



December 20, 2013

***, Superintendent

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT** for In the Matter of **, 2013-09, 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 her child, ** (Student), a student in *** Schools (the 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., by allegedly:

- (1) not conducting a timely annual review of Student's IEP by October 25, 2012, allowing Student's October 25, 2011 IEP to expire;
- (2) failing to notify Complainant of the IEP meeting which took place on December 20, 2012 and denying Complainant the opportunity to attend and participate in that IEP meeting therefore denying Student a Free and Appropriate Public Education (FAPE);
- (3) implementing the December 2012 IEP without consent of either parent;
- (4) implementing the March 22, 2013 IEP without Complainant's consent;
- (5) failing to have Student's regular education PE teacher participate in the March 15, 2013 IEP meeting; and
- (6) denying Student FAPE by not providing student educational benefit during the 2012-2013 school year.

A. Procedural History

1. On October 21, 2013, the Montana Office of Public Instruction (OPI) received a Special Education Complaint (Complaint).
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 15, 2013.
4. An appointed investigator conducted interviews with: Complainant, Complainant's advocate, Student's father, the District's special education coordinator, and the following middle school staff: principal, regular education PE teacher, school psychologist and speech and language pathologist.

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 or regulation occurred.

C. Findings of Fact

1. Complainant is Student's mother and has standing to file this Complaint under the Montana special education complaint process at ARM 10.16.3661.
2. Complainant and the Student's father are divorced. Their Final Decree of Dissolution was entered on April 12, 2011.
3. Student is currently enrolled in 7th grade and is eligible for special education services under the disability category of autism.
4. Student has been enrolled in the District since preschool and attended the same elementary school until moving on to the middle school for the 2012-2013 school year, for 6th grade.
5. Student's October 25, 2011 IEP expired on October 25, 2012.
6. Student's case manager notified Student's father by telephone in December, 2012, that the IEP expired and they needed to schedule an IEP meeting.
7. Written notice was not given to either parent regarding an IEP meeting on December 20, 2012.
8. Student's father, case manager and special education teacher, speech language pathologist, general education PE teacher and middle school principal attended the December 20, 2012 IEP meeting¹.
9. Parental consent was not obtained for the IEP dated December 12, 2012 and it was not implemented.
10. On February 6, 2013 Complainant emailed Student's case manager, "Last time we talked you had stated that we would meet for [Student]'s IEP in January. However, in January I did not receive any notification or request for meeting dates. It is February now and I am just trying to determine when [Student]'s IEP meeting will take place."
11. On February 13, 2013 Student's case manager replied stating she was "sorry for spacing it out" and asked what days Complainant was available to meet. Complainant responded (and carbon copied the middle school principal) with the days she was available and asked for a quick response since the IEP had been expired since the end of October. Student's case manager did not respond to this email.
12. On February 25, 2013 Complainant again emailed the middle school's principal and carbon copied the case manager stating her concern that the IEP had been expired and wanting to schedule an IEP meeting.
13. The case manager responded by email on February 26, 2013 at 4:13 pm setting up an IEP for February 27, 2013 at 1:30 pm. The principal also emailed Complainant on February 26, 2013 and in addition to letting Complainant know an IEP meeting was being scheduled stated, "[w]e did go over the IEP with his father as well. I would have to look at what the date was when we did that."
14. Complainant replied on February 26, 2013 by stating, "I am certain less than 24 hour notice does not satisfy the requirements of 34 C.F.R. § 300.322; including taking steps to ensure the parents of

¹ The IEP was erroneously dated December 12, 2012.

the child are present... Nor, did the notice indicate anything that is required including purpose, time, location of the meeting or who will be in attendance.”

