



March 8, 2024

**Sent via US Mail and/or SMFTS**



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **Final Report for In the Matter of** [REDACTED], 2023-04, Alleged Violations of the Individuals with Disabilities Education Improvement Act (IDEA) and Montana special education laws.

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] (Complainant) filed the Complaint on behalf of her daughter, [REDACTED] ([REDACTED]), (Student), a student in the [REDACTED] Public Schools (District). The Complainant 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 regulation at 34 C.F.R. Part 300 and ARM 10.16.3007 et seq. The Complaint alleges the following issues:

1. Did the District fail to develop appropriate measurable annual goals and present levels of academic achievement and functional performance?
2. Did the District fail to provide Student with extended school year services (ESY) during the summer of 2022 as required by 34 C.F.R. 300.106 and ARM 10.16.3324?
3. Did the District fail to provide Student with direct services in occupational therapy?
4. Did the District violate IDEA by failing to appropriately address Student's frequent absences, tardies and school refusal?
5. Did the District fail to implement the accommodations in Student's IEP?
6. Did the District violate IDEA by failing to provide Student with a dyslexia specific reading program as requested by Complainant?
7. Did the District fail to provide Student with an education in the least restrictive environment (LRE)?

8. Did the District deny Student a free appropriate public education (FAPE) by failing to provide Student with an individualized education program (IEP) reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances?
9. Did the District violate IDEA by failing to appropriately address Student's social, emotional, and behavioral challenges that were affecting her school day and academic progress.

### **Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant June 7, 2023.
2. The OPI Dispute Resolution Office contacted the District on June 7, 2023, and the District received a copy of the Complaint, as required by the Code of Federal Regulations (CFR) 34 C.F.R. 300.153(d) and Administrative Rules of Montana (ARM) 10.16.3662(3).
3. The Complainant and District agreed to extend the 60-day timeframe on July 6, 2023, in order to engage in mediation as permitted under 34 C.F.R. 300.152(b)(1)(ii). The mediation was held on January 25, 2024, and the mediation did not resolve any of the issues.
4. The OPI Dispute Resolution Office issued a Notice of Filing, Appointment of Investigator, and Request for District Response on January 26, 2024, to the District and Complainant.
5. After the Notice of Filing, Appointment of Investigator and Request for District Response was issued on January 26, 2024, additional allegations were received and added to previous allegations via correspondence dated February 6, 2024. It was noted that the filing date remained June 7, 2023, for all allegations.
6. The District submitted a written response to the issues in the Complaint on February 12, 2024.
7. OPI issued a letter of clarification on February 20, 2024, responding to the Complainant's request for an extension of time to submit additional relevant information.
8. A written rebuttal to the Response was received from the Complainant on February 22, 2024.

### **Investigatory Process**

The investigator reviewed the following records:

- The original letter of Complaint and all supporting documentation;
- The District's original response to the Complaint and all exhibits;
- The Complainant's rebuttal to the District and all exhibits; and
- The education records relevant to this investigation.

The investigator interviewed the Complainant and a grandparent via Zoom.

The investigator interviewed the General Education Teacher, Special Education Teacher and Special Education Coordinator, with counsel present via Zoom.

The OPI provided the Complainant and the District the opportunity to submit additional information for consideration during the complaint investigation.

**Applicable Federal Regulations, State Statutes or Rules**

34 C.F.R. 300.1	Purpose of IDEA
34 C.F.R. 300.17	Free Appropriate Public Education
34 C.F.R. 300.101	Free Appropriate Public Education
34 C.F.R. 300.106	Extended School Year
34 C.F.R. 300.114	LRE requirements
34 C.F.R. 300.320	Definition of individualized education program
34 C.F.R. 300.324	Development, review and revision of IEP.
ARM 10.16.3505	Parental Consent
ARM 10.16.3324	Extended School Year Services
MCA 20-7-469	Dyslexia – definition – screening – intervention

**Relevant Time Period for Investigation**

Pursuant to 34 C.F.R. 300.153(c) and ARM 10.16.3662, 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 June 7, 2022, through June 7, 2023. Additional information beyond this timeframe was considered for the purpose of fully investigating the complaint.

**Findings of Fact**

1. In June 2023, when this Complaint was filed, the Student had completed fourth grade at one of the District elementary schools. The Student is a learner eligible for services under the IDEA category of Multiple Disabilities, Specific Learning Disability and Speech Language Impairment. *District Written Response Exhibit I.*
2. Student’s IEP dated January 13, 2022, which Complainant signed approval of on January 13, 2022, was implemented at the beginning of the timeframe for this Complaint investigation. *District Written Response, Exhibit B.*
3. A summary of Student’s June 6, 2022 progress report on the January 13, 2022 IEP included the following relevant information. *District Written Response Exhibit D.*

Goal	Progress	Data and Description
Math: Fluency (add, subtract, multiply and divide) whole numbers.	Expected to meet goal.	Addition 5/5 (100% accuracy) Subtraction with borrowing 4/5 (80% accuracy) Student uses multiplication chart. Struggles with division and analog clock. Liquid measurement, fractions and area she is able to figure out.
Math: Two step word problems.	Expected to meet goal.	Student needs teacher help to solve 2 step word problems. Needs teacher help to read problem, can figure out the step 1 but struggles with step 2.
Reading: 1 <sup>st</sup> grade list of high frequency words	Expected to meet goal.	42/60 = 70% accuracy. Mastered previous sight words. Working in direct instruction curriculum still introducing new sight words.
Reading: Instructional level phonics to assist with decoding.	Expected to meet goal.	4/4 = 100% accuracy on Unit 9. Student still sounds out most of the words but not relying on teacher, breaks down independently.
Read: 1 <sup>st</sup> grade passage independently read 35 wpm 4 out of 5 trials.	Expected to meet goal	10/10 words correct (0 errors) 20 wcpm. More interest in reading independently.
Social/Emotional/Behavioral: Independently use strategy to regulate, return to task within 2 min, 4 out of 5 times	Expected to meet goal.	Drastic Improvement. Only two crying sessions, both times during big testing session where she felt overwhelmed. Data in May indicates an average 7 minutes to regulate and rejoin.
Speech: Phonemes 4 out of 5 opportunities and fading cues over 3 consecutive sessions.	Expected to meet goal.	VC, CV and CVC no assistance. CCVC, CVCC, deletes and creates new word 3 out of 5 opportunities (60%) accuracy and substitutes sounds 2 out of 5 opportunities (40% accuracy).
Speech: Spell words with blends and long vowels 4 out of 5 over 3 consecutive sessions.	Expected to meet goal.	Words with consonant blends spelled correctly 1 out of 5 opportunities.
Written Expression: With guidance write using phonetic spelling, capitals and punctuation with 90% accuracy in 4 of 5 opportunities.	Expected to meet goal.	Capitalizing and punctuation 81% accuracy average (mostly forgetting to punctuate). A multisensory approach has helped with letting her work on sentence structure rather than spelling.

