



opi.mt.gov  
March 29, 2013

[Complainants]

[Superintendent]

**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT for In the Matter of \*\* 2013-01**, 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. The Complaint was filed by \*\* (Student) a student in \*\*\*\* School District No. \*\* (District), along with his parents, \*\*\*\* (Parents).<sup>1</sup> Complainants assert 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. by allegedly failing to consider Student's needs under the "Special Factors" section of the 2011 and 2012 IEPs in the areas of communication and assistive technology and failing to evaluate student for speech issues and failing to provide speech or communication services;
2. by allegedly failing to complete any transition assessments to properly write post-secondary goals and provide transition services to meet those goals;
3. by allegedly failing to determine appropriate present levels of academic and functional performance (PLAAFP) in order to provide measurable goals on the 2011 and 2012 IEPs;
4. by allegedly denying Student a free appropriate education (FAPE) because Student's 2011 and 2012 IEP's were not reasonably calculated to provide educational benefit.

**A. Procedural History**

1. On January 23, 2013, the Montana Office of Public Instruction (OPI) received a Special Education Complaint signed by Complainants.
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 February 19, 2013.
4. An appointed investigator conducted interviews with: Complainants, the Complainant's advocate, the District's special education director, the District's special education coordinator, the principal,

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<sup>1</sup> Parents and Student will be collectively referred to as Complainants.

associate principal, assistant principal, the high school's speech and language pathologist, school psychologist, school counselor, the Student's case manager, Student's teachers and paraprofessionals.

## **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. Complainants have standing to file this Complaint under the Montana special education complaint process at ARM 10.16.3661.
2. Student is a senior in high school and he reached the age of majority on August 8, 2012.
3. Student has not been declared to be incapacitated and does not have a guardian.
4. On November 11, 2012, Student signed a Consent to Authorize Advocacy and Release of Information for his parents regarding their ability to advocate and receive information from the District.
5. Student has received special education services since preschool under the categories of autism and cognitive delay.
6. Student's last Reevaluation Report meeting was February 11, 2011. Student was assessed in the areas of classroom based assessments for basic skills, adaptive PE, vocational and academics and in academic achievement for reading and social emotional. Recommendations were made for adapted physical education, Career Vocational, Math, Reading, Self-Help Independence, and Social/Emotional/Behavioral. Student was referred for a complete psychoeducational reevaluation but the reevaluation was not successfully completed reportedly because "Student was nonverbal."<sup>2</sup>
7. Neither communication or assistive technology were identified as areas of concern for Student in the Reevaluation Report.
8. A teacher has assisted Student with getting on the bus in the mornings since his sophomore year.
9. On November 12, 2012, by letter to the Special Education Director, Student's Mother requested an additional year of high school for Student as well as appropriate evaluations to ensure Student has skills necessary to transition after high school.
10. Student received some speech and language services early on in his education but these services were dropped in 2006. The reason Student was exited from speech is unknown.
11. A speech and language pathologist visits Student's classroom every week but does not have Student on her caseload.
12. Student is currently in his fourth year of high school. Student does not attend any regular education classes but attends basic skills classes and adaptive physical education at the high school.

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<sup>2</sup> An additional evaluation report meeting did take place after the filing of the Complaint on February 6, 2013.

13. Student had his annual IEP meeting on December 4, 2012. Student and his mother signed off on the IEP on December 7, 2012 with exceptions.<sup>3</sup>
14. One of the exceptions to the 2012 IEP was disagreement with the PLAAFPs and the measurable goals.
15. Student is scheduled to graduate this year on May 27, 2013.
16. Student's case manager attempted informal transition assessments in November of 2012 but did not obtain valid results due to Student's inability to effectively communicate his desires.
17. Student's case manager attempted another transition assessment (Reading Free Vocational Interest Inventory: 2) on January 7, 2013 but the assessment was determined to be invalid because Student would always pick the last answer on every question.
18. Student's case manager performed the Enderle-Severson transition assessment on Student January 15, 2013.
19. Student's 2011 and 2012 IEPs did not address communication or assistive technology under the Special Factors section of the IEP.
20. Student was not assessed for communication or assistive technology until after the Complaint was filed.
21. At some point in the last school year, the District attempted Proloquo, an augmentative and alternative communication system on the ipad with Student.
22. On January 15, 2013 the School Psychologist completed the Vineland Adaptive Behavior Scale on Student.
23. A consultant from the Montana Autism Education Project was contacted per the request of parents at the annual IEP meeting and observed Student on January 21, 2012 and issued a Technical Assistance Report dated January 23, 2013.
24. No new accommodations were offered under the 2011 or 2012 IEPs.
25. Student's PLAAFP listed on the 2011 and 2012 IEPs are vague and do not describe the present level at which Student is functioning.
26. The majority of the goals listed in the 2011 and the 2012 IEPs are vague and not measurable.
27. Student's 2011 and 2012 IEPs do not state what transition assessments were performed and what was learned from those assessments.