15. On February 27, 2013 the case manager responded setting the IEP meeting for March 8, 2013. Complainant responded with an email requesting clarification as to if an IEP meeting was held in December and if the father consented to the IEP.
16. On February 28, 2013 the case manager stated, “I am so sorry for any confusion that I may have caused. Sometimes my mouth forget[s] to say what my mind is thinking. We did have an IEP with [father] at the end of December. I realized that we were late and just wanted to make sure that we got it done. Although he agreed with the IEP goals, he didn’t sign off, wanting to give you the chance to agree and be the one to sign off. Unfortunately, part of the confusion is that I crossed off [Student’s] name on my need to do IEP list without thinking. That is why I did not contact you in January to have a meeting. I truly apologize. As I stated, I wanted to have his IEP completed as close to the date as possible once I realized my mistake. I meant no disrespect or slight.”
17. The Complainant had a scheduling conflict come up on March 8 and the meeting was moved to March 15, 2013. Proper notice was given for the March 8, 2013 IEP meeting.
18. On March 1, 2013, Complainant requested a copy, via email to the principal, of the December 2012 IEP. Complainant obtained the copy at the District office.
19. On March 15, 2013, an IEP meeting was held. The Student’s father and regular education PE teacher were not in attendance. Parental consent was not obtained for excusal of the PE teacher. The IEP team started through the IEP and after approximately 3 hours decided to continue the meeting on March 22, 2013. Proper notice was given for the March 22, 2013 IEP meeting.
20. In attendance at the March 22, 2013 IEP meeting were Complainant, Complainant’s advocate, Student’s father, PE teacher, middle school principal, case manager, speech and language psychologist, and school psychologist.
21. The IEP team made IEP revisions mainly concerning present levels of performance and goals.
22. A copy of the March 22, 2013 IEP was emailed to Complainant by the school psychologist on March 26, 2013.
23. On April 9, 2013, Complainant expressed continued concerns with the March 22, 2013 IEP via email to the school psychologist.
24. Student’s father signed his consent to the March 22, 2013 IEP on April 10, 2013. Complainant was unaware of his consent at this time.
25. On April 10, 2013 the school psychologist emailed Complainant to let her know she would meet with the District’s Special Education Coordinator to review Complainant’s concerns.
26. On May 2, 2013 Complainant responded to the Special Education Coordinator expressing concern about her son’s IEP, “...especially since he is still not working under a signed or updated IEP, and now it is almost the end of the year. Although I was told you would be attending [Student’s] IEP meeting you were not there.” In addition, Complainant expressed her preference for written communication.
27. On May 3, 2013 the District’s special education coordinator emailed Complainant asking if they could meet in an evening to discuss Student’s IEP.
28. On May 9, 2013 Complainant responded she appreciated the offer but, wanted her concerns expressed in her April 9th email addressed in writing.
29. On May 17, 2013 the special education coordinator responded that she is working on her concerns and she hopes to have a response to her at the beginning of the next week.
30. On June 3, 2013 Complainant emailed the special education coordinator and expressed her concern and disappointment with the lack of follow through regarding Student’s IEP.

31. On June 7, 2013 the District's special education coordinator emailed Complainant and Student's father with a response to Complainant's April 9, 2013 concerns. In her response, she notified Complainant, "I am suggesting an IEP meeting right away in the fall to specifically address your concerns and to possibly amend the IEP which is currently being implemented based on approval from [Student's father]. According to Montana Rules one parent may give approval of an IEP. If you have a developed parenting plan which requires agreement of both parties for educational decision, please provide the school with a copy. I will forward this response as well as your concerns to the team, including [Student's father], so that other[s] may be prepared to meet early in the fall."
32. Complainant and Student's father have a parenting plan that provides for educational decisions to be made jointly² and for the parents to share as equally as possible the parental rights associated with education decisions.
33. Student was provided Extended Year Services during the summer of 2013 to address concerns regarding student's regression in math and reading MAP scores. Student attended 16 of the 19 days offered.
34. Student's case manager for the 2012-2013 school year passed away in September of 2013.

D. Analyses and Conclusions

Issue 1: Did the District err when it did not conduct a review of Student's IEP within the annual timeframe?

The District acknowledges that it did not conduct a timely annual review of Student's IEP. Pursuant to 34 CFR § 300.324(b)(i) the IEP team must review the IEP periodically and not less than annually. Student's October 25, 2011 IEP was not reviewed by October 25, 2012, therefore **the District violated 34 CFR §300.324(b).**

Issue 2: Did the District err by allegedly failing to notify Complainant of the IEP meeting which took place December 20, 2012? Did the alleged failure deny Complainant the opportunity for parental participation in the meeting and thereby deny Student a FAPE?

Parental Notice of IEP meeting

Complainant and Student's father were divorced on April 12, 2011. Contact information for both parents is listed on Student's October 25, 2011 IEP. Although, the parents do have a parenting plan addressing educational decision-making, the District did not request a copy during the relevant dispute and no copy was provided to the District.

