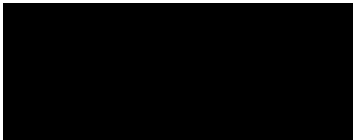


September 13, 2024

Sent via US Mail and SMFTS



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT:** In the Matter of [REDACTED] 2024-05, 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 daughter, [REDACTED] ([REDACTED]) (Student), 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 regulation at 34 C.F.R. Part 300 and ARM 10.16.3007 et seq. The Complaint alleged the following issues:

1. Whether the District failed to implement the accommodations in Student's Individualized Education Plan (IEP) in the general education classroom.
2. Whether the District denied Student a free appropriate public education (FAPE) by failing to provide Student with an IEP reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances.

**Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on July 15, 2024.

2. The OPI Dispute Resolution Office contacted the District on July 15, 2024, and the District 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 OPI Dispute Resolution Office issued a Notice of Filing on July 19, 2024, to the District and Complainant.
4. A Request for District Response, Appointment of Investigator and Scope of Proceedings was issued on July 23, 2024. It was noted that the Early Assistance Program (EAP) determined that any attempt to mutually resolve the matters alleged in the Complaint would be futile and the Complaint moved forward to the investigation phase. The OPI Dispute Resolution Office requested the District prepare and submit a written response to the Complaint by August 2, 2024.
5. The District requested an extension to submit a written response. The OPI Dispute Resolution Office granted an extension for the written response to August 9, 2024.
6. The District submitted a written response to the issues in the Complaint on August 9, 2024.
7. A written reply to the District's Response was received from the Complainant on August 19, 2024.

### **Investigatory Process**

The investigator reviewed the following records:

- The original letter of Complaint and all supporting documentation;
- The District's Response to the complaint and all exhibits;
- The Complainant's reply to the District's Response and all exhibits; and
- The education records relevant to this investigation.

The investigator interviewed the Complainant and her husband with an advocate present via Zoom.

The investigator interviewed the Student's Case Manager, the Director of the special education cooperative (Cooperative) the District belongs to, with counsel present via Zoom.

Six classroom teachers completed and returned investigatory questionnaires.

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. §300.17	Free Appropriate Public Education
34 C.F.R. §300.101	Free Appropriate Public Education

34 C.F.R. §300.320 Definition of individualized education program

34 C.F.R. §300.324 Development, review and revision of IEP.

### **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 July 15, 2023, through July 15, 2024. Additional information beyond this timeframe was considered for the purpose of fully investigating the complaint.

### **Findings of Fact**

1. The District has a total of less than 100 students in kindergarten through 12<sup>th</sup> grade. There is one School (School) where all the students attend. The District employs one special education teacher. In this case, the Special Education Teacher is the Complainant. *District's Written Response, page 2.*
2. The Student was previously evaluated and found eligible as a student with a specific learning disability in April 2023. The IEP Team, including the Student's Parents (Complainant and her husband) developed the Student's initial IEP on May 24, 2023. This was the IEP that was in place at the beginning of the Complaint timeframe. *District's Written Response, page 2.*
3. Relevant Portions of the Student's May 24, 2023 IEP are summarized below:
  - a. The Complainant and School Staff both expressed educational concerns in math. Specifically, the student struggled with solving multi-step problems, vocabulary terms, word problems and abstract problems. Complainant also explained the Student had anxiety that didn't always show at school, but at home, it affected the Student's sleep and caused her to become fixated on things.
  - b. According to the Present Level of Academic Achievement and Functional Performance, the Student received math instruction in a one-to-one setting. Student had an A- in math class. On the District's spring 2023 benchmark assessments the Student scored low. The Student was described as having low confidence and struggled when attempting to solve word problems. The Student's low math skills in solving word problems, and difficulty with abstract thinking impacted her learning.
  - c. The IEP contained one goal in math:

- i. The Student will add and subtract rational numbers and represent addition and subtraction on a horizontal and vertical number line diagram, solve multi-step real life math problems posed with positive and negative rational numbers in any terms (whole, numbers, fractions, and decimals) using tools and maintain a B in the regular math class with 80% accuracy in classwork as received by classroom teacher.
- d. The Student received 40 minutes per week of special education in math provided in the special education setting.
- e. Statewide assessments were taken with allowable accommodations. Districtwide assessments (AIMSWEB and benchmark testing) were taken without accommodations.
- f. Supplementary Aids and Services in the content area of instruction included:
  - i. Checking for understanding of vocabulary terms.
  - ii. Verbal instructions paired with visuals.
  - iii. Allowing the Student to rock in a chair helped her calm and focus.
  - iv. Manipulatives, graphs and organizers were helpful.
  - v. Visual representation helped the student organize information in word problems.
  - vi. Student tended to internalize her negative emotions and became overwhelmed.
  - vii. Short term memory was a weakness.

*District's Written Response, Exhibit 2, pages 2-4.*

4. The District's Prior Written Notice (PWN) documented the decisions made by the IEP Team and the IEP was approved by the Complainant's signature on May 24, 2023. *District's Written Response, Exhibit 2, page 6.*
5. At the beginning of the 2023-24 school year, the Complainant indicated she was reluctant to continue serving on the Student's IEP Team as both a parent and the Student's case manager. She reached out through email on September 25, 2023, to the Cooperative that supports the District. She inquired whether the Cooperative provided case management services. The Cooperative agreed to support the District with a case manager. The District Superintendent readily agreed to this change, explaining it was more appropriate for the Complainant to participate as a parent without case managing her own child's IEP. *Complainant's Reply, Exhibit 29 & District's Written Response, page 2.*

6. The Complainant contacted the District Superintendent through email on October 23, 2023, concerned about the Student's grades, workload, self-confidence and anxiety. The District Superintendent suggested reconvening the IEP Team to discuss the concerns. *Complainant's Reply, Exhibit 29, page 3.*
7. After a series of emails and an IEP Team meeting, the Student's IEP was updated through a November 9, 2023, IEP Amendment. The following summarizes the changes in the IEP Amendment:
  - a. The Student's strengths, and interests were updated.
  - b. The Student's goal was modified. Specifically, the Student's attainment of a specific math "grade" was removed.
  - c. Special education math services were increased from 40 minutes per week to 80 minutes per week in the special education setting.
  - d. The IEP Team specified that all accommodations were "as needed" or "as requested by the Student." The following instructional accommodations were added:
    - i. Additional time (up to 2X) to complete assignments, projects and tests.
    - ii. Multiplication chart.
    - iii. Offer a calculator when appropriate.
    - iv. Provide extra time to copy information, provide information already in copied form to reduce the demands of copying on tasks.
    - v. Guided notes/outline for completion.
    - vi. Provide access to a copy of notes, class lectures or outline of information presented.
    - vii. Modified assignments, quizzes and tests, (i.e. word bank, three multiple choice options, etc.).
    - viii. Reduced volume of work that prioritizes quality over quantity (i.e., completing 50%, such as all the odd numbered questions).
    - ix. Provide visuals when giving instructions.
    - x. Private clarifications/checks for understanding from the classroom teacher.
    - xi. Provide a designated calm down area.
    - xii. Offer up to a 5-minute break when Student is overwhelmed.
    - xiii. Access a trusted adult.
    - xiv. Access to separate setting for completing academic work, especially tests.

- xv. Short term memory is a weakness. Student may require additional support and instruction in creating an organizational system.
- xvi. Access to book share.

*District's Written Response, Exhibit 3, pages 3 - 6.*

8. The District's PWN memorialized the November 9, 2023, IEP Amendment. Salient portions of the PWN included:
  - a. There was discussion about adding a self-help goal, but the team agreed that this area of concern was addressed with supplementary aids and services.
  - b. Special education math minutes were increased. The IEP Team agreed the Student would receive 20 minutes of special education math services per day during Student's study skills class (4 times a week for 20 minutes each day). The increased support assisted the Student in gaining confidence and advocating for herself.
  - c. The Student remained in the general education math classroom. Accommodations were added to the IEP to assist the Student to continue to make progress in this setting. All team members agreed to the new accommodations for the Student.

