

Complaint Investigation Report

Parent v. Schools

Complaint # 22.015C
Complaint Investigator: Leigh Lardieri

Report Date: December 15, 2021

Date of Appointment: October 22, 2021

I. Identifying Information

Complainant: Parent

Respondent:

Superintendent

, Special Education Director

Student:

II. Summary of Complaint Investigation Activities

On October 19, 2021, the Maine Department of Education received this complaint. The complaint investigator was appointed on October 22, 2021. Therefore, the current investigation covers the period of October 19, 2020 to present. See MUSER XVI(4)(B)(3).

The complaint investigator received fifty-nine pages of documents from Schools (the "District"). The investigator also received sixteen pages of documents from the complainant. On November 18, 2021 the Director of Special Education and the special education teacher were interviewed from the District. Interviews were conducted with the student's father and stepmother ("the Parents") on November 18, 2021. From November 18, 2021 through November 22, 2021, the following individuals were interviewed: A Children's Behavioral Health Services (CBHS) Case Coordinator from DHHS; A Case Coordinator from a targeted case management program, as well as the student's child targeted case manager; and a member from the student's treatment team at

III. Preliminary Statement

At the time the complaint was filed, the Student was a old , and in treatment on the Hospital in , Maine. has since

turned eighteen and is under the legal guardianship of the Parents.¹ On May 20, 2021, upon intake to the _____ Hospital, the Student began attending _____ in a full day Special Purpose Private School (SPPS) as a state agency client. The Student qualifies for special education and related services under the disability category of Multiple Disabilities (Specific Learning Disability, Speech and Language Impairment, Emotional Disturbance) as documented in the IEP implemented while the Student attended the _____ Center (_____) in _____, Maine.² On September 21, 2021, _____ was transferred to the _____, thus ending the state agency client status, and reverting the responsibility for the provision of a free and appropriate public education (FAPE) back to the sending district. While receiving treatment on the _____, _____ received educational services consisting of two hours per day of voluntary tutoring from an in-person tutor.

The present complaint was filed by the Parents, alleging that the District has violated the Maine Unified Special Education Regulations (“MUSER”) and IDEA. After the receipt of the Parent’s complaint, an Allegations Memorandum was sent to the parties by the complaint investigator on October 22, 2021, alleging three violations of MUSER, and IDEA. A telephonic Complaint Investigation Meeting was held on November 1, 2021. A revised Allegations Memorandum was sent to the parties on November 4, 2021.

IV. Allegations

The following violations are alleged by the present complaint:

1. The complainant alleges that Student _____ is being denied FAPE as the District is not providing the 31.5 hours per week of specially designed instruction in the special education setting as written in the IEP. **MUSER II(13); 34 CFR 300.101(a); MUSER XI; 34 CFR 300.34.**
2. The complainant alleges that the District did not provide prior written notice of an amendment to the IEP, and a change of placement was made without parent participation in the decision and IEP process. **MUSER IX (3)(C)(4); 34 CFR 300.324(a)(4); 34 CFR 300.503; MUSER VI(2)(A); MUSER VI(2)(H)(1)(a); MUSER VI(2)(I) .**
3. The complainant alleges that the Student’s treatment team was neither informed nor given an opportunity to participate in the decision to change the Student’s placement. **MUSER VI (2)(B)(5); 34 CFR 300.324(a)(4).**

¹ See State of Maine, _____ Letters of Guardianship, dated October 26, 2021.

² At _____ the Student was receiving specially designed instruction, 28.5 hours per week; Speech and Language Therapy, 30 minutes per week; 60 minutes/ week of group and individual therapy provided by a social worker; and special transportation. Extended School Year services were also in the IEP with the plan to take place in July 2021.