4. According to a Prior Written Notice (PWN) dated June 10, 2022, the IEP team convened on June 10, 2022, to discuss the Student's need for ESY. It was explained then that the Team

used classroom data, program assessments, observations and teacher feedback to determine whether the Student required ESY. The District Coordinator indicated that a regression and recoupment process was used to determine the need for ESY. It was further explained that the District reviewed the Student's data before and after spring break (spring 2022) for regression. The District reported the Student had not regressed during this break. The District shared that current data and indicated that the Student was maintaining her IEP goals. *District Written Response Exhibit E, p.12.*

5. In the Complainant's response, she explained that the Student was not at her grade level, and she wanted the Student's emerging skills and breakthrough opportunities to be considered as part of the ESY determination. She explained the progress the Student was making was not adequate in order to close the 3-year learning gap. *Complainant's Rebuttal 2-22-24, p.8.*
6. As documented in the June 10, 2022 PWN, the District offered to provide supplies and a packet that the Student could work on during the summer. *District Written Response Exhibit E. p.12.*
7. The record contained a signature page from the June 10, 2022 IEP meeting documenting the IEP team participants. Because the meeting was held through Google Meet, the District had signed and dated the signature page for all participants on June 28, 2022. The District reported that the Team meeting occurred on June 10, 2022, but due to personnel contracting days, completing the PWN and providing information to the Complainant took a couple of weeks.
8. On July 7, 2022, the Complainant reached out through email to explain she had not received the summer work for the Student. The District Coordinator requested the Complainant confirm with the Teacher that she indeed wanted the work packets. The District Coordinator also clarified that the District was not providing these packets in lieu of ESY as Complainant stated. The ESY and extra activity packets were two different things. Complainant reported receiving the work packets via U.S. mail at the end of July. *Original Complaint, p.43.*
9. The Complainant approved the June 10, 2022 IEP amendment with exceptions on August 22, 2022. *District Written Response Exhibit E, p.11.* A summary of the Complainant's exceptions and disagreement with the determination of no ESY included:
  - a. The Student is significantly behind her peers and grade level standards. Prior to summer break in June of 2022, the Student showed that she had emerging skills and breakthrough opportunities. She was on the brink of gaining momentum in her literacy skills at the end of 3<sup>rd</sup> grade in June 2022.

- b. The only criterion used in the June 10, 2022 IEP meeting was regression and recoupment before and after the Student's spring break in spring of 2022.
- c. There was no consideration given to preventing substantial loss of skills or acquired or emerging skills or behavior.

*District Written Response Exhibit E, p.15.*

10. District and School staff indicated that until a parent signs consent on the IEP, the team continues to implement the last agreed upon IEP. Additionally, if the parent signs consent with exceptions, the team reconvenes to discuss the exceptions. During the time period when the Student's IEP Team was meeting regarding the exceptions, the last agreed upon IEP continued to be implemented. *District and School Staff Interviews, 3-5-2024.*
11. The IEP team reconvened on September 8, 2022. At the request of Complainant and the District, the State provided an IEP facilitator. A PWN documented the Team discussed the exceptions the Complainant had with the amended June IEP, reviewed goals, data collection and reporting and accommodations. It was requested by the Complainant that the Student receive reading instruction 1:1 in the special education room with no other students. The District rejected this request because the Student already received services in the special education classroom. It was stated that whether the services are provided 1:1 or in a small group, the services are individualized. The Complainant informed District that she had sought outside tutoring to address the Student's dyslexia and this required the Student to have a late start two days per week. District staff explained the Student would be missing core instruction time. Complainant acknowledged this and stated it was a parent's decision. *District Written Response Exhibit F, p.8.*
12. The School explained the Student would be counted tardy on tutoring days and that the Complainant would need to call in and excuse the Student each day. *Complainant Rebuttal to District 2-22-24 Exhibit D-1, p.4.*
13. The Complainant offered her consent with exceptions on October 3, 2022 to the amendment developed at the September 8, 2022 facilitated meeting. A summary of the Complainant's exceptions included:
  - a. Ongoing concerns about social emotional goals, documentation, communication and implementation of the Student's supports and services.
  - b. Requesting more detail and clarity on the Student's academic goals, in reading, math and writing.

- c. Needing more understanding of the processes and procedures for documenting and stating information in the Student’s IEP, as well as how IEP implementation is communicated and tracked.

*District Written Response Exhibit F. p. 8-10.*

- 14. Through email on October 17, 2022, the Complainant requested a meeting with the General Education and Special Education Teacher. The Special Education Teacher requested the Principal attend as well. The group met on October 27, 2022, to problem solve the Student’s attendance and school anxiety. *Original Complaint, p. 45.*
- 15. The Special Education Coordinator acknowledged there was a period of time in the fall 2022 that the Student didn’t receive speech services due to staff turnover and a delay in hiring a replacement. *District and Staff Interviews 3-5-2024.*
- 16. On November 4, 2022, the IEP Team convened. A PWN proposed the following changes:
  - a. Update the IEP to include that behavior which impedes the Student’s learning. The Team agreed behavior is being addressed in the social/emotional/behavior goal and accommodations. The Team agreed to create a positive support plan documenting all of the supports that are in place.
  - b. Some of the IEP goals were clarified and divided into smaller more specific goals.
  - c. The Team agreed to increase speech services to twice per week to make up for speech minutes that were missed while the position was being filled earlier in this school year.

