



October 26, 2021

**Sent via US mail and ePass**

Parents

Superintendent

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

**RE: FINAL REPORT: In the Matter of \*\*\*, 2021-02, Alleged Violation of the Individuals with Disabilities Education Act (IDEA).**

Dear Mr. and Mrs. \*\*\* and Mr. \*\*\*,

This is the Final Report pertaining to the above-referenced state special education complaint (Complaint) filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. \*\*\* (Parents) filed the Complaint on behalf of their adult daughter, \*\*\*, (Student), a student who recently graduated from the \*\*\* School District. The Student currently resides within the \*\*\* School District (District) boundaries. Parents allege the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulations at 34 CFR Part 300 and ARM 10.16.3007 et. seq.

The following issues have been identified based on the Parents' Complaint:

**Issue 1:** Did the District err when it awarded Student a regular high school diploma in May 2021 and refused to enroll the Student and provide a free appropriate public education (FAPE) for the 2021-2022 school year in violation of 34 CFR § 300.101 and § 300.102?

**Issue 2:** Did the District deny the Parents a chance to meaningfully participate at Student's February 3, 2021 IEP meeting in violation of 34 CFR 300.327 and 34 CFR 300.501(c)?

The investigation revealed an additional issue regarding whether the District failed to provide the Student with appropriate measurable transition services. Under the OPI's general supervisory and oversight authority, the following issue was also investigated:

**Issue 3:** Did the District fail to provide the Student with appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills and to provide the transition services needed to assist the Student in reaching those goals, as required by 34 CFR 300.320(b)?

**A. Procedural History**

1. On August 27, 2021, the Montana Office of Public Instruction (OPI) received a signed Complaint on behalf of the Parents and a copy of the Complaint was also provided to the District. The Complaint was deemed filed on August 27, 2021.
2. The OPI received the District's written response on September 23, 2021.
3. The appointed investigator conducted a telephone interview with the Student's Parents on October 7, 2021.
4. The appointed investigator conducted telephone interviews with the superintendent, special education teacher, high school principal and the District's attorney on October 15, 2021.
5. All documentation received from the parties was reviewed by the investigator.

**B. Legal Framework**

The OPI is authorized to address alleged violations of the IDEA and Montana special education laws through this special education state complaint process as outlined in 34 CFR § 300.151-153 and ARM 10.16.3662, which occurred within one year prior to the date of the complaint. Pursuant to 34 CFR § 300.151-153 and ARM 10.16.3662, all relevant information is reviewed, and an independent determination is made as to whether a violation of federal or state statute, regulation or rule occurred. Any references to facts outside of the one-year timeframe from August 27, 2020, to August 27, 2021, is included strictly for background information.

**C. Findings of Fact**

The following facts have been determined, based on the documentation received and the interviews conducted.

1. The Parents have standing to file this Complaint pursuant to ARM 10.16.3661.
2. The Student is 18 years old and will turn 19 on January 19, 2022. The Student's father has obtained legal guardianship of the Student.
3. The Student received special education services from the District since the 6<sup>th</sup> grade.

4. The Student was in the 12<sup>th</sup> grade during the 2020-2021 school year and graduated with a regular high school diploma on May 23, 2021, at the age of 18.
5. For the 2020-2021 school year Student had two IEPs that were implemented. One was dated February 8, 2020 and one dated February 3, 2021.
6. Progress reporting for the 2020-2021 school year:
  - a. October 28, 2020 reported progress on the February 8, 2020 IEP.
  - b. January 27, 2021 reported progress on the February 3, 2021 IEP.
  - c. March 25, 2021 reported progress on the February 3, 2021 IEP.
  - d. May 21, 2021 reported progress on the February 3, 2021 IEP.
7. An annual IEP team meeting was held on February 3, 2021. On January 28, 2021, a draft IEP was provided to the Parents.
  - a. The Parents provided the IEP team with hand-written comments on the draft IEP.
  - b. The draft IEP included a completed prior written notice that was identical to the one in the February 3, 2021 IEP.
  - c. The draft IEP included a completed IEP notes section. All of IEP notes from the draft were included on the February 3, 2021 IEP with very minimal changes.
8. The Student's IEP dated February 3, 2021, provides:
  - a. The Student's disability category is Cognitive Delay.
  - b. The Student has Angelman Syndrome and exhibits the following characteristics:
    - i. Developmental delay, functionally severe.
    - ii. Movement or balance disorder including forward lurching, unsteadiness, clumsiness, or quick, jerky motions.
    - iii. Behavioral uniqueness, including combinations of frequent laughter/smiling; apparent happy demeanor and easily excitable personality.
    - iv. Speech impairment, no use of words, receptive and nonverbal communication skills are higher than verbal ones, yet clearly communicating needs does not happen.
  - c. The Student's cognitive ability is two to three years old.
    - i. The Student enjoys being around peers and music classes.
    - ii. The Student has made little to no progress on pre-primer academic tasks.
    - iii. The Student will watch videos of interest, including cooking shows, and has participated in life skills activities.
  - d. Training opportunities are limited due to the Student's cognitive functioning.
  - e. Employment opportunities are limited, but the Student participated in activities at school with assistance, including wiping tables, pushing a sweeper, putting items away, carrying a tray to the cafeteria, and putting silverware in the trash after meals.
  - f. Independent living skills show that the Student is able to follow one step, modeled directions for tasks, pick up after self, flush the toilet with verbal prompting, feed self, and turn lights off and on.