V. Factual Findings

1. The Student has a history of significant emotional, behavioral, and educational needs, including involvement with residential placements. On January 15, 2020, a neuropsychological evaluation and report (January 22, 2020) were completed by M.S. NCSP School Psychologist, and yielded the following results.³ Behaviors assessed in the school setting revealed clinically significant Anxiety, ADHD, Oppositional Defiance, and Conduct Problems in the School. The Student's father reported clinically significant Depressive Problems, ADHD Problems, Oppositional Defiance, and Conduct Problems. The Student's cognitive profile included average Visual Spatial skills, low average Verbal Comprehension, Fluid Reasoning skills, and a Nonverbal and General Ability index all falling in the low average range. The profile also included Processing Speed and Cognitive Efficiency in the extremely low range, and a Full-Scale IQ score in the very low range. Academic achievement scores fell in the very low range for Basic Reading, the low range for Written Expression and Math Fluency, and the below average range for Mathematics. The report also noted that along with special education eligibility of Multiple Disabilities, the Student was diagnosed with Autism while at Hospital.⁴ At the time of this evaluation, the Student was attending school at the and residing at home.⁵
2. On May 20, 2021, the Student was admitted to Hospital. Leading up to this admission, consistent with what was reported in the above evaluation regarding emotional and behavioral presentation, the Student exhibited significant difficulties in the home setting with family members, and in-home support staff. was physically and verbally aggressive and would elope from the home. also engaged in property destruction. Reportedly, these behaviors were triggered when the Student was presented with non-preferred tasks; when was presented with non-preferred staff; when things did not go the way the Student had planned; and when was told "no."⁶ Similarly, behaviors in the school setting were reported to be unsafe for the staff and other students at .⁷ These behaviors included physical and verbal aggression, elopement and property destruction.

³ The completion of the Psycho-educational evaluation by this provider was conducted under the supervision of , Licensed Psychologist Clinical Supervisor, Counseling and Testing Services Inc.

⁴ Ibid

⁵ Ibid.

⁶ See notes from interview conducted with the targeted child case manager on 11/22/2021.

⁷ See notes from the Special Education Director from the district of residence.

3. Once the hospital intake was complete, the _____ School Department assumed responsibility for providing FAPE.⁸ The Parents were present at the intake meeting. At that time _____ described the educational program in which the Student, now a state agency client would be placed. An amendment without an IEP meeting was completed and the Parents gave verbal permission for services to begin immediately.⁹ Weekly meetings with the hospital treatment team were held, and the Parents attended these meetings by phone. These meetings were also attended by the child targeted case manager and clinical coordinator of case management services.¹⁰

4. On June 16, 2021 the District initiated a 30-day review of program IEP meeting. The Parents received seven days advance written notice, however they were unable to attend.¹¹ Members of the _____ treatment team¹² were present at that meeting, along with a representative from _____ Schools, as well as the Special Education director from the district of residence.¹³ During the IEP meeting it was reported that at intake, a behavior plan was developed to target the unsafe behaviors that the Student was presenting (aggression, self-injurious behavior, property destruction, elopement, and making statements of harm).¹⁴ It was also reported that the Student, although initially resistant to school, was warming up to the staff.¹⁵ A determination was made to add a behavior goal to the plan to address the target behaviors.¹⁶ The amended IEP also included specially designed instruction, speech and language therapy, social work services and extended school year (ESY) services, which were provided by the program July 5-23, 2021.¹⁷ During this time, the Parents remained in touch with the Student by phone almost daily.

5. During the ESY programming, the Student was restrained on 7/23/2021 for exhibiting unsafe behaviors and self-harm.¹⁸ Later that summer, On August 4, 2021 the Student was

⁸ MUSER II

⁹ As documented in the Prior Written Notice without a meeting dated 5/20/2021, the team determined that the Student would receive specially designed instruction, 31.5 hours/ week; speech and language services 30 min/ week; Psychological or BCBA Consultation 1 hour per week.

¹⁰ In the interview with the case management clinical coordinator, _____ reported that he attended the meetings from August through October 2021 in support of the Student and targeted case manager.

¹¹ See Advanced Written Notice sent to the Parents on 5/21/2021.

¹² The staff interviewed declined to give specific information about this treatment team. However, it was noted that an educational “treatment team” typically included a BCBA, social worker, psychologist, and a special education staff.

