



November 24, 2021

Sent via US mail and ePass.

Parent

Superintendent

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: FINAL REPORT: In the Matter of ***, 2021-03, Alleged Violation of the Individuals with Disabilities Education Act (IDEA).

Dear Ms. *** and Mr. ***,

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. *** (Parent) filed the Complaint on behalf of her son, ***, (Student), a student attending the *** School District (District). The Parent 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 following issues have been identified based on the Parent's Complaint:

Issue 1: Did the District fail to provide the Student with specially designed instruction to address the unique needs of the Student, resulting from the Student's disability, and to ensure access of the Student to the general education curriculum, in violation of 34 CFR 300.39 (b)(3)?

Issue 2: Did the District fail to implement the Student's IEP, as required by 34 CFR 300.323?

A. Procedural History

1. On 9/29/21, 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 9/29/21.
2. The OPI's Early Assistance Program (EAP) was unsuccessful in attempting to resolve the issues in the Complaint. On 10/20/21, the OPI sent a Request for Written Response to the District. The Complaint proceeded to investigation.
3. The OPI received the District's written response on 11/4/21.
4. The OPI received additional information from the Parent on 11/12/21.
5. The appointed investigator conducted a telephone interview with the Student's Parent on 11/15/21.
6. The appointed investigator conducted telephone interviews with the elementary principal, third grade classroom teacher, third grade resource room teacher, fourth grade classroom teacher, fourth grade resource room teacher, and special education behavior program teacher on 11/17/21.
7. All documentation received from the parties was reviewed by the investigator.

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 a 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 September 29, 2020, to September 29, 2021, 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.

Background Information

1. The Parent has standing to file this Complaint pursuant to ARM 10.16.3661.
2. The Student is 10 years old and in the fourth grade. The Student has been identified as a student with a disability under the category of Other Health Impaired.
3. On 3/23/18 an evaluation was completed by the District when the Student was in Kindergarten.
 - a. The Student had hyperactive and aggression factors, a number of disruptive behaviors and had difficulty controlling impulses.

- b. The Student had an average overall scholastic learning aptitude and no processing deficits were indicated.
 - c. The Student was determined to be eligible for special education services under the disability category of Other Health Impairment.
4. In December 2018, a neuropsychological evaluation was completed by a private provider when the Student was 7 years old and in the first grade. The diagnostic impressions included:
- a. Post-Traumatic Stress Disorder, Chronic, Severe.
 - b. Attention Deficit Hyperactivity Disorder, Combined Type.
 - c. Generalized Anxiety Disorder with Panic and Obsessive-Compulsive Features.
 - d. Tourette's Syndrome Disorder.
 - e. Sensory Processing Disorder.

2020-2021 School Year

5. An annual IEP meeting was held on 5/18/20. The IEP team reconvened on 5/22/20. During this meeting, minor changes were made to the strengths and concerns portion of the IEP.
6. The Student's IEP dated 5/18/20 provided the following:
- a. The Student's behavior impeded learning of self or others.
 - b. The Present Level of Academic Achievement and Functional Performance in the area of Self-Help/Independence identified:
 - i. The Student had made significant progress towards self-advocating during independent work but often asked a teacher for help to sit at their table without first attempting an assignment independently.
 - ii. The Student worked on-task independently for 10 minutes before asking for assistance 60% of the time. Same aged peers did this 90% of the time.
 - iii. The Student received special education services for self-help/independence needs, due to being well below grade level when compared to same aged peers.
 - iv. One goal for self-help/independence needs was set forth:
 - 1. Goal: When given direct instruction, the Student will work on challenging classwork (modified if needed) independently for 10 minutes before asking for assistance 4 out of 5 consecutive occasions, as measured by teacher observation and classroom data.
 - a. The Progress Report dated 11/19/20 identified that the Student was making progress expected to meet the goal. The data and description provided that the Student had shown great progress in coping with challenging work. Each day was a new day, but the Student was starting to identify when feeling something sad, challenging, or frustrating.
 - b. The Progress Report dated 2/26/21 identified that the Student was not expected to meet the goal. The data and description provided that there had been a decrease in the Student's ability to independently work for 10 minutes on a perceived challenging activity or assignment. The Student

was able to do this 20% of the time and was inconsistent from day to day.

- c. The Present Level of Academic Achievement and Functional Performance in the area of Social/Emotional/Behavioral (SEB) identified:
- i. During a moment of frustration, and when offered a pre-taught calming strategy by a teacher, the Student used the strategy within one minute, and has done so for 4 out of 5 moments of frustration. Same aged peers were able to do this at least 90% of the time.
 - ii. When the teacher gave a direction, the Student followed the direction and/or asked for clarification within one minute on average of 3 out of 5 consecutive directions. Same aged peers follow the teacher's directions or ask for clarification within one minute on 9 out of 10 consecutive occasions.
 - iii. The Student will receive special education services for self-help/independence, due to being well below grade level when compared to same aged peers.
 - iv. Two goals for SEB needs were set forth:
 1. Goal: When the teacher gives a direction, the Student will follow the direction and/or ask for clarification within one minute on 4 out of 5 teacher directions, as measured by teacher observation and classroom data.
 - a. The Progress Report dated 11/19/20 identified that the Student was making progress expected to meet the goal. The data and description provided that the Student is doing better about following directions and expectation with some prompting and redirections.
 - b. The Progress Report dated 2/26/21 identified that the Student was not expected to meet the goal. The data and description provided that the Student required multiple prompts to start work. The Student was able to start working within one minute 20% of the time.
 2. Goal: During a moment of frustration and when offered a pre-taught calming strategy by a teacher (belly breathing, calming space, calming/sensory box), the Student will use the strategy within one minute, on 9 out of 10 moments of frustration, as measured by teacher observation and classroom data.
 - a. The Progress Report dated 11/19/20 identified that the Student was making progress expected to meet the goal. The data and description provided that the Student is more responsive to the teacher in accepting a calming or coping strategy about 50% of the time. The Student is becoming more self-aware of emotions and the feeling of frustration or anger.
 - b. The Progress Report dated 2/26/21 identified that the Student was not expected to meet the goal. The data and description provided that it took the Student, on average, 5

