



December 6, 2019

Complainant

District

RE: FINAL REPORT for In the Matter of *** District, 2019-03, 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) filed the complaint on behalf of special education students, grade six through eight attending a District middle school. Complainant alleged 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 following issues were investigated based on the Complaint:

Issue 1: Did the District fail to follow disciplinary provisions when considering disciplining students with disabilities, in violation of 34 CFR § 300.530?

Issue 2: Did the District fail to ensure that students' educational programs were provided in the Least Restrictive Environment (LRE), in violation of 34 CFR § 300.114?

A. Procedural History

On October 10, 2019, the Montana Office of Public Instruction (OPI) received the signed Complaint. OPI verified that a copy of the Complaint was also provided to the District. The Complaint was deemed filed on October 10, 2019. The District filed its Response on October 29, 2019.

An appointed investigator conducted telephone interviews with the Complainant, School District attorney and School District executive director for student services 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 from October 10, 2018 to October 10, 2019 are included strictly for background information.

C. Findings of Fact

The following facts have been determined, based on the documentation received and the interviews conducted.

1. Complainant has standing to file this Complaint pursuant to ARM 10.16.3661.
2. At the beginning of the 2018-19 school year, the school had a student handbook tardy policy in place which provided as follows:

# Tardy	Consequence
4	30 minutes after school detention
5	45 minutes after school detention
6-9	60 minutes after school detention
10-11	Half day in school suspension
12-14	Full day in school suspension
15	Full day out-of-school suspension and parent conference
16+	Tardy consequence determined by outcome of parent conference

Complaint, Attachment.

3. The tardy policy was typically not enforced during the first three weeks of school to allow new students to acclimate. *Response, p. 2.*
4. In early fall, 2018, several teachers, including Complainant, approached administration with concerns they had regarding the tardy policy. *Response, p. 2.*
5. A committee was formed to review the matter. A revised policy was developed and introduced to staff at a faculty meeting in January 2019. *Response, p. 2.*
6. The revised policy provided the following:

# Tardy	Consequence
3	Warning
4-6	Lunch Detention
7-9	30 minutes after school detention
10	45 minutes after school detention and parent meeting
11-12	45 minutes after school detention
13-15	60 minutes after school detention
16-18	5-day loss of privileges
19-20	Half day in-school suspension
21-23	Full day in-school suspension
24+	Administration intervention and discretion

Response, Appendix A

7. Students referred to the office for disciplinary reasons received progressive consequences for repeated behaviors, which could include:
 - a. Intervention/reprimand
 - b. Kept out of class for remainder of period
 - c. Lunch detention
 - d. After school detention – 30 minutes
 - e. After school detention – 45 minutes
 - f. After school detention – 60 minutes
 - g. Half day in-school suspension (ISS)
 - h. Full day ISS
 - i. Multiple days ISS
 - j. 1 day out-of-school suspension (OSS)
 - k. 2 days OSS and a formal administrative hearing warning letter
 - l. 3 days OSS
 - m. Multiple days OSS pending administrative hearing.
 - n. Each day of OSS results in 5 days of loss of privilege (LOP).

Response, Appendix C.

8. The school could also send students to the District’s Truancy Center, which was located in a different building.
9. Whenever a student was assigned to ISS or the Truancy Center the practice of the middle school was to collect student assignments from teachers, which the students were expected to complete. *Response, p.2.*
10. Students’ case managers were responsible for monitoring student behavioral patterns and determining whether a manifestation determination meeting must be held. *Response, p. 3.*
11. In March 2019 the school introduced a push-in referral program, which eliminated the procedure of sending students to the office for minor disruptions. Instead, an

- administrator came to the classroom and talked to the student in the hall. A reflection sheet was completed by the student and administrator. *Response, p. 3.*
12. The school provided an intervention program during lunch where students could catch up on missed work and have access to a teacher to assist with assignments. *Response, p. 3.*
 13. Each teacher was responsible for taking daily attendance for each class period. *Response, p. 4.*
 14. District staff audited 90 middle school special education students' discipline and attendance records and determined there were two students (Student A and Student B) whose discipline resulted in those students being out of class in excess of 10 days without services being provided. *Response, p. 4.*
 15. Upon finding that Student A and B exceeded 10 days without services, corrective action was taken by the District, consisting of:
 - a. Administration and special education staff are required to communicate when special education students are at six days of suspension.
 - b. Special education staff is required to determine if a Functional Behavioral Assessment (FBA) or manifestation determination meeting are needed to address concerns.
 - c. A special education teacher is available to provide services to special education students who are suspended and placed at the Truancy Center.*Response, p. 4.*
 16. Six student files were reviewed by the investigator. The files for Student A and Student B were requested by the investigator as those students were identified by the District as having exceeded ten days of disciplinary removal. Four student files (Student 1, Student 2, Student 3, and Student 4) were selected from the Response, Appendix B which identified special education students who had received disciplinary removals. Complainant was the case manager for Student 2.

