



OFFICE OF PUBLIC INSTRUCTION

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Linda McCulloch
Superintendent

August 28, 2003

***** , Superintendent
***** Public Schools

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

FINAL REPORT

RE: In the Matter of *** 2003-07. Alleged Violations of the Individuals With Disabilities Education Act (IDEA).

Dear Mr. And 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 (the Complaint). Mr. and Mrs. ***** (referred to herein as the "Complainant") allege in the Complaint that the ***** Public Schools ("the District") is not implementing ***'s (the Student) IEP "as written." In particular the Complainant alleges that the District: (1) did not provide IEP identified accommodations or provided them in an inconsistent or sporadic manner; (2) failed to provide specific programs included in the IEP, such as the behavior plan; and (3) did not allow the Student to continue her public education to which she is entitled because she was denied access to the second 6th grade classroom. Other allegations were made by the Complainant, which will not be addressed in this report because they either do not pertain to IDEA compliance or because Complainant agreed to their implementation, and signed the IEP document indicating approval.

A. Procedural History

1. The Complaint. The Montana Office of Public Instruction ("OPI") received a letter of complaint from the Complainant dated June 5, 2003 on June 19, 2003.
2. Early Assistance Program. Pursuant to A. R. M. 10.16.3660, the OPI's Early Assistance Program attempted to resolve the controversy. Due to difficulty in contacting the Complainant within the time allotted for EAP the director Tim Harris concluded resolution was not possible.
3. District's Written Response. On July 21, 2003, the parties were notified that the EAP director was unable to resolve the dispute. The Compliance Officer called for the District's Written Response, which was due on or about July 31, 2003.
4. Extension of time for Final Report to be issued. Pursuant to ARM 10.16.3662(8) the date by which the final report in this matter will be issued is extended to September 4, 2003.

FINAL REPORT

In the Matter of ***, 2003-07

August 28, 2003

Page 2 of 5

The findings and conclusions contained in the Final Report are based on the Complaint and the District's Written Response and supporting documents. Both federal and state law require that the Compliance Officer 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). As part of the investigation hereunder, Gary Garlock was contracted to review certain materials and interview the parties.

B. Legal Framework

Federal and state law require that students with disabilities receive FAPE, 20 U. S. C. 1400-1487, and 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 child with a disability. 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." Hedrick 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 13-year-old female. She was identified as Other Health Impaired due to a medical diagnosis of hydrocephaly, seizure disorder, hyperactivity disorder and farsightedness by the Child Study Team in December 2002. The Student was enrolled in the Billings Public Schools for the 2002-2003 school year. The Student received special education and related services under an IEP written December 12, 2002 at Highland School.
2. The Student's CST Report dated December 12, 2002 notes in the Summary of Evaluation Results: Parent – The Student "has trouble reading people for social cues." "Needs to be told sometimes bluntly how to behave." The Student "has difficulty working with her aide." The Student "seems to respond better to black /white than gray areas." "Needs to be shown boundaries and consistent structure." "Wants the Student held to limits." Classroom and Curriculum – "The Student is trying hard and making good progress." "Enlarge work, lessons are modified (50%). "Grades are given according to her work not class average." "Needs to be told to give others their personal space." Psychological Assessment – " The Student reached developmental milestones late. She had ear infections, seizures, tubes in her ears, and orthopedic problems." "The Student was diagnosed with hydrocephalus (with a ventricular shunt), seizure disorder, hyperactivity disorder and farsightedness."

FINAL REPORT

In the Matter of ***, 2003-07

August 28, 2003

Page 3 of 5

“The Student previously qualified for special education services as a child who was Other Health Impaired.” “The Student received physical and occupational therapy, behavior management, services of a classroom aide, special education in the resource room and accommodations in the regular classroom.” “ On the Wechsler Intelligence Scale for Children – Third Edition (WISC III), there was a highly significant difference between the Student’s Verbal and Performance scale scores (V 80, P 47). The borderline-level verbal score was the best estimate of her ability.”

The CST determined that the Student met criteria as a student with “Other Health Impairment “ and is in need of special education services.

