

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
BUREAU OF SPECIAL EDUCATION APPEALS

In Re: Oxford Public Schools

BSEA #1506886

DECISION

This decision is issued pursuant to the Individuals with Disabilities Education Act or IDEA (20 USC Sec. 1400 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 USC Sec. 794); the Massachusetts special education statute or “Chapter 766,” (MGL c. 71B) the Massachusetts Administrative Procedures Act (MGL c. 30A) and the regulations promulgated under these statutes.

On March 18, 2015, Parent filed a hearing request alleging that the Oxford Public Schools (Oxford or School) denied Student a free, appropriate public education (FAPE) by failing to implement portions of accepted IEPs since November 2014 during periods when Student was in hospitals or in residential facilities funded by the Department of Mental Health (DMH). Parent also alleges that Oxford delayed the process of placing Student in an agreed-upon residential education placement in retaliation for Parent’s vigorous advocacy on behalf of Student (as well as Student’s disabled sibling). Parent seeks findings of fact and rulings of law on her claims pursuant to federal and state special education statutes as well as Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

Oxford filed a timely response in which it denied Parent’s allegations of denial of FAPE and retaliation. Oxford also moved to join the DMH as a party in this matter. Parent and DMH objected to joinder, and this Hearing Officer denied Oxford’s motion on May 14, 2014.

The parties requested and were granted several postponements of hearing dates for purposes of discovery, other procedural matters, and to attempt resolution. Attempts at resolution were not successful.

The BSEA held an evidentiary hearing on June 16 and 17, 2015, at the offices of Catuogno Court Reporting in Worcester, MA. Both parties were represented by counsel and had an opportunity to examine and cross-examine witnesses as well as submit documentary evidence for consideration by the Hearing Officer. The parties requested and were granted a postponement until July 28, 2015 for submission of written closing arguments and the record closed on that day.

The record in this case consists of the Parent’s exhibits P-1 through P-94 (except for exhibit P-20B, which was withdrawn); School’s exhibits S-1 through S-33, and the transcript created by the certified court reporter.

Those present for all or part of the proceeding were:

| | |
|------------------------|---|
| Parent | |
| Patricia Susen | Director of Student Services, Oxford Public Schools |
| Joann Rose | Team Liaison, CES/SEIS ¹ |
| Kara Zablotzky | Therapist, Three Rivers Treatment Program |
| Eileen Antalek, Ed.D. | Parent Consultant |
| Robert LeGary | Head of School, The Learning Clinic |
| RaymondDuCharme, Ph.D. | Director, The Learning Clinic |
| James M. Baron, Esq. | Attorney for Parent |
| Susanne R. Blatt, Esq. | Attorney for School |
| Sara Berman | BSEA Hearing Officer |
| Brenda Ginisi | Court Reporter |

ISSUES PRESENTED

The issues for hearing are the following, quoted verbatim from the Parent's hearing request:

- Issue 1. Whether the Oxford Public Schools has failed to provide [Student] with a free and appropriate public education in violation of federal and state special education laws since November 25, 2014.
- Issue 2. Whether [Student] has failed to make meaningful academic, social, emotional, and/or behavioral progress since November 25, 2014.
- Issue 3: [withdrawn]
- Issue 4: Whether Oxford has failed to implement the accepted portions of the IEP that was signed and returned by [Parent] to Oxford on November 25, 2014.
- Issue 5: Whether [Oxford] should be required to provide compensatory services due to the violations described...above.
- Issue 6: Whether Oxford retaliated against [Parent] in violation of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) when Oxford refused to move forward with a placement at the Learning Clinic, which had previously been one of the three schools recommended by Oxford for [Student's] placement.
- Issue 7: Whether Oxford retaliated against [Parent], in violation of Section 504 of the Rehabilitation Act of 1973 and the [ADA] when Oxford failed to implement the accepted portions of [Student's] IEP.

