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Linda McCulloch
Superintendent

June 5, 2001

***** and *****

*** *****

*****, MT *****

***** ***** , Superintendent

***** Public Schools

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***** , MT *****

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: In the Matter of **** 2001-02 Alleged Violations of the Individuals with Disabilities Education Act (IDEA). 20 USC §§ 1400 through 1485.

FINAL REPORT

Dear Mr. & Mrs. ***** and Superintendent *****:

Pursuant to A.R.M. 10.16.3662(9), this is the Final Report pertaining to the above-referenced special education compliance complaint.

A. PROCEDURAL HISTORY.

1. The Complaint. As outlined in my letter to the parties dated May 24, 2001, the history of this complaint procedure has been cumbersome and complicated. The Office of Public Instruction ("OPI") received ***** original letter and complaint dated February 6, 2001, on February 14, 2001. (Mr. and Mrs. ***** are referred to herein collectively as the "Complainant.") In that letter, the Complainant generally asserted that the ***** Public Schools (the "District") failed to provide the Complainant's child, **** (the "Student"), with a free appropriate public education ("FAPE") pursuant to the Individuals with Disabilities Education Act ("IDEA").

On March 9, 2001, and again on March 25, 2001, I requested that the Complainant provide a more "specific statement of what requirement of a federal or state statute, regulation, or rule that applies to a student with disabilities or special education the local educational or public agency has allegedly violated" as required by A.R.M. §10.16.3662 (2)(b). On March 28, 2001, OPI received an additional letter from the Complainant dated March 16, 2001, attempting to "condense and clarify" the nature

of the complaint. On April 26, 2001, OPI received a letter dated April 25, 2001, from ****, the Complainant's attorney, supporting the allegations and citing provisions of federal law allegedly violated by the District. Either the Complainant or I provided copies of each of these letters to the District. Therefore, for the purposes of this Final Report, "Complaint" refers to the allegations made against the District in the Complainant's letters of February 6, 2001, and March 16, 2001.

2. Early Assistance Program. Pursuant to A.R.M §10.16.3660, the OPI's Early Assistance Program attempted to resolve the issues between the Complainant and the District. The parties were unable to reach resolution.

3. District's Written Response. When the parties could not reach resolution, I called for the District's written response, which was due on or about March 15, 2001. At the request of the District and upon discussion with the Complainant, I granted an extension of time until March 28, 2001, for the District to respond to the Complaint. I received initial documentation from the District on March 12, 2001, and I received the District's written response on March 29, 2001. Because of problems in providing the District's documentation to the Complainant (see my letter to the parties dated March 30, 2001), I granted an additional extension of time, until April 11, 2001, to the District to provide a complete copy of the District's response to the Complainant. The Complainant thereafter had ten calendar days to submit to me additional information about the allegations in the Complaint and the District's written response. The Complainant apparently received the District's supporting documents on April 16, 2001. On April 26, 2001, I received Mr. *****'s letter and supplemental information concerning the allegations made by the Complainant.

The findings and conclusions contained in this Final Report are based on the Complaint and the District's written response and supporting documents. Mr. *****'s request that I not consider certain documents pertaining to this matter is denied. (See Mr. *****'s letter dated April 25, 2001.) Both federal and state law provide that I shall review all relevant information and make an independent determination as to whether the District violated IDEA. 34 CFR 300.661(a)(3) and A.R.M 10.16.3662(8).

B. LEGAL FRAMEWORK.

Federal and state law requires that students with disabilities receive FAPE. 20 U.S.C §§ 1400-1487. Mont. Code Ann. §20-7-401, et seq. In general, FAPE means special education and related services that conform to the student's individualized education program. Special education, in turn, means specifically designed instruction, at no cost to the parent to meet the unique needs of the disabled child. The United States Supreme Court has interpreted IDEA to mean that "the 'basic floor of opportunity' provided by the Act consists of access to specialized instruction and related services which are individually designated to provide educational benefit to the handicapped child." *Hendrick Hudson Dist. Bd. of Ed. v. Rowley*, 458 U.S. 176, 202 (1982). The Supreme Court has not read IDEA to mean that a disabled child be provided with the best available special education or services or that the services maximize each child's

potential. Therefore, under IDEA, the District must provide the “basic floor of opportunity” for the Student’s education. Particular regulations promulgated to implement IDEA are referenced below.