to 10 minutes to accept a strategy from a teacher when the Student did accept the strategy. The Student was only doing this on average 20% of the time.

- d. The Special education services included:
 - i. Social/Emotional/Behavioral in the regular education setting for 30 minutes per week.
 - ii. Self-Help/Independence in the regular education setting for 30 minutes per week.
 - e. Supplementary Aids and Services included accommodations/modifications. The following accommodations are the accommodations at issue in the Complaint:
 - i. Chunking of tasks.
 - ii. Decreased writing assignments (when appropriate).
 - iii. Dictation of keywords in writing assignments.
 - iv. Modification of writing assignments (inclusion of editing and revision in first draft).
 - v. Word processing available for writing assignments greater than one paragraph.
 - vi. Speech to text available.
 - f. The IEP indicated the Parent and District agreed that a reevaluation was not necessary.
 - g. The IEP provided that staff working with the Student would be informed of their responsibilities for implementing the IEP by being provided a copy of the accommodations, through Powerteacher, by email and by verbal communication.
7. Several changes occurred for students moving from the second grade to the third grade, including changing from using iPads to using Chromebooks and learning how to use a keyboard and Google Docs. (Interview, teacher).
8. Writing on paper was one of the Student's biggest issues in the third grade. Once the Student learned the keyboard, the Student was more willing to write. The third grade classroom teacher provided the Student with a variety of writing accommodations, including:
- a. Extra time.
 - b. Help/redirection.
 - c. Close proximity.
 - d. Resources to spell words.
 - e. Brainstorming with the Student regarding writing and the planning process.
 - f. Providing a script to the Student to assist with beginning writing.
 - g. The ability to begin typing without the need to write a "sloppy copy".
 - h. Chunking of writing tasks.
 - i. Extra time to complete the writing tasks.
 - j. Decreased writing assignments.
 - k. Scripted key words.
 - l. Modified writing assignments, such as not requiring the Student to do a first draft
 - m. Worked with the Student 1:1.
 - n. Scripted for the Student, if needed, as the teacher was not familiar with speech to text computer programs.

- work with staff to deescalate the behaviors through the use of social stories and problem-solving strategies.
- d. The positive behavioral supports/interventions included:
 - i. Instruction/role playing that demonstrates what a successful break looks/sounds like.
 - ii. Social story instruction and visuals for asking for help/taking a break;
 - iii. Problem solving strategies.
 - iv. Time spent working on preferred activities when task behaviors are displayed.
 - e. A crisis plan identified actions to be taken by staff in the case of emergency situations.
 - f. A list of preferred activities/incentives was included.
13. A Confidential Functional Behavioral Assessment (FBA) Report was completed on 3/29/21.
- a. The purpose of the FBA was to determine the function of the Student's behaviors and determine what support and accommodations could be provided to ensure the Student was successful in the academic setting.
 - b. Pursuant to notes on the IEP, an amendment meeting was held on 1/18/21:
 - i. The Student had a very positive start to the third grade school year and was receptive to prompts when redirection was required. During the first 54/62 days, the Student did not need outside support with regulation. The 8 days in which dysregulation occurred, the Student was able to re-regulate in the regular education classroom with the support of the classroom teacher.
 - ii. The first instance in which the Student showed the need for outside support to regulate was on 11/16/20.
 - iii. Beginning on 11/23/20, the Student showed a significant increase in social/emotional/behavioral needs. The Student required a restraint or seclusion on 6 occasions between 11/23/20 and 2/4/21, due to physical aggression towards self and staff, property damage and significant disruption/intimidation towards peers.
 - 1. All 6 incidents involved threats and/or aggression towards staff and self.
 - 2. Two incidents involved suicidal statements and a suicide screener was completed each time.
 - 3. Four incidents involved intimidation towards peers.
 - 4. Two incidents began with elopement.
 - 5. On 4 occasions, the Student left the classroom without permission.
 - 6. The Student left the school on 3 of the 6 elopements.
 - iv. During transition times, the Student had 13 incidents that occurred within 15 minutes of transitioning from unstructured to structured activity, which required teacher support for regulation.
 - v. The Student was able to use a calming strategy given by the teacher 2 out of 10 times during a moment of frustration.

