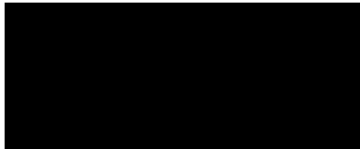




March 12, 2024

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



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT** for In the Matter of [REDACTED], 2024-01, Alleged Violations of the Individuals with Disabilities Education Act (IDEA).

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 son, [REDACTED] 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 regulations at 34 C.F.R. Part 300 and ARM 10.16.3007 et seq. The Complainant alleges the following issues:

1. Did the District deny Student a free appropriate public education (FAPE) by failing to implement Student's IEP?
2. Did the District deny Student a FAPE by failing to address Student's absenteeism?
3. Did the District deny Student a FAPE by failing to respond to allegations of bullying of Student?

**Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on January 12, 2024.
2. The District was provided a copy of the Complaint as required by Administrative Rules of Montana (ARM) 10.16.3662(3), Code of Federal Regulations (CFR) 34 C.F.R. 300.153(d), and ARM 10.16.3662(3).

3. Complainant communicated to the OPI Dispute Resolution Office on January 23, 2023, that she requested to proceed with the complaint process and declines participation in the Early Assistance Program (EAP) and informal resolution.
4. The OPI Dispute Resolution Office issued the parties a Notice of Filing, Appointment of Investigator, and Request for District Response on January 24, 2024.
5. The Attorney for the District requested an extension of time to file the District's response on February 2, 2024.
6. The OPI Dispute Resolution Office issued an Extension of Time to File District Written Response and Scope of Issues on February 2, 2024, extending the District's time to file a Response to February 6, 2024.
7. The OPI's Dispute Resolution Office received the District's written response on February 6, 2024.
8. During the Complaint Investigator's interview with Complainant on February 22, 2024, Parent requested a follow up for questions on potential resolution with the EAP Director.
9. The OPI Dispute Resolution Office contacted Complainant by telephone on February 23, 2024, but was unable to reach her and then followed up with an email that same day.
10. On March 1, 2024, Complainant responded to the email from the EAP Director, but did not set up a time to discuss her questions.

### **Investigatory Process**

The investigator reviewed the following records:

- The original Complaint and all supporting documentation;
- The District's written response to the Complaint;
- Educational records relevant to this investigation;
- The Complaint Investigator interviewed the Complainant via telephone;
- The Complaint Investigator interviewed by telephone the District Special Education Teacher/Case Manager, English Teacher, Counselor and Assistant Principal with District's legal counsel present;
- The Complaint Investigator emailed the District follow up questions and reviewed the District's responses.
- 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. 300.320	Definition of Individualized Education Program
34 C.F.R. 300.323	When IEPs Must Be In Effect
34 C.F.R. 300.324	Development, Review and Revision of IEP
MCA 20-5-208	Definition of Bullying

## **Relevant Time Period for Investigation**

Pursuant to 34 C.F.R. 300.153(c) and ARM 10.16.3661, 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 commencing January 12, 2023, through January 12, 2024. Additional information beyond this timeframe was considered for the purpose of a full investigation of the complaint.

## **Findings of Fact**

### **Background**

1. At the time the Complaint was filed, Student was 15 and a sophomore at District's high school during the 2023-2024 school year. *January 17, 2023, IEP.*
2. Student transferred from a small K-8 school district to a large high school as a freshman. *Interviews with Complainant and Case Manager.*
3. The high school has an open campus which allows students to leave the school grounds for lunch. *District Response*
4. The Student's last reevaluation was completed during eighth grade. The Evaluation Report Team found that Student continued to be eligible for services under the eligibility category of specific learning disability (SLD). *January 19, 2022, Evaluation Report.*
5. Student's January 17, 2023, IEP was developed during Student's freshman year and implemented during the timeframe of this complaint investigation. The IEP included goals in the areas of reading, written expression, and self-help independence. Goals in the area of self-help independence were added to this IEP and focused on organization, time management and work completion. *January 17, 2023, IEP.*
6. Student's self-help independence present level of academic achievement and function performance states in part that "[Student] is enrolled in a study skills class for organization

and time management and assignment completion. He struggles to keep focused and make appropriate use of study skills to complete work and earn credit. He needs to improve his self-advocacy skills and check with individual teachers about missing assignments and classroom expectations.” *January 17, 2023, IEP.*