*District's Written Response, Exhibit 3, page 9.*

9. The Parent approved the IEP with her signature on November 13, 2023. *District's Written Response, Exhibit 3, page 11.*
10. At the end of November 2023, the Case Manger provided the classroom teachers with a list of the Student's accommodations outlined in the November 9, 2023, IEP amendment. Teachers were also provided with a fidelity checklist to track the Student's accommodations. This included when the student needed them, and when the Student requested them. Staff acknowledged receipt of the information. *District's Written Response, Exhibit 15 and 23 & Case Manager Interview August 30, 2024.*
11. After a series of emails between the Complainant and Case Manager, the IEP Team reconvened on December 18, 2023, to discuss Complainant's concerns with the Student's access to current accommodations and whether adjustments were needed. The District's PWN indicated that the IEP Team agreed to add the accommodation that all tests would be read aloud in a separate setting to address the Complainant's concern with the Student's test anxiety. *District's Written Response Exhibit 4, pages 8 & 9.*
12. Classroom Teachers explained they did not observe the Student's anxiety in the classroom. According to the fidelity checklist the Student accessed a separate setting for completing

academic work, including tests in science as needed in English and Civics. *District's Written Response, Exhibit 15 & Staff Investigatory Questionnaires.*

13. The Progress Report dated January 12, 2024, explained the Student was making progress and expected to meet her annual IEP goal. Specifically, the Student could solve mixed numbers and improper fractions using tools (number lines) with 92.5% accuracy. Four units had been covered in the fall. Integer Addition and Subtraction, Rational Numbers, Multiplication and Division of negative numbers and Proportional Relationships. Classroom test scores showed an accuracy of less than 60% average, but the homework/coursework, with assistance, demonstrated upper 80% accuracy. *District's Written Response, Exhibit 5, page 1.*
14. The Complainant contacted the Case Manager on January 16, 2024, regarding concerns with accommodation implementation and questions regarding the fidelity checklist. The Complainant acknowledged she had not signed the December 2023 Amendment, stating "she did not feel good after meeting, and was seeking advice on how to handle this really tough situation." The Case Manager offered to reconvene the IEP Team. *District's Written Response, Exhibit 13, page 1.*
15. On January 22, 2024, the IEP team convened and amended the Student's IEP. An advocate attended the meeting with the Complainant and her husband. The Complainant expressed ongoing concern that the accommodations added in December had not been fully implemented. The District indicated that the amendment created in December was never signed by the Complainant. However, the District noted accommodations, including reading test aloud, had been implemented. *District's Written Response, Exhibit 6, page 9.*
16. During this same meeting, the IEP Team discussed conducting a math assessment. The District suggested it might be helpful to know grade level equivalency of the Student's skills. During interviews, the Complainant stated she didn't believe it was necessary to test the Student, and the Case Manager explained consent to evaluate was not sought or provided by the Complainant. Instead, the IEP Team agreed to assess Student by using the pretest from the Student's math intervention and classroom-based assessments to determine areas to target with goals and interventions. *District's Written Response, Exhibit 6, page 9 and 10, Complainant Interview, August 30, 2024 & Case Manager Interview, August 30, 2024.*
17. A PWN outlined and proposed the following changes resulting from the January 22, 2024 IEP meeting:
  - a. Additional accommodations (Classroom Assessments):
    - Modified tests/quizzes (i.e., word bank, three multiple choice options, etc.).

- Civics/English: chunk vocabulary into sections of five on tests and quizzes and three multiple choice options.
  - All tests and quizzes read aloud.
  - Access to separate setting that is quiet and free of distractions for completing tests.
- b. Additional instructional supplementary aids and services:
    - Chunking for long assignments.
    - Civics: Provide completed outline.
    - Civics/English: Not graded on spelling.
  - c. The fidelity checklist was updated to include recently added accommodations. The checklist was provided to each subject matter teacher with instructions that all accommodations the Student received would be noted.
  - d. In order for the Student to have a full study hall class the IEP team agreed to provide the Student's special education services minutes (math intervention) before school. Previously she was pulled out of study hall for 20 minutes each day to receive her special education minutes.
  - e. The Team agreed that the intervention pretest and classroom based assessments would be completed within the next nine days.
  - f. The Team also discussed the Student's anxiety but decided to implement accommodations with fidelity prior to moving to an official evaluation.