¹³ See Prior Written Notice from 6/16/2021 IEP meeting.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ See IEP amended on 6/16/2021.

¹⁸ See _____ Incident Report (Physical Restraint or Seclusion of a Student), 7/23/2021.

again restrained for similar unsafe and self-harming behaviors.¹⁹ No other incidents requiring restraint or seclusion were reported to this investigator. By mid-August, a CBHS Behavioral Health Program Coordinator from DHHS assigned to the case joined the weekly meetings. He shared that in July 2021, an application was completed to begin the search for a children’s residential treatment placement however there were no beds available.²⁰ In August 2021, the student was approved for out-of-state residential treatment, but there were no beds available.²¹ During this time, the Parents reported that the Student’s behaviors had decreased, and did not begin to escalate again until a week before knee surgery, scheduled for 9/17/2021. On 9/15/2021, the knee surgery was cancelled. The Student told to Parents that had bad behaviors due to nerves about surgery.²²

6. On September 16, 2021 the Parents were contacted by three hospital staff (two of the medical directors, and one member of the medical staff).²³ They were informed that the Student was to be transferred from the to the . No set date had been established. The next day, the Parents were told the Student would no longer be attending school. Subsequently, they contacted the advocate at Hospital who told the parents he would look into the matter.²⁴ On September 20, the Parents were informed that the transfer would happen the following day.²⁵
7. On September 21, 2021 the parties were told the decision had been made to move the Student from the to the due to medical reasons.²⁶ A discharge summary was provided to the Parents, and the District.²⁷ Upon discharge from the , the Student no longer was a state agency client. Upon the transfer, the sending district again became responsible for FAPE.²⁸ The District had no knowledge of, or the reason why the transfer was to take place.²⁹ They

¹⁹ See Incident Report (Physical Restraint or Seclusion of a Student), 8/4/2021.

²⁰ See interview notes with the CBHS Behavioral Health Program Coordinator from DHHS from 11/18/2021.

²¹ Ibid.

²² See Parent’s notes.

²³ See

²⁴ As reported by the Parents, they did not get a response from the hospital advocate.

²⁵ Ibid.

²⁶ In the District’s response to the complaint, the assertion is that beyond the full day school program called , the hospital also operates a straight psychiatric hospital placement, apparently on a different floor, called the , with no official educational program attached to it other than a limited contracted tutoring program.

²⁷ The Parents noted that at the time, they never received a copy of the discharge summary from . The discharge summary indicated that the Student made minimal progress on academic and behavioral goals.

²⁸ See MUSER IX 3.I

²⁹ See the District’s response.

were told that the decision was made by the medical treatment team and could not be shared with the District.³⁰

VI. Determinations

1. The complainant alleges that Student is being denied FAPE as the District is not providing the 31.5 hours per week of specially designed instruction in the special education setting as written in the IEP. **MUSER II(13); 34 CFR 300.101(a); MUSER XI; 34 CFR 300.34. NO VIOLATIONS. COMPLIANCE FOUND.**

Under State and Federal law Maine students with disabilities have a right to a free and appropriate public education. Public agencies including School Administrative Units and Out-of-Unit placements are responsible for providing special education and related services as prescribed by the IEP team. When students move into placements out of their district of residence, the District in which the Out-of-Unit placement is located assumes the responsibility of FAPE.³¹ In this case, upon the Student's admission to the hospital, Schools worked jointly with the sending district and parents through the IEP process to transfer the student into the Out-of-Unit educational placement of . From that point on, Schools collaborated with the treatment team³², and the Parents to ensure the Student's IEP as amended would be implemented.

The District did not violate MUSER in the above allegation for two reasons. First, the District was under no duty or educational responsibility to provide FAPE in this Out-Of-Unit placement once the student was transferred to the , as the obligation was shifted back to the sending district.³³ Second, the unilateral decision to transfer the student to that unit and out of the agreed upon educational placement was made for medical reasons and not for educational purposes. Throughout this case, corroborating evidence from the parties established that hospital medical treatment team and administration rendered this decision without the input of the treatment team, the District, or the Parents. The District had no knowledge of the decision until after it was finalized.³⁴ Hence, the District had neither the authority over the decision to transfer the Student to the , nor control over the decision to provide two hours of tutoring daily in place of the educational programming at .