¹Collaborative for Educational Services which contracts with DESE's Special Education in Institutional Settings (SEIS)

- Issue 8: If Oxford is found to have retaliated against [Parent], what harm occurred to Student and [Parent] as a result of the retaliation.

POSITION OF PARENT

Beginning in November 2014, the Oxford Public schools failed to ensure implementation of Student's accepted IEP while Student was in Three Rivers, a DMH-funded treatment facility. Additionally, through inaction and inappropriate actions, Oxford caused a significant delay in the process of Student's transition to his agreed-upon placement at the Learning Clinic (TLC), a residential educational program.

Oxford's failure to implement Student's IEP while he was at Three Rivers as well as its failure to ensure timely placement at TLC denied Student FAPE, prevented him from making effective progress since November 2014, contributed to the failure of the TLC placement, and caused significant emotional and financial harm to Student and Parent. Student is entitled to compensatory services to make him whole.

Additionally, Oxford's actions and failures to act were in retaliation for Parent's vigorous advocacy for Student as well as for his sibling, who also has disabilities.

POSITION OF SCHOOL

The BSEA lacks jurisdiction over any claim of retaliation under Section 504 of the Rehabilitation Act or the ADA. Even assuming, *arguendo*, that the BSEA does have such jurisdiction, Parent has failed to present a *prima facie* case for retaliation. Even if the BSEA were to find that Parent has met this initial threshold, Oxford has provided evidence of legitimate, non-discriminatory and non-retaliatory reasons for its actions and Parent has not produced evidence sufficient to support a conclusion that Oxford's reasons were pretextual.

Contrary to Parent's claim, Oxford's Director of Student Services, Patricia (Trish) Susen, made ongoing, good faith efforts to implement Student's placement at TLC. Any delays in the process had several causes, many of which were outside of Oxford's control, and none of which can be attributed to retaliation by Oxford. Moreover, any failure to fully implement Student's IEP while he was at Three Rivers was not due to retaliation. Rather, Parent and others were responsible for withholding information from Oxford about problems with implementation. As soon as Oxford was finally made aware of the problems, in April 2015, Oxford rectified the situation. In fact, Student received nearly all of his IEP services while he was at Three Rivers; at most, Student lost certain discrete speech-language and occupational therapy (OT) services during January, February and March 2015. With or without an order from the BSEA, Oxford will provide compensatory services for any missed sessions of OT and speech therapy.

Finally, Student did, in fact, make meaningful educational progress since November 2014, despite his severe and complex disabilities

SUMMARY OF THE EVIDENCE

1. Student is a ten year old child who is a resident of Oxford. Student's eligibility for special education services from Oxford pursuant to federal and state special education laws as well as his rights under Sec. 504 of the Rehabilitation Act of 1973, are not in dispute. As of the hearing dates, Student had just been prematurely discharged from a trial placement at TLC because of severe emotional difficulties. He was living with Parent and not attending any educational program.
2. Student has average cognitive ability; however, his functioning at home and in school has been significantly impaired for many years by severe emotional and behavioral difficulties. Student has undergone multiple psychiatric hospitalizations due to frequent and extreme emotional and behavioral meltdowns. Between June and December 2013, Student was hospitalized five different times. (P-68)
3. Student has received many diagnoses over the years. A November 2014 psychoeducational evaluation report by Dr. Eileen Antalek identified Student with severe Post Traumatic Stress Disorder (PTSD), moderately severe ADHD, an "Unspecified Neurodevelopmental Disorder" causing significant weaknesses in processing speed, memory and executive functioning, a Developmental Coordination Disorder, Social Pragmatic Communication Disorder, and specific learning disabilities affecting reading, written expression and math. There is a possibility that Student has an as-yet undiagnosed neurological disorder. (P-50)
4. As of the hearing dates, the parties did not dispute that Student needs intensive educational and clinical services in a residential setting in order to make effective educational progress. On December 5, 2013, upon discharge from a psychiatric hospitalization, Student was admitted to the Three Rivers program in Springfield, MA. Three Rivers is an Intensive Residential Treatment Program (IRTP) operated by the Cutchens Program and funded by DMH. (P-68)
5. In addition to clinical services, Three Rivers has an in-house school program. (Rose, Zablotsky) Like all children at Three Rivers, Student received instruction in math, reading, writing, science and social studies. Teacher reports indicate that Student seemed to be making some academic and behavioral progress. (S-27 – 29)
6. Special education services for children at Three Rivers who have IEPs are provided by SEIS, through a contract with the Collaborative for Educational Services (CES). An eligible resident child's IEP is developed by his or her home school district, and implemented within the Three Rivers school program by CES. (Rose, P-68) Joann Rose is the Education Team Liaison (ETL) employed by CES to oversee provision of special education services. Among other responsibilities, Ms. Rose communicates with parents and students' home school districts to ensure that IEPs are developed, implemented, and reviewed/amended upon expiration, and that progress reports are issued. (Rose)