- g. Independent living skills show that the Student needs help taking coat off and on, hanging up backpack, brushing teeth, taking pants up and down in the bathroom, wiping, washing hands, walking, and throwing paper towel into the trash.
- h. No results of age-appropriate transition assessments are referenced.
- i. Three postsecondary goals provide that upon completion of IEP goals and leaving high school:
  - i. The Student will continue to live in a supported home environment with guardians where the Student will continue training for household tasks.
  - ii. The Student will secure, with supports from parents/guardians, appropriate monetary support to facilitate a long term living arrangement.
  - iii. Within two weeks of graduation on goals from high school, the Student will complete independent living skills, with support from parents/guardians, with household tasks at home.
- j. The Course of Study section identifies the anticipated graduation date for the Student as May 2021, and the credits earned to date are “0” and the total number of credits needed for graduation are “0”. The courses identified for the school years 2019-20 and 2020-21 included:
  - i. Communication
  - ii. Mobility
  - iii. Self-help/independence
  - iv. Band
  - v. Chorus
- k. The Statement of Transition Services Needed provides the following:
  - i. Instruction: working on IEP goals.
    - 1. Person or Agency Responsible: The Student and District staff.
  - ii. Employment: This section is blank.
    - 1. Person or Agency Responsible: this section is blank.
  - iii. Community Experiences: The Student will continue to attend community events with family and should sign up for Special Olympics.
    - 1. Person or Agency Responsible: the Parents.
  - iv. Post-School Adult Living: The Student’s family should contact various organizations listed with contact information in Montana for assistance.
    - 1. Person or Agency Responsible: The Student and Parents.
  - v. Related Services: the Student’s family should contact various organizations listed with contact information in Montana for assistance.
    - 1. Person or Agency Responsible: The Student and Parents.
  - vi. Daily Living Skills: the Student, with family support should continue working on picking up items, making basic snacks or meals with assistance, helping with laundry, wiping off tables.
    - 1. Person or Agency Responsible: The Student and Parents.

- vii. Functional Vocational Assessment: this section is blank.
  - 1. Person or Agency Responsible: This section is blank.
- viii. The High School Graduation section in the IEP provides that “The IEP team determined that the student **will meet** the district’s graduation requirements, or will successfully complete the measurable annual goals, **and** not need new measurable annual goals. The IEP team will not develop a new Individualized Education Plan, and the student **is** expected to graduate with a regular diploma at the end of the current school year.” (Emphasis original).
  - 1. The annual goals provide that by May 21, 2021:
    - i. Communication:
      - 1. When given two choices of activities the Student will communicate the choice by picking up the item of interest and handing it to staff with 80% mastery.
        - a. The Progress Report dated January 27, 2021 stated “Goal just started yet. No data. IEP meeting next week.”
        - b. The Progress Report dated March 25, 2021, stated that this goal was met. Based on staff observation and record book, the Student was at 100% mastery of this goal.
        - c. The Progress Report dated May 21, 2021, identified that this goal was met.
      - 2. When given the opportunity to say, “thank you,” the Student will press the button in the cafeteria to thank the kitchen staff after putting silverware in the trash with 100% accuracy.
        - a. The Progress Report dated January 27, 2021 stated “Goal just started yet. No data. IEP meeting next week.”
        - b. The Progress Report dated March 25, 2021 stated that this goal was met. Based on data collection and staff observation, the Student was at 100% accuracy.
        - c. The Progress Report dated May 21, 2021, identified that this goal was met.
    - ii. Self-Help Independence:
      - 1. When participating in life skills activities during class time, the Student will follow one step, verbal or modeled, directions to help complete the task with 100% accuracy.
        - a. The Progress Report dated January 27, 2021 stated “Goal just started yet. No data. IEP meeting next week.”
        - b. The Progress Report dated March 25, 2021, stated that this goal was expected to be met by the end of the year. The Student was at 80% mastery.

