



May 10, 2010

(parent)  
(address)

(Superintendent)

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

**FINAL REPORT: In the Matter of \*\*\*, 2010-03, alleged violations of the Individuals With Disabilities Education Act (IDEA) and state law.**

Dear (parent) and Superintendent \*\*\*:

This is the Final Report regarding the state special education complaint In the Matter of \*\*\*, 2010-03 (“Complaint”) filed March 9, 2010, pursuant to ARM 10.16.3662. \*\*\* (“Complainant” or “parent”), parent of \*\*\*, alleges that \*\*\* School District (“the District”) denied her the opportunity to advocate for her child to receive a free, appropriate public education (FAPE) in violation of the Individuals with Disabilities Education Act<sup>1</sup> (IDEA) and Montana special education laws and regulations when it failed to provide student records she had requested.

**A. Procedural History**

1. The Complaint. On March 9, 2010, the Montana Office of Public Instruction (OPI) received a signed Complaint from Complainant through her attorney along with exhibits. On March 17, 2010, the OPI sent a Notice of Filing of Complaint to the District.
2. Early Assistance Program. The OPI’s Early Assistance Program attempted to resolve the controversy pursuant to ARM 10.16.3660. The Director of the Early Assistance Program concluded that resolution was not possible.
3. District’s Written Response. On March 29, 2010, the District timely filed a Response to the Complaint and provided additional supplements.

The Findings and Conclusions contained in this Final Report are based on the Complaint and supporting documents and the District’s Written Response and supporting documents as well as contact with the parties’ attorneys and the special education coordinator. As required by federal and state law, all relevant information was reviewed and an independent determination was made as to whether the District violated the IDEA or state law.

**B. Legal Framework**

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<sup>1</sup> The most recent version of the Act is entitled: Individuals with Disabilities Education Improvement Act of 2004 published at 20 U.S.C. §1400 et seq. It is referenced herein as the IDEA.

Access to student records for all students is governed by the provisions of Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, 34 CFR part 99. The federal Family Policy Compliance Office has jurisdiction over FERPA complaints of access to student educational records. A person may file a complaint regarding an alleged violation under FERPA by contacting their school district or the Family Policy Compliance Office (FPCO), U. S. Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202-5920. The OPI does not process FPCO complaints.

While access to special education records is generally governed by FERPA, it is more particularly addressed by the IDEA at 20 U.S.C. §1400, 34 CFR §300.610 through §300.626. Montana regulations address special education records at ARM 10.16.3560 and reference both FERPA and the IDEA.

The OPI is authorized to address alleged violations of the Individuals with Disabilities Education Act and Montana special education laws through the special education state complaint process pursuant to 34 CFR §§300.151-153 and ARM 10.16.3662. This Complaint proceeds under these authorities and applies only to the special education records in the student's educational files.

### **C. Findings of Fact**

1. The parent has standing to file this Complaint under the state special education complaint process at ARM 10.16.3661.
2. At all times relevant to this Complaint, \*\*\* was a student with a disability who received special education services in the District.
3. By letter dated 2/26/10, Complainant, through her attorney, made a request to the District to provide a complete copy of her child's school records and referenced an attached "Authority to Release allowing you to provide us with this information."
4. The "Authority To Release" was dated 9/02/09 and was attached to the 2/26/10 letter. A review of the Authority to Release shows it only authorizes Complainant's attorney to disclose his client's information to others.
5. By document dated 2/9/10, Complainant's attorney notified the District that Complainant therein revoked any releases of information from Complainant.
6. By letter dated 3/1/10, the District responded to the 2/26/10 letter by requesting Complainant provide a current authorization because she had earlier revoked all prior authorizations which would include the 9/2/09 release.
7. By letter dated 3/2/10, Complainant re-sent her 2/26/10 request but did not include a current authorization.
8. By letter dated 3/3/10, the District responded by letter again indicating that on 2/9/10 Complainant had revoked all earlier releases including the 9/2/09 release and asserted the District was unable to respond to the request.

9. At Complainant's request, on 11/20/09, the District had produced a number of special education documents to Complainant. A new form containing an 11/20/09 list signed by Complainant indicated the District provided the parent with Individual Education Plans, IEP Meeting Notes, Releases of Information, Medical Information, Discipline Records, CRT scores, report cards, and a current schedule.

#### **D. Analysis and Conclusions of Law**

**Allegation: Did the District wrongfully deny Complainant access to her child's special education records by refusing to provide a copy of those records after she made a formal written request and provided a release?**

This Office has jurisdiction to investigate alleged violations of the IDEA and state special education law occurring within one year prior to the filing date of March 9, 2010. Complainant alleges violations for failure to produce a "cumulative school file" and "all hand written documentation concerning [student]" which are general education records of the student unless contained in the special education file. This Office does not have jurisdiction to investigate alleged violations of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, disputes over general "education records," and therefore will not address that portion of the Complaint.

Through the late fall 2009, the District's usual course of business was to have a parent make a request for records in writing or at times verbally. Due to the increase in number of requests to the District in 2009, they instituted use of a new form. The District produced a copy of a new form dated 11/20/09 and signed by Complainant, detailing the list of special education documents produced to her by the District on that date at Complainant's request. The documents included numerous special education records. To the extent the 2/26/10 special education file request is duplicative of the special education records produced on 11/20/09, the Complaint is moot since these documents were provided to Complainant.

Normally the District's informal approach using a verbal or written request for records would be adequate under 34 CFR §300.613. The tracking form now currently utilized would also normally be adequate. However, the parties' attorneys were handling this request. Neither district staff nor the parents were involved with this initial request. The parties' attorneys relied on Complainant's Authority to Release as the authorization for producing the records. The 2/26/10 request letter referenced the attached release and, importantly, stated the Release "allow[ed] [the district] to provide us with this information." However, the Release granted Complainant's attorney permission to release client information to others. It did not grant the District permission to release information. As such, the Release did not fit with the request. Further, the Release was void since it had been previously revoked by Complainant. As such, Complainant did not provide an adequate current release.

Documents submitted by the parties indicate the parties are either in litigation or contemplating litigation. Much of the difficulties arising in this matter appear to be entwined with litigation preparation. The use of the state special education complaint process to resolve such disputes is not contemplated by the IDEA.

The District informed Complainant it will cooperate with appropriate document requests upon receipt of an adequate Release. During the pendency of this matter, the District provided Complainant's counsel with a sample release. This office would expect no less than prompt production of special education records once an appropriate release is in place.

Under the circumstances of the case, this investigation reveals no violation of the IDEA or state special education law. The Complaint is therefore DENIED.

DATED this 10<sup>th</sup> day of May, 2010.

/s/ Ann Gilkey  
Ann Gilkey  
Compliance Officer

c:           \*\*\* (Parent's attorney)  
              \*\*\* (District's attorney)