



December 11, 2012

[Complainant]

\*\*, Superintendent

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT** for In the Matter of [Student], 2012-04, Alleged Violations of the Individuals With Disabilities Education Act (IDEA) and Montana special education laws.

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. \*\*\* (Complainant) filed the complaint on behalf of his child, \*\* (Student), a student in \*\* District \*\* (District). Complainant alleges 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.:

- (1) when the District required an IEP meeting April 17, 2011 at the time Student was transitioned back to the District after attending a treatment facility;
- (2) when Student’s transfer time between the two District schools she attended caused her to receive failing grades in social studies in the first weeks after her return to middle school;
- (3) when the District placed Student in classes that were too difficult at the beginning of the 2012-2013 school year;
- (4) when the District failed to respond to his numerous attempts to contact staff for answers concerning Student’s IEP and, after restrictions were placed on Complainant’s contact with the District, the District failed to meet its responsibilities to adequately oversee these restrictions, continually changed the restrictions causing confusion for parent in his attempt to participate in Student’s education; and
- (5) when the District denied Complainant the opportunity to attend and participate in person in the September 24, 2012 IEP meeting.

**A. Procedural History**

- 1. On October 12, 2012, the Montana Office of Public Instruction (OPI) received a Special Education Complaint signed by Complainant.
- 2. The OPI Early Assistance Program found the parties were unable to resolve their issues within 15 business days of the date of the Complaint. The Complaint proceeded to investigation.
- 3. The OPI received a written Response to the Complaint on November 14, 2012.
- 4. An appointed investigator conducted interviews with: Complainant; the current district superintendent; the former district superintendent; the middle school principal; the middle school

vice principal; the high school principal; the School Resource Officer (SRO) for the middle school; the District special education director; the Student's case manager; and an OPI compliance monitor.

## **B. Legal Framework**

The OPI is authorized to address alleged violations, which occurred within one year prior of the date of a complaint, 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. Pursuant to 34 CFR §§ 300.151-153 and ARM 10.16.3662, all relevant information is reviewed and an independent determination must be made as to whether a violation of federal or state statute, regulation or rule concerning the provision of a free and appropriate education occurred.

## **C. Findings of Fact**

1. Complainant has standing to file this Complaint under the Montana special education complaint process at ARM 10.16.3661.<sup>1</sup>
2. Complainant is Student's father.
3. At all times relevant to this Complaint, Complainant has resided in another state.
4. Student's mother personally attended all IEP meetings. Complainant participated by telephone.
5. Student attended the District middle school then transferred to a youth treatment hospital (the hospital) on November 2, 2011.
6. The hospital has an accredited education program and provides special education services. While there, Student was found eligible for special education services under the categories of emotional disturbance and speech and language impairment. An IEP meeting was held to implement services during her hospital stay.
7. Student was discharged from the hospital and residing back in the district by April 6, 2012, at which time the middle school was on Spring Break.
8. On April 17, 2012, the District evaluated Student and held an IEP meeting to discuss her transition and proper placement. Complainant attended this meeting telephonically at his choice.
9. The IEP team decided Student would split time between the middle school and an alternative school/day treatment program and would transition throughout the school year toward attending most classes at the middle school.
10. Due to the transfer between schools the Student was missing a large portion of her social studies class the first few weeks.
11. Complainant contacted the school after seeing Student's failing social studies grade on the parent portal online. Complainant called to speak with the principal who was not available. He spoke with the vice principal, who had requested the SRO sit in the room during the call because of previous phone calls where Complainant became harassing or belligerent to him and other school staff. This conversation became escalated and the SRO took over the phone call.
12. Student's social studies teacher worked with Student on additional projects and modified her grade to address the missed class time.
13. On May 23, 2012 an IEP meeting was held to discuss Student's transfer to the high school. Complainant attended this meeting telephonically.

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<sup>1</sup> Complainant and Student's mother are divorced. Student's mother did not join in as a complainant in this matter.