- c. The Progress Report dated May 21, 2021, states that staff observation and review of record indicates the Student met this goal, although there was some inconsistency depending on the task. Across all attempts, the Student's mastery was at 80%.
    - d. During the complaint investigation interview, the special education teacher clarified that the May 21, 2021, Progress Report was incorrect; the Student had achieved 100% accuracy by May 21, 2021.
  2. When given manipulatives, the Student will purposefully grasp and release objects with 80% accuracy.
    - a. The Progress Report dated January 27, 2021 stated "Goal just started yet. No data. IEP meeting next week."
    - b. The Progress Report dated March 25, 2021, stated this goal was expected to be met by the end of the year. The Student was at 60%.
    - c. The Progress Report dated May 21, 2021, stated this goal was met with a current measure of 80%, although from time to time, if it was an item the Student really liked, the Student would want to hang on to it, as is typical of most children.
  3. When asked to throw away silverware, the Student will walk to the kitchen with staff and place the silverware in the trash with 100% mastery.
    - a. The Progress Report dated January 27, 2021 stated "Goal just started yet. No data. IEP meeting next week."
    - b. The Progress Report dated March 25, 2021, stated that this goal was met.
    - c. The Progress Report dated May 21, 2021, identified that this goal was met.
  - m. Progress reports will be provided to the Parent quarterly.
  - n. The special education services total weekly minutes of 1410 consisted of:
    - i. Communication in the special education setting for 235 minutes per week.
    - ii. Self-help/independence in the special education setting for 1175 minutes per week.
9. The IEP meeting on February 3, 2021 was held by telephone with the Parents and was short in duration.
  - a. The Parents indicated that the meeting lasted approximately seven minutes. [Complaint Investigator Interview].

- b. The special education teacher indicated the meeting lasted approximately 15 minutes. [Complaint Investigator Interview].
10. The Prior Written Notice attached to the IEP dated February 3, 2021, provides:
  - a. The Student “requires special education support in order to be a successful learner and meet IEP goal requirements for her graduation...”
  - b. A “Functional Vocational Assessment [is] not included in [the] IEP due to [the Student’s] cognitive levels.”
11. The IEP notes attached to the IEP dated February 3, 2021, provide that:
  - a. The Student has extremely severe non-traditional communication skills.
  - b. The Student did not have input into the IEP, due to lack of communication skills, and inability to understand what is being said, due to the severity of the disability.
  - c. Due to the Student’s severe disability, the Student does not use a standard grading scale and will graduate from high school on completion of the IEP goals.
  - d. Functional vocational assessments are not appropriate for the Student as the Student’s cognitive levels are below the level of gaining employment skills.
  - e. The Student is expected to graduate on the IEP goals in May 2021.
12. Shortly after the February 3, 2021, IEP meeting, the special education teacher drove to another city to meet with vocational rehabilitation staff to discuss the Student’s needs. The special education teacher shared the information received and the vocational rehabilitation staff contact information with the Parents.
13. On May 21, 2021, District staff informed the Parents that the Student’s Progress Report showed the Student met all current IEP goals.
14. The Student participated in the graduation ceremony for the Class of 2021 on May 23, 2021, and received a regular diploma.
15. The Student’s transcript identified the Student’s grade as 12 and diploma date of 5/23/2021.
  - a. The transcript provided the courses taken during the 2017-2018 school year when the student was in ninth grade.
  - b. The transcript identified that the Student earned a half credit in PE and Health.
  - c. The transcript does not provide any information regarding courses during tenth through twelfth grades.
16. On August 19, 2021, District staff provided a letter to the Parents as a follow-up to a phone call that day, during which the Parents requested that the Student continue to attend the District’s high school. The letter provided:
  - a. Staff researched the documentation regarding the Student’s IEP, reviewed the contact logs, and spoke with high school staff to determine if the material supported graduating the Student from high school with a regular diploma.
  - b. The review of information supported the IEP Team’s decision to graduate the Student with a regular diploma.