- vi. On average, it took the Student between 5 and 10 minutes to begin working on an assignment and required more than 2 prompts to begin working 9 out of 10 times.
- c. As part of the FBA, the Parent completed the Social Behavior Survey and the Functional Assessment Interview.
 - i. The concerning behaviors included physical aggression, verbal aggression, and elopement at school.
 - ii. The behavior occurred frequently after a transition or when given work the Student perceived as too hard.
 - iii. The behaviors were present since November 2020.
 - iv. The Student has been diagnosed with multiple disabilities and takes medications, which may influence behavior.
 - v. At home, the Student felt safe and acted like a typical 9-year-old, although exhibits more signs of sadness due to complex early developmental trauma.
 - vi. The Student has very low self-esteem and has made suicidal statements in relation to issues at school.
 - vii. The Student showed anxiety before school and had difficulty exiting the car to go to school.
 - viii. The Student's behavior did not occur in other environments such as daycare, attending a sports class, therapy, and playing baseball and football.
 - ix. The behaviors seen in the school setting did not occur at home.
- d. Teacher interviews identified concerning behaviors including verbal and physical aggression towards self and others, issues with compliance, perseverance, and work completion.
 - i. The behaviors occur in the general education classroom, usually following unstructured or preferred tasks.
 - ii. The behaviors may be related to deficits in coping abilities or emotional regulation strategies.
 - iii. The Student was taking medication which may affect behavior.
 - iv. The Student's background of trauma may influence learning and behaviors.
- e. Classroom observations were conducted.
 - i. The first observation occurred on 3/19/21 from 1:18 to 1:48 p.m. during whole group instruction. During this time, the Student appeared on-task 88% of the time.
 - ii. The Second observation occurred on 3/26/21 from 8:36 to 9:30 a.m. during independent writing. During this time, the Student appeared on-task 48% of the time.
 - iii. A third observation occurred on 3/26/21 from 10:39 to 10:56 a.m. during independent writing time. During this time, the Student appeared on-task 5% of the time.
- f. The FBA identified that the Student's function was to avoid task completion and gain adult attention.
- g. Recommendations to address the behavior were identified by the evaluator.

14. The Student's 5/18/20 IEP was amended on 3/31/21 by the IEP team.
- a. The Present Levels of Academic Achievement and Functional Performance in the service area of self-help/independence was amended to reflect the decrease in the Student's progress on goals.
 - i. On average, the Student was requiring a minimum of 5 prompts to start working on an assignment and would typically take around 10 minutes to begin working on the assignments. Same aged peers are able to begin working on an assignment with 2 or less prompts within 2 minutes of receiving the assignment.
 - ii. The goal set forth in the Student's IEP dated 5/18/20 was amended. The underlined language was added to the goal: When given direct instruction, the Student will work on the Student's perception of challenging classwork (modified, if needed) independently for 10 minutes before asking for assistance on 4 out of 5 consecutive occasions, as measured by teacher observation and classroom data.
 - iii. An additional goal was added to the Student's 5/18/20 IEP: When given direct instruction, the Student will begin a task independently within 2 minutes from a baseline of 10 minutes, with no more than 2 prompts from a baseline of 5 prompts from an adult in 8 out of 10 given tasks, as measured by teacher observations and data collection.
 - b. The Present Levels of Academic Achievement and Functional Performance section of the IEP in the service area of SEB was amended to reflect the decrease in the Student's progress on goals.
 - i. An overview of the Student's behaviors when dysregulated, anxious, seeking sensory input, is stressed or PTSD is triggered includes: physical aggression towards self and staff; threatening staff and other students; yelling obscenities and racial slurs; and running out of the classroom and the school. Physical restraint or seclusion had been necessary on 6 occasions, due to threats and/or aggression towards self or staff. The Student was able to use a calming strategy given by a teacher 2 out of 10 times during moments of frustration. On average, it would take the Student between 5 and 10 minutes to begin working on an assignment and required more than 2 prompts to begin working 9 out of 10 times.
 - ii. An additional goal was added to the two existing goals on the Student's IEP dated 5/18/20 which stated: When given instruction and practice, the Student will appropriately ask for a break when frustrated or agitated by communicating with the classroom teacher by using a signal and eye contact (i.e., a head nod) or asking the teacher to take a break, 4 out of 10 occasions (from baseline of 1 out of 10 times), as measured by teacher collected data and observation.
 - c. The Special Education Services were amended in the area of SEB to be provided in the special education setting for 150 minutes.
 - d. The Self-help/Independence services remained at 30 minutes per week in the regular education setting.
 - e. Related services consisting of social work in schools was added, to be provided in the special education setting for 30 minutes per week.

