



May 9, 2023

Sent via US Mail and/or SMFTS



**THIS DOCUMENT CONTAINS CONFIDENTIAL
INFORMATION**

RE: **FINAL REPORT** for In the Matter of [REDACTED] 2023-01, 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. [REDACTED] (Parent) filed the Complaint on behalf of her son, [REDACTED], (Student), a tenth grader at [REDACTED] (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 C.F.R. Part 300 and ARM 10.16.3007 et seq. The Complainant alleges the following issues:

Issue 1. Whether the District, pursuant to 34 C.F.R. § 300.321, convened an IEP team that included members with appropriate expertise to develop an IEP that addressed all of Student's special educational needs to ensure provision of a free appropriate public education (FAPE);

Issue 2. Whether the District added acceptable ELL accommodations to the IEP developed at the March 11, 2022 IEP meeting as required by 34 C.F.R. § 300.324;

Issue 3. Whether the District implemented the IEP as agreed to at the March 11, 2022 IEP meeting or another IEP as required by 34 C.F.R. § 300.324;

Issue 4. Whether the District implemented the IEP and provided progress notes on the goals from the March 11, 2022 IEP without the required consent for the IEP as provided in 34 C.F.R. § 300.9 and ARM 10.16.3505;

Issue 5. Whether the District provided Parent with a copy of the IEP from the March 11, 2022 IEP to obtain consent for implementation of that IEP as required by 34 C.F.R. § 300.322(f) and ARM 10.16.3505; and

Issue 6. Whether the District failed to provide Student a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101, by not including the agreed upon accommodations in the March 11, 2022 IEP.

A. Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on March 10, 2022.
2. The District was provided a copy of the Complaint as required by ARM 10.16.3662(3).
3. On March 14, 2023, Parent submitted a statement of correction to the OPI Dispute Resolution Office and to the District.
4. The Complaint included a request to move directly to investigation and not participate in trying to resolve the dispute through the Early Assistance Program.
5. The OPI Dispute Resolution Office issued the parties a Notice of Filing, Appointment of Investigator, and Request for District Response on March 15, 2023.
6. The Complaint Investigator contacted the Complainant on March 22, 2023, to seek clarification on the issues alleged in Complaint.
7. The Attorney for the District requested an extension of time to file the District's Response to the Complaint on March 24, 2023.
8. The OPI Dispute Resolution Office issued an Extension of Time to File District Written Response and Scope of Issues on March 28, 2023, extending the District's time to file a Response to April 10, 2023.
9. The Scope of Issues clarified that the allegation in the Complaint that "the LEA failed to treat Complainant as an equal IEP team member" was previously raised and addressed in the October 28, 2022 Final Report for State Complaint, 2022-06, and was therefore dismissed.
10. The District's response was received on April 10, 2023.
11. The Parent's reply to the District's response was received April 17, 2023.

B. Investigatory Process

The investigator reviewed the following records:

- The original Complaint and all supporting documentation including videotape recording and transcript from March 11, 2022 IEP meeting;
- The District's written response to the Complaint;
- The Parent's response to the District's written response and additional documentation submitted;
- Educational records relevant to this investigation;
- The investigator interviewed the Complaint via telephone;

- The investigator interviewed the Director of Student Services with District’s legal counsel present, via telephone; and
- OPI provided the Complainant and the District the opportunity to submit additional information for consideration during the complaint investigation.

C. Applicable Federal Regulations, State Statutes or Rules

- 34 C.F.R. § 300.9
- 34 C.F.R. § 300.17
- 34 C.F.R. § 300.101
- 34 C.F.R. § 300.320(a)(3)
- 34 C.F.R. § 300.321(a)
- 34 C.F.R. §300.322(f)
- 34 C.F.R. § 300.323(c)(2)
- 34 C.F.R. § 300.324(a)
- 34 C.F.R. § 300.324(b)
- 34 C.F.R. § 300.503(a)
- ARM 10.16.3505
- ARM 10.16.3662

D. Relevant Time Period for Investigation

Pursuant to 34 C.F.R. § 300.153(c) and ARM 10.16.3661, OPI has the authority to investigate alleged violations of IDEA and Montana special education laws that occurred within one year prior to the date the complaint was filed. In accordance with this limitation, the investigation and any findings of noncompliance will be limited to the period of time commencing March 10, 2022, through March 10, 2023. Additional information beyond this timeframe was considered for the purpose of a full investigation of the complaint.