- c. The Student's file did not contain any concern by the Parents or District staff that the Student should not graduate with a regular diploma in May 2021.
  - d. Once the Parents signed the documentation and the Student received a normal diploma of graduation the educational responsibilities of the District are complete.
17. The Parents believed they had requested on several occasions while the Student was in high school that the Student be allowed to continue attending school until the Student turned 19 years of age.
- a. The Parents believed they were informed by District staff that students with disabilities are not allowed to attend another year after graduation in Montana.
  - b. District staff had no recollection of the Parents making a request that the Student be allowed to continue attending school until age 19.
    - i. District staff understood that the Parents wanted the Student to graduate with classmates.
    - ii. The Student's father accompanied the Student during the graduation ceremony to receive the diploma.

#### **D. Analysis and Conclusions**

**Issue 1: Did the District err when it awarded the Student a regular high school diploma in May 2021 and refused to enroll the Student and provide a free appropriate public education (FAPE) for the 2021-2022 school year in violation of 34 CFR 300.101 and 300.102?**

#### **FAPE**

The purpose of the IDEA is “[t]o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living...” 34 CFR 300.1(a).

A FAPE consists of special education and related services that:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the State Education Agency;
3. Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
4. Are provided in conformity with an IEP that meets regulatory requirements.

34 CFR 300.17.

The U.S. Supreme Court construed the meaning of FAPE in *Bd. of Education of Hendrick Hudson Cent. School Dist. v. Rowley*, 458 U.S. 176, 198, 207 (1982). The *Rowley* court stated:



“The statutory definition of ‘free appropriate public education,’ in addition to requiring that States provide each child with ‘specially designed instruction,’ expressly requires the provision of ‘such ... supportive services ... as may be required to assist a handicapped child to benefit from special education.’ § 1401(17). ...” The U.S. Supreme Court further defined the standard for a free appropriate public education in *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017), holding that the educational program for a child with a disability must be one that is “... reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”

In *Endrew F.*, the Supreme Court rejected a line of cases that held that the IDEA FAPE standard requires merely more than de minimis educational progress. For those children who are not able to be fully integrated in the regular classroom and are not able to achieve on grade level, the “educational program must be appropriately ambitious in light of his circumstances, just as advancement from grade to grade is appropriate ambitious for most children in the regular classroom. The goals may differ, but every child should have the chance to meet challenging objectives.” *Endrew F. v. Douglas County School District. RE-1*, 137 S. Ct. 988 (2017).

Under the IDEA, FAPE must be available to all children with disabilities ages 3 to 21 except to the extent that its application to children aged 3, 4, 5, 18, 19, 20, or 21 would be inconsistent with State law or practice. 34 CFR 300.102(a). In Montana, the trustees of a school district shall admit a child to school who is 5 years of age or older on or before September 10 of the year in which the child wishes to enroll but is not yet 19 years of age. MCA 20-5-101(a). To the extent a district provides education to students ages 19, 20 or 21, students the same age with disabilities must be provided a FAPE. ARM 10.16.3121(2).

### **Graduation with a Regular High School Diploma**

#### **Federal Requirements**

A district’s obligation to provide a student a FAPE ends when a student graduates from high school with a “regular high school diploma.” 34 CFR 300.102(a)(3)(i). Therefore, a student who graduates from high school but was not awarded a regular high school diploma continues to be entitled to FAPE. 34 CFR 300.102(a)(3)(ii). “Children with disabilities who have not graduated with a regular high school diploma still have an entitlement to FAPE until the child reaches the age at which eligibility ceases under the age requirements within the State.” 71 Fed. Reg. 46580 (8/14/2006). Under IDEA, a “regular high school diploma” means the “standard high school diploma awarded to the preponderance of students in the State, that is fully aligned with state standards. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma (GED), certificate of completion, certificate of attendance, or similar lesser credential.” 34 CFR 300.102(a)(3)(iv). “Children who graduate from our public school systems are considered by our society to have been ‘educated’ at least to

the grade level they have completed, and access to an ‘education’ for handicapped children is precisely what Congress sought to provide in the Act.” *Rowley* at 203.

The Office for Special Education Programs (OSEP) within the U.S. Department of Education has emphasized that the ESEA (Elementary and Secondary Education Act) requires each State to apply the same challenging academic content and achievement standards to all students, including students with disabilities. The authority to set and/or modify academic standards rests solely with the State. OSEP is concerned “that if IEP Teams are permitted to set requirements for high school graduation that are not fully aligned with the State’s academic content, LEAs will determine that students with disabilities who receive diplomas through [an alternate pathway] are no longer entitled to FAPE. Such determinations would violate the requirement that a State and its LEAs ensure that FAPE is made available to all eligible students with disabilities within the State.” *Letter to White*, 63 IDELR 230 (OSEP 2014).