This resulted in another IEP amendment dated December 2, 2022, which is the same day Complainant provided her consent. *District Written Response Exhibit G, p.8,10-12.*

- 17. A summary of the Student’s November 11, 2022, progress report for the January 13 2022 amended IEP includes the following relevant information. *District Written Response Exhibit M.*

Goal	Progress	Data and Description
Math: Fluency (add, subtract, multiply and divide) whole numbers.	Expected to meet goal.	Student started 4 <sup>th</sup> grade reviewing 3-digit addition and subtraction. She can add and subtract (w/out borrowing) with 75% accuracy. 4 <sup>th</sup> grade expectation is adding and subtracting 4-digit numbers. Student is able to add and subtract (with and without borrowing) 4-digit numbers at 77% accuracy. Requires zero prompts (independent).

Math: Two step word problems.	Expected to meet goal.	Student can solve one step word problems read to her with 100% accuracy and 0 prompts. Two step word problems require 3 prompts. Once she knows the operation (+/-) she can solve independently 100%. If it involves (x/÷) she can only solve with 50% accuracy.
Reading: 1 <sup>st</sup> grade list of high frequency words	Expected to meet goal.	Student can read sight words with 75% accuracy. Daily list is smaller, and she can read it with 92% accuracy.
Reading: instructional level phonics to assist with decoding.	Expected to meet goal.	Student can read one-syllable words short vowels, consonant blends/digraphs 93% accuracy; random one-syllable words short vowels 80% accuracy; one syllable words consonant blends short vowels 47% accuracy.
Read: 1 <sup>st</sup> grade passage independently read 35 wpm 4 out 5 trials.	Expected to meet goal.	Reads 14wpm. Student relies on sounding words out but is starting to read sight words more automatically. When she reads without sounding out much faster.
Social/Emotional/Behavioral: Independently use strategy to regulate, return to task within 2 min, 4 out of 5 times	Expected to meet goal.	Ups and downs. On avg. takes up to 30 min to return to baseline. Tutoring days were often more difficult. If she didn't feel good longer to regulate than if she was frustrated with a math problem (within 10 min).
Speech: Phonemes 4 out 5 opportunities and fading cues over 3 consecutive sessions.	Expected to meet goal.	VC, CV and CVC no assistance. CCVC, CVCC, deletes and creates new word 3 out 5 opportunities (60%) accuracy and substitutes sounds 2 out of 5 opportunities (40% accuracy).
Speech: Spell words with blends and long vowels 4 out of 5 over 3 consecutive sessions.	Not expected to meet goal.	Words with consonant blends spelled correctly 1 out 5 opportunities.
Written Expression: With guidance write using phonetic spelling, capitals and punctuation with 90% accuracy in 4 of 5 opportunities.	Expected to meet goal.	When writing independently, doesn't always remember to capitalize or use punctuation. She can write a sentence when only some words (verb to use in the sentence) provided with 31% accuracy. She can identify mistakes in sentences with 80% accuracy. Needs help with spelling mistakes.

18. According to the Daily Attendance Report, the Student missed 8.5 days and recorded 27 tardies during the first trimester of the 2022 – 2023 school year. *District Written Response Exhibit P, p.3.*

19. The IEP Team met on December 20, 2022, to develop the Student's annual IEP. Relevant portions include:

a. The Complainant stated her educational concerns continue to be those in the current IEP. School staff indicated the Student benefited from specially designed instruction in math, reading, speech/language, social/emotional/behavioral, and written expression in order to better access general education.

b. Present Levels and Goals are summarized:

i. Math: Student has great base math skills. She is easily overwhelmed learning new concepts. Supports make her feel more confident. When adding and subtracting, Student rarely makes a calculation error. She is not as confident in multiplication and division. Word problems, including multi-step problems, continue to need support.

- GOAL #1: Student will fluently add, subtract, with fewer than 2 prompts, using strategies such as the relationship between operations, traditional algorithms, and mental strategies with 90% accuracy in 4 out of 5 trials as measured by the special education staff during the IEP year.

- GOAL #2: Student will fluently multiply and divide whole numbers, with fewer than 2 prompts, using strategies such as the relationship between operations, traditional algorithms, and mental strategies with 90% accuracy in 4 out of 5 trials as measured by the special education staff during the IEP year.

- GOAL #3: When problems are read aloud the Student will solve one and two-step word problems with less than 2 prompts using the four operations by identifying the operations in the problem and using computation strategies to solve with 80% accuracy in 4 out of 5 trials as measured by the special education staff during the IEP year.

ii. Reading: Student is working at the 1<sup>st</sup> grade level. She is slowly gaining confidence in her reading but is easily overwhelmed with new or something she perceives is too hard. The Student is working on sight words, phonics skills and reading fluency. Same age peers are reading chapter books and working on more complex comprehension skills. They are expanding their

vocabulary and reading multisyllabic words. The Student continues to work on core phonics so she can engage with text independently.

- GOAL #1: When given a list of 1<sup>st</sup> grade high frequency sight words, Student will independently read the words without sounding them out (flash speed) with 80% accuracy in 4 out of 5 trials as measured by the special education staff during the current IEP.
  - GOAL #2: Student will apply 1<sup>st</sup> grade level instructional phonics and word analysis skills to help her decode words that include consonant digraphs and blends, regularly spelled one-syllable words, and final -e words with 90% accuracy in 4 out of 5 trials as measured by special education team during the current IEP.
  - GOAL #3. When given a 1<sup>st</sup> grade level passage, Student will independently read the passage with 40 correct words per minute in 4 out of 5 trials as measured by the special education team during the current IEP year.
- iii. Social/Emotional/Behavioral: Student feels anxiety and frustration when she perceives something difficult, being unsure of directions, feeling sick or not wanting to do something. Her dysregulation looks like crying, putting her head down, pushing back, or going to a safe spot in the room. There has been growth in this area. She is usually able to calm and rejoin activities in 10 minutes or less. Although comfortable in the special education room, she is far less comfortable in the general education classroom. With the addition of positive behavior support in her general education classroom she has been able to transition better.
- GOAL #1: When presented with a situation known by the Student to be anxiety or frustration producing for her, she will independently use a strategy/find a solution to regulate back to an expected emotional state and return to task at hand within 5 minutes, in 4 out of 5 instances as measured by the special education staff during the current IEP year.
- iv. Speech/Language: Student's phonological awareness is emerging. Student has been practicing how to integrate phonemic awareness skills to assist with encoding.