Pursuant to 34 CFR § 300.30(b)(1), except if a judicial decree provides otherwise, "the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified ... must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child." The Comments to the Federal Regulations provide, "In situations where the parents of a child are divorced,

² The parents entered a Marital and Property Settlement Agreement, Final Parenting Plan, Waiver of Notice of Hearing, and Consent to Entry of Decree on March 28, 2011. The parents entered a Stipulation to Amend Final Parenting Plan, April 29, 2013 but the provisions of the stipulation did not change decision making authority.

the parental rights established by the Act apply to both parents, unless a court order or State law specifies otherwise.” *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46568 (August 14, 2006).

Regarding the December, 2012 IEP, the District asserts they did not err because “if a parent chooses not to attend, despite efforts to secure that parent’s attendance, the IEP team meeting can proceed.” *District Response* at 5. The facts do not support this assertion. While there is indication that initially both parents were contacted and the father could make the proposed date but the mother couldn’t, the District went forward with the date on which the father could attend and told the mother that they would hold a meeting in January which they never did. The District did not inform the mother that they planned to proceed without her rather than change the meeting to a date that was mutually agreeable to all. Complainant did not “choose to not attend.”

Parents are to be notified of the purpose, time, and location of the IEP meeting and who will be in attendance. 34 CFR § 300.322(b)(1). Here, the District failed to give Complainant proper notice of Student’s IEP meeting that took place December 20, 2012. As a parent under 34 CFR §300.30(b)(1), Complainant was entitled to notice of the IEP meeting and therefore, the **District violated 34 CFR §300.322(b)(1) and 34 CFR 300.503.**

Parental Participation in December 20, 2012 IEP Meeting and Denial of FAPE

Because Complainant was not notified of the IEP meeting on December 20, 2012, she was not able attend or participate. Emails demonstrate that Complainant did not have actual knowledge of the meeting until February 26, 2013 when she tried to schedule what she thought was the first IEP meeting after the expired IEP and the principal informed her the District had already met with the Student’s father in December.

The IDEA contemplates a parent’s active participation in the IEP process. See 34 CFR §300.501(b). 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 (9th 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. The district “... must take steps to ensure that one or both parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate.” 34 CFR §300.322(a).

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.

34 CFR §300.17.

Harmless procedural errors are not considered to be a denial of FAPE. *Doug C. v. State of Hawaii Dept. of Education*, 720 F.3d 1038, 1043 (9th Cir. 2013). However, “[p]rocedural 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.” *Id.* quoting *W.G. v. Bd. of Target Range*

Sch. Dist. No 23, 960 F.2d 1479,1484 (9th Cir. 1992), *superseded by statute on other grounds by IDEA Amendments of 1997*. In the recent 9th Circuit decision of *Doug C.*, the parent of a student was unable to attend the IEP meeting due to illness. The district could not reschedule the meeting to when the parent could attend prior to the date the student’s annual IEP expired. *Id.* at 1042. The district went forward with the IEP meeting without the parent and then held a follow-up IEP meeting with the parent. *Id.* The Ninth Circuit found “...the Department’s decision to prioritize strict deadline compliance over parental participation was clearly not reasonable.” *Id.* at 1046. The Court held the procedural violation which resulted in loss of parents’ opportunity to participate in the IEP process was a denial of FAPE. *Id.* at 1048.

The District argues correctly that neither the IDEA or Montana law requires both parents to attend and participate in an IEP meeting. Student’s father did attend the December 20, 2012 IEP meeting. However, failure to notify Complainant of the meeting and allow her an opportunity to participate is clearly a serious infringement of her right to participate in the IEP formulation process **in violation of the notice provisions of the IDEA**. See 34 CFR §300.503. The District further argues the error was harmless because the IEP was never implemented. In a situation such as this, after-the-fact meetings are not enough to remedy the District’s denial of the parent’s right to participate. Clear procedural error occurred when the District allowed the IEP to expire in October 2012, didn’t meet until December to the exclusion of Complainant, and held no follow-up meeting to complete the December 20, 2012 IEP until Complainant made inquiry. By the time of the case manager’s email on February 28, 2013, the District was months in arrears of its obligation. The District took no steps to follow up on the December 20, 2012 IEP meeting as admitted to by the case manager that she “without thinking” crossed Student’s name off her need-to-do IEP list despite that lack of parental consent. If Complainant hadn’t continued to request an IEP meeting in February 2013, it is clear the District would not have sought to complete an IEP. Their offer to have a later IEP meeting to include the excluded parent does not make their actions any less a violation. The failure of the District to notify Complainant of the December 20, 2012 IEP meeting clearly infringed on her ability to participate in the IEP formulation process **in violation of 34 CFR §300.322, violated her right to receive notice of IEP meetings, and therefore denied Student a FAPE in violation of 34 CFR §300.17**.