### **Montana and Local Requirements**

Minimum graduation requirements are established by the Montana Board of Public Education (BPE), see ARM 10.55.905.<sup>1</sup> The BPE sets the standards of accreditation for public schools in Montana. To meet accreditation standards for special education, each district is required to provide educational programs and services to students eligible to receive special education under IDEA. ARM 10.55.805(1). In doing so, “[a] student eligible to receive special education services as defined under IDEA and who has successfully completed the goals identified on an individualized education program for high school completion shall be awarded a diploma.” ARM 10.16.55.805(4).<sup>2</sup> See also *In the Matter of Student*, OSPI 2012-01 (11/10/12) (Hearing Officer found that the evidence did not support a finding that the units of credit earned by a student with disabilities were sufficiently aligned with the “content and performance standards” required by Montana for the award of a regular diploma violating the student’s right to FAPE under IDEA).

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<sup>1</sup> ARM 10.55.905 GRADUATION REQUIREMENTS

(1) As a minimum, a school district's requirements for graduation shall include a total of 20 units of study that enable all students to meet the content standards and content-specific grade-level learning progressions.

(2) In order to meet the content and performance standards, the following 13 units shall be part of the 20 units required for all students to graduate:

- (a) 4 units of English language arts;
- (b) 2 units of mathematics;
- (c) 2 units of social studies;
- (d) 2 units of science;
- (e) 1 unit of health enhancement, with 1/2 unit each year for two years;
- (f) 1 unit of arts; and
- (g) 1 unit of career and technical education.

(3) Units of credit earned in any Montana high school accredited by the Board of Public Education shall be accepted by all Montana high schools.

(4) In accordance with the policies of the local board of trustees, students may be graduated from high school with less than four years enrollment.

<sup>2</sup> See also District Policy 2410P, “In addition, handicapped students who successfully complete their Individual Educational Program (IEP) will be granted a general diploma.”

IEP teams must set out how a student will be assisted in meeting the graduation requirements for the district in his or her IEP through specially designed instruction. Pursuant to Montana’s special education administrative rule, a student with disabilities shall be promoted or retained according to local education agency (or district) criteria, unless waived in the student’s IEP. ARM 10.16.3345(4).<sup>3</sup> A student with disabilities who completes a prescribed course of studies shall be eligible for graduation from high school. ARM. 10.16.3345(5). A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study. ARM. 10.16.3345(5)(a).

The Montana Office of Public Instruction has provided guidance on whether a student’s IEP team can waive graduation requirements for a student with disabilities and determined that an IEP team does not have the authority to waive specific course requirements; this is a decision only the board of trustees or designee of each district may make. ARM 10.55.906(3).<sup>4</sup> Each IEP team must follow local district policy when considering waivers for students with disabilities. *See OPI’s Special Education in Montana.*<sup>5</sup>

### **Analysis**

In August 2021, the Parents requested that the Student be allowed to attend school. In response to the request, the District provided the Parents with a letter dated August 19, 2021, and stated that once the Student received a normal diploma all educational responsibilities of the District ceased. The Parents subsequently filed the Complaint alleging the District erred by refusing to enroll Student.

In Montana, during a student’s senior year of high school, the IEP team is required to begin using a form that provides three options regarding high school graduation:

- A. The IEP team determined that the student **will meet** the district’s graduation requirements, **or** will successfully complete the measurable annual goals **and will not need** new measurable annual goals. The IEP team **will not** develop a new Individualized Education Plan and the student **is** expected to graduate with a regular diploma at the end of the current school year.” (Emphasis original).
- B. The IEP team determined that the student **will not meet** the district’s graduation requirements **or will not** successfully complete the measurable annual goals and **will** need

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<sup>3</sup> This is also stated in District policy 2410: “A student with a disabling condition will satisfy those competency requirements incorporated into the individualized education plan (IEP). Satisfactory completion of the objectives incorporated into the IEP shall serve as the basis for determining completion of a course.”

<sup>4</sup> District policy 2410P provides that graduation requirements will generally not be waived under any circumstances. In rare and unique hardship circumstances the principal may recommend, and the superintendent may approve minor deviations from the graduation requirements.

<sup>5</sup> <https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/Guides/OneguideFINAL.pdf?ver=2020-10-20-155646-053> (October 20, 2021).

new measurable annual goals for the coming school year. The student **is not** expected to graduate with a regular diploma at the end of the current school year and the IEP team must develop a new Individualized Education Program for the next school year. (Emphasis original).