- GOAL #1: Student will delete a sound from a consonant blend to create a new word in 4 out of 5 opportunities with fading cues over 3 consecutive sessions as measured by speech language data.
  - GOAL#2: Student will substitute a sound from a consonant blend to create a new word in 4 out of 5 opportunities with fading cues over 3 consecutive sessions as measured by speech language data.
  - GOAL #3: Student will encode 1-syllable words with final consonant blends in 4 out of 5 opportunities with fading cues over 3 consecutive sessions as measured by speech language data.
  - GOAL #4: Student will encode 1-syllable words with 3 letter consonant blends in 4 out of 5 opportunities with fading cues over 3 consecutive sessions as measured by speech language data.
- v. Written Expression: Student is working to write a sentence independently. With the help of accommodations, she is able to follow expectations in the classroom. The Student's writing support has been adapted, words are available for her to choose from, and she manipulates them into a sentence. She practices writing skills by "fixing" sentences. Using this method she was able to write five sentences independently and with 75% accuracy. She did not remember to capitalize the first word of the sentence but she did add ending punctuation. Same age peers are working on writing multi-paragraph text to tell a story, inform or give an opinion. They are also working on writing more complex sentences with details.
- GOAL #1: With guidance and support, Student will write using phonemic spelling, capitals, and punctuation to produce writing focused on a specific topic with 80% accuracy in 4 out of 5 opportunities as measured by special education staff during the current IEP year.
- c. Special Education services included:
- i. Math (Special education Setting) 150 minutes per week.
  - ii. Reading (Special Education Setting) 150 minutes per week.
  - iii. Social/Emotional/Behavioral (Special Education Setting) 30 minutes per week.
  - iv. Written Expression (Special Education Setting) 150 minutes per week.
- d. Speech Language was provided 30 minutes per week in a special education setting.

- e. The IEP contained numerous supplementary aids and services to support the Student's success in the general education classroom. Relevant instructional aids and services include:
  - i. OT consult to support sensory regulation skills.
  - ii. Access to sensory tools and scheduled sensory breaks.
  - iii. Break spot in classroom.
  - iv. Positive behavior support plan for classroom.
  - v. Extra time on assignments.
  - vi. Material read aloud.
  - vii. Scribe for longer assignments.
  - viii. Use of speech to text for longer written assignments.
  - ix. Weekly email home based on the academic standards for the week.
- f. The Team determined that Extended School Year services are necessary in reading fluency.
- g. All participants signed the signature page on December 20, 2022.

*District Written Response Exhibit I.*

20. The Positive Behavior Support Plan included the following relevant information:

- a. The target behavior was work avoidance as a way of escape or communicating sensory needs.
- b. The behavior is noticed when the student is required to do a lot of reading, a change in her schedule, presentation of a new concept, requirement to complete lots of writing, confusion with expectations and not feeling well (sick).
- c. Interventions included: access to oral inputs, using a gem jar (earning gems as rewards); transition before everyone else; and providing a structured schedule, including front loading big changes.

*District Written Response Exhibit H.*

21. A PWN dated December 20, 2022, memorialized the IEP Team's decisions. Salient portions include:

- a. Discussion of strengths and educational need. The Team discussed the Student's behavior and impact on learning, specifically identifying that this need was addressed through goals and a positive behavior support plan. The Student's present levels were reviewed and the District proposed goals.

- b. After a review of the IEP data from the current school year, the Team determined the Student qualified for extended school year services in the area of reading fluency. The Team discussed adding speech information to emails going between school and home to assist with front loading and reinforcement.
- c. The Team discussed occupational therapy services, specifically consult versus direct services, and chose to continue to use a consultative model.

*District Written Response Exhibit I, p.14.*

22. It was noted by the Complainant that School staff and the Complainant met on January 18, 2023. The Complainant requested information on the Student's progress, ongoing attendance issues and potential reasons for the Student's school avoidance. At one point, there was a discussion about setting up a job for the Student to complete in the office. School staff reported that due to constant changes in office staff, having the Student check in at the office was not a good solution. Instead, it was determined the Student would have a soft start, meaning she would start her day in the resource room with the special education and fewer students and transition into the general education classroom at her own pace. It was noted the Complainant informed the School that the Student's tutoring had changed to one day per week. *Complainant's Rebuttal 2-22-24, p.7 and District Staff interviews 3-5-2024.*

23. On February 8, 2023, the Parent signed that she approved the Student's December IEP with exceptions. The following exceptions were noted:

- a. The team discussed strategies to transition the Student from home to school in the morning such as breakfast in Special Education Teacher's room or creating a morning job.
- b. The Team discussed a new reading program, specifically transitioning [Student] into reading group from one-to-one instruction.
- c. Complainant was concerned about not knowing what had been implemented since the previous meeting or how [Student] was doing in school. She requested more frequent communication about the Student's academic and social/emotional components. *District Written Response Exhibit I, p.15.*

24. A PWN dated February 10, 2023, stated the IEP team met to discuss the Complainant's requests. The Complainant requested a functional behavioral assessment. Additionally, she wanted supports for dyslexia, and weekly communication. It was noted that the Team also addressed the Complainant's exceptions from the December 2022 IEP. The District proposed:

- a. Completing the requested functional behavioral assessment (FBA).
- b. Amending the IEP supplementary aids and services section to include weekly and academic and behavioral communication.
- c. Principal sending a link to Complainant for schoolwide social/emotional curriculum used.
- d. Stating the information provided by the Complainant regarding December 20, 2022 PWN would be attached to the IEP for the notes.

*District Written Response, Exhibit J, p.13.*

25. The School indicated that the Student had been utilizing a soft start when she came to school. The Student started in the resource room and then transitioned into the general education classroom when ready. The Special Education Teacher indicated the Complainant typically walked the Student to the resource room each day. *District Staff Interviews 3-5-2024.*

26. The District rejected Complainant’s request for specific dyslexia staff training explaining staff were already appropriately qualified to teach students with learning disabilities. Also, the District rejected Complainant’s request for another paraeducator to assist in the special education room. The District noted staffing was not an IEP team decision. The District confirmed that current staffing levels allowed for the full implementation of the Student’s IEP. *District Written Response, Exhibit J, p.13.*

27. During the second trimester of the 2022 - 2023 school year, it was reported that the Student missed 36.5 days of school and recorded 36 tardies. *District Written Response Exhibit P, p.3.*

28. A summary of the Student’s March 27, 2023, progress report for the December 20, 2022 amended IEP includes the following relevant information. *District Written Response Exhibit N.*

Goal	Progress	Data and Description
Math: Fluency (add and subtract) with fewer than 2 prompts	Expected to meet goal.	Student is able to add and subtract up to 4 digit numbers with 80% accuracy on avg. Calculation mistakes in one column cause her to miss the problem.
Math: Fluency (multiplication and division) with fewer than 2 prompts	Expected to meet goal.	Able with zeros (tens or hundreds) with 93% accuracy. Started to multiply multidigit numbers. She is confident with 1 digit multipliers by not as confident with 2 digit multipliers. She still requires teacher prompting. She can use her multiplication table to do simple division.