C. FINDINGS AND CONCLUSIONS.

1. The Student is a 14-year-old male. He was diagnosed with attention deficit, hyperactivity disorder (ADHD) and qualifies for special education under the category of “Other Health Impaired.” He was enrolled in the 8th grade at ***** Middle School. On January 26, 2001, Complainant removed the Student from that school. An IEP was in place for the Student at the time of the Student’s removal. The District, Complainant and the Student executed the IEP on August 31, 2000.

2. The Student’s Child Study Team (CST) report dated December 3, 1999, notes in the assessment summaries:

“Classroom Based Assessment.” “Has missed much in English + Math and skills have not built. 0% in Social Studies. Same problems with discipline in Science. Mostly distracts other students. Natural leader. Failing everywhere. Afternoon is much more difficult.”

“Achievement.” “[Student] has scored at or above level in all his core academics, except in the area of Math. In Math, he’s in the low average range.”

It was determined that the services to be provided would be in the areas of Math and Social-Emotional-Behavioral. Accommodations made until an IEP is developed after the first of the year were:

“Mr. [K] will talk to his teachers and be the go between, the teachers will report to Mr. [K]. Daily Mr. [K] will check his assignment sheet.”

Parents requested that Student attend the resource special ed classroom for his math.

“Mr. [M] will write a contract which will decrease the demarts [sic] that [Student] has accumulated this year.”

[Student’s] academics will be tied to his basketball participation i.e., he will be able to participate daily contingent on his behavior and performance in the classroom. He will have to hand in his homework daily & participate in BAT Club every night for the full time daily until 4:30 to work on homework. When he has maintained a 2.0 gpa [Student] will be able to negotiate not attending BAT Club, after school homework program daily.”

3. An IEP meeting was held on August 31, 2000, to develop the IEP that was in place at the time of Student's withdrawal in January 2001. Concerns of the parents were noted:

"Want situations investigated and proven to be accurate or not before action is taken, behaviors that are a result of impulsivity. "

Concerns of the school staff were noted:

"Behavior plan, work avoidance, harassment (teasing, bullying) of other students and staff, respect for adults, compliance with directions or requests, work completion."

Goals addressed on the IEP are social/behavioral, math, and study skills/organizational skills. Progress reports will be provided for the parents at mid-quarter and quarterly. A daily log is also listed for social/behavioral and study skills/organizational skills, with a behavior intervention printout as needed.

Services provided are special education study hall 5 hours a week. Special education support provided in general education is listed as "Beh. Plan/Modified as per RRm."

Extended school year and transition services were to be addressed in May 2001.

The student's behavioral plan states: "[Student] will be held responsible for his behaviors under a modified discipline plan that will not accrue demerits." The behavior plan goes on to provide that the Student will be praised for compliance and positive work habits and corrections will be delivered as dispassionately as possible and disengaged as quickly as possible. The student must comply within 15 seconds. The student may take a "self timeout" by checking out with his teacher and going to the office. The student will be responsible for having each teacher sign and complete a daily behavior and progress report which will be taken home each day. Minor offenses will follow classroom procedures, major offenses will be handled by the principal who will contact the parent, and severe offenses will result in convening the IEP team to develop appropriate consequences and address the issue. (Minor, major, and severe offenses are outlined in the student handbook.)

All parties signed the IEP on August 31, 2000. The behavior plan was signed by the parent and returned to the District on October 9, 2000.

4. A special education specialist, representing OPI, worked with Complainant and the District to develop the August 2000 IEP. The specialist submitted a report dated September 2, 2000, to the District and Complainant. In the report he noted, in part:

"In order for the [District] to serve [Student's] educational and behavioral goals, all parties must be willing to continue the dialogue I witnessed at

the I.E.P. meeting. Communication is the key, but it will only occur if both sides are respectful of each other. That requires open discussion, keeping the focus on the student, and the willingness to trust the information each side presents. I would also suggest that all the participants be very careful in defining the behaviors [the Student] needs to work on. Keep data on the intensity and frequency of the behaviors and share that information often. By focusing on [Student's] behavior, rather than on judgmental assumptions, the key players can avoid some of the pitfalls that have occurred in the past."

"If all parties carefully avoid letting [Student's] description of events rule the day, and each side communicates with the other when issues arise, the chance of splitting is lessened considerably. I would also suggest some in-service training for the staff on O.D.D."

"Be prepared to change the behavior plan as needed."

"Observation of [Student] is imperative . . . I would suggest close supervision if it becomes apparent he is continuing to do that [harassment] . . . Let his behavior determine the amount and intensity. This should be included in his behavior plan."