*District's Written Response, Exhibit 6, pages 9 and 10.*

18. The IEP team reconvened with the assistance of an OPI IEP Facilitator on February 28, 2024.

The IEP was amended. A summary of the adjustments are described as follows:

- a. The IEP Team added an accommodation which provided the Student with a guided note card to use on math tests.
- b. The accommodation fidelity checklist was revised to include recently added accommodations. It was discussed that the document would be provided to the Superintendent and Complainant weekly. Teachers were also directed to note in the gradebook when accommodations were made on assignments or tests.
- c. The IEP Team agreed no additional assessments were needed outside of the math intervention and curriculum-based assessments.
- d. The IEP Team approved that the Student would continue receiving special education math intervention outside of the school day. The Special Education

Teacher (Complainant) was willing to provide this intervention outside of the school day.

- e. The District documented the decisions made by the IEP Team in the PWN.
- f. The IEP was signed and approved by the Complainant on March 14, 2024.

*District's Written Response, Exhibit 7 pages 9 – 11.*

19. The Complainant acknowledged she had access to the fidelity checklist beginning in March 2024. It was described by the Complainant that the Case Manager continued to share the checklist with her via email throughout the school year. The checklist tracked accommodations by week and by core subject. The document contained a brief description of which accommodations had been provided and the purpose. Examples from the checklist included: (1) staff documented when the Student took tests in a separate location; (2) staff explained when visuals were used to describe subject matter content; (3) teachers generated notes to assist the student when producing essay answers; (4) guided outlines were developed and used to assist the Student during presentations; and (5) staff often used verbal chunking when communicating requirements for long assignments. There were some days/weeks on the checklist that indicated an accommodation wasn't needed or required, and sometimes the checklist had nothing documented. Questionnaires completed by Staff explained the Student had access to all accommodations but rarely, if ever, asked for an accommodation and infrequently required many accommodations to be successful in the general education classroom. *District's Written Response Exhibits 15 and 18, Staff Investigatory Questionnaires, & Complainant's Reply, page 2.*

20. On April 15, 2024, the IEP Team convened to develop the Student's annual IEP, relevant portions are summarized below:

- a. As part of the description of the Student's strengths and interests, the Student explained she liked the outdoors, working with animals and playing basketball. She indicated she needed the most help in math and that the current program was helping. Complainant and her husband added the Student was a very hard worker, determined, and put full effort into completing tasks. Complainant and her husband would consider the 2023-2024 school year successful if Staff continued to work on providing meaningful accommodations instead of generic ones. School Staff described the Student as a hard worker, who regularly asked for help, participated in class, and was self-motivated.

- b. The educational concerns stated by the Complainant included the Student needed more visuals with learning, assistance with understanding how to voice what she needed, math skills and vocabulary in all areas. Complainant expressed concern with the decline in the Student's confidence and increased anxiety. School Staff described the Student's educational needs as having difficulty turning words into images, understanding new terminology, respectfully communicating and contributing to class discussions, and foundational math skills.
- c. Present levels of academic achievement and functional performance indicated that the Student received math instruction before school for 15 minutes per day, four days a week, using an online intervention and supplemental instructional activities. Additionally, the Student was in the general education math class completing activities at the 7<sup>th</sup> grade level with the support of supplementary aids and services.
  - i. According to the AIMSWEB assessment Fall 2024, the Student had an overall performance score that placed her in the 28<sup>th</sup> percentile. This meant her performance level was average and categorized as moderate risk. Additionally, according to the IXL diagnostic action plan (intervention) the Student's overall scores fell between 360 to 460 which indicated she was working on skills at the 3-4<sup>th</sup> grade level. It was noted that in the general curriculum, the Student required repetition and opportunities to build her foundational math skills.
- d. Measurable goals
  - i. By April 2025, given an analog clock, [Student] will tell and/or write the correct time within 5 minutes with 100% accuracy as measured by daily practice and informal assessments.
  - ii. By April 2025, [Student] will independently complete problems dealing with fractions, decimals, and percents with 80% accuracy as measured by daily practice and informal assessments.
  - iii. By April 2025, [Student] will independently write expressions to represent multi-step word problems with an average 80% accuracy as measured by daily practice and informal assessments.
  - iv. By April 2025, [Student] will add, subtract, multiply and divide multi-digit numbers with positive and negative integers with an average of 90% accuracy as measured by daily practice and informal assessments.
- e. Services