Math: Word problems, solve one and two step problems with less than 2 prompts	Expected to meet goal.	Student requires an avg. of 3 prompts to solve word problems. She solves them with 90% accuracy when supported by the teacher. Independently she can solve one step word problems at 50% accuracy.
Reading: 1 <sup>st</sup> grade list of high frequency words	Expected to meet goal.	Student is able to read her sight words with 82% accuracy. Many of the words are in the new curriculum an she is ale to read them independently within this context.
Reading: Instructional level phonics to assist with decoding.	Expected to meet goal.	Student is working on reading one syllable words with short vowel sounds and blends with 85% accuracy. She is gaining confidence.
Read: 1 <sup>st</sup> grade passage independently read 40 wcpm 4 out of 5 trials.	Expected to meet goal	Reads 17 wcpm. If she is interested in passage she is more enthusiastic.
Social/Emotional/Behavioral: Independently use strategy to regulate, return to task within 5 min, 4 out of 5 times	Expected to meet goal	Student experienced two different types of escalations. In the beginning escalations were during reading in special education classroom. When reading program changed this changed. Switched in second half to escalation in math when presented with new concept. Dysregulation lasted for 25 minutes. Escalations were shorter in small group than when one to one with special education teacher. Multiple escalations in one day rarely occur any longer.
Speech: Deleting sounds from consonant blend – create a new word 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Expected to meet goal.	Student deletes sounds from consonant blend to create a new word in 3 out of 5 opportunities when given multisensory support.
Speech: Substitute a sound from a consonant blend to create new word 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Expected to meet goal.	Student substitutes sound from a consonant blend to create a new word in 3 out of 5 opportunities when given multisensory support.
Speech: Encode 1 syllable words with final consonant blends 4 out of 5 opportunities with fading	Expected to meet goal.	Student accurately encodes 1-syllable words with final consonant blends in 3 of 5 opportunities. She is hesitant to begin writing and needs reassurance.

cues over 3 consecutive sessions		
Speech: Encode 1 syllable words with 3-letter consonant blends 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Goal not yet started.	Goal not yet started as primary focus has been on 2-letter blends.
Written Expression: With guidance write using phonetic spelling, capitals and punctuation with 80% accuracy in 4 of 5 opportunities.	Expected to meet goal.	Student missed a lot of writing instruction during the trimester. Student has moved to new curriculum and is able to practice spelling and sentences with each lesson. She is able to write a complete sentence with 70% accuracy. She often forgets to capitalize the first word or add punctuation.

29. An evaluation report dated April 6, 2023, outlined the result of the functional behavior assessments conducted by the District. The evaluation included a comprehensive review of classroom data, assessments, attendance, classroom observations, and a functional behavior assessment conducted by a school psychologist. Relevant information included:

- a. Overall, it was mentioned that Student’s academic work has been affected by the Student’s absences. She has not shown much improvement when compared to classmates in math and reading due to her absences.
- b. The Complainant and School staff reported that the Student demonstrated refusal behavior. Complainant reported the Student’s refusal behavior was primarily observed by refusing to come to school and School staff were more likely to see work refusal to starting and/or complete an academic task she perceives as challenging or new. It was noticed that the function of the Student’s refusal behavior appeared to be escape, including sensory stimuli. She may engage in the behaviors when she has to come school, the academic task is new, there is a change in routine, the sensory environment is too stimulating, and/or the task involves reading. *District Written Response Exhibit K, p.13.*

30. A PWN on April 6, 2023, memorialized the actions of the IEP Team. School staff suggested implementing positive rewards on top of the gem jar for attending school by a specific time. This included being able to invite a peer for a fun interaction during lunch, etc. The Team discussed shortening the length of the Student’s day but ultimately rejected this solution at that time. The School and Complainant agreed to exchange ideas, thoughts and strategies

that could be used to increase attendance and engagement once the Student is at school. *District Written Response Exhibit K, p.4.*

31. The Complainant and School staff reported, various members of the IEP Team met on May 4, 2023, and again on May 16, 2023, and continued to problem solve and discuss ways to support the Student's success at school, including attendance. The District and Complainant discussed additional ideas about getting the Student to school on time, including providing transportation. The Complainant didn't see transportation assisting. It wasn't that the Complainant couldn't drive the Student to school. Instead, it was that the Student refused to go to school. *Complainant's Rebuttal 2-22-24, p.13.*
32. The Complainant expressed that the general education classroom was overwhelming to the Student given her ability to access the general education curriculum. She was interested in the Student being placed in a smaller environment with more 1:1 service. Complainant specifically requested information regarding the District's Structured Learning Program (SLP). The District described this program as a center based, self-contained classroom to support students with intensive behavior needs. The Special Education Coordinator indicated that three of the eight elementary schools in the District had a SLP. During interviews with the School and District staff they explained that students in this program had behavior needs that far exceeded and differed greatly from the needs of the Student. They described the Student's behavior as work refusal and anxiety with nonpreferred tasks. *Original Complaint, p.16 and Staff Interviews 3-5-2024.*
33. During the third trimester, it was reported that the Student missed 21 days of school and recorded 35 tardies. *District Written Response Exhibit P, p.3.*
34. A summary of the Student's June 7, 2023 progress report for the December 20, 2022 amended IEP includes the following relevant information. *District Written Response Exhibit O.*