14. At the May 23, 2012 IEP meeting the team determined the Student would attend the high school full time for her freshman year in the fall.
15. After the school year ended in 2012, Complainant filed a complaint against the middle school with the former district superintendent.
16. The former superintendent responded to Complainant in a letter dated June 21, 2012 finding no merit in Complainant's allegations. The superintendent's response included letters from the middle school's principal and vice principal detailing their observations of Complainant's disruptive behaviors toward them and various other school staff.
17. The former superintendent placed a restriction on Complainant. If he wished to discuss school issues with any district teacher or administrator, he must first obtain an appointment through the superintendent's office. If Complainant did not first schedule an appointment, the superintendent warned him law enforcement may be contacted and he may be prosecuted for intimidation or criminal trespass.
18. Student began attending high school full time in the fall of 2012 and also attended an alternative program at a different district school.
19. Complainant noticed through the parent portal online Student was failing several of her classes. He requested the school change her class schedule.
20. An IEP meeting convened on September 24, 2012 to modify the Student's class schedule.
21. On the morning of September 24, 2012 before the IEP meeting, Complainant contacted the current superintendent because he was in Montana and wished to attend the IEP meeting in person.
22. The superintendent informed Complainant he could not attend the meeting in person, but would be able to attend the meeting by telephone. Complainant did attend the meeting by telephone.
23. The District demonstrated an on-going lack of consistency and clarity as to who Complainant was permitted to contact, who had the information to respond to Complainant's inquiries, and with regard to his physical presence on school property.

#### **D. Analyses and Conclusions**

##### **Issue 1: Did the District err when it required an IEP meeting at the time Student was transitioned back to the District after discharge from the hospital?**

Complainant alleges when Student was released from the hospital she had an IEP in place and the District shouldn't have required an additional IEP meeting since there were meetings at the hospital to discuss the transfer.

The Student was not receiving special education services before she went to the hospital. An IEP was developed while she was in the hospital. When Student returned to the school district on April 6, 2012, the district was on spring break. School resumed sometime around the beginning of the following week. Records from the hospital arrived within a week. Initially Student was enrolled in a regular class schedule. The District then timely evaluated Student and held an IEP meeting on April 17, 2012.

Although Student had attended the school previously, she had not been receiving special education services. Upon her transfer from the hospital, which is also an accredited school, back to the middle school, pursuant to 34 CFR §300.323(e), the District was required to either adopt the hospital's IEP or develop and implement a new IEP for the new placement at the high school. For a transfer student, a district is required to abide by the previous IEP until it can develop a new IEP. See 34 CFR §300.323(e). Here, the District deemed it necessary to develop a new IEP. Upon return from spring break, the District

initiated an evaluation and an IEP team developed the new IEP for the middle school setting- incorporating the applicable assessments and recommendations from the Hospital. These actions are in keeping with District authority and responsibilities and the **District was not in violation** of 34 CFR §300.323(e).

**Issue 2: Did the District deny FAPE when Student’s transfer time between the two district schools caused her to receive failing grades in social studies in the first weeks after her return to middle school?**

Complainant alleges the District violated the IDEA causing Student to receive failing grades in social studies during her first couple of weeks back at the middle school. The commuting time between the alternative school and the middle school was an issue, plus the two schools were on different schedules, causing Student to miss class time daily in social studies. In response to Complainant’s inquiry, Student’s social studies teacher gave instruction and accommodations allowing Student to work on class projects which fit her schedule. The Student completed the work and the District modified her grade.

A free appropriate public education (FAPE) includes specially designed instruction and related services that, among other requirements, are provided in conformity with an individualized education program (IEP) pursuant to 34 CFR §300.17 and of 34 CFR §§300.320 through 300.324. The methods for accomplishing the goals in the IEP must be fluid enough to respond to the changing circumstances of a student. The fact that this scheduling issue occurred is not itself a violation of FAPE. The District responded promptly to the concerns of the parent, immediately addressed the problem, and the Student’s grade improved. Parent-district communication is necessary to ensure a student’s special education services are effective. The District did not deny Student a FAPE in this circumstance and **no violation** of 34 CFR §300.17 and of 34 CFR §§300.320 through 300.324 is found.

**Issue 3: Did the District change Student’s IEP without proper notice or meeting at the beginning of the 2012-2013 school year when it placed Student in high school classes which were allegedly too difficult?**

A couple of weeks after the 2012-2013 school year began, Complainant noticed through the parent portal on the internet that Student appeared to be failing several of her courses. Complainant alleges Student should never have been placed in those classes at the beginning of the year and therefore Student’s IEP accommodations had been changed without notice or a meeting.