E. Findings of Fact

Timeline

To assist in understanding the procedural background in this matter, the following timeline is provided:

October 28, 2020	IEP meeting to develop annual IEP
December 2, 2020	Continued IEP meeting
December 9, 2020	Continued IEP meeting
December 20, 2020	IEP signed with exceptions
February 8, 2021	Remote learning plan signed
September 8, 2021	Parent signed consent to an evaluation plan
October 15, 2021	Evaluation Report (ER) meeting
October 27, 2021	Continued ER meeting

January 17, 2022	Continued ER meeting
January 21, 2022	IEP meeting
March 11, 2022	Continued IEP meeting
April 8, 2022	District emailed the March 11, 2022 Proposed IEP to Parent
April 18, 2022	Prior Written Notice (PWN) provided to Parent and updated Proposed IEP sent through FlowForms.
April 28, 2022	District emailed the March 11, 2022 Proposed IEP and PWN to Parent

Background Information

1. Student was on an IEP under the eligibility category of other health impaired (OHI). Student also received English language learner (ELL) services. *March 11, 2022 proposed IEP*
2. The last IEP that Parent consented to was dated October 28, 2020, and signed with exceptions on December 20, 2020. *October 28, 2020 IEP, Multiple proposed IEPs, Interview with District personnel.*
3. The portions of the IEP that were agreed to have been implemented since that time. *Interview with District personnel.*
4. Student was 15 and a ninth grader at District's high school during the 2021-2022 school year. *March 11, 2022 proposed IEP.*
5. The District has considered if Student has a speech language impairment on multiple occasions. Student has not met eligibility criteria for a speech language impairment and the IEP team has not determined student needs speech and language pathology services as a related service.
6. Beginning in October 2021, multiple ER and IEP meetings occurred to determine eligibility and draft an annual IEP. *Timeline, Interview with District personnel.*
7. An IEP meeting on March 11, 2022 was scheduled and noticed on February 23, 2022, with follow up email notices on March 1, 7 and 8, 2022. *IEP meeting notices.*
8. Parent had submitted parental input regarding the development of the IEP. *March 8, 2022 email, Interview with Parent and January 22, 2022 Parental input.*
9. This parental input included proposed accommodations and modifications as well as proposed goals in the following areas: Language Content Vocabulary, Reading, Written Expression, Math, Self-Advocacy, Organization, Task Initiation, Task Completion. *January 22, 2022 Parental input.*
10. The March 11, 2022 IEP meeting was held at the school with Parent and an advocate participating via an online platform. *Recording of March 11, 2022 IEP meeting.*
11. The IEP meeting was recorded and a transcript was prepared from the meeting.
12. Those in attendance at the March 11, 2022 IEP meeting included an IEP facilitator from OPI, special education director, coordinator of special education, executive director of Indian education and ELL supervisor, principal, high school special education chair, special education case manager/service provider, regular education teacher, counselor, Parent, Parent's advocate. *March 11, 2022 proposed IEP.*

13. Since the IEP team had previously determined that Student was not eligible in the area of speech-language, a speech-language pathologist was not invited or in attendance at the March 11, 2022 IEP meeting. *Interview with District personnel.*