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

#### **Issue 1: Did the District err when it did not consider Student's needs under the "Special Factors" section of the 2011 and 2012 IEPs in the areas of communication and assistive technology and when it did not evaluate student for speech therapy and provide speech therapy services?**

Complainants allege the District should have considered communication and assistive technology under the "Special Factors" section of Student's IEPs and provided services. Complainants further allege the District erred by not properly evaluating Student for speech therapy and providing those services.

Under the IDEA the District has a responsibility to make sure a student is assessed in all areas related to the suspected disability or disabilities. 34 CFR §300.304(c)(4). Pursuant to 34 CFR § 300.324(b)(2) an IEP Team must consider special factors when reviewing the child's IEP. Specifically, the IEP team *must* consider the communication needs of the child and consider whether the child needs assistive

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<sup>3</sup> The exceptions were noted in a letter addressed to the principal dated December 7, 2012.

technology devices and services. 34 CFR § 300(a)(2)(iv) and (v). Further if assistive technology devices are found to be necessary for a student, a district must make sure they are made available to the student. 34 CFR § 300.105(a).

According to the District, Student can communicate functionally in the school environment using pointing, gestures, signs, and with certain individuals, verbally. The District did not see a reason to change or enhance his means of communicating. The 2011 IEP Student Concerns for “Strengths, Educational Concerns and Preferences/Interests,” state “[Student] has trouble communicating his strengths, preferences and interests.” And under “education concerns of school staff,” it states “Communication.” Similarly on the same portion of the 2012 IEP, under Student’s perspective it states: “[Student] has trouble communicating his strengths, preferences and interests.” The evidence showed some District staff who work closely with him are able to understand some words (typically a one or two word utterance) but that those who do not work as closely with Student are unable to understand what he is saying. Despite these concerns, “Communication” and “assistive technology” were checked “no” as not needed on Student’s 2011 and 2012 IEPs. The IEPs contain no goals related to improved communication or speech.

The District did not evaluate Student for communication or assistive technology needs during the relevant timeframe for this Complaint which spanned portions of the 2011 and 2012 IEPs. Student was not considered for communication and assistive technology needs until after the Complaint was filed.<sup>4</sup> Student’s last evaluation report dated February 11, 2011, did not recommend the IEP team consider assistive technology or communication. It recommended consideration of adapted physical education, career/vocational, math, reading, self help/independence and social/emotional behavioral.

While no speech or communication needs are identified, the District reported it did try Proloquo, an augmentative and alternative communication system on the ipad last school year. No evidence was available regarding how the program was introduced with Student. There are no goals regarding Proloquo in the IEPs. There was no documentation as to how, when, or if staff was trained and no data was taken on Student’s progress. Only Student’s case manager and a paraprofessional indicated they tried to use Proloquo with Student, but that he did not like it or make the connection on how to use it. The District reported use of picture exchanges, such as the Picture Exchange Communication system at some point, saying it was used successfully in the past and then phased out.

The District maintains that Student is able to communicate effectively with gestures, signs and verbally to get what he wants at school. However, it is clear from the documentation and the investigation that Student continually struggles with communication issues. No one outside his immediate circle can understand his verbalizations. It is also clear that outside of the IEP process some staff were concerned enough about Student’s communication needs that they tried various programs to assist him. Student’s lack of an effective means to communicate with those outside his immediate staff contacts was obvious and should have triggered evaluation of his communication needs and follow-up services. **The District violated 34 CFR 300.304(c)(4)** by failing to assess Student in all areas of suspected disability. The District also violated **34 CFR § 300.342(a)(2)** by failing to address or include communication and assistive technology in the development of the IEPs.