Issue 3: Did the District err by allegedly implementing the unsigned December 2012 IEP without consent of either parent and did it err when it did not seek to obtain consent?

Neither Complainant nor Student’s father consented to the December 2012 IEP. A district must obtain written parental consent for initial and annual placement of a student with a disability. ARM 10.16.3505(2). When parental consent has not been obtained for annual placement and it has not been specifically refused, a district “shall” informally attempt to obtain consent. ARM 10.16.3505(2)(c).

After a series of Complainant’s requests for an IEP meeting via email in early February 2013, two IEP meetings were held in March of 2013 approximately 5 months after Student’s IEP expired. Very little evidence was available regarding implementation of the December IEP, partly because Student’s case manager, who was his teacher for all but PE and speech and language, passed away in September 2013. Interviews with the speech and language pathologist revealed the October 25, 2011 IEP was implemented until April 10, 2013 when the father consented to the new IEP. The District did not implement the unconsented-to December 2012 IEP and therefore **did not violate ARM 10.16.3505(2)**

in this respect. However, the issue of consent is broader than whether the District implemented an unapproved IEP. The District made no attempt to obtain parental consent for the December 2012 IEP as required by ARM 10.16.3505(2)(c). As discussed in Issue 2, it is clear the District would not have followed up on the unsigned IEP if it were not for Complainant's contact due to her understanding that an annual IEP meeting had not been held. Therefore, **the District did violate ARM 10.16.3505(2)** when it let the IEP languish and failed to seek parental consent for months.

Issue 4: Did the District err when it implemented the March 22, 2013 IEP with the father's consent but without Complainant's knowledge or consent?

Complainant and the District finally held an IEP meeting on March 15, 2013. After several hours of discussion, the parties decided to continue the IEP meeting the next week. Complainant, Student's father, and the District all attended the March 22, 2013 meeting and a copy of the draft was mailed to Complainant soon thereafter. Complainant still had concerns and expressed them to the District on April 9, 2013. The father signed his consent to the IEP on April 10, 2013. Complainant did not consent to the March 22, 2013 IEP but the District proceeded to implement it without her knowledge. It is unclear whether the father knew that Complainant still objected to the IEP.

State law provides that "The father and mother of an unmarried minor child are equally entitled to the parenting...of the child." MCA §40-6-221. There is a presumption that both parents are entitled to participate. The consent provisions in ARM 10.16.3505 and 34 CFR§300.300 do not mandate both parents attend and give consent to an IEP. Guidance in the Comments to the Federal Regulations provides, "[i]n situations where the parents of a child are divorced, the parental rights established by the Act apply to both parents, unless a court order or State law specifies otherwise." *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46568 (August 14, 2006). Thus, the parental rights established by the IDEA apply to both parents unless state law or a court order specify otherwise.

The District argues that "[t]he equal rights shared by divorced parents does not, however, mean that both parents are required to act jointly...In the event there was a court order requiring mutual agreement for education decisions the [D]istrict would honor that order and seek consent of both parents." *Dist. Response p. 6*. Here, the parents actually had a court-approved parenting plan as part of their divorce which specified joint educational decision-making. However, the District did not ask for or receive the parenting plan during the dispute. The Student's father did make their request for joint educational decisions known to the District at the December, 2012 IEP meeting as acknowledged by the District's case manager via email on February 28, 2013. Further, even though this was Student's first IEP meeting at the middle school, both parents' names, contact information, and signatures were available on previous 2011 IEP documents.

Initially, the District contacted both parents about scheduling a December, 2012 IEP meeting. The District informed Complainant they would meet in January but then chose to meet with the father in December without informing her. At the December 20, 2012 IEP meeting, the father provided notice that he would not give consent to the IEP until the mother approved the document. This notice to the District should have guided the District's actions for obtaining further consent from the parents. At a minimum, the District should have clarified the parenting rights of each parent for educational decisions. The District made no inquiry about, nor did it request a copy of a parenting plan until June 7, 2013-long after they had received notice that the parents wanted to make joint educational decisions. When the

possibility of joint decision-making is expressed, the District had a responsibility to at a minimum inquire if there was a court order to that effect.