- f. Intersperse preferred and non-preferred tasks was added to the Supplementary Aids and Services section of the Student's 5/18/20 IEP.
15. Staff continued to collect data from 2/23/21 through 5/13/21 regarding the Student's behaviors.
16. Once the BIP and the IEP Amendment were implemented, staff saw an improvement in the Student's behaviors.
- a. If the Student refused to leave the regular classroom for instruction in the special education classroom, the special education teacher would provide services in the general education classroom.
 - b. The Student also received services in the behavior classroom and attended on a fairly consistent basis.
 - c. If the Student became escalated in the regular classroom, the Student would often elect to go to one of the identified safe locations in the building.
 - d. The Student responded well to the incentives identified on the BIP.
 - e. The Student was completing assignments with more care so as to receive the incentives.
 - f. Behavior replacement instruction was provided, including actions the Student could take to help with regulation.
 - g. The special education teacher used trauma-informed instruction with all students, including the Student.
17. An annual IEP meeting was held on 5/18/21. The IEP provides the following:
- a. The Student's behavior impedes learning of self or others.
 - b. The Present Level of Academic Achievement and Functional Performance identified:
 - i. Since the amendment, the Student has not eloped from the classroom and only had one occasion of needing extra support and was escorted to a different location for a break. Otherwise, the Student chooses to remain in the classroom for a break.
 - ii. The Student's behavior plan includes a work completion incentive.
 - iii. The Student needs to continue asking for and taking a break appropriately, using strategies to help calm down when frustrated or escalated and listen to and accept help from adults when frustrated or escalated.
 - c. The goals addressing self-help/independence needs included:
 - i. Goal: When given direct instruction, the Student will work on the Student's perception of challenging classwork (modified, if needed) independently for 10 minutes before asking for assistance 80%, as measured by teacher observation and classroom data.
 - 1. The Progress Report dated 6/4/21 provided that the Student was making progress and expected to meet the goal. The Student was able to work on the Student's perception of challenging work 60% of the time.
 - 2. The Progress Report dated 9/30/21 provided that the Student had made progress but did not meet the goal. The Student was working independently for 10 minutes 37.5% of the time; however, this was not always on a non-preferred task.

- ii. Goal: When given direct instruction, the Student will begin a task independently within two minutes from a baseline of 10 minutes, with no more than 2 prompts from a baseline of 5 prompts from an adult in 80% of the tasks given, as measured by teacher observations and data collection.
 - 1. The Progress Report dated 6/4/21 provided that the Student was making progress and expected to meet the goal. The Student was able to start a task within 2 minutes with no more than 2 prompts 40% of the time.
 - 2. The Progress Report dated 9/30/21 provided that the Student was not expected to meet the goal. The Student required 6 or more prompts to begin a task 50% of the time, 3-5 prompts 37.5% and 12.5% of the time one prompt was needed.
- d. The goals addressing SEB needs included:
 - i. Goal: When given instruction and practice, the Student will appropriately ask for a break when frustrated or agitated by communicating with the classroom teacher by using a signal and eye contact (i.e., a head nod) or asking the teacher to take a break 4 out of 10 occasions (from a base line of 1 out of 10 times), as measured by teacher collected data and observations.
 - 1. The Progress Report dated 6/4/21 provided that the Student was making progress and expected to meet the goal. The Student was not communicating the need for a break but would set the Student's head down on the desk and shut down. This was a good start for the goal, but the goal is for the Student to communicate a need in order for the teacher to understand that the Student is frustrated.
 - 2. The Progress Report dated 9/30/21 provided that the Student was not expected to meet the goal. The Student was not appropriately asking for a break from the classroom teacher by using a signal or sign and making eye contact.
 - ii. Goal: During a moment of frustration and when offered a varied calming strategy by a teacher (calming space, calming/sensory box), the Student will use the strategy within one minute on 9 out of 10 moments of frustration, as measured by teacher observation and classroom data.
 - 1. The Progress Report dated 6/4/21 provided that the Student was making progress and expected to meet the goal. Once the Student became frustrated, the Student had a difficult time taking advice or help from a teacher when offered different calming strategies.
 - 2. The Progress Report dated 9/30/21 provided that the Student was not expected to meet the goal. The Student will go to a calm down area independently. The Student is using the calm down area inappropriately (i.e., calling out, talking to others, throwing things). When given a calming tool (i.e., calming/sensory box), the Student uses it as a toy and will often slap or throw them.
- e. The Special Education Services included:

- i. Self-Help/Independence in the regular education setting for 50 minutes per week.
 - ii. SEB in the special education setting for 150 minutes per week.
- f. The Related Services provided for social work in schools in the special education setting for 30 minutes per week.
- g. Supplementary Aids and Services included accommodations/modifications. The following accommodations are the accommodations at issue in the Complaint:
 - i. Chunking of tasks.
 - ii. Decreased writing assignments (when appropriate).
 - iii. Dictation of keywords in writing assignments.
 - iv. Modification of writing assignments (inclusion of editing and revision in first drafts).
 - v. Word processing available for writing assignments greater than one paragraph.
 - vi. Speech to text available.
- h. The IEP indicated that the Parent and District agreed that a reevaluation was not necessary.
- i. The IEP provided that staff working with the Student would be informed of their responsibilities for implementing the IEP by being provided a copy of the accommodations, through Powerschool and by verbal communication.

2021-2022 School Year

- 18. On 8/2/21, District staff responded to the Parent's email dated 7/21/21 which requested information regarding fourth grade teachers and the Student's participation in music class, which had previously been a trigger for the Student's behaviors.
- 19. On 8/9/21, the Parent emailed District staff and requested a meeting prior to the start of school to discuss the Student's services.
 - a. The Parent mentioned accommodations for writing and the possible need to change the IEP because of a new special education teacher. The Parent noted that there were writing accommodations on the IEP, but the FBA only indicated the use of a graphic organizer.
 - b. The Parent shared information that discussed the need to move to a more trauma-informed approach.
- 20. The first day of school for the 2021-22 school year was Wednesday, 8/25/21.
- 21. During the first week of school, the special education teacher provided the Student's teachers with a written copy of the IEP accommodations.
 - a. The accommodations are located and updated in Powerteacher after every IEP meeting.
 - i. The special education teacher noted that Powerteacher had been updated through 5/17/21.
 - ii. The special education teacher updated Powerteacher at the beginning of the 2021-22 school year to include the IEP that was finalized on 5/18/21. (Interview, special education teacher).

