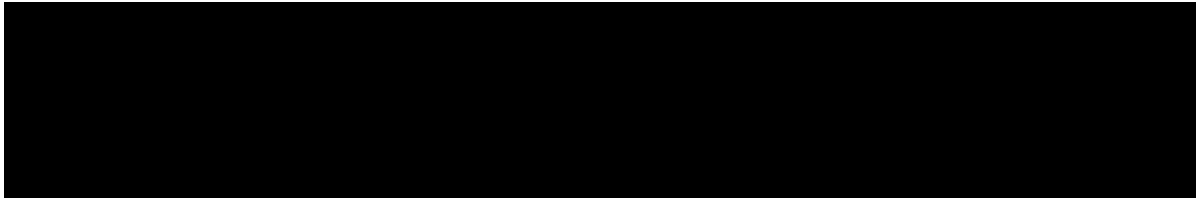




January 29, 2024

Sent via US Mail and SMFTS



RE: **FINAL REPORT** In the Matter of [REDACTED] 2023-10

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 the [REDACTED] School District (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, Question 13, <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. The District submitted a written response to the issues in the Complaint on December 14, 2023. The District attempted to send a copy to the Complainant via certified mail which was returned to the District.
6. The District emailed a copy of the written response to Complainant on January 8, 2024.

### **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 and submitted by the District on January 4, 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. The Student was enrolled in the District as a discretionary out-of-district student from August 24, 2022, to January 25, 2023. *District Enrollment Documentation.*
2. On January 16, 2023, the Complainant hand-delivered a letter mis-dated Monday, January 16, 2022, to the District's administrative assistant. The letter was addressed to the District Superintendent and School Counselor and requested that Student be evaluated for Special Education Services under IDEA. *Complaint.*
3. Complainant also emailed the letter to the School Counselor on Tuesday, January 17, 2023. *January 17, 2023, Email.*
4. On Thursday, January 19, 2023, the School Counselor responded to Complainant indicating that she will work on the necessary paperwork for the parental referral and evaluation plan and once that is completed, she will go over them with the Complainant and have her sign them. *January 19, 2023, Email.*

5. Complainant notified the District on Wednesday, January 25, 2023, at 9:17 a.m., that Student would be transferring back to her district of residence. *January 25, 2023, Email.*
6. Enrollment records for the 2022-2023 school year indicate that Student transferred back to her district of residence on January 26, 2023. *District Enrollment Documentation.*
7. On January 26, 2023, the District received a request to transfer Student's records to her district of residence, "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.*
8. The District did not complete the initial evaluation for Student because Student unenrolled from the District. *December 14, 2023, District Response.*
9. The District cannot confirm whether it included Complainant's request for an initial evaluation with the records it transferred. *January 4, 2024, District Response to Additional Questions.*

## **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. When the request is made by the parent, the request must include a statement of the reasons for the request and signature of the person making the request. ARM 10.16.3320(2)(b). All requests must document the suspicion that a student may have a disability which adversely affects the student's educational performance to a degree the student needs special education and related services. ARM 10.16.3320(2)(c).
3. If a comprehensive evaluation is warranted, the local education agency shall obtain consent of the parent before conducting a comprehensive evaluation. ARM 10.16.3320(2)(d).

4. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 CFR § 300.301(c)(1)(i).
5. The IDEA does not set a specific timeframe from when a parent requests an initial evaluation to when parental consent is obtained for the evaluation. The United States Department of Education's longstanding policy is that evaluations be conducted within a reasonable period of time following the agency's receipt of parental consent. *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46637 (August 14, 2006).
6. Complainant requested an initial evaluation on January 16, 2023. On January 19, the school counselor responded letting her know they were moving forward with the necessary paperwork. Less than a week later, on January 25, 2023, Complainant notified the school that the Student would be transferring to another school district. Student transferred out of the District prior to the District obtaining parental consent to conduct the initial evaluation.
7. 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."
8. The request for an initial evaluation is a required part of a student's special education records. ARM 10.16.3560(3).
9. Complainant provided the January 16, 2022 mis-dated request for an initial evaluation both via hand delivery to the front office on January 16, 2023 and via email to the school counselor on January 17, 2023. The District has no record of including the Complainant's request for an initial evaluation in response to the January 26, 2023 request for transfer of records.

### **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 the District in violation.** The District did respond to Complainant's January 16, 2023 request for an initial evaluation. On January 19, 2023, the District informed Complainant it was going to work on the necessary paperwork and then obtain parental consent. Less than a week later, on January 25, 2023, Complainant notified the District that Student would be transferring to another District. Parental consent was never obtained for the evaluation. The district did not violate 34 CFR 300.301(b) or ARM 10.16.3320. The District promptly responded to Complaint's request but did not proceed with the initial evaluation due to the student leaving the District.

However, a request for an initial evaluation is a special education record. In this case, the request for an initial evaluation was the letter mis-dated January 16, 2022. Student was transferring back to her district of residence, and the request for records was limited to April 2022 to January 26, 2023. The District may not have provided the request for an initial evaluation based on the incorrect date of the letter. Regardless, the District must ensure that if these circumstances were to occur again, the request for initial evaluation would be included with the records transfer.

### **Corrective Action**

1. The District shall provide all special education teachers, case managers, related service providers, school counselors and administrators with two hours of training on maintaining students' special education record pursuant to ARM 10.16.3560(3) and including the appropriate records when transferring records as required by MCA 20-1-213(1). The District shall comply with the following conditions:
  - a. The training shall be conducted by the OPI. The District shall reach out to OPI's School Improvement/Compliance Unit Manager by **February 12, 2024**, to schedule the training.
  - b. The training must be completed by **April 15, 2024**.
  - c. The District shall have all required staff members sign into the training and provide the sign-in sheet to OPI's EAP Director **by April 19, 2024**.

2. By **May 17, 2024**, the District shall submit for approval to OPI's EAP Director, an explanation of the District's practices and/or policies in maintaining students' special education record pursuant to ARM 10.16.3560(3), and including the appropriate records when transferring records as required by MCA 20-1-213(1).

**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*

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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)