



December 06, 2023

Sent via US Mail and SMFTS

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RE: **FINAL REPORT** In the Matter of [REDACTED], 2023-08

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 student in [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. Whether the District provided the Complainant with the opportunity to inspect and review educational records relating to her child that were collected, maintained, or used by the District under Part B of the IDEA in conformity with 34 C.F.R. §300.613; and
2. Whether the District violated IDEA by refusing to provide the Student service at home, when the District had been provided a medical note that allowed the Student to learn from home.

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on September 28, 2023.
2. The OPI Dispute Resolution Office contacted the District on September 29, 2023, and October 2, 2023, and the District had not 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 requested on September 29, 2023, to move forward with the complaint process rather than attempt resolution through the Early Assistance Program (EAP).
4. The OPI Dispute Resolution Office issued a Notice of Filing, Appointment of Investigator, and Request for District Response on October 4, 2023, to the District and Complainant.
5. After the Notice of Filing, Appointment of Investigator and Request for District Response was issued on October 4, 2023, additional allegations were received and added to the previous allegation via correspondence dated October 11, 2023. It was noted that the filing date remained October 7, 2023, for all allegations.
6. The OPI issued a letter of clarification on October 27, 2023, to clarify contacts for the state complaint process in this matter.
7. The District submitted a written response to the issues in the Complaint on October 24, 2023.
8. No written response was received from the Complainant.

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 education records relevant to this investigation.

The investigator offered to interview the Complainant. The Complainant submitted responses to the interview questions via email.

The investigator interviewed the District Student Services Director, School Principal and Virtual Learning 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. §300.613	Access Rights
34 C.F.R. §300.617	Fees
34 C.F.R. §99	FERPA
ARM 10.16.3560	Special Education Records
MCA §20-7-1201	Montana Digital Academy – Purpose - Governance
ARM 10.55.907	Distance, Online, and Technology-Delivered Learning

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 October 7, 2022, through October 7, 2023. Additional information beyond this timeframe was considered for the purpose of fully investigating the complaint.

Findings of Fact

Issue 1

1. The Complainant contacted the Executive Director of Student Services on June 20, 2023, and requested the Student's special education records. The Complainant indicated this was her second attempt at obtaining records. *District Written Response Exhibit A-7.*
2. The District acknowledged there had been a previous records request on April 11, 2022. The District explained the records had been available for the Complainant's inspection. However, the District reported the Complainant did not attempt to review the records in June 2022. *District Written Response Exhibit A-33 & A-8-10.*
3. In response to the Complainant's most recent request, on June 21, 2023, the Executive Director of Student Services emailed explaining that the Student's records would be available for the Complainant to review at the District Special Education Office and requesting Complainant let them know when she would be coming in. *District Written Response Exhibit A-8.*
4. On June 21, 2023, Complainant responded stating that "I asked for a copy to be sent to my house." The Executive Director of Student Services replied and provided Complainant with District Policy 1401-P1 governing public records requests, stating the fee charged for copying is at the rate of \$.15 per copy and that the fee will need to be paid prior to picking up the copies at the District Special Education Office. Included with the email was the District's April 11, 2022 email to Complainant's initial records request outlining the District's Policy 3600-P5 for a special education records request and the parent's access rights to the records. *District Written Response Exhibit A-27.*
5. Complainant responded stating that "I got that but you still need to provide the records when I asked." On June 22, 2023, the Executive Director of Student Services replied letting Complainant know that once the District went through the requested files to redact any information not related to Student, then Complainant would be notified of the fees, once the

fee is paid, the copies will be made available for pick up at the District Special Education Office. *District Written Response Exhibit A-32.*

6. On June 23, 2023, the Executive Director of Student Services notified the Complainant that the copy of the Student's file would be available for pick up on June 27, 2023, at the District Special Education Office. Although not requested to do so, the District waived the \$54.00 copy fee for the 360 pages. *District Written Response Exhibit A-41 and Exhibit A-93.*
7. The same day, the Complainant reminded the District that she wanted the files sent to her home and that "...[Student] will also be writing a certified letter requesting the documents and since [Student] is not of working age she's unable to pay for them." *District Written Response Exhibit A-42.*
8. The District explained that due to the size of the Student's file, over 360 pages, that mailing it to the Complainant would include a postage charge. *District Written Response Exhibit A-47.* The District did not provide Complainant notice of what the postage charge would be.
9. Complainant responded indicating that the District still needed to provide the records and that "I'll be watching the mail, reminding you weekly and in addition to that, [Student] will be sending a written request." *District Written Response Exhibit A-53.*
10. The District sent the Student's file to the Complainant on June 27, 2023, COD (Collect on Delivery). *District Written Response Exhibit A-66.* The Complainant emailed the District Superintendent on June 28, 2023, notifying the District "...because of inflation and economics and time constraints from home schooling, I've asked that [Student's] records be forward to my home so *I* can keep providing an education. Since non[e] of you have. Unfortunately, I do not have the extra cash to pay records because my taxes have been raised making our budget tighter. I'm sure you know why our taxes have been raised..." The USPS receipt shows the fee included \$11.75 for postage and an additional \$9.60 for sending COD. *District Written Response Exhibit A-69.*
11. Delivery attempts were made to the Complainant on June 28, 2023, and July 3, 2023. The Complainant was not available to accept the COD package and the postal service took it back to the post office. *District Written Response Exhibit A-67.*
12. Complainant emailed the Executive Director of Student Services on June 29, 2023, stating she was not able to afford the COD delivery fee. *District Written Response Exhibit A-79.*
13. The District's Director of Student Services indicated that the Student file was never picked up by the Complainant and was returned to the District. *District Email dated November 22, 2023.*