- C. The student **will not meet** the district's graduation requirements. The student **will not receive** a regular diploma. The district **will not provide special education services** for the next school year due to district policy on the age through which education services are available to students. (Emphasis original).

At the February 3, 2021, IEP meeting, the Student's IEP team selected option "A" that the Student will meet graduation requirements or will successfully complete the measurable annual goals and will not need new measurable annual goals. The notes section of the Student's IEP dated February 3, 2021, indicates the Student is expected to graduate on IEP goals in May 2021, does not use a standard grading scale, and will graduate high school on completion of the IEP goals. This decision was made even though Student earned half a credit towards graduation, and the Student's IEP identified the Student as severely developmentally delayed, with no use of words and the inability to clearly communicate needs.

In this case, the IEP team effectively waived all the district graduation requirements for the Student. Waivers of local education agency criteria for graduation must be granted by the board of trustees of the school district. ARM 10.55.906(3). Although Montana law and District policy allow an IEP team to set competency requirements for course completion, the waiver in this case extreme, as the Student only earned a half a credit during the ninth grade in PE and Health, and received 1410 minutes per week of special education services consisting of communication and self-help/independence. OSEP's *Letter to White* emphasized the concern that if IEP teams are permitted to set requirements for high school graduation that are not aligned with the State's academic content, it could violate the right of students with disabilities to receive FAPE.

The obligation of a district to provide FAPE to a student may extend beyond a student's senior year. 34 CFR 300.101. The Student was not going to age out, the Student was 18 at the beginning of the 2021-2022 school year, and the IEP team should have selected "B" as the graduation option discussed above. The Student did not meet the District graduation requirements, as set forth on the Student's high school transcript, and needed new measurable annual goals and an IEP for the 2021-2022 school year. Although the Student was able to meet the measurable annual goals on the February 3, 2021, IEP, the goals were not challenging to the Student or sufficiently ambitious, as the Student met two communication goals and a self-help goal less than two months after the IEP was developed, and met the remaining two goals by May 21, 2021. The ability of the Student to meet several of the annual goals shortly after the IEP was developed clearly shows that the goals were not challenging to the Student or sufficiently ambitious and resulted in a denial of FAPE.

The District awarded the Student the regular high school diploma in error. The District's failure to continue its obligation to provide the Student a FAPE for the 2021-2022 school year was in violation of 34 CFR 300.101 and 300.102. **There were violations of Part B of the IDEA.**

**Issue 2: Did the District deny the Parents a chance to meaningfully participate at Student's February 3, 2021 IEP meeting in violation of 34 CFR 300.327 and 34 CFR 300.501(c)?**

The IEP team process is the means by which a district develops an IEP and offers FAPE. 34 CFR 300.320. Parents are mandatory members of the IEP team. 34 CFR 300.321(a)(1). Districts must ensure that a parent of a student with a disability is a member of any group that makes a decision regarding the educational placement of a student. 34 CFR 300.327; 34 CFR 300.501(c). When conducting IEP or placement meetings, the parent of a student with a disability may agree to use alternative means of meeting participation such as video conferences and conference calls. 34 CFR 300.328. Graduation is a change in placement and must comply with the same procedural requirements for any other placement decision. 34 CFR 300.102(a)(3)(iii). Districts may provide parents with a draft IEP solely for purposes of discussion and development of an IEP, but it may not be represented to parents as a completed IEP. *Letter to Helmuth*, 16 IDELR 503 (OSEP 1990). Predetermination by a school district can occur when members of an IEP team decide a student's placement in advance of an IEP meeting without the parents' participation or input. *H.B. v. Las Virgenes Unified Sch. Dist.*, 52 IDELR 163 (9<sup>th</sup> Cir. 2008).

Parents allege in the Complaint that they were under quarantine and unable to attend the February 3, 2021 IEP meeting in person, that no information concerning IEP requirements for graduation were discussed during the meeting, and that questions regarding Student attending another year were withheld. A draft IEP was provided to the Parents on January 28, 2021 for review and comment. The Parents did write notes on the draft IEP and gave it back to the school. The draft IEP included a fully completed prior written notice identical to that set forth in the finalized IEP. The draft IEP also included meeting notes for the meeting that had not yet occurred, which are mostly identical to those set forth in the finalized February 3, 2021 IEP. On the draft IEP the high school graduation box pre-selected that "[t]he IEP team determined that the student **will meet** the district's graduation requirements, **or** will successfully complete the measurable annual goals **and will not need** new measurable annual goals. The IEP team **will not** develop a new Individualized Education Plan and the student **is** expected to graduate with a regular diploma at the end of the current school year." (Emphasis original). Other boxes were pre-selected on the draft IEP including that the parent approves of the IEP.