Neither the District nor the Complainant followed the specialist's advice. Consequently, by late January 2001, the relationship between the Complainant and the District deteriorated to a very low level.

5. Daily logs from the special education teacher submitted by the District start on September 5, 2000, and end on November 22, 2000. The Student was to attend a study hall class where he could obtain help from the special education teacher on his schoolwork as required by his IEP. He was also required to have a daily behavior chart completed by all of his teachers and return the chart to the special education teacher. According to the logs, the Student was a reluctant participant of this program from the beginning. Although the program appeared to be of some help to the Student at the start, with the student accepting help on occasion and working on his homework during the class, it soon deteriorated to a point where the Student refused help and did nothing during the class. The Student did not turn in a completed behavior log during this period.

On November 8, 2000, the log notes that there was an incident during the class in which the Student was disruptive and was given detention. The log goes on to record a telephone conversation between the teacher and the Complainant regarding the incident that did not end well. The next few days during class the Student refused all help from the teacher and the last day he attended the class was November 14, 2000. An undated note on the last page of the teacher's log states, "Supervision was increased. [Student] refused to go to RRM. Began leaving school after 5th per."

6. On November 9, 2000, the parents requested a meeting with the special education director and a representative from OPI. The meeting took place on November 20, 2000. Notes from the special education director identify Complainant's concerns as the discipline the student receives is punitive and the student is disciplined when others are not. The District's concerns were noted as the student intimidates others, lack of accountability for his words - belligerence and disrespect.

The Complainant requested a second set of schoolbooks for home and also that lesson plans be sent home each week. A note from the special education director states:

"THIS WAS THE INTENT OF THE DAILY BEHAVIOR/ASSIGNMENT SHEET. Have [Student] be responsible instead of one more thing we do FOR him. + violates IEP"

Suggestions were to use student note takers to allow the Student to listen instead of write; in-service on dealing with the Student's behavior to include other staff the Student encounters in his day.

7. A letter from the District to Complainant, dated November 29, 2000, advised them of an upcoming in-service training and noted that it was decided at a November 20, 2000, meeting that the IEP meeting not be reconvened until after such training.

8. On December 4, 2000, the District held a five-hour in-service training session for staff. The session was presented by Dale Anderson and titled "Dealing with Difficult Students." There were 33 staff members who participated, including teachers, teaching assistants, bus drivers, playground aides, principals, crosswalk aide, copy aide, lunchroom aide, custodian, and school psychologist.

9. On January 5, 2001, an IEP meeting was held to review the current IEP, modify the behavior plan, and explore modifications to the schedule/IEP.

The special education director made a list of her concerns to be addressed at the meeting which included (1) the current IEP not being followed in the areas of daily progress - behavior - assignment sheet; assignment - homework completion; (2) attendance in study skills class; and (3) additional supervision. Additional concerns listed were: (1) not passing classes, (2) inappropriate math class, (3) need to access tutoring, (4) need to have more immediate consequences, and (5) possibly retention.

Notes from the January 5, 2001, IEP meeting minutes state, "The reason for meeting today is to write an IEP. The current IEP is not successful at this time and has not been followed recently." Additional notes state:

"A note taker has been provided in all classes, homework is not being completed and this is affecting his academic success. [Student] is currently not accessing his study skills hour through the resource room.

He checks out and goes home Daily progress report that was a requirement in his IEP has not been completed. [Student] told us up front that he did not want [to] complete these. We started in late November giving parents a copy of weekly lesson plans so they would be able to help with homework at home Lunch is also a concern. It was suggested that he be required to sit in the lunchroom for a specified amount of time or go home. It was the consensus of the team that he leave and go home at 12:00 for lunch and leave him to return at 12:30 for some social time as long as behavior is managed."

At the time of this IEP meeting, the student's grades were: Science - 42.1%, F; History - 56.7%, F; Math 38%, F, English 47% ("being absent frequently has had an impact on English grade"). It was agreed by the team that the Student would be provided "must-pass" during 6th period. The team felt that math is the Student's weakest area and it was decided that he would stay in his regular math class and receive remediation 7th period with a student tutor from the high school.

10. On January 23, 2001, the team again met to review the revised IEP, which was written at the last meeting. The Student met with a District staff member to write a behavior plan "in order to give [Student] some ownership." It was suggested that the student have one "case manager" to whom he can report when there is a problem with behavior or he is not working. It was decided the Student would go to the resource room if he doesn't comply with a request from a teacher and the office will be notified and the student will have 2 minutes to get to the resource room where he will have to work through the problem before he is allowed back in the class. He will be allowed to "cool off" before working through the problem. If the Student is not able to "cool off" and continues to be defiant, he will be sent to the office and the situation will be handled as spelled out in the student discipline policy handbook. A copy of the behavior plan will be placed in each teacher's plan book.