7. Student entered Three Rivers without an IEP because at that time, Oxford had deemed him ineligible for special education services.
8. On October 7, 2014 Parent filed an initial hearing request with the BSEA, which was assigned BSEA Case No. 1505358 (hereafter, Case No. 1). Among other things, Parent sought a finding that Student was eligible for special education, an order directing Oxford to issue an IEP, and placement in a therapeutic residential education program. (P-51)
9. On October 22, 2014 Oxford found Student eligible for special education. (P-51)
10. On November 3, 2014 Oxford issued an IEP running from October 23, 2014 to October 22, 2015. The IEP contained goals in reading, writing, math, self-regulation and “social-emotional.” The service delivery grid provided weekly consultations in OT, Behavioral Support, and Skills by, respectively, “OT & COTA,” “Therapeutic Staff” and speech-language therapist and assistant (in Grid A), no services in the general education classroom (Grid B), and, in Grid C, all academics, including 60 minutes/day of instruction by a reading specialist. (P-43)
11. Grid C additionally specified that Student would get 2x30 minutes per week of direct OT services, 2x30 minutes per week of social skills instruction from a speech/language therapist, 2x60 minutes per week of behavioral support from therapeutic staff, and 2x60 minutes per week of counseling.
12. On November 11, 2015 Oxford issued a placement page indicating placement in a residential school. (P-43)
13. On November 19, 2014, after issuance of the IEP but before Parent had accepted it, the parties entered an agreement (“Agreement”) in partial settlement of Case No. 1. In pertinent part, that Agreement stipulated that “[t]he District agrees that [Student] requires a residential, therapeutic placement in a program that uses a holistic approach, with intensive post-traumatic stress therapy in a family systems model, and special education services that can meet [Student's] learning disability needs.”² (P-48)
14. On November 25, 2015, Parent partially accepted the proposed IEP from Oxford. Parent fully accepted the residential placement and services. The partial acceptance reflected Parent's seeking to expand or change some of the language in the “Parent

²On the same day that the parties executed the Agreement, Parent filed an amended hearing request in Case No. 1 which indicated that the only issue in dispute was the specific school designated for Student. Parent sought referrals to facilities in Colorado, Idaho and Montana. Oxford recommended two Massachusetts schools (Children's Study Home and Dr. Franklin Perkins) and one program in Connecticut, TLC. In a letter dated March 12, 2015 Parent withdrew the hearing request in Case No. 1 citing changed circumstances. The letter stated that Parent would file a new hearing request and did in fact file the above-entitled matter on March 18, 2015. At hearing, Parent was no longer seeking the Colorado, Idaho or Montana programs.