March 11, 2022 IEP Meeting

14. Parent believed Student needed specialized instruction in comprehension and language and had proposed goals through parental input. *Interview with Parent.*
15. At the March 11, 2022 IEP meeting, the IEP team determined that Student did not need language or comprehension goals. *Recording of March 11, 2022 IEP meeting.*
16. Student had been receiving ELL services which included supports in language and comprehension. *Recording of March 11, 2022 IEP meeting.*
17. Since Student received ELL services, there was discussion about including ELL accommodations in the supplementary aids and services section of the IEP to support Student instead of a special education language goal. *Recording of March 11, 2022 IEP meeting.*
18. Parent asked how ELL services and the IEP would work together. *Recording of March 11, 2022 IEP, Interview with Parent.*
19. The IEP team agreed that ELL supports and services would be included on the IEP as supplementary aids and services. *Recording of March 11, 2022 IEP meeting.*
20. Parent was concerned that the recommended ELL accommodations were not specific enough for all teachers to provide consistent, needed support. *Interview with Parent; Recording of March 11, 2022 IEP meeting.*
21. The IEP team agreed that the District would add ELL accommodations in the IEP supplementary aids and services section after the meeting. *Recording of March 11, 2022 IEP meeting.*
22. The District requested a social work evaluation to determine if Student had any social - emotional needs. *Recording of March 11, 2022 IEP meeting.*
23. Parent refused that evaluation. *Recording of March 11, 2022 IEP meeting.*
24. The March 11, 2022 IEP included goals in the area of self-help/independence. *March 11, 2022 proposed IEP.*
25. The self-help/independence goals were verbally agreed to at the IEP meeting. *March 11, 2022 proposed IEP, Recording of March 11, 2022 IEP meeting.*

Subsequent Facts to March 11, 2022 Meeting

26. On March 16, 2022, Parent emailed the District additional parental input and an IEP with edits and a question. On March 17, 2022, Parent sent updated parental input. *Emails between the Parent and District.*
27. On April 8, 2022, Parent emailed the District requesting a copy of the March 11, 2022 proposed IEP. *April 8, 2022 emails between Parent and District.*
28. The District emailed a copy of the March 11, 2022 proposed IEP to Parent on April 8, 2022. *April 8, 2022 emails between District and Parent.*

29. The District sent Parent a letter notifying Parent a copy of the IEP was sent through FlowForms and setting out the updates that were made as a result of parental input and request. *Letter dated April 18, 2022.*
30. The District updated the April 18, 2022 PWN, indicating the Parent requested the District to copy Student's ELL plan accommodations, WIDA Can Do Descriptors as accommodations into the supplementary aids and services section of the IEP. The District indicated it attached the WIDA Can Do descriptors document to the IEP. "Attaching a document to the IEP makes it a part of the IEP that cannot be implemented without." *April 18, 2022 PWN updated April 29, 2022.*
31. Emails between the District and Parent during April 20 to April 27, 2022, show the District again attempted to assist the Parent in locating the IEP that was sent via FlowForms. Parent was unable to locate it. On April 28, 2022, the District scanned and emailed the proposed IEP and PWN to the Parent. *Copy of scanned IEP; Interview with District personnel, Parent's supplemental documentation.*
32. ELL accommodations, as agreed to at the March 11, 2022 IEP meeting, were included in the supplementary aids and services section on the proposed IEP and attached ELL plan. *March 11, 2022 proposed IEP.*
33. Parent has not signed consent to the March 11, 2022 proposed IEP. *March 11, 2022 proposed IEP, Interview with District personnel.*
34. Progress reports dated April 18, 2022, June 3, 2022, November 18, 2022, and February 27, 2023, included data on progress on the IEP goals from the October 28, 2020 IEP. *Progress reports.*
35. In the February 27, 2023 progress report, Student had met all goals from the October 28, 2020 IEP with the exception of readiness to learn, where the progress report noted making progress, expected to meet goal. *February 27, 2023 Progress report*
36. A blank progress report listing the goals on the proposed March 11, 2022 IEP was provided with Student's report card to Parent in error on June 3, 2022. Accurate progress reports for the 2022 Spring semester were provided to Parent on August 9, 2022. *Interview with District personnel, Progress Reports.*
37. As part of Student's ELL services, self-help and independence skills were worked on in the general education setting; Student met objectives. *Interview with District personnel.*
38. These services were not specialized instruction through special education but were part of the general education curriculum and Student's ELL services. *Interview with District personnel.*
39. Parent verbally agreed at the March 11, 2022 IEP meeting to ELL accommodations being included in the IEP but has not provided written consent to any part of the proposed IEP. *March 11, 2022 proposed IEP, Interview with Parent.*
40. Since the March 11, 2022 IEP meeting, there have been additional meetings to discuss evaluations and finalize an IEP. *Interview with District personnel.*