Goal	Progress	Data and Description
Math: Fluency (add and subtract) with fewer than 2 prompts	Met Goal.	Student is adding and subtracting 4 digit numbers with an average 95% accuracy.
Math: Fluency (multiplication and division) with fewer than 2 prompts	Expected to meet goal.	With the use of multiplication chart Student is making great growth. Can multiply 4 digit by 1 digit numbers with 77% accuracy; and 2 digit by 2 digit with 67% accuracy.
Math: Word problems, solve one and two step problems with less than 2 prompts	Expected to meet goal.	Student working on fractions. Student was able to solve word problems with 60% accuracy. Student requires 3

		prompts for two step word problems. Student required more teacher support in understanding fractions.
Reading: 1 <sup>st</sup> grade list of high frequency words	Expected to meet goal.	Student is reading her current “heart” sounds (high frequency words) with 90% accuracy.
Reading: Instructional level phonics to assist with decoding.	Expected to meet goal.	Student is currently reading words with short vowels and bends with 90% accuracy.
Read: 1 <sup>st</sup> grade passage independently read 40 wcpm 4 out of 5 trials.	Expected to meet goal.	On average she is able to read 30 correct words in a minutes but her most recent passage she was able to read 42 correct words in a minute.
Social/Emotional/Behavioral: Independently use strategy to regulate, return to task within 5 min, 4 out of 5 times	Expected to meet goal.	Student’s escalation has decreased immensely in frequency and length. She only had 9 dysregulations this trimester and they only average around 15 minutes.
Speech: Deleting sounds from consonant blend – create a new word 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Expected to meet goal.	Student deletes a sound from a consonant blend to create a new word in 3 out of 5 opportunities when given multisensory support.
Speech: Substitute a sound from a consonant blend to create new word 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Expected to meet goal.	Student substitutes sound from a consonant blend to create a new word in 3 out of 5 opportunities when given multisensory support.
Speech: Encode 1 syllable words with final consonant blends 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Expected to meet goal.	Student accurately encodes 1-syllable words with final consonant blends in 3 of 5 opportunities. She is hesitant to begin writing and needs reassurance.
Speech: Encode 1 syllable words with 3-letter consonant blends 4 out of 5 opportunities with fading cues over 3 consecutive sessions	Goal not yet started.	Goal not yet started as primary focus has been on 2-letter blends.
Written Expression: With guidance write using phonetic spelling, capitals and punctuation with 80% accuracy in 4 of 5 opportunities.	Expected to meet goal.	Student missed a lot of writing instruction during the trimester. Student has moved to new curriculum and is able to practice spelling and sentences with each lesson. She is able to write a complete sentence

		with 75% accuracy. She is able to spell with 77% accuracy.
--	--	--

35. The Complainant provided a copy of the communication framework the School used from March 13, 2023, to June 2, 2023. The communication included the Student's schedule throughout the day and specified activities that took place by subject. The School also described the Student's behavior and engagement. It is noted that during this time period, the Student was dysregulated eight times. On almost every day, the Student's arrival at school was noted at 9:30 a.m. or later. *Complainant's Rebuttal 2-22-24, Exhibit N.*

**Conclusions**

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has FAPE available to them, including special education and related services that meet the unique needs of individual students. 34 C.F.R. 300.1.
2. FAPE must be individually designed to meet the unique needs of an eligible student, and a school district must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the student's unique circumstances. *Bd. of Educ. of the Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 553 IDELR 656 (1982) and *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 69 IDELR 174 (2017).

**Appropriate Measurable Annual Goal and Present Levels of Academic Achievement and Functional Performance**

3. The child's present level of academic achievement and functional performance should describe the whole child and provide a baseline that reflects the entire range of the child's needs, including both academic (reading, math, communication, etc.), and nonacademic (daily life activities, mobility, etc.) areas. This statement should provide relevant background information about the child's areas of need, strengths, interests, and learning style. 34 C.F.R. 300.324(a) and 34 C.F.R. 300.320(a)(1).
4. The description of the child's present levels of academic achievement and functional performance must contain sufficient detail to allow the IEP team to determine the extent of the child's abilities and special education needs. *S.W. v. Governing Bd. of E. Whittier City Sch. Dist.*, 473 Fed.Appx. 531, 60 IDELR 125 (9th Cir. 2013, unpublished).
5. The IDEA requires that every IEP include a statement of measurable annual goals, including academic and functional goals, designed to: meet the child's needs that result from the child's

disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability. 34 C.F.R. 300.320(a)(2)(i).

6. The description of annual goals should be specific enough to allow the district to determine whether the student made progress and also make clear which specific skills will be required in order to achieve those goals. *D.S and A.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 54 IDELR 141 (3rd. Cir. 2010).
7. The IEP team need not draft IEP goals in a manner that the parents find optimal, as long as the goals are objectively measurable. *Bridges v. Spartanburg County Sch. Dist. Two*, 2011 WL 3882850, 57 IDELR 128 (D.S.C. 2011, *unpublished*).
8. The record suggests that the IEP goals developed for the Student were based on her current needs. Although Complainant was concerned with the fact that grade level curriculum caused the Student's ongoing anxiety, the School made appropriate adaptations of the grade level standards to meet the Student's unique needs, which is what the IDEA requires. The IDEA ensures that students with disabilities are provided access to the same curriculum as non-disabled peers.
9. The file contained multiple IEPs and amendments in which the present levels of academic achievement and functional performance described the Student's academic difficulties with math, reading, writing, speech and social emotional needs. The target of each goal was described as a grade level standard but the goal itself addressed a skill at the Student's instructional level. Based on these facts, it is reasonable to conclude, the District developed descriptive present levels of academic achievement and functional performance, developed measurable annual goals for the Student and measured progress consistent with the Student's IEP.

### **Extended School Year Services**

10. The term "ESY services" means special education and related services that:

Are provided to a child with a disability:

- Beyond the normal school year of the public agency;
- In accordance with the child's IEP; and
- At no cost to the parents of the child; and
- Meet the standards of the state educational agency.