Student A

17. During the 2018-19 school year, between October 25, 2018 and May 30, 2019, Student A received 17 days of discipline, for various reasons, including multiple tardies. *District p. 176-191.* The discipline consisted of:
 - a. 14 days of ISS
 - b. 3 days of Truancy Center
18. During the 2019-20 school year, Student A was assigned to attend the Truancy Center for one day on October 9, 2019 due to truancy. *District p. 192.*

Student B

19. During the 2018-19 school year, between November 11, 2018 and January 30, 2019, Student B received 13 days of discipline for various reasons, including multiple tardies. *District p. 238-246*. The discipline consisted of:
 - a. 4 days of ISS.
 - b. 8 days of Truancy Center
 - c. 1 day of OSS
20. For the 2019-20 school year, through October 8, 2019, Student B received no disciplinary referrals. *District 246-247*.

Student 1

21. During the 2018-19 school year, between October 17, 2018 and May 23, 2019, Student 1 had several disciplinary incidences which were written up but received no disciplinary referrals. *District p. 12-14*.
22. During the 2018-19 school year, Student 1 received no disciplinary write-ups or referrals. *District p. 10-11*.

Student 2

23. During the 2018-19 school year, between November 20, 2018 and May 30, 2019, Student 2 had several disciplinary incidences, including tardies, which were written up and received 9 days of discipline, consisting of:
 - a. 5 days of ISS.
 - b. 4 days of Truancy Center.*District p. 46-57*.
24. For the 2019-20 school year, through October 8, 2019, Student 2 received one day of ISS which was not tardy related. *District p. 57*.

Student 3

25. On November 6, 2018, during the 2018-19 school year, Student 3 received two periods of ISS which were not tardy related. Student 3 received a full day of ISS on November 7, 2018 which was not tardy related. *District p. 89*.
26. For the 2019-20 school year, through October 8, 2019, Student 3 received no disciplinary referrals. *District p. 93*.

Student 4

27. During the 2018-19 school year, on February 18, 2019, Student 4 received one period of ISS which was not tardy related. Student received a full day of ISS on March 22, 2019; the documentation is unclear on the reason for the ISS. *District p. 119-120.*
28. For the 2019-20 school year, through October 8, 2019, Student 4 received no disciplinary referrals. *District p. 123.*

D. Analysis and Conclusions

Issue 1: Did the District fail to follow disciplinary provisions when considering disciplining students with disabilities, in violation of 34 CFR § 300.530?

For the first ten school days of suspension in a school year, a school district may suspend a student with a disability in the same manner and to the same extent as a nondisabled student. 34 CFR § 300.530(d)(3).

Any disciplinary removals beyond a total of ten cumulative days during the school year requires a school district to provide education services to a student beginning on the eleventh day of suspension. So long as the suspensions beyond ten days do not constitute a change in placement, school personnel, in consultation with at least one of the student's teachers, determine the appropriate educational services to be provided in the disciplinary setting which will allow the student to continue to participate in the general education curriculum and progress toward meeting the goals set out in the student's IEP. 34 CFR § 300.530(d)(4).

Whenever a series of suspensions exceeds ten cumulative days in a school year, school personnel must determine, on a case-by-case basis, whether the suspensions create a "pattern," and thus constitute a change in placement, because:

- a. The series of removals total more than ten school days in a school year;
- b. The behavior involved is substantially similar to the student's behavior in previous removals during the school year; and
- c. Other factors, such as the length of each removal, the total amount of time the student has been removed during the school year, and the proximity of the removals to one another, are at play.

34 CFR § 300.536.

In the event a pattern of removals is determined to exist resulting in a change in placement, a manifestation determination must be conducted within ten school days. 34 CFR § 300.530(e).

