



September 29, 2023

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

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
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[REDACTED]

RE: **FINAL REPORT for In the Matter of** [REDACTED], 2023-05, Alleged Violations of the Individuals with Disabilities Education 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] (Student), a former student at [REDACTED] High School (School) in the [REDACTED] School District (District). Parent alleges that the District violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulation at 34 CFR Part 300 and ARM 10.16.3007 et seq. The Complaint alleges the following issue:

Whether the District violated the IDEA by expelling the Student in November of 2022 and not providing the Student with educational services for the remainder of the 2022-2023 school year?

**Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Parent on August 4, 2023.
2. The OPI Dispute Resolution Office issued a Notice of Filing Complaint on August 9, 2023, to the District and Complainant. Parties were notified of the opportunity to engage in informal resolution through the Early Assistance Program (EAP).
3. On August 14, 2023, Complainant had a phone call with OPI's EAP Director and declined participation in the EAP process and informal resolution. On August 15, 2023, the OPI

Dispute Resolution Office requested the District's written response to the Complaint within 10 calendar days.

4. On August 15, 2023, OPI notified the parties that a complaint investigator was assigned to conduct the complaint investigation.

### **Investigatory Process**

The investigator reviewed the following records:

- The complaint and all supporting documentation;
- The District's response;
- The Student's special education records relevant to this investigation; and
- The District's responses to written questions presented by the investigator.

The investigator collected three staff questionnaires from the case manager, classroom teacher and a paraeducator of the Student.

The investigator interviewed the Parent via telephone.

The investigator interviewed the Special Education Director/Superintendent, High School Assistant Principal, Case Manager and District School Psychologist via telephone.

The OPI provided the Parent 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. §§ 300.530 through 300.536      Discipline Procedures

### **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 August 4, 2022, through August 4, 2023. Additional information beyond this timeframe was considered for the purpose of fully investigating the complaint.

**Findings of Fact**

1. The Student attended the ninth grade in the District high school. The Student is a learner eligible for services under the IDEA category of Multiple Disabilities, including Autism and Speech-Language Impairment. *District Response State Complaint 2023-05.*
2. The Student’s IEP in effect at the beginning of the 2022-23 school year was dated February 4, 2022, and amended on June 2, 2022. *District Response State Complaint 2023-05.*
3. The Student attended school on a shortened day schedule as agreed upon by the IEP team in June 2022. The shortened day was due to the Student’s behavior that interfered with academics. The Student’s behavior included extreme violent outbursts. According to the Student’s schedule, the Student attended four class periods in the morning and stayed through lunch. *District Documentation Provided on September 7, 2023 & Staff Interviews, September 15, 2023.*
4. In July, the Parent provided consent for an outside agency to work collaboratively with the School to address the Student’s behavioral needs. A functional behavior assessment was completed. The agency obtained Parent permission and provided a copy of the assessment to the District. A Positive Behavior Support Plan dated July 18, 2022, was developed at the conclusion of the assessment. School staff reported the plan was implemented throughout the Student’s day during the 2022-2023 school year. Staff from the outside agency worked with the Student in the classroom collaboratively with school staff. The District explained the classroom had at least two adults and sometimes three, working with the Student each day. *District Response State Complaint Part 2 2023-05 & Staff Interviews, September 15, 2023.*
5. A Behavior Tracking Form was utilized by School staff to note the Student’s aggressive behavior. *District Response to Complaint Part 3.*

Date	Frequency	Type of Behavior
09/13/2022	4	Hit and push teacher, cry, grab peers, throw snack
9/14/2022	2	Hit, pull top up and shorts down outside
9/15/2022	1	Tried to leave the classroom
9/16/2022	1	Throw tablet
10/24/2022	4	Punch and hit teacher, throw tablet, clear table of materials