A copy of the behavior plan was sent home with Complainant to review and return on January 25, 2001. There is no record that Complainant returned the behavior plan.

The goals of the IEP included social/behavioral, behavioral and math. Academic accommodations include allowing Student to confirm with teacher that he is doing assignment correctly; bringing student's interests into assignments, if possible; allowing alternative response modes; aiming for mastery of skill, not quantity; teaching organizational skills; providing additional time to complete tests and/or modifying tests; providing peer note takers; allowing Student to go to locker one time per class; having Student keep assignment notebook - checked by each teacher; providing Student with practice test or study guide; reprimanding privately, when possible; designating one teacher as "case manager;" encouraging Student to underline, circle specific directions or due dates; providing lesson plans to parents weekly.

The IEP developed at the January 5, 2001, and January 23, 2001, meetings is titled "Proposed IEP" and there are no signatures on the IEP.

11. The Student's last day at school at the District was January 26, 2001. Records kept by the District on daily absences show the following absences for the Student:

1/22/01	Tardy period 1, Absent the rest of the day (no reason listed in record
1/23/01	Excused Absence - ill
1/24/01	Excused Absence - ill
1/25/01	Student not listed on computer printout or on daily absences sheet
1/26/01	Excused Absence - home
1/30/01	Excused Absence - ill
1/31/01	Excused Absence - home

Attendance records submitted by the District show a number of absences for the Student. Between September 13, 2000 and January 26, 2001, (last day the Student was in attendance) the Student was absent either part of the day or for the full day a total of 22 days.

12. There are no records of contact between the District and Complainant from January 31, 2001, until February 21, 2001, when the Special Education Director contacted Complainant at the request of OPI. The District's records contain the following entry:

"I called [Complainant] on Wednesday January 31st because [Student] was marked absent. He was absent on Tuesday because he was sick. I asked [Complainant] if [Student] was still sick today and she said [Student] will not be back in school."

The District's Special Education Director's records contain the following entries:

"1/31/01 Called OPI to inquire if they'd heard anything re: IEP for [Student]. Called Kristy re: IEP + she talked to [Complainant] + [Complainant] told her [Student] would not be coming back to school + hung up." [Sic.]

"[Complainant] said she hadn't received IEP modifiec and I refused to return her calls. I told her the accom were written the day we talked + she did not come by to get them + she had gotten off work early that day. She said she never said that. She said filed a complaint w/ OPI Feb 6th + she wasn't going to have us making her child sick anymore. She wants us to pay for her home schl curric. I asked her if she had contacted the County Supt re curric. or home school and she said no." [Sic.]

13. Discipline records submitted by the District include a behavior log from October 3, 2000, through January 25, 2001, which log includes 31 incidents of discipline. Most

of the incidents were titled insubordination and ranged from failure to serve detention to disruption and openly defiant behavior.

D. ALLEGATIONS AND DISPOSITION

As editorialized in previous correspondence concerning this matter, this matter contains several accusations and cross-accusations, which, at times, are difficult to sort through. It appears to me that the Complainant's complaint against the District, in fact, contains fourteen substantive allegations, each of which is addressed below. Each allegation is either granted (i.e., IDEA violation) or denied (i.e., no IDEA violation) with explanation. Some of the allegations contained in the Complaint are not, in fact, allegations of violations of IDEA. Those allegations not included below are denied as non-IDEA issues.

1. Allegation: A substitute teacher refused to allow the student to leave the room and go to the office when he was unable to control himself, which is a condition of the IEP.

Granted. The Student's Behavior Plan specifically provides that the Student "will be given the opportunity to take a self 'timeout' upon checking out with his teacher and proceed directly to the office." The substitute teacher's denial violated that provision of the Student's education plan. Specifically, the District violated IEP implementation provisions by not informing the substitute teacher of her or his specific responsibilities related to implementing the Student's IEP. 34 CFR 300.342(b)(3). The District essentially acknowledged this violation by responding that the Student's IEP and Behavior Plan have not been shared with all middle school staff. The District asserts that a meeting was set up between the Complainant, the substitute teacher, and the principal for the day following the incident to reach an understanding as to why the substitute teacher did not follow the IEP. The District stated that the substitute teacher "simply did not know. He did not have access to the IEP at parent request as he was not one of [Student's] regular teachers."