7. A summary of Student’s June 9, 2023 progress report for the spring semester of freshman year (*Exhibit M*) includes the following relevant information:

Goal	Progress	Data and Description
Reading: Given grade level text, Student will independently cite textual evidence to support a claim scoring 3 out of 4 trials measured by graded work and improve comprehension skills with 80% accuracy on reading assignments.	Not Expected to Meet Goal.	Student has a 67% in English 1 co-teach. He is still working to cite textual evidence and analysis and comprehension skills at 80% accuracy. He has issues with attendance and assignment completion.
Self-Help/Independence: Student will bring assignments for assistance and completion daily earning 80% of the daily points and checking his Infinite Campus weekly for missing assignments and getting clarifications weekly from teachers and classroom expectation 100% of the time.	Expected to meet goal.	Student earned 76% of the daily points in Study Skills but does not complete all assignments and get clarifications from teachers. He is often distracted by phone use and needs to develop skills to monitor assignment completion.
Written Expression: When given a prompt Student will be able to write a paragraph of 5 sentences with correct grammar and mechanics and 75% accuracy. He will develop a topic with relevant facts, definitions and details with 75% accuracy as measured in Teacher gradebook and Infinite Campus.	Not Expected to meet goal.	Student earned 67% in English but is not able to write a cohesive paragraph with 75% accuracy with mechanics, detail and conclusions. He does not always complete assignments and has attendance issues.

8. A summary of Student’s February 2, 2024 progress report for the fall semester of sophomore year (*Exhibit M*) includes the following relevant information:

Goal	Progress	Data and Description
Reading: Given grade level text, Student will independently cite textual evidence to support a claim scoring 3 out of 4 trials measured by graded work and improve comprehension skills with 80% accuracy on reading assignments.	Expected to Meet Goal.	Student completed Semester 1 with a 65% in English. He is developing skills to cite textual evidence to support a claim and has completed multi-paragraph essays with minimal structural errors. In addition he reads for comprehension as he tracks central ideas in a text to understand themes.
Self-Help/Independence: Student will bring assignments for assistance and completion daily earning 80% of the daily points and checking his Infinite Campus weekly for missing assignments and getting clarifications weekly from teachers and classroom expectation 100% of the time.	Expected to meet goal.	Student has excessive attendance issues and does not complete all assigned work. He had 27 days absent in Study Skills and earned 55% on points. He completed the final and ended with a 61% to pass the class. He passed all classes except Biology and Algebra. He had 34 absences in Algebra 1 and 26 in Biology. He can complete most assignments independently if he is present. With regular attendance and on task behavior he can make progress toward this goal in 2 <sup>nd</sup> semester.
Written Expression: When given a prompt Student will be able to write a paragraph of 5 sentences with correct grammar and mechanics and 75% accuracy. He will develop a topic with relevant facts, definitions and details with 75% accuracy as measured in Teacher gradebook and Infinite Campus.	Expected to meet goal.	Student can write a paragraph of 5 sentences with correct grammar and mechanics at 75% accuracy and is currently working on multi-paragraph essays with a claim, evidence, analysis, conclusion as well as gaining skills in basic research.

### Attendance

9. Student was counted absent for 216 class periods during his freshman year, all but 18 were unexcused absences. Seventy-nine of the absences occurred during the fall semester, with an increase of 137 occurring during the spring semester. Student was also tardy to 39 class periods during his freshman year. *Exhibits D: Student Attendance Detail 2022-2023.*