- b. The Student's teachers received a Google Doc and email of all accommodations at the beginning of the school year.
 - c. After each IEP meeting, a copy of the IEP is provided to the general education teacher.
 - d. All specialists are made aware of accommodations through Google Docs and Powerteacher.
 - e. A copy of accommodations is printed and in the classroom substitute folders. (Interview, special education teacher).
22. The resource room teacher attended the Student's classroom from 8-8:30 daily and reminded the classroom teacher and substitutes, as needed, about the Student's accommodations. (District Response).
23. Writing tasks continued to be an issue for the Student in the fourth grade. Additionally, new behaviors by the Student were identified at the beginning of the fourth grade, including:
- a. Sexualized verbiage, noises and jesters;
 - b. More difficulty with transitions;
 - c. Resistance to academic tasks;
 - d. Obscene language directed at female students; and
 - e. Throwing of items in the classroom, including spit wads and books. (Interview, principal).
24. An IEP review meeting with the Parent was initially scheduled for 8/27/21 and was rescheduled at the request of the Parent and held on 8/31/21, during which the Student's BIP was updated.
25. The Positive Behavior Intervention Plan (BIP) dated 8/31/21 identified the target behaviors, the procedures used to decrease the inappropriate/target behaviors, the replacement behaviors, and the positive behavioral supports and interventions.
- a. The target behaviors included:
 - i. Off task and non-compliant behavior.
 - ii. Aggression, including throwing objects, destroying property, hitting, kicking, cursing, and derogatory language.
 - b. The procedures used to decrease appropriate behaviors included, in part:
 - i. Prompting the whole group rather than personally addressing the Student.
 - ii. Giving 3 choices for work.
 - iii. Ignoring or offering support.
 - iv. Reinforcing with genuine and specific praise in private.
 - v. The ability to earn free time and buy preferred activities.
 - vi. If aggressive behaviors occurred and the Student refuses to move from the classroom, the Student would be escorted to the breakroom through the use of a 2-person transport/escort.
 - c. Replacement behaviors included in part:
 - i. Taking a 5 minute break with head down on desk, with 3 additional minutes, if needed.
 - ii. Hand signals of thumb up or down, if needing a break.

- iii. After 8 minutes, if not ready to return to learning, a break will occur in one of 4 locations with the Student choosing the location;
 - iv. Asking for help or a break.
 - v. If the Student became frustrated, upset, overwhelmed, angry or escalated, the Student was expected to move from the classroom to another setting to work with staff to deescalate the behaviors through the use of social stories and problem-solving strategies.
 - d. The positive behavioral supports/interventions included:
 - i. Instruction/role playing that demonstrates what a successful break looks/sounds like.
 - ii. Social story instruction and visuals for asking for help/taking a break
 - iii. Problem solving strategies.
 - iv. Time spent working on preferred activities when task behaviors are displayed.
 - e. A crisis plan identified actions to be taken by staff in the case of emergency situations.
 - f. An updated list of preferred activities/incentives was provided.
26. The fourth grade teacher had a copy of the BIP and utilized it in the classroom as a means to set up the classroom for success. (Interview, teacher).
27. The fourth grade teacher had daily discussions with staff to ensure the BIP was being implemented with fidelity, including discussions regarding how the BIP was working for the Student, how to make sure it was successful, and whether changes were needed. (Interview, teacher).
28. A special education teacher worked with the Student on the BIP incentive plan and checked in with the Student each morning to work on self-help goals. (Interview, special education teacher).
29. At the beginning of the school year, the Student refused to go to the behavior class. Staff addressed the Student's refusal to follow staff directions, and the refusal to attend the behavior class by "front-loading" so the Student knew the schedule and the expectations. (Interview, special education teacher).
30. The Student attended a weekly hour session of specialized instruction provided by the school social worker and participated daily in a behavior class with 8 other students with a special education teacher.
- a. The specialized instruction introduced a new concept, including behavior replacement and self-regulation strategies.
 - b. The behavior class further discussed and practiced the new concepts discussed in the specialized instruction weekly session.
 - c. The curriculum utilized to address behaviors included trauma informed principles and strategies, social thinking, and zones of regulation, among others.
 - d. On one occasion, at the beginning of the school year, the Student refused to leave the general education classroom.
 - e. The Student appeared to enjoy attending the behavior class and had commented to staff that the Student did not want to leave. (Interview, special education teacher).