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<sup>4</sup> The high school speech and language pathologist performed an evaluation on Student January 25, 2013 and the Assistive Technology team performed an evaluation January 31, 2013.

Additionally, although it was not alleged in the Complaint, the investigation revealed the need for services to assist Student to benefit from special education by addressing Student’s difficulties accessing transportation to get to school. 34 CFR § 300.34. Since the fall of his sophomore year, Student has needed the assistance of a teacher to get on the school bus in order to get to school in the morning. A caring teacher has gone to Student’s door every morning to assist with him getting on the bus.<sup>5</sup> Similarly, last summer Student was offered extended year services but could not attend because he would not get on the bus. Services to address this behavior were not included in either the 2011 or 2012 IEPs but are clearly relevant for Student to benefit from special education. The District had an obligation to address these unique needs of Student. Failure to do so to date leaves Student without basic skills to become independent **and violates 34 CFR § 300.34 and 34 CFR § 300.324(a)(2)(i).**

**Issue 2. Did the District err when it did not complete any transition assessments on Student to properly write post-secondary goals and provide transition services to meet those goals?**

Complainants allege the District did not appropriately assess Student and therefore could not properly write post-secondary goals and provide transition services to meet those goals in violation of 34 CFR §300.320(b). “Congress in the IDEA placed ‘added emphasis on transition services so that special education students leave the system ready to be full productive citizens, whether they go on to college or a job.’” *Carrie I. v. Department of Education, State of Hawaii*, 869 F.Supp.2d 1225, 1244 (D. Haw. 2012) citing 150 Cong. Rec. S11653-01, S11656 (Nov. 19, 2004) (Conf. Rep. accompanying H.R. 1350) (Statement of Sen. Dodd).

Pursuant to 34 CFR §300.320(b), beginning not later than the first IEP to be in effect when the child turns 16, and updated annually, the IEP must include appropriate measurable post secondary goals based upon age appropriate transition assessments related to training, education, employment and where appropriate, independent living skills. The type of transition assessments to be conducted is not specified by the IDEA. Specific transition assessments used to measure post secondary goals are dependent upon the individual needs of the child and determined on an individual basis. *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46667 (August 14, 2006).

On both the 2011 and 2012 IEPs, under “Transition Services,” “Results of Age-Appropriate Transition Assessments” are supposed to be listed. These sections read as follows:

Area Assessed	Results of Transition Assessment listed on 2011 IEP	Results of Transition Assessment listed on 2012 IEP
Training	[Student] will explore different ideas and levels of participation in job specific skill training to help him determine what he likes and does not like.	Along with staff, [Student] will work in a variety of vocational jobs, each job will be supervised by staff. Jobs will include, wiping tables, sweeping floors, delivering objects etc.

<sup>5</sup> The teacher assists with the bus transition on a voluntary basis.

Education	Blank	Along with staff, [Student] will work in a variety of vocational jobs, each job will be supervised by staff. Jobs will include, wiping tables, sweeping floors, delivering objects etc.
Employment	[Student] will work with a job coach in order to master or gain skills in a specific employment situation	[Student] will work with staff in order to master or gain skills in a specific employment situation.
Independent Living	[Student] needs to develop simple living skills necessary for success in a supported or independent living environment.	[Student] needs to develop simple living skills necessary to succeed in a supported or independent living environment.

None of the “Results” listed above states how Student was assessed or what was learned from the assessment. No assessments were performed in 2011. The 2012 IEP states informal assessments were attempted in November of 2012, but the results were invalid because of Student’s “inability to effectively communicate his desires.” No other assessments were performed in 2012 and in December, 2012, a graduation meeting was held to exit Student at the end of the year.

Student’s post secondary goals have been the same since 2009:

1. Within three months of graduation, [Student] (with help of his parents) will access services from the Developmental Disabilities Services or other adult program.
2. Within three months after graduation, [Student] (with the help of his parents) will be receiving services in a supported work environment.
3. Within a year of graduation, [Student] (with the help of his parents) will explore opportunities for living options.