10. During the first semester of Student's sophomore year, his absenteeism increased:
  - a. Student was marked absent for 200 class periods, only seven of which were excused;
  - b. Student was tardy to 65 class periods;
  - c. Student did not miss full days of school. Student only missed two full days of school;
  - d. Class attendance was sporadic, and he was attending parts of each day; and
  - e. The attendance report did not reveal any particular patterns based on the time of day or the class the absences occurred in. Student did not attend hands-on or high interest classes more than academic classes. *Exhibits E: Student Attendance Detail 2023-2024.*
11. Under District policy, a student who was less than ten minutes late for a class is marked tardy. A student who is ten or more minutes late is reported as absent for the entire class period. Therefore, Student may not have missed the entire class period for which he was counted absent but did arrive more than 10 minutes late. *District Response.*
12. During the spring semester of Student's freshman year, District administrative staff began checking in with Student about absences and work completion. *District Response.*
13. At the beginning of the Student's sophomore year, the Student Assistance Team (SAT) team met to discuss Student's attendance and grades and brainstormed options to address concerns. *Interview with Counselor.*
14. The District's procedure was to notify parents after a student has five unexcused absences and then again if the student had unexcused absences after 10 days. After 15 days of unexcused absences, a meeting with Complainant was arranged. *Interview with Assistant Principal.*
15. On October 9, 2023, the Assistant Principal emailed Complainant and Student to set up a time to discuss attendance and grades. *District Response: Exhibit G.*
16. A meeting was held on October 24, 2023, to discuss Student's attendance with the Complainant, Student, Case Manager, Administration and Counselor. *District Response, Interviews with Complainant, Case Manager and Counselor.*
17. During the meeting, Student reported that he did not want to be in school and wanted to learn a trade as soon as possible. The District proposed options, including Job Corps and the District's alternative high school program. Additionally, a change in Student's schedule was also planned, including switching to a health class and possibly taking welding second

- semester. The hope was Student would attend more often for a high interest class. *District Response; Interview with Counselor.*
18. Another meeting was held on November 30, 2023, to continue discussion on attendance with the Student, Complainant, Case Manager and Administration. There had been some improvement on attendance since the October meeting. Student was enrolled in welding for the second semester. *District Response; Interviews with Case Manager and Counselor.*
  19. Following the November meeting, a Job Corps representative came to the high school, and the Counselor set up a meeting for Student with the Job Corps representative. The Counselor scheduled interviews with all students interested in Job Corps. *District Response; Interview with Counselor.*
  20. Student's attendance continued to be a struggle through December 2023. *District Response; Exhibit E: Attendance Detail 2023-2024.*
  21. On December 18, 2024, the District began reaching out to Complainant to set up Student's annual IEP meeting. On December 19, 2023, the meeting was scheduled for January 17, 2024. *District Response, Exhibit H: Contact Log.*
  22. In early January 2024, Student's English Teacher emailed Complainant regarding her concerns with Student missing 25 days of class. *January 5, 2024, Email from English Teacher.*
  23. Complainant responded to the English Teacher regarding her frustration with attendance and asking what can be done to help him be successful. He rides the bus every day, and she talks with him about the importance of showing up and asking for help, but attendance is still an issue. *January 5, 2024, Email from Complainant.*
  24. Student has worked after school for the last two years and participated in a jujitsu class. Complainant reported Student has never missed work or the jujitsu class. *Interview with Complainant.*
  25. An IEP meeting was convened after the filing of this Complaint, on January 17, 2024. During that meeting, a reevaluation was discussed, specifically, to obtain more information on if social-emotional issues were impacting attendance. *Interview with Case Manager, District Response.*
  26. The January 17, 2024, proposed IEP indicates that Student's behavior impedes his learning or that of others. The IEP also included a self-help/independence goal to address attendance, work completion issues and self-advocacy skills to communicate with

teachers regarding his accommodations and clarifications on assignments. *District Response; Exhibit I, January 17, 2024, Proposed IEP.*

27. The proposed IEP and evaluation plan were sent home with Complainant after the January 17, 2024, IEP meeting. *Interview with Complainant; District Response.*
28. Complainant returned the signed evaluation plan. *Interview with Complainant.*
29. At the beginning of the second semester, around January 22, 2024, a check in/check out system was proposed by the Case Manager, but it was rejected by Student. Therefore, in order to obtain additional information regarding attendance, work completion, behavior, phone use and accommodations the Case Manager developed a form for teachers to fill out daily. *Interview with Case Manager; District Response; Exhibit K: Attendance and Work Completion.*

### **Bullying**

30. During lunch on two separate occasions during Student's freshman year in March and April 2023, Student became involved in altercations off campus with other students. *District Response.*
31. The two incidents were unrelated and were investigated by the School Resource Officer (SRO), because the incidents occurred off campus. *District Response; Exhibit F: Emails from Complainant, SRO and County Attorney's Office.*
32. No criminal charges resulted from the incidents, even though Complainant reported to the County Attorney's Office that Student was assaulted and needed medical treatment following the first incident. *District Response; Interview with Complainant.*
33. After the second incident, Student and another student were not able to leave the campus at lunch time for two weeks. No additional concerns were reported. There were no ongoing concerns regarding the altercations, and the District did not take any further actions. *District Response.*
34. In the fall of Student's sophomore year, Complainant made vague claims of bullying in some conversations with Administration. There were no specific allegations made and Student denied there was any bullying when asked by District staff. *District Response Interview with Assistant Principal.*
35. There was an incident on December 18, 2023, an altercation between Student and other students, including a female student in a credit recovery class. *District Response; Exhibit F: Emails from Credit Recovery Teacher; Interview with Assistant Principal.*