Concerns,” and “Vision Statement,” refine and adjust goals and benchmarks, and revise accommodations. (P-43)

15. Implementation of the accepted portions of the IEP required Oxford to take simultaneous action on two fronts: ensuring delivery of IEP services within the Three Rivers setting while the referral process for a residential placement was underway, and the referral process itself. (Rose)

16. The chronology of events regarding IEP implementation within Three Rivers took place as follows:

- 11/25/14: Parent partially accepted the IEP and returned it to Oxford. (Susen, Parent)
- 1/6/15: Joann Rose sent an email to Patricia Susen asking if Student's IEP had been signed and requesting faxed copy. Ms. Susen responded incorrectly that the IEP had not been signed. (Rose, Susen, P-33)
- 1/13/15: Joann Rose received a faxed copy of the partially accepted IEP. (P-16)
- 2/15: Parent informed Kara Zablotzky, Student's TLC therapist, that she did not think the IEP was being implemented. (Parent)
- 3/3/15--3/5/15: Joann Rose and Patricia Susen exchanged emails in which Rose sought to clarify how to implement goals and write progress reports in light of the partial rejection. Susen offered phone discussion, but she and Rose did not connect by phone.
- 3/6/15: Susen sent an email to Rose saying “We can put all services in place that were not rejected.” (P-16)
- 3/7/15: Rose sent an email to Susen requesting further clarification. (P-16) Susen did not respond. (Rose)
- 3/25/15: Susen emailed Rose reporting that Parent stated Student was not receiving IEP services. (P-16) Susen subsequently testified that Parent did not report this to her; the information came from Oxford's counsel. (Susen)
- 3/27/15: Margaret Foran-Collins, Principal of SEIS within DESE, sent a letter to Ms. Susen informing her that SEIS could not provide Student with the following IEP services: reading with the reading specialist, occupational therapy with OT and COTA, social skills with speech-language therapist and assistant, counseling, or behavioral support with therapeutic staff. The letter advised Ms. Susen that options for Oxford included obtaining providers to deliver the services at Three Rivers, amending the IEP with parental consent, and/or reconvening the Team. (P-9)
- 4/ 6, 2015: Oxford contracted for OT and speech services to be delivered at Three Rivers.

17. Student received academic instruction from special education teachers, behavioral support and counseling from his Three Rivers therapist and other therapeutic staff at Three Rivers, and some OT support and/or consultation from an OT employed at Three Rivers; however, these services were part of the Three Rivers program

available to all students and were not delivered pursuant to Student's IEP. (Rose, Zablotzky)

18. Ms. Susen has conceded that Student did not receive the services listed above between November 25, 2014 and early April 2015, and testified that Oxford would provide compensatory services to Student. (Susen)
19. The chronology of events surrounding Student's referral to TLC is set forth below³.
 - 11/24/14: The Oxford special education office sent a referral packet to TLC. (P-44, Susen, DuCharme)
 - TLC has a five step admission process. TLC reviews initial referral documents. If a child is potentially appropriate for placement, a TLC staff member arranges for a parent visit and interview. Financial responsibility for the placement is established. A student interview and tour is scheduled. If the interview is successful, parents receive confirmation of acceptance and a Team meeting is scheduled to plan the 30 to 60 day diagnostic placement.⁴ Written confirmation of financial responsibility must be provided. A payment schedule is given to TLC at admission of the student. (S-5, DuCharme)
 - 12/8/14: TLC staff notified Ms. Susen that they wanted Parent to meet with staff at TLC. (P-39)
 - 12/10/14: Parent informed Susen (before visiting) that she believed TLC was most appropriate of three schools recommended by Oxford. (P-38, Parent, Susen)
 - 1/14/15: Parent visited TLC. (P-31)
 - 1/19/15: TLC informed Susen that Student's visit was scheduled for 1/22/15 and asked if Oxford was willing to move to a 30 day diagnostic placement after the visit. (P-31)
 - 1/20/15: Parent emailed Susen stating she was impressed with TLC and wanted referral to proceed. (P-32)
 - 1/20/15: Susen emailed TLC stating "I would not be able to agree to a 30 day diagnostic at this time. There is much court involvement with the student. Please do not move forward without full written approval from me. This is a DMH placement as well and they are currently not agreeing to send him to your school. You need to speak with me and our attorneys prior to anything except for a student visit." (P-31, DuCharme, Susen)
 - Susen did not make such statements to other potential placements with active referrals: Devereux and Home for Little Wanderers.
 - The "court involvement" to which Susen referred was a custody proceeding that resulted in Student's father becoming involved in educational matters for the first time. (Parent)