These goals as written are measurable and could be appropriate for Student. However, without adequate transition assessments, it is not possible to tell whether these goals are adequate. Failure to perform age appropriate transition assessments on which to base postsecondary goals is a clear violation of the IDEA. *Carrie I.*, 869 F.Supp.2d at 1245. See also: *Dracut v. Bureau of Special Education Appeals of Mass. Dept. of Elementary and Special Ed.*, 737 F. Supp.2d 35, 50-51(D. Mass. 2010)(failure to provide measurable post-secondary goals based on timely transition assessments is a violation of IDEA).

Additionally, the IEP in effect after a child’s 16<sup>th</sup> birthday must contain transition services including courses of study needed to assist the child in reaching their post-secondary goals. 34 CFR §300.320(b)(2). The transition services are supposed to assist Student in meeting his

postsecondary goals. A review of the transition services in the IEPs indicates they may be appropriate for Student. However, because timely age appropriate transition assessments were not performed, it is impossible to determine if the goals are appropriate and therefore if the transition services are appropriate to assist in meeting those goals.

After the exit meeting, Complainants objected to the IEP, listed their “exceptions,” and requested a transition assessment and additional evaluations. The District did administer the Reading Free Vocational Interest Inventory on January 7, 2013, but it was determined to be invalid because of Student picking the last picture for each question. Then on January 15, 2013, Student’s case manager administered an Enderle-Severson Transition Rating Scale which indicated sheltered work might be appropriate. Also, the school psychologist evaluated Student using the Vineland Adaptive Behavior Scale which reiterated that his cognitive delay level indicates he will need assistance.

Because of his communication deficits and cognitive delays, Student is difficult to assess in a more traditional way. However, some form of effective assessment needed to be identified and timely performed on Student in order to properly assess Student to be able to create appropriate post-secondary goals and services. Failure of the District to perform appropriate timely transition assessments **is a violation of 34 CFR §300.320(b).**

### **Issue 3. Did the District err when it failed to determine appropriate present levels of academic and functional performance (PLAAFP) and measurable IEP goals on the 2011 and 2012 IEPs?**

Complainants allege there was no data presented to indicate current levels of PLAAFP and the District has failed to review existing data necessary to determine Student’s PLAAFP to develop appropriate IEP goals. An IEP must include a statement of the child’s PLAAFPs including how the child’s disability affects their involvement and progress in the general education curriculum. 34 CFR § 300.320(a)(1).

PLAAFPs are set out to further goals development. An IEP begins by measuring the student's present level of performance which provides a benchmark for measuring the student's progress toward the goals stated in the IEP. *Ravenswood City School District v. J.S.*, 870 F.Supp.2d 780, 790 (N.D. Ca. 2012) citing *Settlegoode v. Portland Pub. Schs.*, 371 F.3d 503, 508 n. 1 (9th Cir.2004). The following selected PLAAFPs and goals for the 2011 and 2012 IEPs are discussed here:

#### **Service Area: 2011 Adapted PE**

PLAAFP: [Student] is doing great in PE. He likes riding the bikes, walking the gym, he is starting to interact with the staff but not with his other peers.

Goal: Given opportunity, [Student] will exercise, stretch and participate in activities at a passing grade as measured by six week/semester grading period through IEP year.

This PLAAFP does not state what Student’s present level of performance is. “Doing great” is not a statement of present level of performance. How long does he ride a bike? This Goal does not state a level of performance or what will be measured. What is a passing grade?

#### **Service Area: 2012 Career/Vocational**

**PLAAFP:** [Student] is able to complete several jobs. He may need several prompts to get him going through. Directions need to be simple and not multistep because he is unable to follow them. He is doing a nice job of washing tables in the cafeteria in the mornings. He uses the dust mop in the afternoons to drag the hallways and dusts lockers. He also crushes cans for a 30-40 minute period but needs to be reminded to stay on task. I believe that short work periods are in order for him as I believe longer periods of sustained work are asking him to do more than he is capable of doing. He always seeks out a hug at the end of class period and at the end of the day. He has gone down for assemblies the last few times we've had them without fuss, but once they start he wants to leave, but hasn't left.

**Goal:** Given opportunity to do vocational tasks, [Student] will increase his on-task time with fewer prompts, consistently, as observed by his teacher for duration of IEP.

The PLAAFP does not state what jobs student is able to complete or how many prompts are needed to complete them. This is the same goal as 2011. The Goals do not state what vocational tasks are being worked on, what is being measured, or what level the prompts or cues should be reduced to?

