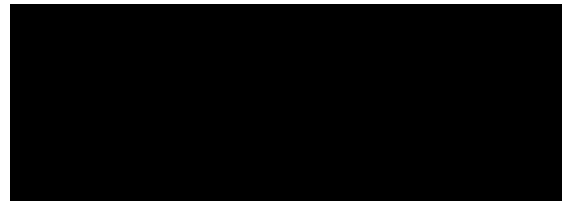
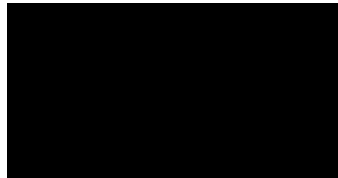




January 29, 2024

Sent via US Mail and SMFTS



RE: **FINAL REPORT** In the Matter of [REDACTED], 2023-09

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 of [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 regulations at 34 C.F.R. Part 300 and ARM 10.16.3007 et seq. The Complaint alleges the following issue:

Whether the District violated 34 CFR § 300.301(b) and ARM 10.16.3320 by not responding to Complainant's January 2023 request for an initial evaluation.

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on December 4, 2023.
2. The Complainant indicated in the Complaint that she requested to move forward with the complaint process rather than attempt resolution through the Early Assistance Program (EAP).

3. The OPI Dispute Resolution Office contacted the District on December 6, 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).
4. The OPI Dispute Resolution Office issued a Notice of Filing and Request for Written Response on December 8, 2023. Because the District had not received a copy of the Complaint, the OPI determined the filing date by adding three days from the date OPI mailed the Complaint to the District. See OPI's Frequently Asked Questions: IDEA State Complaints, Question13,<https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/Dispute%20Resolution/StateComplaintFAQs.pdf?ver=2023-07-21-064821-630> (last visited January 8, 2024). Therefore, the Complaint was deemed filed on December 11, 2023. The District's written response to the Complaint was due within 10 calendar days of receipt of the Notice of Filing Complaint letter.
5. On December 18, 2023, the District requested an extension to the timeframe to file the District's written response until December 28, 2023, due to holiday schedules. The OPI determined there was reasonable necessity for an extension pursuant to ARM 10.16.3662(5).
6. The District submitted a written response to the issues in the Complaint on December 19, 2023.

Investigatory Process

The following records were reviewed:

- The original letter of Complaint and all supporting documentation;
- The District's response to the Complaint and all exhibits; and
- Additional information requested by OPI was submitted by the District on January 5, 2024.

The OPI offered to interview Complainant. The Complainant declined to be interviewed and requested follow-up questions be sent via email. On January 16, 2024, follow-up questions were sent via email. Complainant responded to the email the same day but did not provide responses to the questions and indicated solely that the District should have all email communications.

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, and State Rules

34 C.F.R. § 300.301(b)	Initial Evaluations
ARM 10.16.3320	Request for Initial Evaluation
MCA 20-1-213(1)	Transfer of School Records
ARM 10.16.3560	Special Education Records

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 December 11, 2022, through December 11, 2023. The OPI notified the parties in the December 8, 2023, Notice of Filing and Request for District Response, that any claims prior to December 11, 2022, were dismissed.

Findings of Fact

1. Student's residence was within the boundaries of the District when Complainant requested to enroll Student in the District on January 26, 2023. *January 5, 2024, District Response to Additional Questions.*
2. Student was previously enrolled in the District from March 23, 2022, through June 4, 2022. *December 19, 2023, District Response.*
3. On January 26, 2023, the registrar for the District's middle school faxed a records request to the school district the Student previously attended: "The above-named student has enrolled in our school district at the school identified below. We are requesting you forward ALL educational records (to include cumulative, special education, confidential, behavior plans, health plans, 504 plans and behavior/discipline records)." The request limited the timeframe of records requested

from April 2022 to January 26, 2023. *Request for Transfer of 7-12 Student Records, January 26, 2023; Fax Confirmation, January 26, 2023.*

4. On January 26, 2023, the previous district faxed a copy of Student's records to the District. The coversheet indicated that five pages were being faxed, including the coversheet. The District only received four pages: the cover sheet, a copy of Student's academic report card for 2022-2023, and Student's attendance record. *Fax, January 26, 2023.*
5. Complainant's January 2023 request for an initial evaluation was not included in the records provided to the District. *December 19, 2023, District Response.*
6. The District did not receive any requests directly from Complainant for an initial evaluation of Student. *December 19, 2023, District Response.*
7. Student attended the District's virtual learning program on January 30, 31 and February 1, 2023. The morning of February 1, 2023, the District received an email from Complainant at 7:53 a.m. indicating Student would be immediately registered as a homeschooled student. *January 5, 2024, District Response to Additional Questions; Enrollment History; February 1, 2023 Email.*
8. On February 2, 2023, Complainant emailed the registrar at the middle school confirming that Student had been registered with the county superintendent as being homeschooled. *February 2, 2023, Email.*

Conclusions

1. Either a parent or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. 34 CFR § 300.301(b) and ARM 10.16.3220(1).
2. Pursuant to Mont. Code Ann. 20-1-213(1), subject to the Family Educational Rights and Privacy Act (FERPA) and IDEA, Districts "shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request."

3. The request for an initial evaluation is a required part of a student's special education records. ARM 10.16.3560(3).
4. The District did not receive a copy of the Complainant's request for an initial evaluation as part of the records transfer from the previous school district on January 26, 2023. There is no documentation or evidence that Complainant has requested an initial evaluation directly from the District.
5. Child find is the affirmative, ongoing obligation for a State to locate, identify and evaluate all children with disabilities residing within the State. 34 CFR § 300.111.
6. In Montana, each local education agency must establish policies and procedures to ensure all children with disabilities living within the boundaries of the local education agency are identified, located and evaluated. ARM 10.16.3125. The responsibility for child find includes children with disabilities who are enrolled by their parents in private schools. 34 CFR § 300.131.
7. In Montana, homeschool students that are registered with the county superintendent of schools are considered parentally placed private school students. MCA 20-5-109.
8. Student is considered a parentally placed private school student, who based off the address on the Complaint, is still residing within the District's boundaries.
9. Districts must spend a proportionate share of IDEA Part B funding providing equitable services to parentally placed private school students with disabilities. 34 CFR § 300.132(a); 34 CFR § 300.133. However, parentally placed private school students with disabilities who are found eligible for special education services, have no individual right to receive some or all of the special education and related services they would receive if enrolled full time in public school. 34 CFR § 300.137.

Decision

Whether the District violated 34 CFR § 300.301(b) and ARM 10.16.3320 by not responding to Complainant's January 2023 request for an initial evaluation.

The OPI finds no violation. The District did not receive the Complainant's request for an initial evaluation that was provided to the Student's previous school district prior to Student transferring.

Although there has been no violation, the District is now aware of Complainant's request for an initial evaluation. The District shall follow up with Complainant regarding her request.

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: Danni McCarthy, State Special Education Director
Mandi Gibbs, Dispute Resolution/EAP Director (via SMFTS only)
John Gorton, School Improvement/Compliance Unit Manager (via SMFTS only)
[REDACTED], Attorney for the District (via SMFTS only)
[REDACTED], Director of Student Services & Special Education (SMFTS only)