31. The fourth grade classroom teacher provided the Student with a variety of writing accommodations based on class activities and instruction occurring at the time, including:
 - a. Chunking of writing tasks.
 - b. Decreased writing assignments when appropriate.
 - c. Assistance to the Student in writing or spelling key words.
 - d. Close proximity.
 - e. Word processing when available, and when not, scribing for the student.
 - f. Avoiding written answers in subjects other than writing, such as math, if possible.
 - g. Assisting with spelling.
 - h. Ensured communications between the Student and the teacher were private; and
 - i. Modified an assignment at the Parent's request. (Interview, teacher).
32. On 9/6/21, District staff emailed the Parent and provided the revised BIP and the incentive plan that the special education teacher and the Student developed. The Parent was also informed that on 9/2/21 the morning seclusion was for 45 minutes and that when the Student escalated, it continued for 23 minutes. The afternoon seclusion lasted 22 minutes, and the Student was assisted by staff when the Student began to run.
33. On 9/6/21, the Parent responded to the email received earlier that day from District staff, requested a reevaluation, and requested additional information:
 - a. Raw data tracking the Student's IEP progress along with notes.
 - b. Date and length of last seclusion in third grade.
 - c. Accommodations provided for writing tasks in third grade.
 - d. Any accommodations regularly provided that are not in the Student's IEP.
 - e. Attempted interventions and data reflecting the Student's response and modifications made afterwards.
34. An IEP review meeting with the Parent was held on 9/7/21. The Parent requested that the agenda for the meeting include:
 - a. Lessons learned from third grade.
 - b. Reevaluation.
 - c. Special education services/providers.
 - d. FBA/BIP/incentive plan.
35. On 9/12/21, the Parent signed Permission for Evaluation or Reevaluation and gave the District consent to assess the Student in the areas of academic achievement, behavioral, classroom-based assessment, observations, physical, psychological, social/emotional, and occupational therapy.
36. On 9/15/21, staff failed to ensure that the Student was prompted to attend the behavior class. In response, District staff took the following actions:
 - a. The classroom teacher put a prompt on her phone to remind the Student to attend the behavior class.
 - b. The special education teacher for the behavior class will go to the classroom to prompt the Student to attend the behavior class. (Interviews, teacher, special education teacher).

37. On 9/16/21, the Student made threats about beating self to death and shooting everyone with a gun.
 - a. The Student was suspended for three days out of school on 9/17/21, 9/20/21 and 9/21/21.
 - b. Staff began completing a threat assessment and had a phone call with the Parent to discuss conducting a parent interview.
 - c. The Student was suspended for 3 days and a reentry meeting was scheduled with the IEP team
 - d. The parents of another student submitted a harassment, intimidation, and bullying complaint related to the Student's behaviors.
38. On 9/21/21, a meeting was held with the Parent to share a summary of the incident, the outcome of the threat assessment, and the response management support plan. It had become more evident to the school team that the intensity of the Student's behaviors required additional support, including more 1:1 support and small group support. An IEP team meeting was proposed for 9/30/21.
39. Beginning on 9/22/21 through 9/29/21, the Parent elected to have the Student attend a shortened school day. On two occasions during this time, a room clear was necessary due to the Student's behaviors. (Interview, principal).
40. An IEP meeting was held on 9/30/21, during which a draft IEP Amendment was discussed. The team tabled the discussion regarding placement and special education service minutes to allow the school reevaluation to be completed.
41. The draft IEP Amendment identified the Student's behaviors from 8/23/21 to 9/28/21:
 - a. An average of 12 incidents of inappropriate language, derogatory/sexual language and gestures toward staff and peers (i.e., sexual noises or moans, jokes, references, hand motions).
 - b. An average of 15 incidents of physical and verbal aggression (i.e., preventing staff from leaving the room, threatening classmates, threats to beat up a student, threats to shoot everyone with a gun, throwing objects, hitting walls and staff, kicking, damaging property).
 - c. An average of 7 incidents related to not following school rules and safety (i.e., calling 911, using Chromebook inappropriately, blowing wads of paper, climbing on storage units).
 - d. The Student had been present at school 26 days out of 30. During the days the Student was present, there were 7 documented days of no significant behaviors.
42. Teachers, specialists, counselors, and administrators have worked with the Student over the last two years. The District has provided these staff members with multiple trainings specific to trauma informed teaching, practices and therapies, behavioral training, including Positive Behavioral Interventions and Supports, de-escalation strategies, and working with students with anxiety, among other topics.

D. Analysis and Conclusions

Issue 1: Did the District fail to provide the Student with specially designed instruction to address the unique needs of the Student, resulting from the Student’s disability, and to ensure access of the Student to the general education curriculum, in violation of 34 CFR 300.39 (b)(3)?

Parent’s allegation: The Parent alleged that the 150 minutes per week of SEB services set forth on the Student’s IEP were not relevant to enable the Student to make progress and achieve the IEP goals. Specifically, the teaching of replacement behaviors is missing from the Student’s IEP. Further, the services were not diagnostically informed, the staff had no training to provide the Student with services, and there was a lack of understanding of the Student’s diagnoses.

The Parent believed that the 2021-2022 school year started off wrong, in that there was no front-loading, staff got behind in addressing the Student’s anxiety, there was a lack of communication, inconsistent messaging, fear-based interactions from staff, and a lack of boundaries, in that the student was allowed to “run the show.”

The Parent also believed that the Student’s BIP was not being consistently implemented by staff.

District Response: The Student has been provided appropriate SEB services for at least 150 minutes per week in both the special education classroom and the regular education classroom as set forth on the Student’s IEP.

Legal Analysis

Special education services, consisting of “specially designed instruction,” are defined as adapting, as appropriate to the needs of an IDEA eligible student, the content, methodology or delivery of instruction: 1) to address the unique needs of the student that result from the student’s disability; and 2) to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all children. 34 CFR 300.39 (b)(3).