The fact the prior written notice and IEP notes were filled out before the IEP meeting occurred, gives no indication as to what was actually discussed at the IEP meeting which lasted approximately between seven to fifteen minutes on February 3, 2021. Even if it did give an indication, there is nothing in the prior written notice that documents discussion regarding

graduation. The top of the IEP notes indicates that “[student] is expected to graduate on her IEP goals in May, 2021.” There is no evidence of any discussion by the IEP team that the Student may continue to need special education in light of the Student’s severe disabilities. The District’s actions resulted in predetermination of the Student’s change in placement.

Further evidence of predetermination by the District occurred when the District provided the Parents with a progress report dated January 27, 2021. The progress report did not address the goals on the February 8, 2020 IEP, which was the IEP that was supposed to be implemented at that time, but instead referred to the goals on the IEP dated February 3, 2021, for which there had not yet been a team meeting to discuss and finalize the IEP, nor had parental consent been received for its approval and implementation, as required by Administrative Rule of Montana 10.15.3505. Additionally, the Parents did not have the final progress reporting for the February 3, 2021 meeting in order to make a decision as to if Student had met the goals on the February 8, 2020 IEP which also hampered their ability to meaningfully participate in the IEP meeting.

The District’s actions resulted in predetermination of the Student’s placement in violation of **34 CFR 300.327 and 34 CFR 300.501(c). There were violations of Part B of the IDEA.**

**Issue 3: Did the District fail to provide the Student with appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills and provide the transition services needed to assist the Student in reaching those goals, as required by 34 CFR 300.320(b)?**

The IDEA requires that no later than the first IEP in effect when a child turns 16, and updated annually, transition services, consisting of a coordinated set of activities for a child with a disability must be provided and must:

- Be designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.
- Be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests.
- Include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. 34 CFR 300.43; 34 CFR 300.320(b).

Transition services can include a broad range of services, including vocational and career training, based on the unique needs of the individual student, taking into account the student’s strengths and interests. 71 Fed. Reg. 46579 (8/14/2006). In certain circumstances, transition services may be functional skills to allow students who are not ready for independent work to

continue training necessary so the students may live and work independently, given their disabilities. 34 CFR 300.43.

The IDEA is silent on the specific transition assessments that are to be used but require that the assessments are dependent on the individual needs of the student. 71 Fed. Reg. 46667 (2006). Without transition assessments, appropriate goals and services cannot be provided. *See Forest Grove School District v. Student*, 63 IDELR 163 (D. Ore. 2014) (failure to provide measurable post-secondary goals based on timely transition assessments is a violation of IDEA).

The challenges inherent in assessing the transition needs and goals of a student with cognitive deficits does not absolve a district of its duty to develop an appropriate transition plan. *See Los Angeles Unified School District*, 62 IDELR 68 (SEA CA 2013) (The student's teacher attempted a transition inventory but the student was unable to complete the 15-minute exercise over a period of three days. Without the benefit of completed assessments the resulting transition plans were not unique to the student).

A district is expected to take a leadership position in contacting agencies expected to provide services to the student once he exits the school system and to act as a liaison between the parents and the other agencies while the student is enrolled in school. *See Letter to Bereuter*, 20 IDELR 536 (OSERS 1993). *See also Yankton Sch. Dist. v. Schramm*, 23 IDELR 43 (D.S.D. 1995), *aff'd*, 24 IDELR 704 (8th Cir. 1996), *petition for reh'g denied*, 112 LRP 18821 (8th Cir. 10/01/1996).

A school district cannot unilaterally delegate its transition responsibilities to parents. A district is ultimately responsible to the student for ensuring that the transition services called for in the student's IEP are implemented. Although school districts are not required to ensure that students achieve their transition goals, the lack of need to guarantee success does not discharge a district of its statutory obligation to provide transition services to assist a student in attempting to reach his goals. *Los Angeles Unified Sch. Dist.*, 113 LRP 39561 (SEA CA 2013).

In this case, the Student's IEP reflected that age appropriate transition assessments were not conducted, and the Functional Vocational Assessment section of the transition plan is blank.