However, the inquiry in this case does not end there. The IDEA requires districts to provide procedural safeguards to parents. A key tenet of the procedural safeguards is the right to parental participation as guaranteed in 34 CFR §300.322(a). “Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate...” As this Office has stated in the past, parental participation is a key ingredient to ensuring a successful IEP and placement for a student. We agree with Complainant that when parents are married, the District may infer that communication sent to one parent is sufficient to notify both parents and that, with married parents of a child with a disability, if one parent chooses not to attend an IEP meeting, the district need not take further steps to ensure both parents participate. However, when parents of a child with a disability are divorced, the District has an affirmative duty to clarify their procedures and make specific efforts to include both parents unless state law or a court order mandate otherwise.

A District may not arbitrarily decide to notify and include one parent in IEP proceedings and not the other. For months after obtaining the father’s signature on the IEP and with full knowledge that Complainant sought to meet again to iron out remaining concerns, the District chose not to inform Complainant of the father’s consent or of the fact that it had already acted to implement the IEP without Complainant’s knowledge or consent. Notably, the case manager and the special education coordinator were aware of these facts but did not inform Complainant of them until June, 2013 when she continued to press her IEP concerns.

The District argues this was justified because they only needed one parent’s signature to implement the IEP and they had obtained the father’s signature and that the mother also had a chance to participate in some of the meetings. This position conveniently ignores that the District acted to affirmatively exclude a dissenting parent from the IEP process. Nothing in the IDEA makes the parent’s right to participate “contingent on parental cooperation with, or acquiescence in, the state or local educational agency’s preferred course of action.” *Anchorage School District v. M.P.*, 689 F. 3d 1047, 1055 (9th Cir. 2012). Here, the District withheld critical procedural information from Complainant when it was convenient for them when there were scheduling conflicts in December and again in April when Complainant objected to the proposed IEP. The District failed to keep each parents fully informed of the proceedings and gave hollow lip service to Complainant’s right to participate.

The District Response also asserts that if the Mother chose to revoke consent for services, it would honor that revocation even without the father’s joint consent. This raises the question of why the District did not treat Complainant’s continued requests to meet as an attempt to revoke services since clearly she did not agree with the proposed services in the last IEP of which she was aware. Nor did the District inform Complainant that they were proceeding with implementation under the assumption that they only needed one parent to consent, that they had made their final offer of FAPE, and that Complainant had a right to file for due process to challenge their decision. If they had, the parents would have had the opportunity to demonstrate that they had a parenting plan calling for joint decision-making. Rather than cut one parent out of the process when both are active participants, the District had an affirmative duty to ensure both divorced parents were included in the IEP process when they chose to jointly make educational decisions. **The District is in violation of ARM 10.16.3505 and 34 CFR 300.322** for

excluding Complainant from the IEP process and failing to obtain her consent given the expressed joint parental decision-making for education for their child.

Issue 5: Did the District err by allegedly failing to have the regular education PE teacher participate in the March 15, 2013 IEP meeting?

Complainant alleges the District erred by not having Student's regular education PE teacher attend the March 15, 2013 IEP meeting. Pursuant to 34 CFR §300.321(a)(2) the IEP team must include a regular education teacher. The parent and district can agree to excuse the attendance of an IEP team member if the parent gives written consent of the excusal. 34 CFR §300.321(a)(e). If the IEP team member involves a modification or discussion of the member's area of the curriculum or related service, the IEP team member is to submit their input in writing prior to the meeting. 34 CFR §300.321(2). The regular education PE teacher did not attend the March 15, 2013 IEP team meeting and no written excusal was obtained from either parent. Therefore, **the District is in violation of 34 CFR §300.321(a)(2).**

Issue 6: Did the District deny Student FAPE by not providing student educational benefit during the 2012-2013 school year?

Complainant alleges that during the 2012-2013 school year the District was confused as to which IEP it was implementing and did not collect data on any IEP goals resulting in a denial of FAPE due to failure to receive any educational benefit. 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 (9th Cir. 2010). A district must confer at least "some educational benefit" on students with disabilities. *Id.* This standard is referred to as "a basic floor opportunity." *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. To demonstrate a FAPE was provided, it must be shown that some educational benefit was conferred. As discussed in Issue 3, the investigation determined the October 25, 2011 IEP was implemented throughout the 2012-2013 school year, until April 10, 2013 when the father consented to a new IEP. The investigation requested evidence of how progress was tracked on Student's goals throughout the 2012-2013 school year. The District provided only data for Speech and Language which reflects that Student made progress in speech and language over the course of the year. No other evidence was provided for Student's remaining IEP goals except for 3 quarterly progress reports dated November 7, 2012, March 27, 2013 and June 13, 2013. The November 7 progress report shows Student was expected to meet all goals except for one math goal and one self-help goal which were marked as "goal not yet started" but the comments indicate they were not being worked on. The March 27, 2013 progress report states all goals are expected to be met and states "no progress/ goals just set." The District asserts this was due to a problem with the statewide electronic student database or AIM system. No additional notes or comments were provided about the goals Student had been working on. The June 13, 2013 progress report was for the newly implemented goals and indicated all but 3 goals that had not yet been started were expected to be met.