36. The Credit Recovery Teacher reported that the December 18, 2023 incident was a minor altercation, and it was resolved without further consequences. When the Credit Recovery Teacher spoke to the Student, the Student felt the incident was not a big deal and was more interested in talking about help so he could keep his welding class, which would allow him to progress towards Jobs Corps. *Exhibit F: Emails from Credit Recovery Teacher.*
37. Complainant told the Complaint Investigator that there were a group of students that harassed Student at school and waiting for the bus. These incidents were never reported to the District. Complainant was able to provide the Complaint Investigator with the name of one of the students, but that Student is no longer attending the same school or at the bus stop. *Interview with Complainant.*
38. Complainant also told the Complaint Investigator that Student's hair was shaved or cut at school. This incident was never reported to the District. *Interview with Complainant, District Follow Up Questions.*

#### **Accommodations**

39. Student's IEP provided for supplementary aids and services for the content area, "instructional" and included: preferential seating, editing assistance, use of calculator, check for understanding, extra time on tests and assignments (1.5x), notes provided as requested, modify assignments and tests, and movement breaks and re-focus as requested and agreed by teacher. *January 17, 2023, IEP.*
40. All teachers' class rosters indicate which students have accommodations. Further information about a particular student's accommodations is available on the student information system (Infinite Campus) in the "Personal Learning Plan" (PLP) section. *District Response; Interview with Case Manager.*
41. The "IEP Accessibility and responsibilities" portion of the IEP designates how each teacher, related service provider, transportation provider and others will be informed of his or her responsibilities for implementing the IEP and accommodations, modifications and supports that must be provided. Student's January 17, 2023 IEP states "accommodations on Infinite Campus 'PLP Student Documents'". *January 17, 2023, IEP.*
42. In previous years, teachers would receive notification via a document informing them of their specific responsibilities related to the student and the accommodations, modifications and supports that must be provided. That document indicated the date each teacher was informed. A copy of the document was included with the IEP paperwork provided to

Complainant but was not filled out as far as when teachers were informed, due to the change of providing it through Infinite Campus. *Interview with Case Manager.*

43. The Assistant Principal confirmed with each of Student's teachers that they are aware of Student's IEP and accommodations. *District Follow Up Questions.*

## **Conclusions and Decisions**

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

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has a 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. The IDEA defines FAPE as special education and related services that are: (a) provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state education agency, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 300.324. 34 CFR 300.17.
3. A student's IEP team makes the determination as to what services, modifications or supports are necessary and which of those must be included in the IEP. For each student eligible for special education and related services under the IDEA, it is the obligation of the district to convene an IEP team meeting to develop an IEP, an *individualized* education program, designed to meet the student's needs that is developed, reviewed and revised in accordance with 34 C.F.R. 300.320 through 300.324 (*emphasis added*). 34 CFR 300.320(a).
4. In order for a student to receive FAPE, the district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas County School District. RE-1*, 137 S.Ct. 988, 999-1002, 69 IDELR 174, (2017). The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Andrew F.*, 137 S.Ct. at 1000.

### **Did the District deny Student a FAPE by failing to implement Student's IEP?**

5. Public agencies must ensure the Student's IEP is accessible to each regular education teacher, special education teacher, related services provider and any other provider who is responsible for implementation, and each teacher and provider must be informed of their specific responsibilities related to implementing the IEP and the specific accommodations,

modifications and supports that must be provided for the student in accordance with the IEP. 34 CFR 300.323(d).

6. The IEP must be implemented, as written, including all required components. 34 CFR 300.17(d). The Ninth Circuit in *Van Duyn v. Baker School District*, 502 F.3d 811, 47 IDELR 182, *amended* (9th Cir. 2007), adopted the materiality standard for failure to implement an IEP. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822. Therefore, if a material failure to implement is found, it may be considered a denial of FAPE.
7. Student's accommodations are instructional which means they are used primarily during classroom instruction. Additionally, some of the accommodations are only provided at Student's request. The totality of the evidence shows that Student's teachers were aware of Student's accommodations and are implementing them when Student is in school.