**Service Area:** 2011 Math

**PLAAFP:** [Student] is doing well in math, he is starting to use a calculator in math, will begin to add and subtract money, still knows his numbers. Some days he decides to sit on the couch but is always easy to get him to work. We are still working with [Student] on counting objects.

**Goal:** Upon request, [Student] will recognize the number of objects to a number with 70% accuracy consistently over the IEP with staff observation graded every 6 weeks.

Regarding the PLAAFP, "Doing well" is not a statement of present level of performance. Questions remain: What numbers does he know? What can he do with a calculator? What is Student's present level of performance in regard to counting objects? Regarding the goal, although a level of performance is specified, the goal is vague as to what numbers are being worked on and how will it be measured?

**Service Area:** 2012 Self-Help/Independence

**PLAAFP:** [Student] participates with the class when going on an outing. At times [Student] will decide to stay in the classroom and work. We take [Student] along with other students out into the community to do shopping. When [Student] is not shopping he helps with laundry. Daily he checks to see if there is laundry in the dryer or washer. If there is clothes in the dryer he will take them out and set them aside. Clothes in the washer he will put into the dryer. He does need help with the dial, even though he knows where the dial goes when drying, he still needs that ok to set the dial. [Student] also puts dishes into the dishwasher and takes them out to put them away when cleared. He does need prompts to do this activity

**Goal:** Upon request, [Student] will go out into the community at least one to two times a week with the class, as measured by teacher observation, [Student] will follow class rules as grade every 6 weeks for the duration of the IEP.[Student] will put clothes in washer and dryer and start one or the other with decreasing cues and prompts as measured by teacher observation. [Student] will put dishes in the dishwasher or take them out with decreasing cues and prompts as measured by teacher observation.

The PLAAFP is not clear. It does not explain how he participates during outings. How does student shop, does he go in by himself, is he able to use a list? How many prompts are given when doing laundry, etc? Further, the goal is vague and not measurable. It does not state what prompts and cues will be used and how many will be reduced.

The remaining PLAAFPs and Goals were similarly deficient. The investigation revealed no significant documentation to demonstrate Student's present levels.<sup>6</sup> A baseline is paramount to enable drafting appropriate goals which are measurable. Unfortunately, the 2011 and 2012 PLAAFPs are all vague and do not describe the present level at which Student is functioning. The IEP must also specify how a student's progress toward meeting the goals will be measured. 34 CFR §300.324(a)(3). The majority of the goals listed in the 2011 and the 2012 IEPs are vague and not measurable and therefore do not meet the minimum standards under the IDEA. Without proper PLAAFPs, it is impossible to draft appropriate goals and have a starting point to measure them. See *Ravenswood City School District*, 870 F. Supp.2d at 790-791, (The IEP was found to deny FAPE because IEP goals were not predicated upon clear baselines); and *Bend-Lapine School District*, 2005 WL 1587241 (D.Or. 2005) (unreported) affirmed by *Bend-Lapine School Dist. v. K.H.*, 234 Fed.Appx. 508 (9th Cir. 2007 ) (IEP denied FAPE due to lack of baseline data, measurable goals, and a description of services to be provided). The **District is in violation of 34 CFR § 300.201(a)(1) and 34 CFR §300.324(a)(3)** by failing to provide appropriate PLAAFPs and measurable annual goals for Student in the IEPs.

#### **Issue 4. Did the District deny Student a free appropriate public education (FAPE) because Student's 2011 and 2012 IEPs were not reasonably calculated to provide educational benefit?**

Complainants allege Student's 2011 and 2012 IEPs were not reasonably calculated to provide Student with education benefit. FAPE means special education and related services that:

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the state educational agency;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (d) Are provided in conformity with an individualized education program (IEP).

34 CFR §300.17. The proper standard to determine whether a student with a disability has received FAPE, is the "educational benefit" standard. *J.L v. Mercer Island School Dist.*, 592 F.3d 938,951 (9<sup>th</sup> Cir. 2010). The district must confer at least "some educational benefit" on students with disabilities. *Id.* This standard is referred to as "a basic floor opportunity" not a "potentially maximizing education." *Id.* at 947 citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 197 (1982).