Student's MAP scores indicated he was not progressing. In response to Complainant's concerns about his MAP scores, the District offered Student Extended Year Services (ESY) during the summer of 2013 to help him recoup his regression in math and reading. Student attended 16 of 19 days of ESY Services. This investigation requested results data on the ESY to determine any progress. The District did not provide any specific data. Student's MAP scores were provided from 2009 to the fall of 2013. Student's fall 2013 scores were down from his spring 2013 scores indicating he still hasn't recouped the regression from the Spring of 2012. The overall MAP data does indicate Student made some overall progress between 2009 and 2013 even though there are periods of regression. However, this is not indicative of Student's progress on his individual IEP goals.

The District was not able to demonstrate what educational benefit Student received for the 2012-2013 school year outside of his speech and language goals. The District failed to track Student's progress or lack of progress on his other IEP goals through testing, teacher observation, or other means. By their failure to track Student's progress on these goals, the District **could not demonstrate it provided some educational benefit to Student. Therefore Student was denied a FAPE in violation of 34 CFR § 300.17.**

E. Disposition

The District is ORDERED to take the following actions:

1. **STUDENT SPECIFIC: Compensatory Services.** The District shall offer services adequate to compensate for the failure to provide a FAPE from October 25, 2012 through the end of the 2012-2013 school year. Compensatory services shall include compensatory education for Student particularly in the areas of math and reading. After consultation with both parents, the District shall submit a plan for any necessary evaluations as well as the compensatory services to the OPI Dispute Resolution Office (the Office) for approval by **January 20, 2014**. The District shall provide a monthly update to this Office **by the 20th of each month through the end of the 2013-2014 school year**, on the status of the compensatory services and comply with further recommendations from this Office.
2. **STUDENT SPECIFIC: Progress Monitoring.** The District shall provide the Office monthly progress reports on Student's progress toward each IEP goals beginning **January 20, 2014**, and make any necessary adjustments to their process of measuring progress in keeping with this Final Report and as identified by the Office.
3. **DISTRICT-WIDE: Annual IEP Review.** The District shall review its practices with regard to timely annual IEP reviews to ensure compliance with this Final Report. The District shall report the number of annual reviews that were not accomplished by the review date between July 1, 2013 and December 31, 2013 by **February 20, 2014. After review and recommendations by this Office, the District shall then submit** action steps in keeping with the recommendations of this Office.

4. DISTRICT-WIDE: Parental Notification and Participation. The District shall promptly review, revise, and provide explanation of how it will adjust its practices and/or policies to be in compliance with this Final Report regarding: a) Parental Notification for IEP proceedings to divorced parents; and b) Clearly informing divorced parents of their rights to fully participate in IEP proceedings. This information shall be provided to the Office by **February 20, 2014** for approval.
5. DISTRICT-WIDE: Progress Monitoring. The District shall promptly review its policies and practices with regard to data collection and retention for tracking educational progress to ensure compliance with this Final Report. By **February 20, 2014**, the District shall submit to the Office any proposed changes or modifications for approval.
6. DISTRICT-WIDE- Clarification of Consent To Be Obtained by the District. The District shall promptly review, adjust, and provide to this Office for approval by **February 20, 2014**:
 - a. An explanation of how it will adjust its practices and/or policies to be in compliance with this Final Report regarding its affirmative duty to determine the right of individual parents to consent to IEPs.
 - b. The explanation shall include inquiry as to parents' expressed notification to the District of the divorced parents' mutual desire to jointly make and consent to IEP decisions and the existence of any court order, parenting plan, or other legal mechanisms that specifies each parent's individual or joint rights to make educational decisions.
 - c. The explanation shall also include a reasonable process to fully informing divorced parents of the effect on consent of: their choice for joint educational decision making; any court order; non-participation by a parent; an explanation of the parent's right to challenge an IEP team decision whether or not they are the parent providing consent, and an explanation of when the District will rely on the signature of one parent or both parents for consent to an IEP.

/s/ Mary Gallagher
Mary Gallagher
OPI Compliance Officer

c: ***, Attorney for the District