2. Allegation: The parents have not received appropriate progress reports.

Granted. The District has not provided the Complainant progress reports as required by the Student's current IEP. The IEP states that "Progress reports will be provided for the parents at mid-quarter and quarterly." Prior to the end of 2000, the record indicates that the District provided some progress reports relating to the Student's general curricula. Those general education reports are very good. However, the record does not contain progress reports relating to IEP goal achievement.

Complainant complains that the information given by the District was "infrequent and unreliable and not a tabulation of his grades." In response, the District stated:

Copies of [Student's] 10th grade transcript were printed in June and provided to parents Middle school report cards are not saved as individual items, but are transferred to a transcript as part of the computer program used in the school offices. Notes from the Oct. 2000 parent meeting show progress reports have been shared/provided The first quarter report card had to be reprinted as it had already been sent and the original was not available. As is standard practice the 2nd quarter, report card is being held as [Student] owes money. [Student's] parents have been informed of this practice in the school newsletters At our meetings for students, teachers submit a progress report on a form circulated by our special education teacher(s) or they bring their computer generated reports from their grade book program

Documentation submitted by the District and provided to the Complainant through this Complaint process, includes:

- Handwritten progress reports were included that are dated December 1, 1999, for science, social studies, English, math and tech lab (dated November 30, 1999). These reports give the current grade, strengths, areas of concern, and other comments or concerns.
- A transcript dated June 6, 2000, with letter grades and grade point average for math, science, social studies, English, P.E., and health for each quarter from August 29, 1999, through June 6, 2000 (the Student's 7th grade year).
- Report cards for the first and second quarters of the student's 8th grade year.
- Documentation of a meeting with the Complainant on October 17, 2000, with progress reports attached.
- The progress reports listed below are computer generated and include grades given in tests, quizzes, homework, notebooks, etc. They also give a letter grade and GPA as of the date of the report.

January 4, 2001, for math, history, English, science, resource room and cover from September through December 2000.

October 16, 2000, for history, science, English and math and cover from September through October, 2000.

January 12, 2000, for science - does not provide a time frame. There is also a progress report for English, however, it does not give a date or time frame.

December 1, 1999, for math and covers November, 1999.

The Student's current IEP requires that progress reports be provided to the Complainant. In addition to the general education reports provided by the District, the Complainant must receive progress reports indicating whether the Student will achieve the goals of the IEP by the end of the term of the IEP. The District has satisfied only part of that requirement and is, therefore, in violation of the terms of the IEP.

3. Allegation: The District failed to identify, locate and evaluate the Student pursuant to 34 CFR 300.125.

Denied. The record shows that the District and the Student had an IEP in place no later than February 9, 2000. *In the Matter of [Student]*, OSPI 00-03E. Logically, the Student was identified for special education services sometime before February 9, 2000. The Complaint in this matter was received by OPI on February 14, 2001, more than one year after the Student's February 9, 2000, IEP was executed. Therefore, this allegation is dismissed as untimely pursuant to 34 CFR 300.662(c) and A.R.M. 10.16.3662(2)(a).

4. Allegation: Student was disruptive and study hall teacher tried to send student to 7th grade math class to finish his work. When he refused, he was punished with Saturday school.

Denied. The District acted within its authority under 34 CFR 300.520. The District response states that the principal was not in the day of the disruption and so the student could not be sent to the office, and was instead given the opportunity for a time-out in the closest physical classroom to his study hall. The Student's behavioral plan in effect at that time provides that the "[Student] will be given the opportunity to take a self 'timeout' upon checking out with his teacher and proceed directly to the office."

The District states further that the Saturday school was assigned because of an accumulation of several incidents the student was involved in November 2000. Behavior log printouts show an incident of being tardy and argumentative with teacher on November 7, skipping detentions on November 7, 8, and 9, and several incidents of arguing with teachers and playground aides, belligerence, and defiant behavior on November 9, including the incident in study hall. The District neither violated the IEP nor brought about a change of placement in violation of IDEA.

5. Allegation: Disparate Treatment.

Denied. These allegations center on discipline issues that involved tracking snow into the school and attendance at basketball games. Neither act by the District violated IDEA. As to the snow incident, there is no evidence that any action was taken by the District. The Complaint asserts that the principal called the Complainant to report that

the Student "was out of control." That act is not disciplinary; it is, however, evidence of the poor relationship and communication between the District and the Complainant.