The Statement of Transition Services Needed in the Student's IEP identified working on the IEP goals as the District's only obligation. No employment opportunities were identified. The persons identified as responsible for community experiences, post-school adult living, related services, and daily living skills only included the Student and Parents. Although the special education teacher met with vocational rehabilitation staff regarding the Student's needs and provided the Parents with information, the District is not identified as having any obligations to ensure that the components of the Student's transition plan were implemented. Rather, the IEP delegated those responsibilities to the Parents and the Student.

The District failed to provide the Student with appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and independent living skills and provide the transition services needed to assist the Student in reaching those goals, in violation of 34 CFR 300.320(b). **There were violations of Part B of the IDEA.**

## **F. Disposition**

There is evidence in the record that Part B of IDEA was not followed. Corrective actions by the District are required.

## **G. Corrective Action Plan**

### **Compensatory Education and IEP Development**

- The District shall immediately enroll the Student at its high school through the end of the 2021-2022 school year.
- The District shall implement the IEP dated February 3, 2021, upon enrollment.
- An IEP team meeting shall be scheduled to occur on or before November 12, 2021. In the event the IEP meeting does not occur on or before November 12, 2021, due to the parents' availability, the following documentation shall be provided to the OPI Early Assistance Program Director:
  - Notification to parents of the meeting early enough to ensure that they will have the opportunity to attend;
  - Scheduling the meeting at a mutually agreed on time and place.
- The IEP team shall, at a minimum:
  - Determine whether assessments are necessary to determine the Student's present levels of performance.
  - Identify the transition assessments to be completed by Parents and school staff.
  - If necessary, draft an interim IEP pending the completion of assessments.
- Within ten school days of the IEP meeting, the District shall provide the following documentation to the OPI Early Assistance Program Director:
  - The Invitation to the IEP Team Meeting;
  - Any amendment of the IEP or new IEP adopted by the Student's IEP Team; and
  - Prior Written Notice of all decisions made.
- Schedule and hold additional IEP meetings as needed to finalize and/or revise an IEP to be in place through the 2021-22 school year.
- In addition to enrolling the student through the 2021-2022 school year, the District shall offer special education and related services adequate to compensate for the failure to provide Student a FAPE from the beginning of the 2021-2022 school year through the date student is enrolled and provided services. Compensatory education shall align with this Final Report and any recommendations from the IEP team. After consultation with Student's IEP team, the District shall submit a plan for compensatory services to the OPI Early Assistance Program Director by January 31, 2022. All compensatory services must be offered to the Parents to be completed within one year of this Final Report.

### **Required Staff Training**



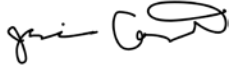
The District shall arrange for the District superintendent, high school principal, and all high school special education teachers to participate in professional development by December 31, 2021, with an OPI trainer. To schedule the training, please contact John Gorton, OPI School Improvement/Compliance Unit Manager.

At a minimum, the required training shall cover the following topics:

- IEP requirements, including:
  - The requirement to draft ambitious goals, regardless of the nature of a student's disability.
  - The requirement to confer an appropriate educational benefit, in light of the student's circumstances.
  - Use of draft IEPs.
  - Parental consent requirements.
  - Requirement to ensure special education services and placement to provide a student with FAPE.
- Progress reporting requirements, including:
  - Frequency of progress reporting given to parents.
  - Data collection for progress reporting.
- Measurable postsecondary goals and transition services requirements, including:
  - Age appropriate transition assessments related to training, education, employment, and independent living skills.
  - Results-oriented process requirements.
  - Based on individual needs, taking into account a student's strengths, preferences and interests.
  - Include instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
  - Course of study requirements.
  - Summary of Performance requirements.
- Definition of regular high school diploma
  - Graduation requirements for students with disabilities
  - When a regular high school diploma is provided
  - Prior written notice when a student graduates with a regular high school diploma
- The provision of FAPE for students with disabilities who do not meet graduation requirements

Participants must sign in at the training and the original sign-in sheet shall be filed with the OPI Early Assistance Program Director, by the OPI Trainer along with a copy of the training materials.

**Recommendation:** If the Parent agrees, the District is strongly encouraged to consider accessing OPI IEP facilitation services. If the parties agree to use an IEP facilitator, please contact the OPI Early Assistance Program Director, as soon as possible to obtain the assistance of a facilitator.



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Jessie Counts

Senior Manager Student Support Services

- c: Mandi Gibbs, Dispute Resolution/EAP Director (via ePass Only)  
John Gorton, OPI School Improvement/Compliance Unit Manager (via ePass Only)  
\*\*\*, School District Attorney (via ePass Only)