



September 2, 2022

Sent via US Mail and SMFTS

Parents

Superintendent

RE: **FINAL REPORT for** In the Matter of ***, 2022-02, Alleged Violations 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. *** and *** (Parents) filed the Complaint on behalf of their *** (Student), a sophomore at *** High School in the *** School District (District). Parents allege 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 regulation at 34 CFR Part 300 and ARM 10.16.3007 et seq. The District allegedly:

Failed to implement the required special education and related services on the Student's IEP during the 2021-2022 school year.

A. Procedural History

1. On May 9, 2022, the attorney for the Parents filed a Complaint on behalf of the Student.
2. The District was not provided a copy of the Complaint as required by ARM 10.16.3662(3).
3. The OPI's Dispute Resolution Office sent the parties a Notice of Filing Complaint and Partial Dismissal on May 13, 2022, which stated the filing date would be May 16, 2022, allowing for service of the Complaint on the District.
4. The Early Assistance Program (EAP) attempted to work with the parties to resolve the dispute.

5. On June 6, 2022, the EAP Director determined the parties were unable to resolve the dispute and notified the Dispute Resolution Office to proceed with the complaint process. ARM 10.16.3660(4).
6. On June 6, 2022, the OPI Dispute Resolution Office sent a Request for District Response/Scope of Proceedings letter to the parties.
7. On June 9, 2022, the attorney for the Parents emailed the EAP Director and the attorney for the District requesting to reengage in the EAP process and putting the complaint process on hold.
8. On June 17, 2022, the attorneys for the parties agreed via email to extend the original timeframe of the state complaint by 30 days to continue working on resolution with the EAP pursuant to ARM 10.16.3662(8) and 34 CFR 300.152(b)(ii).
9. The parties continued to work with the EAP Director on finalizing the details of the resolution.
10. On July 12, 2022, the Parents' attorney informed the OPI and the District that she was no longer representing the Parents.
11. On July 13, 2022, the OPI communicated by telephone with the Parents and the District's attorney; the parties agreed to extend the timeframe for resolution another 30 days, to allow the Parents time to work with the EAP towards resolution. This agreement to extend was confirmed by email.
12. On July 21, 2022, the EAP Director received emails from the parties indicating that further attempts at resolution would be futile. Therefore, it was necessary to clarify the timeline and move forward with the complaint process.
13. On July 21, 2022, the timeframe for early resolution ended and the Dispute Resolution Office requested in a letter that the District prepare and submit its written response to the Complaint to the Dispute Resolution Office and send a copy to the Parents within 10 calendar days of receipt of the letter. ARM 10.16.3662(5).
14. Following receipt of the District's response, the Parents had 10 calendar days to submit additional information to the Dispute Resolution Office, either written or orally, about the allegations in the Complaint and the District's written response to the Complaint. ARM 10.16.3662(7).
15. The Dispute Resolution Office received the District's response on August 1, 2022.
16. The Parents contacted the OPI and the Complaint Investigator regarding submitting additional information. The Parents mailed additional information to the OPI within the 10 days, however it was not received by the OPI until August 18, 2022.
17. The date for issuance of the report had been extended to August 19, 2022. The Parents and the District agreed to extend the date for issuance of the complaint investigation report again, until September 5, 2022, to ensure that the investigator has adequate time to review all submissions.
18. The appointed Complaint Investigator set a deadline for submission of all documents as end of business on August 19, 2022.
19. Following the Complaint Investigator's August 18, 2022, interview with the Parents, on August 19, additional documents were mailed to the OPI by the Parents.

20. The documents were not received until August 22, 2022. However, the documents were reviewed by the Complaint Investigator as part of the investigation.

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 the OPI receives a 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, May 16, 2021, to May 16, 2022, are included strictly for background information.

Additionally, the Complaint alleged issues regarding personnel misconduct and disagreement with the District's response to those allegations. The OPI dismissed those issues for lack of jurisdiction and notified the parties in the May 13, 2022, Notice of Filing Complaint and Partial Dismissal. The Parents filed a grievance directly with the District regarding those allegations.

C. Findings of Fact

Background

1. Parents have standing to file this Complaint pursuant to ARM 10.16.3661.
2. Student was 17 and a sophomore in District's high school during the 2021-2022 school year.
3. Student was on an IEP under the eligibility category of multiple disabilities (specific learning disability and speech-language impairment).
4. Student's IEP included goals in math, reading, self-help/independence, speech, written expression and transition goals.
5. Parents participated in IEP meetings for the development of IEPs for the Student.
6. Student's IEP team met on May 17, 2021, to amend the Student' IEP dated September 4, 2020.
7. Student's mother signed approval of the amended IEP on August 19, 2021.
8. Notice was sent on August 25, 2021, for an IEP meeting on September 2, 2021. That meeting was rescheduled for September 9, 2021; Student and the Student's mother attended the IEP meeting on September 9, 2021.
9. On September 19, 2021, the Student's mother signed approval, consenting to the IEP dated September 2, 2021.
10. The September 2, 2021, IEP included the following transition services needed to meet Student's postsecondary goals: budgeting, shopping and grocery shopping skills. These transition services were to be provided by parents and school staff.