F. Conclusions and Decision

Issue 1. Whether the District, pursuant to 34 C.F.R. § 300.321, convened an IEP team that included members with appropriate expertise to develop an IEP that addressed all of

Student’s special educational needs to ensure provision of a free appropriate public education (FAPE).

1. The IEP team must include the parent(s) of the child, not less than one regular education teacher, not less than one special education teacher, a representative of the school district, a person who can interpret the instructional implications of the evaluation results, and at the discretion of the parent or district, other individuals who may have knowledge or special expertise regarding child, including related service personnel as appropriate. 34 C.F.R. § 300.321(a).
2. To ensure that appropriate IEPs are developed for English learners with disabilities, the IEP team should include participants who have the knowledge or special expertise regarding the student’s language needs. “These could include persons with expertise in second language acquisition and other professionals, such as speech and language pathologists, who understand how to differentiate between limited English proficiency and a disability. The participation of these individuals on the IEP Team should help to ensure that appropriate academic and functional goals are developed for the child and the child is provided the necessary special education and related services, supplementary aids and services, program modifications and supports for school personnel designed to enable the child to advance toward attaining these goals. An IEP Team that includes all of the appropriate members should be able to make informed decisions about the content of an English Learner’s IEP (34 C.F.R. 300.321(a)(6)).” *Letter to Boals*, 80 IDELR 24 (OSEP 2021).
3. The required members of the IEP team were present at the March 11, 2022 IEP meeting. The District’s ELL supervisor was present at the March 11, 2022 IEP meeting. The ELL Supervisor works with and understands the language needs of ELL students.
4. The District had considered if Student has a speech language impairment on multiple occasions. Student has not met criteria for a speech language impairment and the IEP team has determined the Student does not need speech and language services as a related service; therefore, a speech and language pathologist was not a required IEP team member.
5. The IEP team had the requisite expertise to develop an appropriate IEP for Student at the March 11, 2022 IEP meeting.

OPI finds no violation.

Issue 2: Whether the District added acceptable ELL accommodations to the IEP developed at the March 11, 2022 IEP meeting as required by 34 C.F.R. § 300.324.

6. Students are not eligible for special education services strictly because of limited English proficiency. 34 C.F.R. § 300.306(b)(1)(ii). Regardless of eligibility under the IDEA, an English learner must receive needed English language services as a matter of right pursuant to federal civil rights law. *Dear Colleague Letter, English Learner Students and Limited English Proficient Parents* (DOJ, OCR 2015).
7. The IDEA does not require specific goals or services for any child. There is no requirement in IDEA that language development goals be included in an IEP of each English learner with a disability. Determinations to specific goals and services are made on an individual basis by the participants of the child’s IEP team. “Each child’s IEP must include a statement of the special education and related services, supplementary aids and services, program modifications and other supports that are designed to enable the child to advance

appropriately toward attaining the annual goals and to be involved in and make progress in the general curriculum (34 C.F.R 300.320(a)(4)(i)-(ii).” *Letter to Boals*, 80 IDELR 24 (OSEP 2021).