IDEA does not require that the Student be allowed to attend a basketball game or any extracurricular activity. The IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to, or on behalf of the child, to advance appropriately toward attaining annual goals, to be involved and progress in the general curriculum, to *participate* in extracurricular and other nonacademic activities, and to be educated and participate with other children disabilities and nondisabled children. Attendance at basketball games, as opposed to participating as a player, is optional and not considered an extracurricular or nonacademic activity, consequently not governed by the IEP.

6. Allegation: The principal "displayed confusion or conflicting rules on [Student] and they change daily."

Denied. The Claimant asserts that on one day the principal may laugh at the Student's behavior and the next day the Student is disciplined for the same or similar behavior. Like much of the substance of this Complaint, this is not evidence of a violation of IDEA but of the parties' distrust and dislike of each other. This is a significant dynamic in this matter. While the Supreme Court has instructed us that we ought not expect the "best" or perfection in the delivery of FAPE, it is not unreasonable to expect a district and parents to engage in respectful and professional communication.

The record is clear, and I have witnessed this myself, that communication is poor, at best, and hostile or nonexistent, at worse, between the parties. This has apparently been the case since almost the beginning of the parties' relationship. Frankly, the hostility demonstrated by both sides in this matter is sever and extremely counterproductive. This hostility is a significant factor at play in this matter.

7. Allegation: The student was punished for a violation of the IEP that had not yet been signed.

Denied. The record indicates that the punishment was not a result of the Student going home for lunch. On the day in question, the Student started to go home for lunch and stopped to talk to another student. The District states: "[Student] was not punished for being on the playground, but was assigned consequences for not going to his assigned detention, for being defiant and for refusing a reasonable request." Whatever the reason for discipline in this instance, it was not for a violation of an IEP nor a proposed IEP.

8. Allegation: The principal made a comment that directly contradicted the IEP: "You can't always leave the room you have to learn how to deal with things."

Denied. The principal executed the IEP. He was aware of the terms of the IEP and the Behavior Plan. As outlined above, the parties met shortly after the

substitute teacher incident in an effort to enforce the "timeout" provision of the IEP. If he said that statement, he was in error, which error was corrected shortly thereafter by participating in the meeting.

It is worthwhile to note that a one-time occurrence, or isolated incidents, of a failure to implement a portion of the IEP do not establish a pattern of failure to implement the student's IEP. See, for example, *San Francisco Unified School District, No. 286-96, 24 IDELR313*. See also *W.G. v. Board of Trustees of Target Range School District*, 960 F.2d 1479 at 1484 (9th Cir. 1992) (Procedural flaws do not automatically require a finding of denial of FAPE.)

9. Allegation: "The teachers have stated several times that they believe that [Student] can control his actions. This statement alone shows that they are unwilling to help [Student] in any way."

Denied. The District recognizes the Student's disability and has helped design two IEPs to address his education. Moreover, the Child Study Team report of December 3, 1999, notes in documentation of eligibility, disability criteria, "Diagnosis of ADHD combined type by Drs." Under need for special education the Team stated "Unable to be successful with only regular classroom accommodations." The disability category is "other health impaired."

The underlying problem, again, appears to be the parties' distrust and inability to work cordially or even professionally together. The Complainant feels like they are still fighting for the school to accept the diagnosis of ADHD. The District feels that it has done what it needs to do to provide FAPE to the Student. There is, however, no evidence to support a violation of IDEA associated with this allegation.

10. Allegation: History teacher allowed student to sleep in class because it was easier to let him sleep than to deal with him.

Denied. The allegation apparently focused on one incident, which neither violated the IEP nor IDEA.

The District responded that that the Complainant informed the District of a change in the student's medication over the 2000 Christmas break and that one of the side affects may be drowsiness. A note from the District indicates that the Claimant requested a mandatory informational meeting, which was held on January 4, 2001, with the student's teachers to inform the teachers of the change in medications and to "check on [Student's] behavior . . . please keep a log of behavior if see something going on." One of the side affects noted is "sleepy." Notes from the IEP meeting of January 23, 2001, state that "[History teacher] commented that [student] is having more difficulties 3rd qtr. He became argumentative and fell asleep in class last week."

The history teacher submitted a note, dated March 22, 2001, concerning the incident. The note states " . . . received a note from [principal] stating that there was a

possibility that [Student] could be lethargic. This would be caused by the combination of [Student] having been sick and the change of medication. On the day in question, [Student] had a difficult time staying awake and focused. He was reminded a couple of times to sit up and pay attention. The last 5 minutes the students were allowed to work on an assignment in class before being dismissed for lunch. [Student] put his head down and went to sleep. I allowed this because [Student] could not physically stay awake and focus on his assignment."