34 C.F.R 300.106(b).

11. Individualized determinations of ESY services must be made by using the IEP process. 71 Fed. Reg. 46,582 (August 14, 2006).
12. Because the IDEA does not guarantee the best possible education, ESY programming is not provided for the purpose of maximizing a student's educational opportunities. See, e.g., *Cordrey v. Euckert*, 917 F.2d 1460, 17 IDELR 104 (6<sup>th</sup> Cir. 1990), cert. denied, 110 LRP 38027, 499 U.S. 938 (1991).
13. Pursuant to 34 C.F.R. 300.106 and ARM 10.16.3324, each public agency must ensure that ESY services are available as necessary to provide FAPE to a Student. ESY services must be provided only if a child's IEP team determines, on an individual basis, and in accordance with 34 C.F.R. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.
14. "Extended school year services are provided to maintain identified skills and prevent or avoid substantial loss of previously acquired or emerging skills or behaviors." *OPI, Special Education in Montana*, October 2021 (Page 128, Question 1). IEP teams shall use recoupment and regression as the criteria for determining eligibility for ESY services. ARM 10.16.3324(2).
15. In this case, the IEP convened on June 10, 2022, to determine whether the Student required ESY during the summer break. The IEP team reviewed IEP classroom data, program assessments, observations and teacher feedback, regression data collected over spring break and progress data to determine that the Student didn't need ESY as part of her FAPE. The Student made slow but steady progress without ESY services, indicating the Student did not need ESY in order to receive FAPE. The Complainant expressed concern with the Student being three years behind her peers and promoted this as a reason to provide ESY. It is important to remember that ESY is not required to get more benefit or maximum benefit, rather it is required in order for the student to receive FAPE. The District was not required to provide ESY in 2022 after the IEP team appropriately determined it was not necessary for the Student to receive FAPE.

### **Occupational Therapy**

16. Supplementary aids and services mean aids, services and other supports that are provided in regular education classes, other education related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 34 C.F.R. 300.114 through 300.116. 34 C.F.R. 300.42.

17. It was noted that the Occupational Therapist attended the December 2022 IEP meeting. As documented in the PWN, the Team had discussed occupational therapy services, specifically, the consult model versus the direct service model, and had agreed to keep occupational therapy consult as a support. Although referenced by the Complainant, the record does not support that an occupational therapy evaluation was requested or conducted during the time period relevant to the Complaint. The Complainant reported having a private occupational therapy evaluation conducted in March of 2023, but the District reported not having a copy of this evaluation until this Complaint was initiated.
18. In each of the Student's IEPs, occupational therapy was listed as consultative services to support the Student's sensory needs. The Special Education Teacher reported that she consulted weekly with the Occupational Therapist to brainstorm ideas to address the Student's sensory needs. It is reasonable to conclude the Student received consultative occupational therapy according to her IEP.

#### **Accommodations**

19. Public agencies must ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a child's IEP is informed of her specific responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the child's IEP. 34 C.F.R. 300.323(d)(2).
20. The record indicated the Student received accommodations throughout her school day. For example, the General Education Teacher explained she provided communication to the Complainant regarding educational standards that were worked on in class, the Student was provided a quiet spot to access when she became dysregulated, the Special Education Teacher described consulting with the Occupational Therapist on a weekly basis to provide the Student with sensory support, and staff described the implementation of the Student's Positive Behavior Plan to address the Student's anxiety with nonpreferred tasks. Based on the totality of the documentation in the Student's record, Staff were aware of the Student's accommodations and implemented them throughout her school day.

#### **Social Emotional Behavior -- Absences, Tardies, and School Refusal**

21. If a student is consistently absent and truancy is affecting a student's ability to receive the services in the IEP, the district should take steps to address the issue. Failing to do so may amount to an IEP implementation failure. *Joaquin v. Friendship Pub. Charter Sch.*, 188 F.Supp.3d 1, 66 IDELR 64 (D.D.C. 2015)

22. The School met informally on at least four occasions to problem solve and brainstorm with the Complainant regarding the Student's attendance and the ongoing struggle of getting the Student from home and school. The IEP Team convened on six occasions, including developing the Student's annual IEP in December 2022, to review and refine the Student's IEP, and address the Student's current educational needs. This included the development of incentives to get the Student to school, creating a positive behavior plan, setting up a soft start in the resource room, conducting a functional behavior assessment and offering transportation.
23. The District remained responsive to the Student's ongoing attendance and anxiety needs. The record supports that when the Student was in school, she received services outlined in her IEP. The lack of consistent progress on IEP goals and the continued gap in the general curriculum was not a result of an IEP implementation failure or an IEP that was inappropriately developed, rather the Student's continued absences interfered with meaningful progress.

### **Dyslexia**

24. The Montana Dyslexia Screening and Intervention Act MCA 20-7-469(3)(a) states that in alignment with the existing requirements of the IDEA rules of the board of public education, and rules of the superintendent of public instruction, that school districts shall establish procedures to ensure that all resident children with disabilities, including specific learning disabilities resulting from dyslexia, are identified and evaluated for special education and related services as early as possible.
25. While a district should maintain an open discussion with parents regarding the use of various educational methodologies, the district ultimately decides which methodology to utilize. Even if a parent prefers a specific methodology, a district is not obligated to carry out a specific program or employ a specific methodology in providing for the education of a student with a disability. *Carlson v. San Diego Unified Sch. Dist.*, 380 Fed. Appx. 595, 54 IDELR 213 (9th Cir. 2010, *unpublished*) (noting that a parent's disagreement with the district's educational methodology was insufficient to establish an IDEA violation); and *Matthews v. Douglas County Sch. Dist. RE 1*, 2018 WL 4790715, 73 IDELR 42 (D. Colo. 2018, *unpublished*) (holding that a district did not violate the IDEA when it used the Wilson Reading System to provide instruction to a high schooler with dyslexia and other disabilities since some educational methodologies share the same core instructional approach).
26. The fact that the District implemented a reading program that was not selected or agreed to by the full IEP Team, including the Parent, did not make it inappropriate. The District has

latitude when selecting the specific methodology, designing daily lesson plans, and providing instruction to meet the needs of students.

### **Least Restrictive Environment**

27. The LRE mandate demands that students be educated in regular classroom settings to the maximum extent appropriate. Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. 300.114(a). First consideration must be given to placement in a regular classroom with any necessary supplemental aids and services to make that placement successful before considering more restrictive placement options. *Letter to Cohen*, 25 IDELR 516 (OSEP, August 6, 1996).
28. The IDEA requires that a district develop a "continuum of alternative placements," which is the range of potential placements in which a district can implement a student's IEP. The continuum begins with the regular classroom and continues to get more restrictive at each placement on the continuum. 34 C.F.R. 300.115(a).
29. In summary, only if education of the Student in a regular classroom with necessary supplemental aids and services cannot be successfully achieved is the IEP team free to consider more restrictive placements. The Student received services and supports in both the regular education classroom and the resource room as outlined in the Student's IEP. The Student was making some progress, but the Complainant wanted the Student to make more progress and feel successful. The record does not support the conclusion that the Student needed a different environment to access the general education curriculum and make progress. At all times, the Student received the services outlined in her IEP in the LRE.