Complainant contacted the school and eventually spoke with the case manager who scheduled an IEP meeting to discuss possible class changes. On September 24, 2012 an IEP meeting was held, at which Complainant participated by telephone, and Student’s class schedule was modified<sup>2</sup>. Staff felt Student might not have been failing at that point, but because of the way the teachers enter grades in the portal it appeared worse than it may have been. Student had been assigned to regular core classes at the beginning of the year because the May, 2012 IEP did not indicate otherwise. This was appropriate. There were no changes to Student’s IEP accommodations and the case manager had properly notified Student’s teachers at the beginning of the school year about these accommodations. At Complainant’s request, the District quickly convened an IEP meeting and Student’s schedule was modified to take into account these concerns. The District followed the May, 2012 IEP and the initial course placement was

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<sup>2</sup> The extent of Complainant’s participation in the September 24, 2012 IEP meeting will be addressed in Issues 4 and 5.

appropriate. No notice was necessary beyond what was provided and we find **no violation** of IDEA on this issue.

**Issue 4: Did the District deny Complainant the right to effective participation in the IEP process when the District failed to respond to his numerous attempts to contact staff for answers concerning Student's IEP? After restrictions were placed on Complainant's contact with the District, did the District err by failing to meet its responsibilities to adequately oversee the directive thus denying effective parental participation?**

Complainant participated in the April and May, 2012, middle school IEP meetings by phone because he lived out-of-state. Between meetings he made calls to staff to address his concerns about Student's IEP but frequently calls were not returned or were referred on to someone else. When staff did finally contact him, he became upset and verbally abusive at the lack of answers to his questions. Complainant alleges a teacher yelled at him and accused him of failing to make his daughter do her work causing her to receive failing grades, and that other staff threatened to turn him in to protective services when the conversation became escalated. This was not disputed by the District.

Complainant filed a complaint against the school in June, 2012. In the June 21, 2012 response to the complaint, the former superintendent advised Complainant as follows: "In the future, should you wish to discuss any school issues with any School District teacher or administrator, you must first obtain an appointment. You can obtain an appointment by contacting the superintendent's office at...To avoid a prosecution, it is imperative that you make an appointment as set out above, and that you do not appear on School District property or call School District personnel to discuss academic issues without first obtaining an appointment." The response included letters from the middle school's principal and vice principal regarding Complainant's loud disruptive conversations with them and other school staff, including the SRO. The response designated the superintendent's office as the sole contact for Complainant.

A new superintendent took over July 1, 2012. Interviews revealed confusion as to whether all aspects of the June, 2012 restriction were in effect. District actions after Complainant attempted to follow the restrictions, were confusing at best. The District demonstrated an on-going lack of consistency and clarity as to whom Complainant was allowed, permitted, or required to contact, and about his right to in-person attendance at IEP meetings.<sup>3</sup> On several occasions the superintendent permitted him to contact a particular staff on a specific issue. That staff could not answer his questions and in turn referred him to other staff. This happened on a number of occasions and caused additional roadblocks to Complainant's already rocky participation.

Later, despite the fact that the superintendent was the designated contact, the superintendent did not attend the contentious September 24, 2012 IEP meeting. Complainant was permitted to ask questions over the phone. Some questions were answered but Complainant, and apparently the IEP team, remained confused as to whom he was to contact with his remaining concerns. Complainant argues that these circumstances resulted in a denial of his right to effectively participate.

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<sup>3</sup> For example, the current superintendent believed Complainant was not restricted from coming on school property to view Student's extracurricular activities. Complainant was under the impression he could not do so. The issue was not clarified.

We first clarify that the District's disjointed communications with Complainant do not justify Complainant's behavior toward District staff. A district has a right to maintain order and keep its employees free from verbal abuse and harassment. Complainant's communications with the District sometimes escalated to yelling at District staff over the phone and rose to the level of harassment and verbal abuse at times. A district's response to such actions is governed by other state laws and District policy which permit a district to put parameters on the visiting public. District action with respect to the verbal abuse is beyond the jurisdiction of this state special education complaint and we therefore do not express an opinion on the District's initial restrictions of Complainant.<sup>4</sup>

The IDEA, however, contemplates a parent's active participation in the IEP process. See 34 CFR §300.501. Parental participation and input play a key role in the IEP process. *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 890-891 (9<sup>th</sup> Cir. 2001). "An IEP which addresses the unique needs of the child cannot be developed if those people who are most familiar with the child's needs are not involved." *Id* at 892. See 34 CFR § 300.322 and 34 CFR §300.328.