³Between November 2014 and approximately May 2015 Oxford explored and/or made referrals to several additional residential placements, including Children's Study Home, The Home for Little Wanderers, Dr. Franklin Perkins, and Devereux. Oxford also contacted the Colorado, Idaho and Montana programs suggested by Parent. (Parent, Susen)

⁴The 30 day trial placement is required by the State of Connecticut. (DuCharme)

- 1/24/15: Susen emailed TLC Head of School Robert LeGary, alleging that TLC “is working with the parent behind the district's back...this is a court case...which will certainly get your staff involved.” (P-24, LeGary, Susen)
- 1/24/15: TLC sent an email to Parent's counsel stating referral could not go forward without father's assent and without clarity as to whether Oxford and/or DMH would be funding a placement. (Susen, P-22)
- 2/3/15: Susen emailed Robert LeGary stating Oxford would pay for TLC if it was “the best placement,” and further stating “The issue is the lack of DMH involvement for these students, with or without the cost share.” (LeGary, S-7)
- 2/4/15: Student had an interview and tour at TLC which was successful. (Zablotsky, LeGary, DuCharme)
- 3/5/15: TLC informed Susen that they had clinical concerns and wanted Student to come for an additional visit, for a full day. Susen emailed this information to Parents. (S-10, LeGary)
- 3/16/15: LeGary sent Susen an email stating TLC was unsure if it would accept Student as it had clinical concerns; the full day visit might be helpful. LeGary also suggested that Parents view additional schools and asked “who the funding agency is before we move forward.” (S-12)
- 3/17/15: Susen reported to Parents via email that she had been in communication with LeGary to facilitate the admission process. (S-14)
- 3/18/15: Susen sent an email to LeGary reiterating that Oxford would fund Student's placement at TLC, stating that Student was ready for a new placement, and asking how she could help move the admission process forward. Susen attached an N-1 form and placement consent forms to be signed by Parents once TLC provided a start date. (S-14)
- 4/27/15: Student had a full-day visit at TLC which was successful. (P-4)
- 5/13/15: Student began a 30-day trial placement at TLC.
- 5/26/15: Student had a severe behavioral outburst at TLC in which staff was injured. Student was hospitalized. (P-1)
- 5/27/15: TLC notified Susen that Student was not an appropriate candidate for admission to its program. (P-1)

20. Several witnesses testified about Student's condition during the period from approximately November 2014 forward. Kara Zablotsky, Student's therapist at Three Rivers, testified that Student was hospitalized in November 2014, but did very well upon his return, attending all classes and getting along with peers. (Zablotsky). Student enjoyed his initial visit to TLC on February 4, 2015. He was very excited and wanted to go to TLC. Ms. Zablotsky advised Student that he was not necessarily going to move on to TLC.

21. Ms. Zablotsky testified that through February into March, Student showed some regression in his behavior. She and other staff interpreted this regression as Student communicating that he wanted to leave Three Rivers and move on to his next placement. In fact, Student drew an “escape plan” on the wall of his room. Three Rivers staff were concerned that Student was affected negatively by the length of time the admission process was taking. (Zablotsky)

22. Dr. Eileen Antalek, who had conducted a psychological evaluation of Student in September 2014, also testified that the delay in placement was detrimental to Student because it increased his anxiety and PTSD symptoms. She testified that this delay, coupled with the absence of IEP services between November 2014 and April 2015, contributed to Student's inability to complete the trial placement at TLC. (Antalek)

23. Dr. DuCharme and Robert LeGary testified that the TLC admissions process took longer for Student than is typical for a combination of reasons, some attributable to TLC, some to Oxford, and some to the volume and complexity of Student's evaluation and treatment records. Dr. DuCharme testified that Student's final meltdown at TLC may have been precipitated by numerous factors, including as-yet unidentified neurological problems coupled with reactions to, or ineffectiveness of, Student's various medications. (DuCharme, LeGary)

