



June 15, 2018

Complainant

Superintendent

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: FINAL REPORT for In the Matter of ***, 2018-02, Alleged Violation of the Individuals with Disabilities Education Act (IDEA).

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 or Parent) through her attorney, ***, filed the Complaint on behalf of her child, *** (Student), a student at *** 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. The District allegedly:

1. Refused to convene a team meeting to review and revise the Student’s IEP, despite repeated requests from the Parent in violation of the IDEA; and
2. Denied Student a free appropriate public education (FAPE).

A. Procedural History

1. On April 9, 2018, the Montana Office of Public Instruction (OPI) received a signed Complaint on behalf of the Parent and a copy of the Complaint was also provided to the District. The Complaint was deemed filed on April 9, 2018.
2. Since the time the Complaint was filed, OPI’s Early Assistance Program (EAP) attempted to assist the parties in resolving the issues in the Complaint.
3. The parties agreed to extend the time period for the state Complaint and extended the EAP process to May 11, 2018 in order to try and informally resolve the issues in the Complaint.
4. On May 14, 2018, the OPI was informed by the Parent’s attorney that the Parent wished to proceed forward with the complaint process and the Complaint proceeded to investigation.



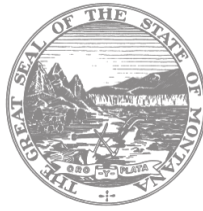
5. The District's written response was received on May 30, 2018.
6. The Parent forwarded a written response on June 8, 2018.
7. An appointed investigator conducted telephone interviews with the Student's Parent, director of the special education cooperative, principal and special education teacher and reviewed all documentation received from the parties.

B. Legal Framework

The OPI is authorized to address alleged violations 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, which occurred within one year prior to the date of the Complaint. Pursuant to 34 CFR § 300.151-153 and ARM 10.16.3662, all relevant information is reviewed, and an independent determination is made as to whether a violation of federal or state statute, regulation or rule occurred. Any references to facts outside of the one-year timeframe are included strictly for background information.

C. Findings of Fact

1. Parent has standing to file this Complaint pursuant to ARM 10.16.3661.
2. Student was not enrolled in the District at the time the Complaint was filed.
3. Student is nine years old and is in the fourth grade. He has been found eligible for special education services under the disability categories of emotional disturbance and learning disability in written expression.
4. Prior to the Student's withdrawal from school by the Parent on January 25, 2018, Student had continually attended the District's school since the second grade.
5. Student's annual IEP meeting was held on March 15, 2017. The Parent gave her written approval for the IEP at that time.
6. On October 13, 2017, an IEP meeting was held at the request of the Parent because of her concerns about the Student's behavior plan. The Parent stated that her concerns for the Student were emotional, not educational and asked that the school not put education first.
7. The IEP team discussed other placement options that could provide the Student with appropriate services.
8. The Parent refused to consider Yellowstone Academy (YA), as the Student had previously attended YA and his experience had been very negative.



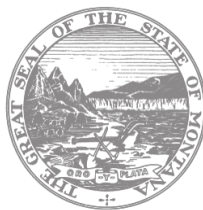
9. The Student's IEP was revised at the October 13, 2017 meeting and the parent gave written approval for the implementation of the IEP.
10. The IEP meeting on October 13, 2017 concluded with the Parent agreeing to look at other programs and research other options for the Student and another IEP meeting would be held in several weeks. It was agreed that the Parent would be contacted and informed any time a change was being considered to the Student's Behavior Plan.
11. On October 23, 2017, the Parent toured YA with the director of the special education cooperative.
12. On October 27, 2017, an IEP meeting was held to discuss alternate settings and discuss the continuum of services for the Student. The Parent's tour of YA on October 23 was discussed, as well as her tour of Billings Education Academy (BEA) on October 16.
13. The Parent discussed the pros and cons for each program she toured and stated that "YA is [an] absolute no and does not want it discussed anymore." The Parent also stated that the Student "will not stay at this school, we will put him somewhere else to meet his needs, but not YA."
14. The District offered to bring in an occupational therapist (OT) to evaluate the Student's sensory needs and an outside behavioral specialist; the Parent denied the offers but indicated she would consider them at the next IEP meeting.
15. On November 1, 2017, the Parent sent an email to the principal and provided the District with a ten-day notice of her intent to remove both the Student and his sibling from school.
16. On November 2, 2017, Prior Written Notice was provided to the Parent that refused placing the student at BEA as requested by the Parent as it is not accredited and cannot provide the Student with FAPE.
17. The next IEP team meeting was held on November 3, 2017 to further discuss alternate settings and continuum of services for the Student. Prior Written Notice was given to the Parent that proposed placement at YA or continuing at the District school with a modified school day of a half day, with an OT and behavioral specialist to assist with sensory and behavioral needs as the District's offer of FAPE.
18. The Parent agreed to the modified school day of a half-day from 8 a.m. to 11 a.m. and agreed to bring in an OT and behavioral specialist. The Student's IEP was amended to reflect these changes.
19. The November 3, 2017 IEP meeting concluded with an agreement to meet again in mid-February to review the data for the Student and make modifications as necessary.