³⁰ Ibid.

³¹ MUSER IX (3) (I)

³² See District's response and email exchanges between Schools, and staff.

³³ MUSER IX (3) (I)

³⁴ See the District's Response.

2. The complainant alleges that the District did not provide prior written notice of an amendment to the IEP, and a change of placement was made without parent participation in the decision and IEP process. **MUSER IX (3)(C)(4); 34 CFR 300.324(a)(4); 34 CFR 300.503; MUSER VI(2)(A); MUSER VI(2)(H)(1)(a); MUSER VI(2)(I) . NO VIOLATIONS. COMPLIANCE FOUND.**

Overlapping with the fundamental protections of FAPE afforded to students with disabilities, parents have “independent, enforceable rights under [the] IDEA.”³⁵ When parent participation is negatively impacted by procedural errors, districts have an obligation to remedy those errors and ensure that parents, as members of the IEP team are essential partners included in the decision-making process.

Upon intake to the hospital, the District complied with MUSER and IDEA, providing the parent with a prior written notice without a meeting³⁶. The District also provided the Parents with 7-days advance written notice³⁷ of, and subsequently the prior written notice from the 30-day review of program meeting held on June 16, 2021.³⁸ In addition, the District sent an amended IEP to the Parents.³⁹

3. The complainant alleges that the Student’s treatment team was neither informed nor given an opportunity to participate in the decision to change the Student’s placement. **MUSER VI (2)(B)(5); 34 CFR 300.324(a)(4). NO VIOLATIONS. COMPLIANCE FOUND.**

During the course of the Student’s hospitalization, the parties shared evidence validating that the Parents, along with the support of their targeted case management team attended multiple meetings with the hospital staff concerning the care and progress of the Student.⁴⁰ The District had no control over who was to be consulted in the decision to transfer and discharge the student.⁴¹

VII. Conclusion

At the heart of this case is the supplanting of the medical decision-making model over the educational decision-making model protected by MUSER and IDEA, which subsequently left the District, the parents and other parties in a difficult position in trying to advocate for the best possible educational placement for this Student. Substantial evidence supports the argument that

³⁵ Zerkel, P.A. (2016) Parental participation: The paramount procedural requirement under IDEA? *Connecticut Public Interest Law Journal*, 15 (1) 1-36.

³⁶ See prior written notice sent to the Parents on 5/24/2021, documenting the services the Student would receive while attending . In addition, the prior written notice indicates the parent received a copy of the procedural safeguards as an enclosure.

³⁷ See Advanced Written Notice from 5/21/2021.

³⁸ See Prior Written Notice sent to the Parents on 6/17/2021.

³⁹ See amended IEP sent to the Parents on 6/17/2021.

⁴⁰ As evidenced by the interview notes with the Parents, targeted child case manager and case coordinator.

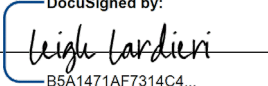
⁴¹ See District’s Response.

from the date of hospital admission, and for the duration of stay, the Student's transfers, placements, and discharge were medically driven decisions and not made for educational reasons subject to the meaning of the IDEA.⁴² The District was neither responsible nor had a say over the decisions made by the medical staff. In light of the evidence and as stated above, the District was found to be compliant on all of the allegations brought forth in this complaint.

VIII. Corrective Action Plan

As this complaint investigation has found no violations of MUSER and IDEA, no corrective action is required.

Dated: December 15, 2021

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Leigh Lardieri, Ph.D.
Complaint Investigator

⁴² Parents v. Attleboro Public Schools and Massachusetts Hospital School Massachusetts State Educational Agency (April 2011). LRP Publications, 111 LRP 25548 (2020).