3. An Individualized Education Program (IEP) meeting was held on December 12, 2002 to address the Students special education needs. The IEP addressed goals in the areas of fine motor skills and study skills and included 2.5 hours per week of support from the resource room, .5 hours per week of O. T. Services, 1 hour per week of vision specialist services and .5 hours per week of behavior specialist for a total of 4.5 hours per week of special education.
4. A meeting to amend the IEP was held on February 11, 2003 at which time the Student was removed from music class and her school day was reduced by one half-hour on Thursdays.
5. On April 9, 2003 an emergency IEP meeting was held and special education services were increased to 19.5 hours per week. This meeting was held as a result of the Student’s behavior toward her teacher on April 3 and 4, 2003. At this IEP meeting Complainant requested that the Student be placed in the other 6th grade classroom at ***** School.
6. On July 23, 2003 a meeting to amend the IEP was held with the special education director, the Complainant, the Student and a PLUK representative to facilitate placement at the middle school for the 2003-04 school year. This IEP indicates placement in the Delta Program at the middle school and indicates minor IEP changes with this IEP ending October 15, 2003.

D. Allegations and Disposition

The Complaint contains essentially three allegations, each of which is addressed below. Some of the allegations contained in the Complaint are not, in fact violations of the implementation of the IEP under IDEA. Other allegations not included below are denied as non-IDEA issues.

1. Allegation: The District did not provide IEP identified accommodations or provided them in an inconsistent or sporadic manner.

Denied. Pursuant to 34 CFR 300.350 (a) “each public agency must: (1) provide special education and related services to a child with a disability in accordance with the child’s IEP, and (2) make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP.” Accommodations for the regular classroom were clearly marked and indicated

FINAL REPORT

In the Matter of ***, 2003-07

August 28, 2003

Page 4 of 5

on the IEP. After interviewing staff and reviewing data kept by staff it is clear that the accommodations were implemented as indicated by the IEP in force.

2. Allegation: The District failed to provide the specific programs included on the IEP, such as the behavior plan.

Denied. Pursuant to 34 CFR 300.346 (2) “the IEP Team also shall- (i) In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.” The behaviors identified, as impeding the Student’s learning were primarily distractiveness, disorganization, off-task, blurt-outs and not following directions. These behaviors were addressed both in objectives under Study Skills and in the Behavior Plan written in the 5th grade and continued in the 6th grade. In interviewing the classroom staff, it was apparent the behavior plan was utilized, as well as other strategies such as, re-directs, time-outs, resource room help and the supervision by the special education assistant. Although data sheets were not readily available for every day of the school year, sufficient numbers of copies were produced that would indicate implementation and consistency in the application of the plan. The Complainant could not produce documentation that would substantiate her claim that the behavior plan was not implemented.

3. Allegation: The District did not allow the Student to continue her public education to which she is entitled because she was denied access to the second 6th grade classroom at ***** School.

Denied. Classroom placement of a student with a disability is an administrative prerogative as long as the District adheres to 34 CFR 300.550 (b). “Each public agency shall ensure—(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are non-disabled; and (2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” The District offered continuation of the Student’s public education by providing the Complainant four options for continuing the Student’s educational services. 1. Increase resource room time for the Student to stabilize, which the Complainant rejected. 2. Counseling, which the Complainant rejected. 3. Stay in current 6th grade placement at ***** School. 4. Enroll in a 6th grade class in any other school in the District.

The Complainant did initial approval for increasing special education support at the April 9, 2003 IEP meeting. The Complainant did not return the Student to any school in the District after April 4, 2003.

E. Order

Although the relationship between the Complainant and ***** School has become strained, the District has not violated IDEA as alleged by the Complainant.

FINAL REPORT

In the Matter of ***, 2003-07

August 28, 2003

Page 5 of 5

Therefore, the OPI finds, since all allegations were denied, the Complaint is hereby dismissed.

Sincerely,

Cathy Warhank, Compliance Officer
Chief Legal Counsel

c:

*****, District's Director of Special Education
Tim Harris, OPI Early Assistance Program