- i. Special Education math services 45 minutes per week in the special education setting.
- f. Supplementary aids and services:
  - i. Classroom assessment:
    - Modified tests/quizzes (i.e. word bank, three multiple choice options, etc.).
    - Civics/English: chunk vocabulary into sections of five on tests and quizzes.
    - Civics/English - three multiple choice options.
    - All tests and quizzes read aloud.
    - Access to separate setting that is quiet and free of distractions for completing tests.
    - Guided note card to use on math tests.
  - ii. Instructional
    - Additional time (up to 2X) to complete assignments, projects and tests.
    - Modified assignments (i.e. word bank, three multiple choice options, etc.).
    - Reduced volume of work that prioritizes quality over quantity (i.e. Completing 50% such as all of the odd questions).
    - Student is a concrete thinker, manipulatives, graphs, and organizers are helpful.
    - Provide visuals when giving instructions.
    - Multiplication chart.
    - Access to calculator.
    - Provide extra time to copy information, provide information already in copied form or reduce the demands of copying on tasks.
    - Provide access to a copy of notes, class lectures or outline of information presented.
    - Check for understanding of vocabulary.
    - Private clarifications/checks for understanding from the classroom teacher.
    - Allowed to rock in chair as a calming or focus strategy.
    - Provide a designated calm down area.
    - Offer up to a 5-minute break when Student is overwhelmed.

- Access a trusted adult.
- Access to separate setting for completing academic work, especially tests.
- Short term memory is a weakness. Student may require additional support and instruction in creating an organizational system.
- Access to book share.
- Chunking for long assignments and break math problems into smaller, more manageable steps.
- Civics – provide a guided or modified outline when direct instruction is not provided.
- Civics/English – not graded on spelling.
- Math curriculum, lessons provided one week in advance to drive interventions.

*District's Written Response, Exhibit 8.*

21. The District memorialized the IEP decisions in the PWN, as summarized below:

- a. The IEP Team discussed education concerns, the present levels of performance and changed goals to reflect the Student's academic performance. Teachers provided feedback. The math teacher shared that the Student does well on homework but performs poorly on tests. It was further stated from his observation she does not understand the material well enough for independent work. Complainant stated that the Student works with a tutor twice a week and her skills are improving, especially in her working memory. The tutor was provided because the Parents wanted the Student to get more practice. Throughout the summer, the Student has access to two outside tutors to fill in gaps in math. It was suggested that the data indicated it may be appropriate to add more time to the Student's math intervention minutes. The Complainant's preference was to keep the Student in the general education classroom. The Student could get additional help through her practice outside of school hours.
- b. The District proposed new goals to reflect the Student's current performance levels. The Student's supplementary aids and services were reviewed. According to the Case Manager, the "as needed" and "upon request from Student" language was intentionally removed from supplementary aids and services on the IEP. With the exception of one additional accommodation, the Student's accommodations

were not changed. The one accommodation added was to ensure alignment between the general education classroom and the Student's special education math intervention. The IEP Team agreed the fidelity checklist would be provided to the Complainant and Superintendent.

- c. The Student continued to receive her special education minutes before the school day started to maximize time in her study skills class to focus on core academic classroom work. The IEP Team agreed to continue to track progress and review data to determine appropriate placement during the 2024-2025 school year. Complainant wanted the Student in general education math classroom with accommodations. The School offered to provide push-in support to the Student in general education math, but this was declined by the Complainant. The Complainant explained that the Student might have increased anxiety with her parent (Special Education Teacher) in the general education classroom with her.
- d. The Team discussed other academic testing. It was stated that academic testing could take place at any time and the IEP can be amended.