Issue 2

14. The District reported the Student was previously enrolled during spring of 2022 when she attended the District's virtual learning program. The Student's most recently signed IEP was from 2015. The District initiated a reevaluation in April 2022 to determine the Student's educational needs and develop an IEP to support her learning. *District Written Response Exhibit B 1-3 & 57.*
15. An Evaluation Report Meeting was held in May 2022, but the Complainant was unable to attend. The Evaluation Report was mailed to the Complainant on June 3, 2022. More data was needed to determine if the Student met criteria for Cognitive Delay, which was the suspected area of disability. Because the evaluation team was unable to get additional information due to the Complainant's unwillingness to participate in the process, an IEP was not developed. *District Written Response Exhibit B-57.*
16. The Student did not return to the District in the fall of 2022. *District Written Response dated October 23, 2023, Page 5.*
17. On January 24, 2023, the Complainant contacted the Virtual Learning Coordinator for the District and requested assistance registering the Student in the District's virtual learning program. In a series of emails with Complainant, the District explained that the registration deadline for the Montana Digital Academy is January 26, 2023 . Further, if the Student needed accommodations, she could be registered through APEX. *District Written Response Exhibit B-62-63.*
18. District staff and the Complainant exchanged a series of emails, and the Student was enrolled in the District on January 26, 2023. *District Written Response Exhibit B-85-86.*
19. While completing the registration process for the virtual learning program, the School Principal contacted the Complainant and explained because the Student had an IEP, the Student would enroll in the APEX virtual learning program. He further indicated, in order to complete the registration process, the Student's May 2022 reevaluation needed to be completed. He indicated the results of the reevaluation were necessary for the IEP team to determine whether the virtual learning program was appropriate for the Student based on her current educational needs and to develop a current IEP to support her learning. *District's Written Response Exhibit B-116-117.*
20. On January 30, 2023, the Complainant indicated that she would not participate in any meetings to complete the evaluation process. She expressed her expectation that the Student should be enrolled in the same online platform as her sibling, and that the District needed to

change its registration protocol to make this happen. *District's Written Response Exhibit B-116-117.*

21. On January 31, 2023, the Complainant withdrew the Student and enrolled the Student in home study. *District's Written Response Exhibit B-121.*

Conclusions

Issue 1

1. The IDEA and Montana Administrative Rules incorporate the rights afforded to parents in FERPA. *34 C.F.R. §300.612 and ARM 10.16.3560.*
2. The IDEA addresses parental access rights to special education records in 34 C.F.R. §300.613:
 - (a) Each participating agency must permit parents to **inspect and review** any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with the request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§ 300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
 - (b) The right to inspect and review education records under this section includes—
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretation of records;
 - (2) The **right to request that the agency provide copies of the records containing information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;** and
 - (3) The right to have a representative of the parent inspect and review the records. (*Emphasis added*).
3. While required to provide a parent with access to their child's education records, a school is not generally required by IDEA or FERPA to provide copies of education records. However, parents have the right to request that the district provide copies of the records if failure to do so would effectively prevent a parent from exercising his or her right to inspect and review education records. *34 CFR §300.613(b)(2) and 34 CFR §99.10(d).* A case in point would be a situation in which the parent does not live within commuting distance of the school. *Letter to Anonymous*, 123 LRP 25611 (SPPO, August 24, 2023).