The District created a single point of contact that soon proved unwieldy and ineffective. District failure to clearly, consistently, and timely attend to its responsibilities with regard to the restrictions on Complainant created unnecessary road blocks and interfered with Complainant's right to effective participation in his child's IEP process. "Procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the IEP formulation process, clearly result in the denial of a FAPE." *W.G. v. Bd. of Target Range Sch. Dist. No 23*, 960 F.2d 1479,1484 (9<sup>th</sup> Cir. 1992), *superseded by statute on other grounds* by IDEA Amendments of 1997. The District is in **violation of 34 CFR §300.501**.

**Issue 5: Did the District err when it denied Complainant the opportunity to attend the IEP meeting in person? Did the District restrict Complainant's ability to ask questions at the meeting? Did the District deny FAPE as a result of denial of parental participation?**

Complainant alleges the District erred by refusing to permit him to attend the September 24, 2012 IEP meeting in person. Complainant was in Montana but out-of-town on the day of the September 24, 2012 IEP meeting. He called the district superintendent that morning stating he would like to attend the IEP meeting in person. He had never had the opportunity to attend a meeting in person before. The superintendent told him he could not attend the IEP meeting in person. Complainant contacted an OPI compliance monitor about his exclusion. The monitor spoke to the superintendent who indicated the District would require Complainant to attend by telephone, not in person, because he had become verbally abusive over the phone in prior contacts and had demonstrated the same behavior that morning.

Complainant participated in the September 24, 2012 IEP meeting by phone, but complained that he was unable to hear a significant portion of the meeting due to phone troubles and was unable to ask questions because the superintendent was not at the meeting and he was supposed to communicate through her.

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<sup>4</sup> Such as Montana Code Annotated (MCA) § 45-8-213 Privacy in Communication, M CA § 45-4-203 Intimidation, MCA § 45-8-101 Disorderly Conduct, MCA § 20-4-203 Abuse of a Teacher, § 20-4-402(1) MCA. (The Superintendent has, "... general supervision of all schools of the district and the personnel employed by the district.").

The superintendent's actions were based on the fact that Complainant had been upset that morning and, given his past behavior, she had concerns he would continue to be upset and disruptive in person, possibly compromising safety. Student and her mother planned to attend the meeting. The superintendent also had concerns about Student's emotional state given Complainant's outbursts. The superintendent decided it was best for Complainant not to attend in person. The meeting proceeded with Complainant on the phone.

A district must take steps to ensure one or both parents are present at IEP meetings or are afforded the opportunity to participate. 34 CFR § 300.322. Notice must be given to the parents to ensure they have the opportunity to attend and the meeting must be scheduled at a mutually agreed upon time and place. 34 CFR § 300.322(a)(1) and (2). If neither parent can attend the IEP meeting in person the district must use another method to ensure parent participation such as video conference or telephone calls. 34 CFR § 300.322(c) and 34 CFR 300.328. Generally, an offer of telephone participation is to be utilized after it is clear a parent cannot make it in person. See also, *N.B. v. Hellgate Elementary Sch. Dist.*, 541 F.3d 1202; *Drobnicki v. Poway Unified Sch. D.*, 2009 WL 4812163 (9<sup>th</sup> Cir. 2009)(unpublished).

Despite this strong preference for parental in-person participation at IEP meetings, the District has a right and a responsibility to maintain order and keep employees and students free from verbal abuse and harassment as discussed in Issue 4. In this limited circumstance, given the District's responsibility for safety and public order, deference to the District's reasonable assessments regarding safety and public order is proper. The District did not err in limiting Complainant's participation at this particular IEP meeting to telephonic participation. **No violation of 34 CFR §300.501** is found here. However, given the IDEA's strong preference for parental participation, the District is advised to assess their policy and position for future IEP meetings based on current facts.

#### **E. Disposition**

The District is ORDERED to take the following actions:

1. Review policies and procedures for parental participation, ensuring the exchange of clear and accurate information regarding their child's special education program.
2. Submit an explanation of the review process and the results of the review to the OPI Dispute Resolution/EAP office for approval by January 31, 2013.
3. With respect to Complainant, clarify in writing current restrictions, if any, imposed on Complainant and District responsibilities to ensure effective participation, and submit to the OPI Dispute Resolution/EAP office a copy of this letter for review and approval by January 31, 2012.

Ann Gilkey  
OPI Compliance Officer

c: Mary Gallagher, Dispute Resolution/EAP Director