The District does not have to provide Student with the most potentially maximizing education available. In order to provide FAPE it only has to be shown that some educational benefit was

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<sup>6</sup> The 2011 psychoeducational evaluation did state some behavioral observations: Student was able to recognize some of the basic colors, able to count from 1-4, ability to recognize month and day on calendar. Additionally, the 2011 evaluation report states there was a reading assessment done- that Student is working on Grocery Words. However, this was over two years ago.

conferred. An IEP cannot be judged exclusively in hindsight, “In striving for ‘appropriateness,’ an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is at the time the IEP was drafted.” *Adams v. State of Oregon*, 195 F.3d 1141 (9<sup>th</sup> Cir. 1999). In *McCallion v. Mamaroneck Union Free School District*, 2013 WL 237846, 9 (S.D.N.Y.), the Court looked to several factors to determine if the IEP was reasonably calculated to provide educational benefit: the student received passing marks progressing from grade to grade, test results indicate student maintained overall achievement level when compared to same age peers, meaningful academic progress made pursuant to past IEPs, and that the proposed IEP contains several recommendations and accommodations not found in past IEPs which were aimed at improving student’s performance.

Here, Student is educated in the basic skills classes and adaptive physical education at the high school and functions cognitively below his same age peers. His transcript shows he received passing marks or credit for his classes. However, the PLAAFPs, measurable goals, and transition assessments were deficient as discussed above. This investigation revealed no meaningful academic progress occurring within the timeframe of this Complaint. The progress reports for the 2011 IEP indicated the vocational goal of going out into the community was the only goal met. The November 16, 2012 progress report indicated the Student’s math goal was met but the evidence revealed that Student has not mastered it and he is still working on that goal. The 2012 math PLAAFP stated Student had good one-to-one correspondence of numbers 1-10. However, his goal for the 2012 IEP is one-to-one correspondence of the numbers 1-4. The goals for Math have been vague and stagnant for the past four years. The Student has been working on a reading program but the investigation was not able to determine what progress was made. The District stated they revised the 2011-12 reading goal because it was too difficult but no changes were made to the IEP to reflect a new goal. Student did not meet the stated 2011 reading goal.

The PE and vocational goals were not met and were carried over to 2012. These goals have not changed over the past four years. There was minimal data collection taken on the progress of all goals making it unclear what progress, if any, has actually been made. No new accommodations were offered under the 2011 or 2012 IEPs. The transition assessments were found to be deficient as set out above. While Student is mostly nonverbal and communicates with most people by pointing and grunts, he does attempt verbal expression and some staff are able to understand some things he says. Nonetheless, the District failed to assess Student in all areas of disability, specifically for communication and assistive technology, and for years his IEPs have contained no speech, assistive technology, or communication services.

It is clear that the teachers and administration care about Student and in several ways did go above and beyond to assist Complainants. However, given the significance of procedural and substantive errors set forth above, the 2011 and 2012 IEPs were not reasonably calculated to allow Student to receive educational benefit and the **District denied Student a FAPE in violation of 34 CFR §300.17.**

#### **E. Disposition**

The District is ORDERED to take the following actions:

1. Given the denial of FAPE, the District shall provide compensatory education services to Student in the form of extended school year services during the 2013 summer and the 2013-2014 school year.

2. The District shall promptly arrange for special education staff training by the OPI in drafting PLAAFPs, accessing communication needs, measurable annual goals, tracking progress, and transition services with emphasis on autism and cognitive delay. The training shall be completed by **May 17, 2013** with verification sent to the Dispute Resolution office.
3. The District independently consulted with the OPI MAEP.<sup>7</sup> Recommendations were made regarding an assessment tool which would address the difficulty experienced in assessing the Student to date. The District shall promptly complete the recommended transition assessment or its' equivalent and address the recommendations regarding prompt dependency and communication.
4. The District shall ensure the IEP team drafts an adequate IEP in conformance with this Final Report and MAEP recommendations. The IEP shall be submitted to the Dispute Resolution office for review and approval no later than **April 30, 2013**.

/s/ Ann Gilkey  
Ann Gilkey  
OPI Compliance Officer

c: Mary Gallagher, Dispute Resolution/EAP Director

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<sup>7</sup> A visit from a consultant with the OPI Montana Autism Education Project (MAEP) took place about the same time the Complaint was filed. This consultation visit was independently requested by the District and not part of the Complaint process.