*District's Written Response, Exhibit 8, pages 9 and 10.*

22. On April 17, 2024, through email, the Complainant contacted the Case Manager with the following concerns and requests:

- a. The IEP accommodation "math topics provided in advance to drive intervention" required more specificity and should state that the math teacher will provide the special education teacher with copies of math curriculum, chapter, lesson and examples, one week prior to concept being taught.
- b. The Complainant requested the following accommodations be added to the Student's IEP:
  - i. Scaffold supports – guided practice prompts and cues to help navigate through problem solving tasks.
  - ii. Models with clearly laid out steps.
  - iii. Break down math problems into smaller, more manageable steps.
  - iv. Provide an option to retake tests. This helps students view tests as feedback and not a reflection of their self-worth.
  - v. Create a checklist of steps with visual, concise, written cues.

- vi. Use explicit and consistent language when teaching a new concept. Go beyond definitions and break down the parts of the word and pair with gross motor.
- c. Modify the Prior Written Notice language. The Complainant explained the word “denied” implied that the Complainant and her husband weren’t cooperating as members of the IEP Team. Proposed language was provided:
  - i. “[Complainant] stated that the interventions and accommodations have not been in place long enough to see what effect they are having on the Student. [Complainant] does not want changes made until the interventions and accommodations have consistently been provided for at least six months”
- d. Complainant wanted it noted that her disagreement with adding additional minutes of services to the Student’s IEP was based on her understanding of the data. She explained that she didn’t interpret the data in the same way as the District. She stated that the Student had made great gains in all areas of math except problem solving.

*District’s Written Response, Exhibit 14.*

23. On April 19, 2024, the District Superintendent requested a meeting with the Complainant. Another teacher also attended and took notes. The District Superintendent described other possibilities for the delivery of math instruction for the Student. Options discussed included the following:

- a. Another teacher could teach 8<sup>th</sup> grade math, and the Student could receive math instruction in this classroom.
- b. The District could develop another basic 8<sup>th</sup> grade math course with a few students that, like the Student, needed additional assistance with math.
- c. The Student would attend a regular math class, and the Complainant (Special Education Teacher) would modify tests, classwork and grades. *District’s Written Response Exhibit 22 and Complainant’s Reply, Exhibit 30.*

24. At the end of the meeting, the Complainant indicated she needed more time to think about the options and discuss them with her husband. The Complainant indicated that none of the options seemed focused on the Student’s needs. *District’s Written Response Exhibit 22 and Complainant’s Reply, Exhibit 30.*

25. Through email the District and Complainant agreed to reconvene the IEP Team on May 6, 2024, and address ongoing concerns shared by the Complainant. The PWN dated May 9, 2024, addressed the following:

- a. The Team discussed the Student’s current special education services in Math, this included increasing the Student’s special education intervention, contracting with the Cooperative for an itinerant special education teacher, contracting with the Student’s outside tutor, or amending the Student’s current math accommodations.
- b. The Complainant had requested that the Math Teacher make copies of the math curriculum and examples of how to complete the problem. This would be provided to the special education teacher (in this case the Complainant) the week before it will be taught so the Special Education Teacher could align the Student’s special education, math intervention to what was taught in the classroom. No consensus was reached on this topic. The IEP Team didn’t agree on whether this was necessary for the Student. The District shared this request didn’t focus on the Student’s needs but rather assisted the teaching staff.
- c. A summary of the District’s response to the Complainant’s specific request for additional accommodations.