20. The IEP amendments were implemented and the Student's behaviors decreased.
21. An Occupational Therapy Consultation Report was completed in December 2017 and no OT services within the educational setting were indicated for the Student at that time. The behavioral interventions and strategies utilized with the Student appeared to be appropriate to meet the Student's needs and it was recommended the continued use of these strategies
22. A Behavior Consultation Report dated December 17, 2017 provided suggestions for self-monitoring, replacement behaviors, video modeling, and lengthening the school day for the Student.
23. The special education teacher called the Parent after the OT and Behavior Consultation reports were received to discuss scheduling an IEP meeting in February, during which the team would discuss the Student's progress and possibly consider increasing the student's school day to include lunch to allow for more social interaction.
24. An IEP team meeting was scheduled for February 23, 2018.
25. On January 11, 2018 the Parent spoke with the director of the special education cooperative, who informed the Parent that the student was doing well in school. The Parent relayed her concerns regarding the Student's special education teacher, as well as issues the Student was having at home, including increased behaviors.
26. On January 16, 2018 a meeting was held with the director of the special education cooperative and the principal at the parent's request to discuss the Student's progress and her concerns about the Student being forced to write. After this meeting, the principal observed the Student in the classroom and did not observe any behaviors, nor was the Student being required to write.
27. On January 25, 2018 at 6:45 a.m., the Parent emailed the principal and asked whether the Student would be able to change special education teachers, and if so, whether the change would remain in place until he entered middle school.
28. The principal responded to the Parent's email on January 25 at 8:41 a.m. and indicated that she had done some observations during which time the Student appeared to be on task, doing what the teacher asked him to do. The principal also indicated that the Student would not be assigned to another special education teacher.
29. At 1:49 p.m. on January 25, the Parent emailed the principal and stated that the Student will no longer be attending the District's school and his last day was January 24. The Parent further stated that she had registered with the county superintendent to home school and informed the Principal that the Student's sibling would also be



- removed from school, with a last day of February 13, 2018. The Parent also wrote that she had talked with the director of the special education cooperative and the IEP meeting scheduled for February 23 was cancelled.
30. On February 2, 2018, the Parent emailed the principal stating that while she had cancelled the IEP meeting scheduled for February 23, 2018 the previous week, she would like the meeting to be held as she was withholding the Student from school for his emotional and physical well-being. The Parent further stated that she did not feel the Student had received FAPE, and the IEP meeting will be to determine other alternatives.
 31. On February 2, 2018, the principal responded to the Parent's email asking for the February 23, 2018 IEP meeting to be held by stating "[w]e are planning on having it. It should still be on everyone's schedule. See you then."
 32. On February 15, 2018, the director of the special education cooperative met with the Parent and her advocate to discuss the District's offer of FAPE. During that meeting, the special education director went over OPI's form entitled "Offer of a FAPE to a Parentally Placed Child with Disabilities in a Private School" with the Parent. During the meeting the Parent stated she did not intend to enroll in public school. The special education director told the Parent that she could elect to re-enroll the Student in public school at any time. Both the special education director and the parent advocate answered any questions the Parent had. The Parent then signed the form and marked the provision stating "I do not intend to enroll my child in the public school program" (emphasis original).
 33. On February 20, 2018, the Parent emailed the principal requesting an IEP meeting, and on February 21, 2018 the Parent emailed the director of the special education cooperative and spoke to her, making the same request.
 34. On February 22, 2018, the principal responded to the Parent and stated an IEP meeting would not be held "due to the fact that [Student] is not enrolled in [the District]."
 35. By letter dated February 23, 2018, the Parent's attorney contacted the District's attorney with an overview of the Parent's position in this matter.
 36. On March 29, 2018, the Parent wrote a letter to the principal setting forth her understanding of the facts and made three specific requests: 1) how was the District proposing to provide continuing education services, such as homebound services, to the Student; 2) grant the Student a reasonable accommodation exception to the



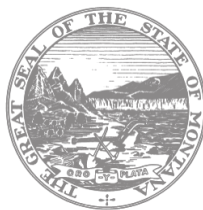
- District's attendance policy until a safe way for him to return to school is determined; and 3) refrain from including the Student in the District's truancy reports.
37. The parties participated in a facilitated IEP meeting on April 25, 2018, at which time a proposed amendment to the Student's IEP was drafted. To date, the proposed amendment has not been accepted by the Parent, although the Student did participate in three sessions of one-hour instruction at the administration building, after which the Parent indicated the Student was exhibiting too much anxiety to continue.