In-school suspension does not qualify as a day of suspension if the student has the opportunity to continue to: 1) appropriately participate in the general curriculum; 2) receive the services specified on the student's IEP; and 3) participate with nondisabled students to the same extent they would have in their current placement. 71 Fed. Reg. 46715 (Aug. 14, 2006). However, the District indicated, in the interview process, that any in-school suspension or placement at the Truancy Center of a student with a disability is counted as a day of suspension.

During the interview, Complainant stated that she had specific concerns about school-wide discipline of students with disabilities. However, the specific information she had pertained to her own classroom, of which there were 24 students. Complainant's concerns were, in part, that some students assigned to her resource room had difficulty navigating the structure and format of the middle school due to their disabilities and acquired multiple tardies. Following the Tardy Policy, those students began receiving disciplinary removals resulting in the students missing the resource room support which resulted in not receiving the service minutes on their IEPs. While the school's Tardy Policy was amended mid-year in January 2019, the tardies accrued by the students during the school year remained.

Of the 24 students assigned to Complainant's resource classroom, Complainant alleged approximately nine students were absent from her resource classroom for more than ten days for disciplinary reasons. Of the nine students, the Complainant alleged four of her students were moved to an alternative setting, which included the Truancy Center, for disciplinary reasons after approximately ten days of discipline and one student dropped out of school. The other four students remained at school in Complainant's classroom for resource support.

Complainant also alleged that her record-keeping of student absences for disciplinary reasons did not necessarily match the official PowerSchool records. However, because Complainant is no longer an employee of the District and did not have access to student records, she was not able to provide documentation regarding her allegations. The investigation did not reveal any concerns as to the District's policies and procedures regarding how absences for disciplinary reasons are counted.

Through the interview process, the District acknowledged that it treats all disciplinary actions that place a student with a disability into ISS or the Truancy Center for a school day as a day of suspension. The District further acknowledged that of the 90 files the District audited, Student A and Student B were removed for disciplinary reasons for more than ten days, and the District failed to determine whether a pattern of removals resulted in a change in placement and failed to determine whether a manifestation determination meeting was necessary. After the audit, the

District put into place corrective actions, as set forth in fact number 16 above, but did not address the individual deficiencies found regarding Student A and Student B.¹

The documented removal of two of the six students from their regular placement to a disciplinary placement for more than ten days, while not fully complying with the IDEA disciplinary mandates, **does not rise to the level of a systemic violation of Part B of the IDEA.**

Issue 2: Did the District fail to ensure that students' educational programs were provided in the Least Restrictive Environment (LRE), in violation of 34 CFR § 300.114?

The IDEA requires the School District to ensure that:

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
2. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes, with the use of supplementary aids and services, cannot be achieved satisfactorily.

34 CFR § 300.114(a).

When dealing with disciplining a student with disabilities, a school district may suspend a student in the same manner and to the same extent as a nondisabled student for ten school days in a school year, without violating the LRE mandate. 34 CFR § 300.530(d)(3).

Complainant's concern for those students attending her resource classroom was that a disciplinary removal was not the LRE for those students, and denied the students access to instruction. Complainant believed there should be a distinction made by the District between general education students and special education students so that discipline would be handled differently to ensure students needing resource room support received those services. The IDEA provides a distinction when disciplining students with disabilities once the disciplinary removal is beyond ten school days in a school year. As discussed in Issue 1, the District acknowledged that it removed Student A and Student B for disciplinary reasons for more than ten school days during the 2018-19 school year. However, the documented removal of two of the six students from their regular placement to a disciplinary placement for more than ten days, while not fully complying with the IDEA disciplinary mandates and LRE requirements, **does not rise to the level of a systemic violation of Part B of the IDEA.**

¹ Under the OPI's general supervisory control, it will work with the District to make sure it remedies the individual deficiencies found for Student A and Student B.

E. Disposition

A determination has been made that while the District did not fully comply with IDEA disciplinary mandates and LRE requirements, the errors did not rise to the level of systemic violations. No corrective action by the District regarding the systemic complaint is required.

Jenifer Cline, Division Administrator
Special Education Division

c: Mandi Gibbs, Dispute Resolution/EAP Director
Dale Kimmet, OPI School Improvement/Compliance Unit Manager
***, District Special Education Director