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

**Issue 2: Did the District deny Student a FAPE by failing to address Student's absenteeism?**

8. "When necessary to provide FAPE, IEPs must include consideration of behavioral needs in the development, review and revision of IEPs." *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1*, Q. 16, 71 IDELR 68 (EDU 2017). The IEP team must consider whether a student's behavior impedes the student's learning or that of others, and if they determine it does, consider the use of positive behavior interventions and supports and other strategies to address the behavior. 34 C.F.R. 300.324(a)(2)(i). The IEP team should address when a student's excessive absences are adversely affecting a student's learning. This can include the use of positive behavior interventions and supports or other strategies to address behavior. 34 C.F.R. 300.324(a)(2)(i); *OPI, Special Education in Montana*, October 2021 (Page 106, Question 3).
9. An IEP does not guarantee a certain educational or functional result for a student with a disability. *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1*, Q.15, 71 IDELR 68 (EDU 2017). However, if a student is not making progress at the level the IEP team expects, then the IDEA requires the IEP team to revise the IEP in order to provide

FAPE, and offer an IEP reasonably calculated to enable the student to make progress in light of the student's circumstances. *Id.*

10. Student's attendance concerns arose during the spring semester of freshman year and impacted Student's progress as noted on the June 2023 progress report. Student's absenteeism worsened during the fall semester of his sophomore year. The District took informal steps towards addressing Student's attendance concerns including: check ins, informal meetings, revising his class schedule, and looking at other educational programs of interest to Student. Although there was a period of brief improvement in Student's attendance, Student continued to struggle during the first semester of his sophomore year as described on the February 2024 progress report. At Student's annual IEP meeting in January of 2024, the team determined that behaviors were impeding his learning and decided a reevaluation was necessary to better understand Student's social emotional needs and how those may be impacting Student's attendance. Additionally, the school is collecting information daily from teachers to gain more data on Student's attendance habits. Although Student's attendance is negatively impacting Student's learning, the District continues to take steps to address it.

**The OPI finds no violation.** Although poor attendance is an ongoing issue for Student, the District has taken and continues to make attempts to address it.

### **Issue 3: Did the District deny Student a FAPE, by failing to respond to allegations of bullying of Student?**

11. The U.S. Department of Education characterizes bullying as aggression with a power imbalance, real or perceived and the aggression is repeated, or has the potential to be repeated. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP, August 20, 2013). Bullying can involve overt physical behavior or verbal, emotional, or social behaviors (e.g., excluding someone from social activities, making threats, withdrawing attention, destroying someone's reputation) and can range from blatant aggression to far more subtle and covert behaviors. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP, August 20, 2013). Whether or not the bullying is related to the student's disability, bullying that results in a student with a disability not receiving meaningful educational benefit from special education and related services provided by the school is a denial of FAPE. *Dear Colleague Letter*, 61 IDELR 263 (OSERS/OSEP 2013).

12. Similarly, MCA 20-5-208 defines bullying as:

(1)...any harassment, intimidation, hazing or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal or electronic communication or threat directed against a student that is persistent, severe, or repeated and that:

(a) causes a student physical harm, damages a student's property, or places a student in reasonable fear of harm to the student or the student's property;

(b) creates a hostile environment by interfering with or denying a student's access to an educational opportunity or benefit; or

(c) substantially and materially disrupts the orderly operation of a school.

(2) The term includes retaliation against a victim or witness who reports information about an act of bullying and includes acts of hazing associated with athletics or school-sponsored organizations or groups.

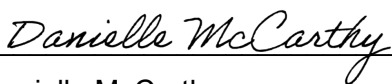
13. The record does not support the conclusion that Student was subject to bullying or any concern that Student perceived he was being bullied. Additionally, there was no evidence to substantiate that reports of bullying were made to the school and not responded to.

**The OPI finds no violation.** There was no evidence that the District failed to respond to allegations that Student was bullied.

**Disposition.**

Since the District did not violate IDEA, there are no actions for the District to complete.

**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  
State Director of Special Education

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

[REDACTED], District Special Education Director (SMFTS only)

[REDACTED], District Attorney (SMFTS only)