PARENT REQUEST	DISTRICT RESPONSE	REASON FOR RESPONSE
Models with clearly laid out steps	Denied	Accommodation already addressed. (5 <sup>th</sup> accommodation listed on the instructional list in the supplementary aids and services section).
Breaks down math problems into smaller more manageable steps	Accepted	Added language to include chunking for long assignments and breaking down math problems into smaller more manageable steps.
Provide an option to retake tests. This helps students view tests as feedback and not a reflection of their self-worth.	Denied	Student has the option to retake tests/quizzes in all classes as it stands, earning at least half credit. Supplemental aids and services are to provide the student the opportunity to access the general curriculum as well as assist in the

		student being in the Least Restrictive Environment. They are not intended to guarantee a specific result in a class.
Create a checklist of steps with visual, concise, written cues.	Denied	Accommodation is already addressed in providing visuals and chunking long assessments and math problems. It is not clear how a checklist would further address the Student's needs. The accommodations provided adequately address her needs as identified.
Use explicit and consistent language when teaching a new concept. Go beyond definitions and break down the parts of the word and pair with gross motor.	Denied	This request is not relevant to Student's identified disability. It is unclear what is meant by "gross motor" – jumping jacks, jumping, walking? Student has not demonstrated a lack of understanding of verbal concepts and a need for pairing such concepts with gross motor skills.

*District's Written Response, Exhibit 22, pages 1-5.*

26. The IEP Team reconvened on May 22, 2024, at Complainant's request. The Complainant provided signature for the Student's annual IEP dated April 15, 2024, with exceptions. The exceptions document was stapled to the IEP. Additionally, the Complainant requested an Independent Education Evaluation. The District inquired about what areas the Complainant wanted evaluated so that they could provide the required information, specifically names of individuals where the evaluation could be completed.

*District's Written Response, Exhibit 26, pages 1 and 2.*

27. On May 23, 2024, the Student's progress was reported. The Student was expected to meet her goal. According to Khan Academy data, the Student was proficient, which meant she got 100% correct in the areas of adding negative numbers on the number line, number equations and number lines, and interpreting negative numbers additional and subtraction expressions. She was also 100% accurate on one-step equations with negatives. It was stated the Student

is 70% accurate or below in most other skills. Of the thirty-seven 7<sup>th</sup> grade math level skills, the Student had mastered 32%, was proficient in 30% and attempted to be familiar with 38%. *District Written Response, Exhibit 9, page 1.*

28. The Student’s grades for the 2023-24 school year were reported.

Course	Semester 1	Semester 2
Art		P
English	C	A-
Financial Education	A+	
Math	C-	B+
Music	A	A+
Band	A	A
PE and Health	A+	A+
Physical Science	B	B
Civics 7/8	B-	A-
Technology	B-	A

*District’s Written Response, Exhibit 10, page 1.*

29. End of Year benchmarking on AIMSWEB Plus reported the Student was Low Risk for both reading and math. *District’s Written Response, Exhibit 11, pages 1 and 2.*

**Conclusions**

**FAPE**

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has FAPE available to them, including special education and related services that meet the unique needs of the individual student. *34 C.F.R. §300.1.*
2. FAPE must be individually designed to meet the unique needs of an eligible student, and a school district must offer an Individualized Education Program (“IEP”) that is reasonably calculated to enable a student to make progress appropriate in light of the student’s unique circumstances. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley, 553 IDELR 656, 458 U.S. 176, (1982) and Endrew F. v. Douglas County Sch. Dist. RE-1, 69 IDELR 174, 580 U.S. 386 (2017).*
3. According to the Supreme Court in *Endrew F.*, an IEP is a snapshot, not a retrospective view, meaning that whether an IEP is reasonably calculated to provide educational benefit is a

standard judged by information known at the time the IEP was written. It requires prospective judgment by school officials, informed by their own expertise and the views of the parent or guardian. *Endrew F.* 580 U.S. at 387, citing to *Rowley*, 458 U.S. at 204.