24. Parent has advocated vigorously for Student and his sibling for many years. In addition to repeated referrals for special education (Student had a Sec. 504 Plan, but was found ineligible for special education until October 2014), during the 2013-2014 school year, Parent wrote numerous letters to Ms. Susen, to which Ms. Susen did not respond. Parent complained about the non-response with three letters to the Oxford superintendent, who spoke to Ms. Susen about the importance of communication with parents. (Parent, Susen, P58, 61, 63, 73 -78).

25. Parent has also filed two BSEA hearing requests on behalf of Student, and one on behalf of Student's sibling. Additionally, on September 22, 2014, an Office for Civil Rights (OCR) complaint was filed alleging a failure to re-evaluate Student in violation of Section 504. OCR closed the complaint after voluntary resolution with Oxford. (P-53)

26. Parent feels her relationship with Patricia Susen is contentious, and that Ms. Susen has taken various actions to undermine and/or sabotage Student's TLC placement in retaliation for Parent's advocacy. Specifically, Parent points to Oxford's failure to find Student eligible for special education until after she requested a BSEA hearing, Ms. Susen's sending emails to TLC seemingly casting doubt on Oxford's commitment to fund the placement, and doing so immediately after Parent indicated that she wanted TLC as a placement, and Ms. Susen's attempts to involve DMH despite Parent's having withdrawn consent for DMH services. (Parent)

27. On the other hand, Ms. Susen testified that she harbors no animosity towards Parent, that she did not view the relationship as problematic, that she had worked with other parents whose advocacy was more vigorous than that of Parent, and that that she personally had advocated for services for her own children and grandchildren with disabilities. (Susen)

DISCUSSION

Parent alleges that the Oxford Public Schools has denied Student a FAPE by failing to implement his accepted IEP in a timely manner while Student was at Three

Rivers and by delaying and impeding the process of referring Student to a residential placement at TLC. Parent further alleges that Oxford caused these delays deliberately, in retaliation for her advocacy on behalf of her children. As the moving party in this matter, Parent has the burden of proving her allegations by a preponderance of the evidence. *Schaffer v. Weast*, 126 S. Ct. 528, 441 IDELR 150 (2005)

After a careful review of the evidence and the written closing arguments of counsel, I conclude that Parent has proved, and Oxford has conceded, that Student is entitled to compensatory services for Oxford's failure to ensure implementation of his IEP from November 25, 2014 until early April 2015 (for speech-language and OT services) and possibly until mid-May 2015 (for reading and counseling services). I further conclude, however, that Parent has not met her burden with respect to her retaliation claims. My reasoning follows.

FAPE Claims, Issues 1, 2, 4, 5

Massachusetts school districts retain responsibility for disabled children who are placed in facilities operated by or under contract with state agencies including DMH. While SEIS might be responsible for actual delivery of services and coordination with the responsible school district, it is the school district that is programmatically and fiscally responsible for ensuring the child's receipt of special education services, including arranging and/or paying for IEP services that cannot be provided in the facility. See 603 CMR 28.06 and 28.10.

There is no dispute that Parent partially accepted Student's IEP on November 25, 2014 but that the OT and speech-language services were not implemented until early April 2015. The record does not indicate whether the reading specialist services were ever delivered. Student received therapeutic and behavioral supports from Three Rivers staff as a part of his clinical program, but there is no evidence that these supports were aligned with his IEP goals and objectives. Indeed, SEIS made clear that it could not provide the counseling and behavioral services listed in Grid C, and that these services were Oxford's responsibility.