In addressing a student’s unique needs, districts have broad leeway in selecting the educational programming that will be utilized. *Board of Edu. of the Henrick Hudson Central Schl. Dist. v. Rowley*, 553 IDELR 656, 102 S.Ct. 3034 (1982). “There is nothing in the [IDEA] that requires an IEP to include specific instructional methodologies.” 71 Fed. Reg. 46,665 (Aug. 14, 2006). “The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit.” *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 56 IDELR 31, 631 F.3d 1117, 1122 (9th Cir. 2011) *See, e.g., Adams v. Oregon*, 195 F.3d 1141, 1149–50 (9th Cir. 1999); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 861–62 (6th Cir. 2004).

The IEP sets forth the comprehensive statement of the educational needs of a child with a disability and the specially designed instruction and related services a district will employ to meet those needs. *Burlington Sch. Comm. v. Massachusetts Dep't of Educ.*, 556 IDELR 389, 471 U.S. 359, 368 (1985). An educational program for a child with a disability must be one that is “reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.” *Endrew F. v. Douglas Cnty. Sch. Dist.t. RE-1*, 137 S. Ct. 988, 1001 (2017). However, the IDEA does not guarantee any particular level of education and “cannot and does not” promise any particular educational outcome. *Endrew F. v. Douglas Cnty. Sch. Dist. RE- 1*, 137 S. Ct. 988, 998 (2017) (citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 553 IDELR 656, 458 U.S. 176, 192 (1982)).

The IDEA requires that the IEP team, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior. 34 CFR 300.324 (a)(2)(i). IEP teams should consider the behavioral needs of students in the development, review, and revision of IEPs when necessary to provide a Free Appropriate Public Education (FAPE). *Questions and Answers on Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, Q. 16, 71 IDELR 68 (EDU 2017); and *Dear Colleague Letter*, 68 IDELR 76 (OSERS/OSEP 2016).

To be eligible for special education and related services under IDEA, the student must meet eligibility criteria for one or more categories listed in ARM 10.16.3010 through 10.16.3022. ARM 10.16.3007. The disability diagnosis listed in a student’s IEP is often immaterial because the IEP should be tailored to the child’s individual needs. *Fort Osage R-I School Dist. V. Sims*, 641 F.3d 996, 1004 (8th Cir. 2011). “Consequently, while the IDEA intends that IEPs contain accurate disability diagnosis, we will not automatically set aside an IEP for failing to include a specific disability diagnosis or containing an incorrect diagnosis.” *Id* at 1004. In order to set the IEP aside, it must be shown that failure to include the proper disability diagnosis “compromised the pupil’s right to an appropriate education, seriously hampered the parents’ opportunity to participate in the formulation process, or caused a deprivation of educational benefits.” *Id.* citing *Lathrop R-II Sch. Dist. v. Gray*, 611 F.3d 419, 424 (8th Cir. 2010).

Conclusion

The evidence clearly established that the Student has multiple medical diagnoses and has had significant behaviors at school. When the Student began the third grade, an IEP was in effect dated 5/18/20. The IEP provided goals in the areas of self-help/independence and SEB. Additionally, the IEP team determined that special education services consisting of 60 minutes a week in the regular classroom were appropriate to address the student’s SEB needs and self-help independence needs.

The Student’s behaviors began to increase in November and December 2020. School staff collaborated on a frequent basis to problem-solve and address the Student’s behaviors and needs.

The IEP progress report dated 11/19/20 identified that the Student was making progress expected to meet each goal. By 2/26/21, the progress report identified that the Student was not expected to meet the goals.

The evidence shows that the District took timely and appropriate action as the Student's behaviors increased. Beginning in January 2021 through March 2021, the IEP team met on four occasions to discuss the Student's behaviors and needs, discuss and receive parent consent for an FBA, draft a BIP, and amend the Student's IEP. The BIP dated 2/22/21 identified the student's target behaviors, the procedures that would be used to decrease inappropriate behaviors, identified the replacement behaviors to be taught to and to be used by the Student, and identified the positive behavioral supports and interventions. A list of preferred activities for the Student was provided, and a crisis plan identified actions staff would take in the event of emergency situations. An FBA was completed on 3/29/21 and identified the function of the Student's behaviors were to avoid task completion and gain adult attention.

The Student's 5/18/20 IEP was amended on 3/31/21 to provide for additional or amended goals in the areas of SEB and self-help/independence, and the IEP team determined that additional special education supports were needed. The social/emotional/behavioral services were increased from 30 minutes per week to 150 minutes per week, and it was determined these services would be provided in the special education setting. Further, the related service of 30 minutes per week of school social work services was added was to be provided in the special education setting. Once the BIP and the specially designed instruction set forth in the IEP amendment were implemented, a significant decrease in the Student's behaviors for the rest of the school year were observed. (*See Issue 2 Conclusion*).

An annual IEP meeting was held on 5/18/21, and the goals, accommodations and special education services remained very similar to those in the Student's 3/31/21 IEP amendment. The progress report dated 6/4/21 showed the Student was making progress expected to meet the goals.

At the beginning of the Student's fourth grade year, school staff recognized that writing continued to be an issue for the Student and identified new behaviors of a sexual nature that had not been seen in the third grade. Less than a week after school started in August 2021, the Student's BIP was updated to include additional replacement behaviors and an updated incentive plan. The fourth grade teacher implemented the BIP in the classroom and had daily discussions with staff regarding the BIP to ensure that it was being implemented with fidelity.

The Student initially refused to attend the behavior class at the start of fourth grade. This behavior was addressed by "front-loading" as staff worked with the Student so that the Student knew the daily schedule and the expectations. The Student began attending the behavior class, as well as the weekly hour session provided by the school social worker, and indicated to the special education teacher that the Student enjoyed attending the class.