### **Free Appropriate Public Education (FAPE)**

30. According to the Supreme Court in *Endrew F.*, an IEP is a snapshot, not a retrospective view, meaning that whether an IEP is reasonably calculated to provide educational benefit is a standard judged by information known at the time the IEP was written. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 69 IDELR 174 (2017). "[It] requires prospective judgment by school officials, informed by their own expertise and the views of the parent or guardian." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 387, 69 IDELR 174 (2017).

31. The IDEA does not guarantee or promise any particular educational outcome or level of progress. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 69 IDELR 174 (2017). It should be noted that just because a student with a disability struggles to meet one or more of his annual goals this doesn't mean he's entitled to relief for a denial of FAPE. The key question is how the district responds to the student's lack of anticipated progress. *I.K. v. Manheim Township Sch. Dist.*, 2023 WL 3477830, 83 IDELR 54 (3d Cir. 2023, unpublished). (Good faith efforts by the District helped convince the court that FAPE was provided) and *Washington Katy Indep. Sch. Dist.*, 2023 WL 2535273, 82 IDELR 218 (5th Cir. 2023, unpublished)).
32. The primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. *Dear Colleague Letter*, 115 LRP 53903 (OSERS, October 23, 2015).
33. In order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled. *Dear Colleague Letter*, 66 IDELR 227 (OSERS and OSEP, November 16, 2015).
34. If it turns out a child is not making progress at the level the IEP team expected, the team must revisit the IEP with the *Andrew F.* standard in mind and revise it as necessary to ensure the student is receiving appropriate special education and related services and that the goals are individualized and ambitious. *Questions and Answers on Andrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (EDU 2017).
35. At all times relevant to this Complaint the Student had an appropriately developed IEP based on her identified needs in all areas with the exception of speech and language.
36. It was acknowledged that the Student went without speech services during a change in staff and a delay in the hiring process. A review of the Student's speech goals indicates that there was stagnant progress reported over multiple reporting periods and on one goal it was indicated that it had not been addressed in two consecutive progress reports. It is also unclear that the speech services the Student missed during the fall of 2022 were made up. Although the PWN from November 2022 indicates that the Student would begin receiving services twice per week for 30 minutes each session, this wasn't reflected in the service section of the IEP and could not be verified. For these reasons, it is reasonable to conclude that the lack of consistent services and progress on speech goals resulted in a denial of FAPE.

## Decision

1. Did the District fail to develop appropriate measurable annual goals and present levels of academic achievement and functional performance?

**The OPI finds no violation. The Student's IEP contained descriptive present levels of academic achievement and functional performance and measurable annual goals in the Student's areas of need.**

2. Did the District fail to provide Student with extended school year services (ESY) during the summer of 2022 as required by 34 CFR 300.106 and ARM 10.16.3324?

**The OPI finds no violation. The IEP Team determined ESY was not necessary during the summer of 2022.**

3. Did the District fail to provide Student with direct services in occupational therapy?

**The OPI finds no violation. The Student's IEP did not require direct occupational therapy services.**

4. Did the District violate IDEA by failing to appropriately address Student's frequent absences, tardies and school refusal?

**The OPI finds no violation. The District frequently reviewed and revised the Student's IEP to address frequent absences, tardies and school refusal.**

5. Did the District fail to implement the accommodations in Student's IEP?

**The OPI finds no violation. The District implemented the accommodations in the Student's IEP.**

6. Did the District violate IDEA by failing to provide Student with a dyslexia specific reading program as requested by Complainant?

**The OPI finds no violation. The District provided the Student with reading supports to address needs, including dyslexia.**

7. Did the District fail to provide Student with an education in the least restrictive environment (LRE)?

**The OPI finds no violation. The District provided services in the LRE according to the Student's IEP.**

8. Did the District deny Student a free appropriate public education (FAPE) by failing to provide Student with an individualized education program (IEP) reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances?

**The OPI finds a violation. There was a service break due to provider availability and a lack of progress in the Student's speech goals. Goals remained stagnant over**

**multiple reporting periods and the record lacked documentation that missed speech services were provided.**

9. Did the District violate IDEA by failing to appropriately address Student's social, emotional, and behavioral challenges that were affecting her school day and academic progress. **The OPI finds no violation. The Student's IEP contained services and supports, including goals, a behavior plan and supplementary aids and services to address the Student's social, emotional and behavioral challenges.**

### **Corrective Action**

1. The District shall provide the Student with compensatory services. The goal of compensatory education is to place the student in the position that the student would be in had the LEA provided the appropriate services in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). In light of the fact that the Student made no documented progress and one speech and language goal went unaddressed, the LEA shall provide compensatory education as follows:
  - a. Eighteen hours of speech and language therapy by an appropriately licensed speech and language therapist.
  - b. The District, in consultation with the Complainant, shall determine the schedule for provision of compensatory services considering the Student's ability to sustain her attention and her interest levels.
  - c. Compensatory services shall be completed by August 1, 2024. Student absence shall result in waiver of service for that day. Staff absence must be rescheduled. Any compensatory service declined or not utilized by August 1, 2024, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory service).
  - d. The schedule for compensatory services shall be provided to OPI's EAP Director within 30 days of the date of this Final Report decision.
  - e. Service provider logs verifying completion of the compensatory education services must be submitted to OPI's EAP Director by August 15, 2024.

**Note:** This Final Report is final and is not subject to appeal. ARM 10.16.3662(13). Both parties retain their right to file a due process complaint after a state complaint final report is issued on

the same or different issues, provided the due process complaint meets the requirements set out in 34 C.F.R. 300.507.

*Danielle McCarthy*

---

Danielle McCarthy  
State Director of Special Education

- c: Mandi Gibbs, Dispute Resolution/EAP Director (via SMFTS only)  
John Gorton, School Improvement/Compliance Unit Manger (via SMFTS only)  
[REDACTED], District Special Education Director (via MFTS only)  
[REDACTED], District Attorney (via MFTS only)