4. The IDEA does not guarantee or promise any particular educational outcome or level of progress. *Endrew F.*, 69 IDELR 174, 580 U.S. 386 (2017). A school district has no obligation to maximize a student's potential or to provide a parents' preferred program. So long as the proposed IEP was reasonably calculated to provide an appropriate educational benefit, the district has satisfied its obligation to provide FAPE. *E.W.-G v. District of Columbia*, 83 IDLER 25, 2023 WL 2598680, *unpublished* (D.D.C. 2023).
5. The primary vehicle for providing FAPE is through an appropriately developed IEP that is based on the individual needs of the child. *Dear Colleague Letter*, 66 IDELR 227 (OSERS and OSEP 2015).
6. In order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled. *Dear Colleague Letter*, 66 IDELR 227 (OSERS and OSEP 2015).
7. At all times relevant to this Complaint, the Student had an appropriately developed IEP based on her identified needs in all areas. The Complainant and District both agreed that math was the main academic area of concern. The Student's IEP contained goals, services and many accommodations to support the Student's access and progress in math.
8. Although there were concerns with the Student's anxiety, everyone, including the Complainant, agreed the Student's anxiety was not as likely to occur at school. Teachers described the Student's anxiety as similar to her peers and was not something often observed in the classroom. Even so, the IEP Team designed supports in the form of supplementary aids and services. Specifically, the Student was provided a space to calm, took tests in an alternate location, had tests read aloud, and was allowed to rock in her chair to calm and focus.
9. Both the Complainant and at least one classroom teacher expressed concern that the Student may have difficulty understanding some vocabulary, especially technical vocabulary. Again, the IEP Team decided that supplementary aids and services, specifically chunking longer assignments, providing visuals when giving instructions, drawing visual representations to

help organize information, and creating vocabulary flash cards and private clarifications/checks for understanding were sufficient to address the Student's needs.

10. In each of these cases, it is well documented that the District staff communicated with the Parent through email. Additionally, the IEP Team met on at least six occasions, amended the IEP five times and adjusted the Student's Special Education in response to the Complainant's concerns and whether the Student's needs changed.

### **IEP Implementation**

11. The IDEA demands that special education and related services are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §300.320 through 300.324. 34 C.F.R. §300.17(d). Public agencies must implement the IEP as written for each student. When looking at whether a public agency's failure to implement the IEP denies a student FAPE, 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. If a material failure to implement the IEP is found, it may be considered a denial of FAPE. "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.
12. Public agencies must ensure that each regular teacher, special education teacher, related services provider, and any other service provider who is responsible for the implementation of a student's IEP is informed of her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the student's IEP. 34 C.F.R. §300.323(d)(2).
13. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP. 71 Fed. Reg. 46667 (August 14, 2006).
14. All Staff demonstrated knowledge of the Student's accommodations. The Case Manager developed a fidelity checklist to track the implementation of accommodations. The record indicated the Student received accommodations throughout her school day. A few examples include: classroom teachers documented the Student taking tests in a separate location, using visual models to explain subject matter content, and chunking longer assignments. The Case Manager revised the checklist after the Student's annual IEP to improve the tracking by content area. Teachers continued to document when accommodations were provided. Based on a thorough review of all documentation, it is concluded that Staff were informed about the

Student's accommodations and that they were integrated into the Student's school day as needed and required in her IEP.

15. The Student demonstrated progress on her IEP goals, teachers described her as a typical learner in the classroom, her grades demonstrated advancement in the general education curriculum, and she achieved a "low risk" score in reading and math at the end of the 2023-2024 school year on the District's benchmark assessment. By all accounts, this was a Student that experienced success. The Student's IEP was developed based on her unique needs and was implemented accordingly, providing Student with a FAPE.

### **Decision**

1. Whether the District failed to implement the accommodations in Student's Individualized Education Plan (IEP) in the general education classroom?

**The OPI finds no violation. The District implemented accommodations consistent with the IEP.**

2. Whether the District denied Student a free appropriate public education (FAPE) by failing to provide Student with an IEP reasonably calculated to enable Student to make progress appropriate in light of the Student's circumstances

**The OPI finds no violation. At all times, the Student had an IEP that was developed based on her unique needs and resulted in appropriate progress.**

### **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.

*Patrick Cates*

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Patrick Cates,  
OPI Senior Manager of Student Support Services

- c: Mandi Gibbs, OPI Dispute Resolution/EAP Director (via SMFTS only)  
John Gorton, OPI School Improvement/Compliance Unit Manger (via SMFTS only)  
[REDACTED] District Attorney (via SMFTS only)