10/25/2022	1	Hit teacher
10/26/2022	5	Hit and push teacher and peers, cry & scream
10/27/2022	2	Push and hit teacher and peers
11/3/2022	2	Throw tablet, cup and chair, hit teacher
11/4/2022	4	Hit teacher and peers, scream
11/7/2022	3	Hit, punch and push teacher and staff
11/8/2022	1	Hit peers
11/11/2022	3	Hit teacher, throw tablet, run toward peers entering room
11/15/2022	2	Gag on purpose, hit peers
11/16/2022	10	Throw materials, hit staff and peers, run toward peers entering room, touch private parts, scream, head bang, run around room, slap teacher
11/18/2022	1	Scream at staff, throw materials at teacher
11/22/2022	3	Throw tablet, hit teacher and peers, self-harm, head bang
11/30/2022	5	Hit and shove staff and peers, throw tablet and chairs, self-harm
12/2/2022	2	Hit staff, scream and cry
12/3/2022	4	Hit and punch staff, clear table of materials, scream, throw tablet, self-harm
12/6/2022	11	Hit staff, scream, grab peers, self-harm, head bang, run at staff
1/10/2023	4	Throw tablet, self-harm, scream
1/17/2023	2	Hit staff, throw tablet
1/18/2023	2	Hit staff and peers

6. The Parent reported she was verbally told by the District Special Education Director/Superintendent in November 2022, near the Thanksgiving holiday, not to bring the Student back to school for four days. She described the request as an expulsion due to the Student's escalated behaviors. *Interview with Parent September 15, 2023.*
7. Documentation provided by the District did not include any behavior incident reports, office referrals or disciplinary statements. *District Written Response to State Complaint & Staff Interviews Conducted September 15, 2023.*
8. The District indicated when the Student was unmedicated, behaviors escalated and prohibited the Student from functioning in the classroom. The District advised the Parent the Student

should remain at home when the Student was unregulated. *Additional District Response to Complaint, September 18, 2023.*

9. The Student was marked absent in late December before the holiday break and in early January at the end of the holiday break. School staff reported the Student's grandparent called and indicated the Student would not be at school until she could see a doctor. The Student was absent 16 days in December and January. *District Written Response to State Complaint & Additional Documentation Provided by District on September 7, 2023.*
10. On February 1, 2023, the Student was physically aggressive with a staff member. The Parent was contacted but didn't immediately respond. When the School reached the Parent, she asked the School to call 911. She requested the Student be transported to the hospital for a psychological evaluation. This was not part of the School's protocol. The School Resource Officer called 911 to ensure the Student's safety. The Student was transported to the hospital. *District Written Response to State Complaint, Staff Injury 2023-05 & Staff Interviews September 15, 2023.*
11. A District Case Manager issued a Meeting Notice on February 1, 2023. Efforts were made to schedule an IEP meeting for 8:30 a.m., February 2, 2023. This meeting was not held. On February 2, 2023, another District staff member called the Parent to schedule an IEP meeting. The Parent refused to meet. She indicated she wanted a full psychological evaluation done first. Additionally, the Student did not return to the School after the February 1, 2023 incident. *District Response State Complaint 2023-05 & Parent interview.*
12. On February 6, 2023, the District called the Parent attempting to set up the IEP meeting. The Parent's voicemail was full. An email follow up was sent when Parent did not answer. *District Response State Complaint 2023-05.*
13. An IEP was drafted on February 13, 2023, without the Parent present at the meeting. Special education services were proposed and included 20 minutes of instruction in math, reading, written expression and social/emotional/behavioral. The IEP included a total of 80 minutes of service each day. The Student's placement was determined as homebound. The District planned to provide an iPad for the Student to use in the home to access the virtual classroom each day. *District Response State Complaint 2023-05.*
14. The District made continued attempts to contact the Parent on February 16, 27, and March 2, 2023. All attempts were unsuccessful. *District's Response State Complaint 2023-05.*