The record establishes that this was a one-time incident. If a student is routinely allowed to sleep in his assigned special education class, then the school district is likely violating the IEP. However, given the nature of this episode and the cause of it (the Student's medication), I cannot reasonably conclude that the District violated his IEP.

11. Allegation: [District employee] has told [Student's] classmates that he is a "no-good troublemaker."

Denied. Once again, I find no provision of IDEA governing this behavior. In this instance, it appears, for what it is worth, that the District addressed the comment in a timely and appropriate fashion. The District states that the District employee referred to is a coach who, in the course of conversation with a player who was late for practice, made a comment to the student "about who he was choosing for friends." The Student was told of the conversation by the player and subsequently told Complainant. Complainant apparently called the principal to express her concern and the principal discussed the incident with the coach. The District stated that "[Principal] handled the situation and the [Complainants] were informed of the results of the investigation at the time it occurred."

12. Allegations: Student was blamed for throwing a rock and hitting a window of a house across the street from the school, even after another student admitted throwing the rock. The principal accused the student of sealing from the local grocery store and drinking alcohol in the cooler.

Denied. As alleged and responded to, I see no evidence of a violation of IDEA. This is, however, evidence the extent to which the relationship between the parties is poisoned.

13. Allegations: The District contends it has letters from several playground aides who are threatening to quit because of the student, but will not produce them. The principal has accused the student of sexual harassment, however, the parents have received nothing to substantiate the allegation. The student was so upset about the allegation of drinking and stealing that he began to punch himself in the head.

Denied. There is no evidence of a violation of IDEA. It is, however, indication of the extremely poor relationship between the parties.

14. Allegation: The school has not contacted the parent since January 26, 2001, regarding the IEP or why the student is no longer in school.

Denied. Complainant withdrew the Student from the District and did not notify the District of doing so. The District is under no obligation provide FAPE to a child voluntarily and unilaterally withdrawn from the District. Once a child is removed from the school, without first completing administrative grievance procedures, the school district has no further duty to the child until such time as the child is once again enrolled in the district. *Florence County School Dist. Four. v. Carter*, 114 S. Ct. 361, 366 (1993). See also, *Wise v. Ohio Dept. of Education*, 80 F.3d 177 (6th Cir. 1996) and *Upper Arlington Sch. Dist*, 26 IDELR 190. Therefore, after January 26, 2001, the Student's IEP no longer is in effect. Consequently, the District had no obligation to contact the Complainant after January 26, 2001.

E. ORDER.

The relationship between the District and Complainant, brought to complaint more than once and to due process hearing, contains numerous claims and counter claims with variant accounts from both the Complainant and the District. The Complainant alleges that the District failed to provide FAPE essentially because it did not implement the Student's IEP.

As noted, this Student's education was the subject of a due process hearing in March 2000. In that hearing, the hearing officer ruled that the District's placement into an interim alternative educational setting was inappropriate and that he be returned to an in school placement with an appropriate IEP that includes a behavioral intervention plan (BIP). In August 2000, an IEP was developed that included a BIP. A review of the IEP indicates that it was appropriately developed and it contained sufficient accommodations, modifications and special education services to provide the student with a free appropriate public education (FAPE).

At the center of this controversy is the relationship between the Complainant and the District. In September 2000, a special education specialist impressed upon the parties the importance of communication in the delivery of FAPE to this Student. Part of the text of his letter to the parties is reproduced above, but it bears repeating here:

"In order for the [District] to serve [Student's] educational and behavioral goals, all parties must be willing to continue the dialogue I witnessed at the I.E.P. meeting. Communication is the key, but it will only occur if both sides are respectful of each other. That requires open discussion, keeping the focus on the student, and the willingness to trust the information each side presents. I would also suggest that all the participants be very careful in defining the behaviors [the Student] needs to work on. Keep data on the intensity and frequency of the behaviors and share that information

often. By focusing on [Student's] behavior, rather than on judgmental assumptions, the key players can avoid some of the pitfalls that have occurred in the past."

The record shows that neither party followed that person's advice. Consequently, allegations and denials flew freely about the parties and ultimately the parties lacked the requisite relationship to make the Student's IEP work.

Therefore, I order the following, pursuant to 34 CFR 333.660(b) and A.R.M. 10.16.3662(9).