8. When developing an IEP, the team must consider the strengths of the child, the concerns of the parent, the results of evaluations and the academic, developmental and functional needs of the child. 34 C.F.R. § 300.324(a). Additionally, the IEP team must consider a number of special factors. Specifically, when a child has limited English proficiency, the IEP team must consider the language needs of the child as they relate to the child’s IEP. 34 C.F.R. § 300.324 (a)(ii). “...[D]ecisions regarding the extent to which an English learner’s disability affects the student’s participation in the general curriculum or whether the child needs interventions related to the student’s disability that impact the child’s developing English language proficiency are matters that should be addressed in the child’s IEP in light of the individual needs of the child.” *Letter to Boals*, 80 IDELR 24 (OSEP 2021).
9. The IEP team should consider the recommendations and suggestions of parent(s) but not all proposals need be included on the IEP. *Letter to Anonymous*, 20 IDELR 1232 (OSEP 1994).
10. At the March 11, 2022 IEP meeting, the IEP team discussed Student’s strengths and needs, and considered Parent’s written input, including proposed goals concerns. Parent also submitted additional written input on March 16 and 17, 2022.
11. The IEP team considered Student’s language needs during the development of the proposed IEP and determined that Student did not need specialized instruction in the area of language and that Parent’s proposed language goals were not required. The IEP team agreed that Student would benefit from ELL accommodations through IEP supplementary aids and services.
12. Student had been and would continue to receive ELL services through the District’s Limited English Proficiency program. Those services were outlined in Student’s ELL plan.
13. The March 11, 2022 proposed IEP included ELL accommodations as discussed at the IEP meeting and Student’s ELL plan with additional specificity on accommodations was attached.

OPI finds no violation.

Issue 3. Whether the District implemented the IEP as agreed to at the March 11, 2022 IEP meeting or another IEP as required by 34 C.F.R. § 300.324.

14. Proposals may be discussed during an IEP meeting, but the written language in the IEP is a district’s offer of FAPE. “The requirement of a formal, written offer creates a clear record that will do much to eliminate troublesome factual disputes many years later about when placements were offered, what placements were offered, and what additional educational assistance was offered to supplement a placement, if any.” *Union School District v. Smith*, 20 IDELR 987, 15 F3d 1519, 1526 (9th Cir. 1994).
15. After careful consideration of the Parent’s input, the District had an obligation to propose FAPE, even if that was different than Parent’s proposals.
16. The District provided a written IEP to Parent that the District believed provided FAPE to Student.

17. Montana requires parental consent to the IEP prior to its implementation. Districts shall implement an IEP as soon as the parent agrees with the proposed special education services and signs the IEP giving consent. ARM 10.16.3505(2).
18. If a parent and a district cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's IEP would be implemented in areas of agreement and the student's last agreed upon IEP would be implemented in the areas of disagreement until the disagreement is resolved. ARM 10.16.3505(2)(b).
19. Parent has not provided consent to any of the March 11, 2022 IEP.
20. If the IEP team cannot reach consensus, a school district must provide the parents with PWN of the agency's proposals or refusals, or both, regarding the child's educational program. 34 C.F.R. § 300.503(a). *Letter to Richards*, 55 IDELR 107 (OSEP 2010). That is, a district must propose FAPE based on the unique needs of the student after reasonable attempts to reach consensus have failed.
21. In this case, the Parent and the District did not always agree on what the Student needed in order to receive FAPE, but the District provided the required proposed IEPs and PWN of the District's determinations regarding the Student's educational program.
22. Although the Parent retains the power of consent, the District has an ongoing obligation to provide FAPE. ARM 10.16.3121(1).
23. The last agreed upon IEP was dated October 28, 2020, and signed with exceptions on December 20, 2020. There is no evidence that any other IEPs have been implemented since.

OPI finds no violation.

Issue 4. Whether the District implemented the IEP and provided progress notes on the goals from the March 11, 2022 IEP without the required consent for the IEP as provided in 34 C.F.R. § 300.9 and ARM 10.16.3505.

