a child with a disability shall be considered as a part of the child's special education program, shall be specified in the child's IFSP/IEP and shall be provided by appropriately certified education personnel, or licensed contractors.

Although the Student's specially designed math instruction was disrupted due to the Student's placement in the regular education classroom and the disruptions to the Student's resource room teacher, there is no finding or determination that the District failed to provide qualified staff to deliver these services.³ Accordingly, there is no violation of MUSER §X.2(5).

²MUSER §IX.3.B(3) provides If a school unit is unable to hire or contract with the professional staff necessary to implement a child's Individualized Education Program, the SAU shall reconvene an IEP Team to identify alternative service options. Once it became apparent that the behaviorally challenged student was disrupting the Student's math instruction, the District should have identified other staff to assist Ms. Shrader so that she could deliver uninterrupted instruction time to the Student. It does not appear to be the case that that the District was unable to identify other staff to work with the behaviorally challenged student since the disruptions have ceased since Ms. Shrader hung a "do not disturb" sign on the resource room door on October 30, 2018.

³ Katharine Shrader is an appropriately certified teacher of Students with disabilities in grades K-12, with her certification expiring July 1, 2019.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

1. The District shall provide the Student with 20 hours of tutoring by a certified special education teacher to make up for the Student's denial of FAPE with regard to her specially designed math instruction between September 4, 2018 and October 30, 2018. The IEP team shall convene within the next 20 school days to determine the location and frequency of said tutoring services. When determining the Student's tutoring plan, the IEP team shall consider the Student's anticipated transition to high school in the 2019-2020 school year.
2. Copies of the Written Notice and revised IEP will be submitted to the Due Process office by February 15, 2019.
3. The District's administration and all appropriate staff members must review the following regulations with an attorney who practices special education law or with the Department and submit a statement of assurance that it will follow these regulations:
 - MUSER §IX.3.B(3);
 - MUSER VI (2)(I);
4. The statement of assurance should be submitted to the Department by February 15, 2019.