1. Mediation. I am offering the Complainant and the District the option to meet with a mediator in an effort to reconstruct a professional and constructive relationship. If both parties agree to meet with the mediator and work in good faith ultimately to modify and implement an IEP for the Student, then OPI shall pay for the mediator's services. If both parties willingly select this option, then I will appoint James Nybo of Helena to facilitate as many sessions as are reasonably necessary to achieve a functional IEP. If requested by either party or the mediator, OPI shall provide technical assistance in the development of the IEP.

The parties shall consider this option and inform me no later than June 20, 2001, of the party's desire to enter into mediation. Because of the nature of mediation, if either party declines the offer, then mediation shall not occur.

I strongly encourage the parties to agree to this offer of mediation. The provision of FAPE in the Student's home district is the best option for the Student. It appears to me that many of the problems experienced in this matter are a result of miscommunication or no communication between the parties and the resulting lack of trust. If the mediator can help the parties rebuild a reasonable, productive working relationship, the District can meet its responsibilities in the least expensive way and, more importantly, the Student can receive the free, appropriate public education he needs and to which he has a right.

2. FAPE at Alternative School.¹ If either party rejects the offer of mediation, I shall conclude that the relationship between the District and the Complainant is so poisoned that to order the District to continue to provide FAPE to the Student will only serve to provide more grief for the Complainant and the District. It is also unlikely that the Student will receive FAPE in that environment. Therefore, if either party rejects the offer of mediation, then the District must provide FAPE as follows:

¹ This is an extraordinary remedy fashioned only for this matter. It is not and should not be considered a readily available option for any district or any parent who experiences IDEA difficulties.

a. The District shall provide FAPE to the Student through the special education program of another public school in the immediate area of the District (the "Alternative School"), as provided below.

b. Within thirty (30) days of their receipt of this Final Report, the Complainant shall notify me of its preferred Alternative School. OPI shall work with the Complainant to attempt to arrange for the enrollment of the Student in the Alternative School. I am unwilling to order that any particular public school enroll the Student. Therefore, the Student's enrollment in the Alternative School shall be through negotiated agreement between the Complainant, the District, OPI and the Alternative School. This arrangement shall be in place no later than August 1, 2001.

c. Payment of the Student's FAPE shall be born by the District either (1) by contract between the District and the Alternative School or (2) by direct payment from OPI with a corresponding withholding from distributions to the District, depending on the negotiated agreement with the Alternative School. In addition to the other requirements of federal and state law, the District shall provide for transportation for the Student.

d. The District shall transfer the Student's education records to the Alternative School upon the finalization of this arrangement. The Alternative School shall confirm that Complainant has a copy of each record and provide to Complainant a copy of the record or records requested by Complainant.

g. The Alternative School shall notify me of the status of the Student's IEP no later than September 1, 2001.

I shall retain jurisdiction over this matter to facilitate the orderly transfer of the Student, as necessary.

3. Progress Reports. The District shall provide to the Complainant no later than thirty (30) days after receipt of this Final Report progress reports as required by Student's August 2000 IEP. The material provided by the District as part of this Complaint process includes some general education reports through the end of 2000. Therefore, the District shall provide to the Complainant IEP progress reports for the time period between the beginning of the 2000-2001 school year and January 26, 2001. The District shall verify to me that it has done so.

4. Future Progress Reports. The District shall comply with 34 CFR 300.347(a)(7). The District shall submit documentation to me quarterly for the next year that periodic progress reports provided relative to special education students include progress in the general curriculum and progress toward achievement of IEP's annual goals as well as a statement whether such progress will result in achievement of the annual goals. I reserve the authority to modify this Final Report to address deficiencies in the District's reporting. OPI shall offer technical assistance to the District to assist with this matter, if so requested by the District.

5. IEP Accessibility and Information. The District shall comply with 34 CFR 300.342(b)(2) and (3) and shall provide all appropriate regular education teachers and any service provider responsible for the IEP's implementation with access to IEPs. Each provider shall be informed of his or her specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and support that must be provided for the child in accordance with the IEP. The District shall schedule training for its staff regarding specific requirements for providing access to IEPs for any teacher or other service provider who implements provisions of an IEP.

6. Mr. *****'s demand for (a) payment of compensatory education, (b) payment for home-schooling costs, (c) payment for alternative educational placement, except as provided for herein, and (d) payment of legal fees are denied.

Sincerely,

Jeffrey A. Weldon, Compliance Officer
Chief Legal Counsel

c:

***** * *****, Esq.

***** *****, Esq.