24. Districts shall provide periodic reports describing student's progress toward meeting the annual goals outlined in the IEP. 34 C.F.R. § 300.320(a)(3).
25. ELL services are separate from the IEP, unless included in the IEP.
26. ELL services were not part of Student's October 28, 2020 IEP. However, Student continued to receive ELL services within the general education curriculum and the regular education teachers reported on progress in those areas.
27. The ELL services provided addressed some of the skills outlined in the proposed self-help/independence goals on the proposed March 11, 2022 IEP.
28. On June 3, 2022, a progress report with goals from the proposed March 11, 2022 IEP was provided to Parent in error. This progress report did not provide any data or descriptions on student's progress and was effectively blank. The District remedied this error and provided a corrected progress report to Parent, reporting progress on the October 28, 2020 IEP goals.
29. Student's progress reports dated April 18, 2022, June 3, 2022, November 18, 2022, 2022 and February 27, 2023, also included data on progress on the IEP goals from the October 28, 2020 IEP.
30. Progress in other areas, including ELL and educational performance, was provided to Parent, though not as part of the IEP progress report. There is no evidence that the District implemented the March 11, 2022 IEP without parental consent.

OPI finds no violation.

Issue 5. Whether the District provided Parent with a copy of the IEP from the March 11, 2022 IEP to obtain consent for implementation of that IEP as required by 34 C.F.R. § 300.322(f) and ARM 10.16.3505.

31. Districts are required to provide a copy of student's IEPs to parents. 34 C.F.R. § 300.322(f).
32. Written parental consent must be obtained for annual placement of a student with disabilities in special education and related services prior to the placement. ARM 10.16.3505.
33. As part of the Complaint, Parent provided emails between the District and Parent showing the District provided multiple copies of the proposed March 11, 2022 IEP, including scanning and emailing a copy on April 28, 2022, to which Parent acknowledged receipt of the IEP.
34. The March 11, 2022 proposed IEP included the self-help/independence goals as well as ELL accommodations incorporated as supplementary aids and services in the IEP.
35. Parent has not provided consent to any portion of the March 11, 2022 proposed IEP.

OPI finds no violation.


Issue 6. Whether the District failed to provide Student a free appropriate public education (FAPE), in violation of 34 C.F.R. § 300.101, by not including the agreed upon accommodations in the March 11, 2022 IEP.

36. Students who are eligible for special education services are entitled to a FAPE. 34 C.F.R. § 300.101. The IDEA defines FAPE as special education and related services that are: (a) provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state education agency, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an IEP that meets the requirements of 34 C.F.R. § 300.320 through § 300.324. 34 C.F.R. § 300.17.
37. The United States Supreme Court in *Endrew F.* held that in order for a local education agency or district to meet its substantive obligation of FAPE, it must offer an IEP reasonably calculated to enable the student to make progress appropriate in light of the student's circumstances. *Endrew F. v. Douglas County School District. RE-I*, 137 S. Ct. 988 (2017).
38. Parent alleges the IEP team verbally agreed to ELL accommodations at the March 11, 2022 IEP meeting but that those accommodations were not subsequently included properly in the proposed IEP provided to Parent.
39. Issue 2 above determined the proposed March 11, 2022 IEP included appropriate accommodations in line with what was discussed in the March 11, 2022 IEP meeting. Although there is a misunderstanding as to what was verbally agreed to in the IEP meeting, the written IEP, as discussed in Issue 3 above, is controlling and is the District's offer of FAPE.
40. Although the District's proposed IEP provided to Parent after the March 11, 2022 IEP meeting may have been different from what Parent thought was agreed to at the meeting, it was reasonably calculated to allow the child to make progress, and therefore, met the FAPE standard.



OPI finds no violation.

G. 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).



JP Williams
State Director of Special Education

- c: Mandi Gibbs, Dispute Resolution/EAP Director (MFTS only)
- John Gorton, School Improvement/Compliance Unit Manger (MFTS only)
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