4. The email correspondence shows that the District gave notice to the Complainant that the Student's records were available for review at the Special Education Office on June 23, 2023. The Complainant informed the District that she had requested that the records be copied and mailed to her home. After notifying the Complainant a fee would be imposed for the copies and Complainant acknowledging fees would be charged, the District copied the records and let the Complainant know when she could pick them up. Although it was not specifically requested, the District waived the fee for copies.
5. Complainant insisted the records be mailed to her. After informing the Complainant there would be a fee for postage, the District mailed the records on June 27, 2023, with a request for postage to be paid upon delivery. According to 34 CFR §300.617(a) and 34 C.F.R. §99.11, unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for copies of records that are made for parents. An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.
6. On June 28, 2023, the day after the District mailed the special education records, Complainant informed the District Superintendent that she was unable to pay for the cost of postage. Complainant never picked up the records at the post office. The records were returned to the District and are currently available for Complainant to pick up.
7. The District's correspondence regarding the special education records request and the school district policies regarding records requests did not contain notice of a postage fee or what would be included in a postage fee should the parent want the records mailed. Here, the District charged an additional fee beyond what the board policy authorized. Sending the records COD incurred an additional charge beyond the regular postage amount.
8. Additionally, the District correspondence and policies did not contain notice of a parent's right to request copies of records if failure to do so would effectively prevent a parent from exercising the right to inspect and review the records pursuant to §34 CFR 300.613(b)(2). Similarly, absent from the District's correspondence and policies provided to Complainant, is that the District may not charge a fee for copies of records if the fee effectively prevents parents from exercising the right to inspect and review those records. *34 CFR §300.617(a)*.
9. There is nothing in the record that demonstrates that charging the Complainant a fee for copies would have effectively prevented her from exercising the right to inspect and review the records. Complainant acknowledged there would be a fee for copies, and did not assert any concern with being charged a fee until after the records were mailed at her request.

Issue 2

10. 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 individuals students and prepare them for further education, employment and independent living. See *34 C.F.R. §300.1*.
11. The District has the obligation to propose FAPE for students and provide services through an appropriately developed IEP, regardless of whether students participate in the brick and mortar school buildings or the virtual learning programs. *34 C.F.R. §§300.17 and 300.101*.
12. The District, consistent with state statute, recognizes that students may have a need for greater flexibility in educational programing and offers virtual learning programs aligned with ARM 10.55.907 and MCA §20-7-1201. Specifically, the District offers two virtual learning programs: Montana Digital Academy (MTDA) and APEX.
13. MTDA is not a school. Rather, it is a supplemental course provider authorized by statute. (<http://montanadigitalacademy.org/wp-content/uploads/2023/11/2023-MTDA-Legislative-Report-to-the-Education-Interim-Committee.pdf>, last visited December 4, 2023). According to the District, it does not typically register students with disabilities or students with a need for accommodations in MTDA.
14. The District informed the Complainant that the Student had the option of registering for virtual learning through APEX. However, in order to know how to support the Student in the District's program, the previous evaluation commenced in 2022 was not completed, due to the Complainant's disengagement from the process, and would need to be completed. The Complainant indicated that she would not participate in the special education process.
15. The District worked diligently with the Complainant to encourage the completion of the evaluation process as evidenced by the multiple and frequent email communications regarding virtual programs.
16. In the end, all information reviewed supports a conclusion that the District was ready, willing, and able to complete the special education evaluation and propose FAPE, permitting the Student to enroll in the APEX program. The Complainant refused to participate in that process, and ultimately withdrew the Student to home study.
17. There is no evidence to support a conclusion that the District refused to permit the Student to be educated at home through participation in the virtual program.

Decision

1. Whether the District provided the Complainant with the opportunity to inspect and review educational records relating to her child that were collected, maintained, or used by the District under Part B of the IDEA in conformity with 34 C.F.R. §300.613.

OPI finds the District in violation. The IDEA allows for a fee to be charged for copies of records. 34 CFR §300.617(a)(2). However, the District’s correspondence regarding the special education records request and the school district policies regarding records requests only included a per page copy fee and did not contain notice of a postage fee.

2. Whether the District violated IDEA by refusing to provide the Student service at home, when the District had been provided a medical note that allowed the Student to learn from home.

OPI finds no violation. The District was ready and willing to provide FAPE to the Student through a current IEP and permitting her to participate in the virtual learning program. The Complainant failed to cooperate, choosing instead to withdraw the Student from the District.

Corrective Action

By February 6, 2024, the District shall submit for approval to OPI’s Early Assistance Program Director, the District’s practices and/or policies in providing parents the opportunity to inspect and review education records pursuant to 34 CFR §300.613 and §300.617. This shall include the District’s practices and/or policies:

1. Regarding a parent’s right to request that the District provide copies of the records if failure to do so would effectively prevent the parent from exercising the right to inspect and review the records; and
2. A full explanation of any fees the District charges to copy special education records.

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
Senior Manager
OPI Student Support Services

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