The record shows that the four-plus month delay in implementation of services is attributable to poor communication on the part of both Oxford and SEIS. Oxford had a partially accepted IEP in its possession as of November 25, 2014. For reasons not in the record, Oxford did not provide a copy of the IEP to Joann Rose until January 13, 2015. Even accounting for Thanksgiving and winter holiday breaks, this was a significant delay. Subsequently, Oxford delayed its responses to Joann Rose's repeated inquiries about how to implement the IEP in light of the partial rejection. On the other hand, Joann Rose and SEIS failed to inform Oxford that it would have to contract for Student's Grid C services until March 27, 2015, nearly 2.5 months after receiving the IEP. Even if the implications of the partially rejected IEP were unclear, it was very clear that the Grid C services themselves were fully accepted, and Ms. Rose or another representative from SEIS should have informed Oxford of SEIS' inability to provide those services.

Oxford does not dispute that it owes compensatory services to Student to make him whole for the non-implementation of his IEP. Student is entitled to compensatory services in OT, speech-language per his IEP, reading instruction from a reading specialist, and behavioral and counseling services. The Team should determine the manner, timing, and setting for delivery of services based on Student's current situation. Student is entitled to have all missed hours of service made up despite his having received similar or parallel services from Three Rivers; the Three Rivers in-house services could have been substituted for the IEP services only via a Team meeting and amended IEP accepted by Parent.

Other than the missed or delayed services described here, for which the remedy is compensatory services, Parent has proved no additional denial of FAPE while Student was at Three Rivers. The record does not support a finding of denial of FAPE while Student was at TLC. No evidence has been presented by either party on Student's situation during the two weeks between his discharge from TLC and the hearing dates, and so no findings can be made on denial of FAPE for that period.

Retaliation Claims—Issues 6, 7, 8⁵

To establish a prima facie case for discriminatory retaliation under Section 504 Parent must show that she engaged in protected activities, that Oxford was aware of these activities, that Oxford took adverse action against her and/or Student, and that Oxford's adverse action was caused and motivated by the protected activities. Causation could be inferred by “unusually suggestive temporal proximity” between the protected activity coupled with a “pattern of antagonism” between herself and Ms. Susen. *Lauren W.v. DeFlammis*, 47 IDELR 183, 480 F.3d 259 (3d Cir. 2007).

Oxford has stipulated that Parent engaged in protected activities of which Oxford was aware. Parent has failed to demonstrate that any of the delays or denials of services occurring in the months at issue were solely the responsibility of Oxford or were the product of any retaliatory or discriminatory motive. Indeed, Parent has not established deliberate “adverse actions.” Rather, the record as a whole establishes that several players with differing rules of operation—Three Rivers, Oxford, SEIS, and TLC—as well as Parent, were trying to serve a child with multiple, complex needs that still are not fully understood. They have not done so perfectly. There have been miscommunications and misunderstandings. TLC took an unusually long time to decide whether or not to accept Student, and the record shows that any lack of clarity about payment from Oxford was a very small factor. Communication between Oxford and SEIS and Oxford and TLC was inconsistent and unclear. Parents declined to seriously consider alternative residential placements when acceptance by TLC was uncertain, contrary to the advice of Oxford and TLC.

⁵Oxford contends that the BSEA lacks jurisdiction over retaliation claims. Oxford is correct that the BSEA lacks jurisdiction under the ADA; however, the BSEA is the state agency designated to hear Section 504 complaints as they relate to special education. 34 CFR 104.36; 603 CMR 28.08(3)(a)

Imperfection is not equivalent to retaliation or even to “adverse action,” however. The record contains absolutely no evidence of a discriminatory motive on the part of Oxford towards Parent or Student. If anything, the missteps of the parties and other players in this matter stem from a sense of urgency regarding Student's needs.

Having determined that Oxford did not retaliate against Parent, I need not reach issues 7 and 8.

CONCLUSION AND ORDER

Based on the foregoing, I find that Oxford owes Student compensatory services in the areas of occupational and speech therapy, counseling, behavioral supports, and specialized reading instruction. As stated above, Oxford is directed to immediately convene a Team meeting to determine the manner, timing, and setting for delivery of services based on Student's current situation and needs.

By the Hearing Officer:

Sara Berman

Date