D. Analysis and Conclusions

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private schools or facilities that meet the definition of elementary or secondary school under State law. 34 CFR § 300.130; 34 CFR § 300.13; 34 CFR § 300.36. Private school students include home school students under Montana law. MCA § 20-5-109. All parents of home school students are required to notify the county superintendent of schools of the county in which the home school is located of the student's attendance at school. A parentally placed private school student with a disability does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. 34 CFR § 300.137(a).

A student with a disability who withdraws from public school and enrolls in a private or home school continues to be eligible for special education and related services. Because school districts must make FAPE available to all children with disabilities in their jurisdiction, districts "must be prepared to develop an IEP and to provide FAPE to a private school child if the child's parents re-enroll the child in public school." 64 Fed. Reg. 12601 (1999) (providing commentary to earlier 1999 regulation, 34 CFR § 300.403, which is now 34 CFR § 300.148). *See also L.G. v. Wissahickon Sch. Dist.*, Civ. Nos. 06-0333, 06-3816, 2011 WL 13572, *11 (E.D.Pa. Jan. 4, 2011). (Districts do not have to assume public school placement for every private school student that resides in the district. The district was not required to continue developing the IEP the parents rejected after they withdrew the child from the district and enrolled him in private school, but this obligation resumed when child's parents notified district that he "would re-enroll". *Id.* (citing 64 Fed. Reg. at 12601)).

Once the student re-enrolls in public school, the district has an obligation to develop an appropriate IEP upon the student's return to public school. OSEP *Letter to Goldman*, March 25, 2009. *See also N.B. v. Hawaii*, 2014 WL 3663452; 63 IDELR 216 (D. Haw. July 21, 2014). (It is enrollment, not a phone inquiry, that triggers a FAPE and implementation of an IEP at a new school district).



Issue 1: Did the District refuse to convene a team meeting to review and revise the Student's IEP, despite repeated requests from the Parent, in violation of the IDEA?

When a student is entitled to FAPE, an IEP meeting is the forum used by which parents and school districts jointly determine the needs of a student with a disability and the services needed to provide the student with FAPE. 34 CFR § 300.320 - § 300.324.

An IEP meeting was initially scheduled for February 23, 2018 to review the Student's progress in his shortened school day placement, and possibly discuss lengthening his school day to include lunch. The Parent unilaterally withdrew the Student on January 25, 2018, indicating that the Student's last day of attendance was January 24. At the time the Parent withdrew the Student from school, she also informed the District she had already filed the necessary paperwork with the county superintendent to home school the Student. The Parent's notification effectively changed the Student's status from a public school student with an entitlement to FAPE, to a private school student with no individual right to FAPE. 34 CFR § 300.137(a).

At the time the Parent withdrew the Student from the District, the IEP team meeting scheduled for February 23, 2018 was cancelled. The following week the Parent indicated she wanted the District to continue to hold the IEP meeting, and that she had withdrawn her child from the District because his current placement in public school was harmful to his emotional and physical well-being. The Parent further intended to keep the Student at home until an appropriate IEP was developed.

At the meeting with the director of the special education cooperative on February 15, 2018, the Parent indicated both orally and in writing that she *did not intend to enroll* her child in a public school program.

The obligation of the District to schedule and hold an IEP meeting to develop an IEP only occurs when the Parent indicates that she *intends to enroll* her child in a District school. The Parent did not provide the District with notification of such intent. **There were no violations of Part B of the IDEA.**

1. **Issue 2:** Did the District deny the Student a free appropriate public education (FAPE)?

While the Student was enrolled in the District, the school had an IEP in place, which was amended in November 2018 to provide for a shortened school day. The data collected while the Student was participating in the shortened school day showed a decrease in behaviors. When the Parent unilaterally withdrew the Student from public school and filed with the county



superintendent that she would be providing a home school instruction to the Student, the Student became a private school student and no longer had an individual right to FAPE. **There were no violations of Part B of the IDEA.**

E. Disposition

The Student was not denied FAPE; there was no evidence on this record that Part B of IDEA was not followed. No corrective action by the District is required.

Frank Podobnik, Division Administrator
Special Education Division

c: Mandi Gibbs Dispute Resolution/EAP Director