15. The District sent a certified letter on March 6, 2023, outlining its responsibilities under the Administrative Rules of Montana (ARM) 10.16.3505(2)(c). The District requested the Parent's consent to initiate the February 13, 2023, IEP and notified the Parent that if they did not respond, the IEP would be implemented 15 days from the date of the letter. The letter was accompanied by the IEP, a District issued iPad, charging cable and two weeks of structured work for the Student to begin homebound instruction. *District Response State Complaint 2023-05*.
16. The Parent did not offer her consent or respond to the March 6, 2023 letter, therefore the District proceeded to implement the February 13, 2022 IEP on March 27, 2023. During the interview with the complaint investigator, the Parent acknowledged receiving the letter and a box of equipment and materials. *Parent Interview September 15, 2023*.
17. The District documented each time the School opened the Zoom meeting room to work with the Student. The log begins on March 27, 2023, and continued through May 31, 2023. According to School documentation, the Student never attempted to login or attend the Zoom sessions. *District Response State Complaint Part 2, page 7 & Interviews with Staff and Parent September 15, 2023*.
18. The District explained it sent additional packets of structured work to the Student throughout the remainder of the 2022-23 school. Additionally, at the request of the Parent, the District provided crayons and some other supplies. No packets were returned to the District. *District Response State Complaint 2023-05 and Staff Interviews September 15 & 19, 2023*.
19. The District reported the Student did not return for the 2023-24 school year. *District Response State Complaint 2023-05 and Staff Interviews September 15 & 19, 2023*.

## **Conclusions**

1. The overarching purpose of the IDEA is to ensure that students with a disability have available to them a Free Appropriate Public Education (FAPE), including special education and related services that meet the unique needs of individual students and prepare them for further education, employment, and independent living. *See 34 C.F.R. § 300.1*.
2. Schools have a fundamental obligation under the IDEA to provide FAPE to all eligible students, no matter the severity of their disability, and to address all areas of disability-related need. *Letter to Wentzell, 69 IDELR 79 (OSEP 2016)*. The right to FAPE is afforded to all eligible students, even students with the most severe cognitive or behavioral symptoms. This

concept stems from the “zero reject” principle in *Timothy W. v. Rochester, N.H. School District.*, 875 F.2d 954, 960-961, 441 IDELR 393 (1st Cir. 1989), which guarantees FAPE to all students with a disability no matter the severity.

3. According to 34 C.F.R. § 300.174(b), District personnel are prohibited from mandating that a child be medicated as a condition of attending school, receiving an evaluation under the IDEA, or receiving special education and related services. The District is prohibited from advising parents to keep unmedicated students home as a condition of their attendance.
4. The IDEA provides that a district may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 consecutive school days, provided the same change in placement would be made in the case of a student without a disability. *See 34 C.F.R. § 300.530(b).*
5. With respect to this Student, there are no formal documented disciplinary removals. With certainty, the record does not indicate or support that the Student was expelled from school as alleged by the Parent. The Student’s record contains no reports of discipline. In fact, Staff were very direct in stating the Student had not been disciplined for her behavior.
6. It is possible for a school to remove students for disciplinary reasons without explicitly using the terms suspension or expulsion. In this case, there is no information to support that the Student was removed from school for disciplinary reasons.
7. The record is clear the Student was not suspended or expelled in November 2022. What is less clear is whether the District required that the Student be kept home in late November. Even if the conclusion is yes that the Student was precluded from attending school for four days in November due to her behavior, the number of removals did not exceed 10 days.
8. The IDEA does not require continuation of educational services for students with disabilities suspended for 10 cumulative school days or less in a school year, unless it provides services to a child without disabilities who is similarly removed 34 C.F.R. § 300.530(d)(3).
9. The District was within its authority to withhold services during the November 2022 removal, because it did not exceed 10 school days. The IDEA didn’t require the District to provide services during this time. The record indicates the Student continued to receive services after the Student returned in November 2022.

## **Decision**

**Issue:** Whether the District violated the IDEA by expelling the Student in November of 2022 and not providing the Student with educational services for the remainder of the 2022-2023 school year?

**The OPI finds no violation. The Student was not expelled and continued to receive services after November 2022.**

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.

*Patrick Cates*

Patrick Cates  
Student Support Services Senior Manager

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