



January 14, 2020

Parent

District

**RE: FINAL REPORT** for In the Matter of \*\*\*, 2019-04, Alleged Violation of the Individuals with Disabilities Education Act (IDEA).

Dear \*\*\* and \*\*\*,

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 who attended \*\*\* (District).

The Complaint listed 12 incidents on separate Request for Complaint Investigation forms, which occurred at the District between July and September of 2019. Several of the incidents were regarding another peer's alleged inappropriate behaviors towards Student. The other incidents included alleging inappropriate verbal behavior of a staff member towards Student and that a different staff member would not allow the student to use his ibuprofen. The Individuals with Disabilities Education Act (IDEA) requires that the Complaint include "A statement that a public agency has violated a requirement of Part B of the Act or of this part." 34 C.F.R. 300.153(b)(1); see also ARM 10.16.3662. Part D of OPI's Request for Complaint Investigation form directs complainants to "Please ATTACH a statement to this complaint detailing the manner in which you believe the school district has violated federal and/or state special education laws/rules."

Of the incidents listed, one stated a possible violation of the 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. Complainant alleged a breach of student confidentiality. Therefore, the only issue that will be reviewed is whether or not the District breached student confidentiality pursuant to the IDEA confidentiality of information regulations 34 CFR 300.610-34 CFR 300.627.

#### **A. Procedural History**

On November 21, 2019, the Montana Office of Public Instruction (OPI) received the signed Complaint. OPI verified a copy of the Complaint was also provided to the District. The Complaint was deemed filed on November 21, 2019. On December 6, 2019 the Complainant submitted additional information on the

breach of confidentiality allegation. The District filed its Response on December 23, 2019 and Complainant submitted additional information in reply to the District's Response on January 2, 2019.

## **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.

## **C. Findings of Fact**

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

1. Complainant has standing to file this Complaint pursuant to ARM 10.16.3661.
2. Student does not currently attend school in the District, but was placed there and that placement included the summer of 2019.
3. The District is not Student's neighborhood school. Student is currently enrolled in his neighborhood school (Current District).
4. On June 14, 2019 Complainant exchanged telephone numbers with another parent (who has a child attending the District) during a free zoo day.
5. During the week of June 23, 2019 Complainant spoke to the other parent on the phone. The other parent indicated she wished someone had told her to write a letter saying her child could not be treated with antipsychotics. Also that she had been trying to get her child an appointment with a certain doctor. Complainant let her know that doctor retired and suggested another provider.
6. Complainant did not tell the other parent about the letter (dated July 12, 2018) that she wrote to the Clinic regarding not treating Student with antipsychotics or who Student's doctor was.
7. An IEP meeting was held on August 28, 2019. At this meeting Complainant shared the information stated in Findings of Fact 4-6 above with the IEP team and alleged a breach of confidentiality against the District for sharing that information with the other parent.
8. Director of Student Services of Student's Current District reviewed Student's file at the August 28, 2019 IEP meeting and could not locate the letter to the Clinic. The letter was not in Student's special education file. Complainant showed them the letter during the meeting and the Director for Student Services at the District and the Director of Student Services at the Current District had never seen the letter before.

## **D. Analysis and Conclusions**

**Did the District breach the Student's confidentiality, in violation of 34 CFR §§ 300.610-300.627?**

Complainant alleges that during the week of June 23, 2019 she had a phone conversation with another child's parent and that parent knew who Student's doctor was and she also knew of information that was in a July 12, 2018 letter from Complainant to the Clinic requesting Student never be treated with antipsychotics. Complainant alleges the District shared this information with the parent because she did not.

School records and confidentiality of information must follow the provisions under FERPA (34 CFR, Part 99) and must follow the provisions established for special education under IDEA (34 CFR § 300.610 through § 300.626) and ARM 10.16.3560. The IDEA adopts the Family Educational Rights and Privacy Act's (FERPA) definition of an education record, records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR § 99.3.

Districts must maintain a log of requests for access to the educational records and release of personally identifiable information about a student within educational records maintained by the district. 34 CFR § 99.32(a)(1), 34 CFR § 300.614 and ARM 10.16.3560(3).

Other than the fact that the other child went to the same school there is no evidence that connects this allegation to the District. The District did not even see a copy of the July 12, 2018 letter until Complainant brought it to the IEP meeting on August 28, 2019. The District could not maintain the letter as an educational record because they did not even have a copy of the letter. Further, the names of Student's doctors are not on the letter, and although it is reasonable that the District may know who Student's doctors are because they have received medical excuses from them other information, there is no evidence educational records containing the doctors' names were disclosed to the other child's parent. There were no violations of Part B of the IDEA.

Special education regulations address confidentiality as it pertains to solely to student records. See 34 CFR §§300.611 through 300.627 and ARM 10.16.3560. To the extent, Complainant's allegation is alleging unprofessional comments by a District employee where the discussion resulted a breach of confidentiality, the OPI does not have authority over these personnel matters and would refer Complainant back to the District for appropriate redress.

#### **E. Disposition**

There was no evidence on this record that Part B of IDEA was not followed. No corrective action by the District is required.

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Jenifer Cline, Division Administrator  
Special Education Division

c: Mandi Gibbs, Dispute Resolution/EAP Director