11. The September 2, 2021, IEP also included the following independent living skills postsecondary goal, “[b]y high school graduation, Student will be able to demonstrate basic grocery shopping skills.”
12. The majority of the Student’s special education needs were provided in the special education setting.
13. Each week the Student was to receive 200 minutes each of specialized instruction in reading, math, self-help/independence and written language. In addition, the Student was to receive 60 minutes a week of speech-language services.
14. Student also received accommodations and modifications but did not need extended school year (ESY) services.
15. During the school year, when the Student had completed required class work, plans were made for the Student to go to the grocery store to work on grocery shopping.
16. In anticipation of a trip to the grocery store, preparatory steps were completed. These included: developing a grocery list, budgeting and discussing prices of needed grocery items.
17. On at least one occasion and as many as four, the Student went to the grocery store with a paraprofessional to purchase needed supplies in order to prepare recipes upon the return to school.
18. Upon the return to school, the Student prepared a recipe with the items purchased at the store.
19. On two other occasions, the Student left school with the paraprofessional for outings that did not pertain to the Student’s transition services.
20. Student did not miss any required special education or related services when the Student left the school building on the two outings unrelated to the Student’s transition services. Student had completed all required work for the day, or it was during the Student’s lunch break.
21. On April 7, 2022, after the Parents heard about the Student leaving school without their permission, they removed the Student from school.
22. District personnel made multiple attempts to resolve the issue so that the Student could return to school. This was not accomplished and the Student remained at home for the remainder of the school year.
23. Parents requested an IEP meeting to discuss the Student’s IEP. A meeting was scheduled in April 2022 and later cancelled by the Parents.
24. Parents decided to keep the Student home. The District was ready, willing and able to meet the Student’s needs whenever the Student returned to school.
25. During the time period the Student was home, the District sent packets of homework for the Student to complete. The District did not provide any special education or related services or general education instruction to the Student during this time.
26. Progress reports and report cards for the 2021-2022 school year indicated that the Student’s progress had diminished since the Student was not receiving specialized instruction.
27. Student was passing all classes, but the Student’s grades declined. The decline and minimal progress may have been due, in part, to the Student not receiving special education and related services while the Parents kept the Student at home.
28. Student returned to school over the summer to complete drivers education. Student received the accommodations and modifications outlined on the IEP for successful completion of drivers education.

D. Analysis and Conclusions

Did the District fail to implement the required special education and related services on the Student's IEP during the 2021-2022 school year?

The Parents allege that the District did not comply with the IDEA because it did not ensure the Student received the required number of special education and related service minutes when the Student was taken off school grounds by a paraprofessional approximately six times. According to the Parents, these unauthorized outings caused the Student to miss special education minutes plus regular school classes. The IEP must be implemented as written, including all required components. *See* 34 C.F.R. 300.323(c). By the age of sixteen, transition services are required to be included in a student's IEP. 34 CFR 300.320(b); 34 CFR 300.43. The IEP must include appropriate measurable postsecondary goals related to training, education, employment and where appropriate independent living skills, and the transition services necessary to assist the student in reaching those goals. 34 CFR 300.320(b). IEPs do not have to be perfectly implemented. The Ninth Circuit in *Van Duyn ex rel. Van Duyn v. Baker School Dis. 5J*, 502 F.3d 811, *amended* (9th Cir. 2007) adopted the materiality standard for failure to implement an IEP. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn* 502 F.3d at 822. If a material failure to implement is found, it may be considered a denial of a free appropriate public education (FAPE). Minor variations in the implementation of the IEP does not automatically mean that the student was denied a FAPE.

At the times the Student left campus with the paraprofessional to work on the transition service of grocery shopping, the IEP that was implemented by the District was the IEP dated September 2, 2021, which the Student's mother signed approval, consenting to the IEP on September 19, 2021. The IEP included the following postsecondary goal, "[b]y high school graduation, [the Student] will be able to demonstrate basic grocery shopping skills." The following transition services were needed to meet the Student's postsecondary goals: budgeting, shopping and grocery shopping skills. These transition services were to be provided by parents and school staff. During the 2021-2022 school year, the Student was taken off campus between one and four times, by a paraprofessional, to work on grocery shopping, a transition service listed on the Student's IEP. The District had an obligation to provide the transition services listed on the IEP. Additionally, the Student was taken off campus two other times by the paraprofessional and those occasions did not pertain to the transition services on the Student's IEP. The Student did not miss any required special education or related services when taken off campus; it occurred during the Student's lunch or after all required classwork for that day was completed. Whether it was appropriate for the Student to leave campus without the Parents' permission is not within the purview of this Complaint.

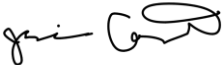
From April 7, 2022, until the end of the year, the Student did not receive special education or related services from the District. However, it was not the District's deprivation of those services, it was the Parents' decision to not allow the Student to attend school that resulted in the services not being provided. The District made multiple attempts to try and get the Student back in school. There were multiple emails and meetings between District staff and the Parents. An IEP meeting was scheduled, but later cancelled, and the Student was provided packets of schoolwork to complete at home so the Student could continue to earn needed academic credits.

However, the Parents continued to keep the Student home through the end of the 2021-2022 school year.

Therefore, the District did not fail to implement the Student's IEP and the District is not in violation of IDEA.

E. Disposition

Since the District did not violate IDEA, there are no actions for the District to complete. There is no right to appeal of this Final Report. ARM 10.16.3662(13).



Jessie Counts
Senior Manager Student Support Services

- c: Mandi Gibbs, Dispute Resolution/EAP Director (MFTS only)
- John Gorton, School Improvement/Compliance Unit Manger (MFTS only)
- *** and ***, Attorneys for the District (MFTS only)