District staff timely and appropriately addressed the Student's behaviors and implemented the BIP, although the Student's increased behaviors resulted in an out-of-school suspension and several room clears. IEP review meetings occurred with the Parent on 8/31/21 and 9/7/21, and an IEP meeting was held on 9/30/21. The Parent requested an evaluation, which was in the process of being conducted when the Complaint was filed.

While the Parent alleged that the 2021-2022 school year started off wrong, in that there was no frontloading, staff got behind in addressing the Student's anxiety, there was a lack of communication, inconsistent messaging, fear-based interactions from staff, a lack of boundaries, in that the student was allowed to "run the show," the evidence showed otherwise.

The District's actions **do not rise to the level of a violation of Part B of the IDEA.**

Issue 2: Did the District fail to implement the Student's IEP, as required by 34 CFR 300.323?

Parent's allegation: The Parent alleged that the District did not provide the writing accommodations to the Student that were specified in the IEP. The Parent identified the writing accommodations as chunking of writing tasks, decreased writing assignments, dictation, modification of writing assignments, word processing, and voice typing. Important frustration-reducing accommodations such as voice typing and dictation were not provided to the Student. Failure by the District to provide the writing accommodations resulted in off-task behavior by the Student, as identified by the evaluator in the FBA.

The Student did not attend the behavior program on 9/15/21, because staff failed to prompt the Student to attend the behavior class, as the Student would not remember to go.

District Response: The Student has been provided supplementary aids and services for writing tasks in both the third and fourth grades.

Legal analysis

Districts are required to have each student's IEP in effect at the beginning of the school year. 34 CFR 300.323(a). Additionally, districts are obligated to implement student IEPs with all required components. 34 CFR 300.323(c). This implementation mandate, however, does not mean that a district must perfectly implement a student's IEP. Only material implementation failure qualifies as a denial of FAPE. A material failure occurs when the services a school provides to a disabled child fall significantly short of the services required by the child's IEP. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation. *Van Duyn v. Baker Sch. Dist. 5J*, 47 IDELR 182, 502 F.3d 811, 821, 825 (9th Cir. 2007).

Conclusion

The evidence established that the Student was very resistant to any handwriting in class and the Student's IEP had multiple accommodations to assist the Student with handwriting.

The FBA conducted in March 2021, included classroom observations by the evaluator. Two of the observations occurred during independent writing time, and the evaluator determined that the Student was on-task 48% and 5% during these observations. The Parent believed that the Student's off-task behaviors that occurred during the observations demonstrated that the Student did not receive the writing accommodations. However, the purpose of the observation was to observe the Student's behaviors during a particular timeframe; it was not to determine whether the teacher was providing the Student with accommodations.

The evidence provides that both the third grade teacher and fourth grade teacher understood that writing was difficult for the Student and both teachers received the Student's IEP accommodations through multiple means, including verbally, through Powerteacher, and hand delivery by the special education teachers.

The evidence further provides that the classroom teachers were constantly monitoring the Student to determine the Student's tolerance for writing and ensured that the accommodations were available for the Student. Although the third grade teacher did not make computerized speech to text available, this was only a minor discrepancy, as the teacher provided scribing for the Student, which allowed the Student to orally provide the teacher the information, and the teacher wrote the information for the Student.

The District failed to remind the Student to attend behavior class on 9/15/21. However, this failure was also only a minor discrepancy, and District staff took appropriate actions to ensure that the Student was prompted to attend the behavior class. The classroom teacher put a prompt on her phone to remind the Student, and the special education teacher would go to the classroom to prompt the Student to attend the behavior class.

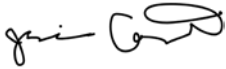
The Student's progress reports dated 11/19/20 identified that progress was being made towards the IEP goals during the first part of the third grade, and it was expected that the Student would meet the goal. When the Student's behaviors became more intense, the progress reports dated 2/26/21 revealed that it was not expected the Student would meet the goal. However, as discussed in Issue 1, the IEP Team met four times between 1/18/21 and 3/30/21 to discuss and address the Student's behavioral goals. As a result of those meetings, a BIP and IEP Amendment were agreed upon and implemented. The data gathered after the BIP and IEP Amendment were in place showed decreased behaviors, and the Student's progress reports dated 6/4/21 provided that the Student was making progress and expected to meet the goal. The District took appropriate actions to address the Student's needs.

For fourth grade, the progress report dated 9/30/21 provided that the Student had made progress but did not meet the goal. As discussed in Issue 1, the Student's behaviors were present at the beginning of the school year. In response to the increased and new behaviors, the District revised the Student's BIP, addressed the Student's refusal to attend the behavior class, held IEP review meetings with the Parent, began conducting a reevaluation, and held an IEP meeting on 9/30/21. The District took appropriate actions to address the Student's needs.

The evidence established that the Student's writing accommodations were provided to the Student on a consistent basis. The District's actions **do not rise to the level of a violation of Part B of the IDEA.**

F. Disposition

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



Jessie Counts
Senior Manager Student Support Services

- c: Mandi Gibbs, Dispute Resolution/EAP Director (via ePass Only)
- John Gorton, OPI School Improvement/Compliance Unit Manager (via ePass Only)
- ***, District Special Education Director (via ePass Only)