



October 15, 2024

Sent via US Mail and SMFTS

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THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT:** In the Matter of [Redacted], 2024-06, 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] Ph.D., a psychologist in Montana, (Complainant), filed the Complaint on behalf of [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 CFR Part 300 and ARM 10.16.3007 et seq. The Complaint alleged the following issues:

1. Whether the District's evaluation procedures were in violation of 34 CFR 300.304 through 300.306, including:
 - a. Not assessing all areas of suspected disability (34 CFR 300.304(c)(4));
 - b. Lack of comprehensive evaluation (34 CFR 300.304(c)(6));
 - c. Assessments used outside guidelines of the publisher (34 CFR 300.304(c)(1)); and
 - d. Incorrect procedures used to determine eligibility (34 CFR 300.306 and ARM 10.16.3321); and
2. Whether the District's representative at the IEP meeting was qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities in accordance with 34 CFR 300.321(a)(4)(i).

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on August 16, 2024.
2. The OPI Dispute Resolution Office contacted the District on August 16, 2024, and the District received a copy of the Complaint, as required by the Code of Federal Regulations (CFR) 34 CFR 300.153(d) and Administrative Rules of Montana (ARM) 10.16.3662(3).
3. The Complaint was deemed filed on August 16, 2024. The OPI Dispute Resolution Office issued a Notice of Filing on August 21, 2024, to the District and Complainant.
4. The Individuals with Disabilities Education Act (IDEA), in accordance with Family Educational Rights and Privacy Act (FERPA), requires parental consent before personally identifiable information is released. 34 CFR 300.633 and 34 CFR part 99. The Notice of Filing notified parties that the Complainant submitted a Release of Information with the Complaint, but the Release only authorized the Complainant to disclose health record information to OPI. The Release did not give OPI or the District consent to release personally identifiable information to Complainant.
5. On August 23, 2024, the parents of Student submitted a letter, giving the OPI and the District consent to disclose personally identifiable information and educational records relating to Student throughout the IDEA state complaint process to Complainant in accordance with IDEA and FERPA regulations.
6. A Request for District Response, Appointment of Investigator and Scope of Proceedings was issued on August 26, 2024. It was noted that the Complainant chose not to participate in early resolution through the OPI's Early Assistance Program. Accordingly, the Complaint moved forward to the investigation phase and the OPI Dispute Resolution Office requested the District prepare and submit a written response to the Complaint by September 5, 2024.
7. The District requested an extension to submit a written response. The OPI Dispute Resolution Office granted an extension for the written response to September 11, 2024.
8. The District submitted a written response to the issues in the Complaint on September 11, 2024.
9. A written reply to the District's Response was received from the Complainant on September 20, 2024.

Investigatory Process

The investigator reviewed the following records:

- The 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 Parents of the Student via Zoom.

The investigator interviewed the District Special Education Director, District Elementary Special Education Coordinator, and Special Education Teacher with counsel present via Zoom.

The OPI provided the Complainant and the District the opportunity to submit additional information for consideration during the complaint investigation.

Applicable Federal Regulations, State Statutes or Rules

34 CFR 300.304	Evaluation Procedures
34 CFR 300.305	Additional Requirements for evaluations and reevaluations
34 CFR 300.306	Determination of Eligibility
34 CFR 300.321	IEP Team
ARM 10.16.3321	Comprehensive Educational Evaluation Process and Reevaluation

Relevant Time Period for Investigation

Pursuant to 34 CFR 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 August 16, 2023, through August 16, 2024. Additional information beyond this timeframe was considered for the purpose of fully investigating the Complaint.

Findings of Fact

1. Student was evaluated and found eligible as a student with a specific learning disability on June 3, 2022. During the Complaint timeframe Student received reading services according to a May 2023 IEP. *District’s Written Response, page 2.*
2. The May 2023 IEP outlined the following services to address the Student’s reading comprehension needs:
 - a. 80 minutes per week in the regular education setting.
 - b. Instructional supplementary aids and services included preferential seating, small group setting and access to graphic organizers.

Complaint, pages 88, 89.

3. The Special Education Teacher (Teacher) explained that she met with parents at the beginning of the 2023-24 school year. She described the Student's goals as "grade level heavy." The Student's special education was delivered four days per week for 30 minutes each day. The Teacher explained instruction happened in small groups, sometimes one to one, outside of the general education classroom. Every day the Student practiced a fluency passage, and then focused on novels and reading comprehension. Based on the discussion during the beginning of year meeting with parents, providing literacy instruction without the distraction of the general education classroom, seemed beneficial to the Student. According to the classroom-based progress monitoring, the Teacher stated the Student made progress. *School Interviews, October 2, 2024.*
4. During winter of 2024, school personnel documented the Student's universal screening and progress monitoring assessments indicated the Student's literacy and reading scores had increased. *District's Written Response, page 2.*
5. During this same time, the District conducted a review of existing educational data (REED) with school staff and the Student's parents. A Worksheet for consideration of existing data was completed, with the assistance of the District Elementary Special Education Coordinator (Coordinator). Relevant portions of the Worksheet are summarized:
 - a. The Team was considering a reevaluation outside of the 3 year reevaluation timeline and was deciding whether a reevaluation was necessary to determine whether the student continues to demonstrate the need for specially designed instruction through an IEP.
 - b. Parent mentioned the Student was inconsistent at home when working on reading and comprehension skills. The Student received weekly tutoring outside of school. The Parent was concerned with communication and reading.
 - c. Classroom based performance monitoring indicated that from fall 2023 to winter 2024 the Student showed an increase in his wpm (words per minute), increasing from 80 to 101; retell (a reading comprehension indicator) decreased from the 41st percentile to the 23rd percentile; and MAZE (ability to construct meaning from text and also a reading comprehension indicator) increased from the 15th percentile to the 18th percentile.
 - d. Staff stated the Student made growth but still needed support. He was inconsistent with reading in class. Sometimes he could independently read an assignment at grade level, but numerous times he needed assistance and took longer than peers. Staff explained the Student's writing was unorganized.

- e. Staff noted that the Student qualified in the area of reading comprehension when he was initially evaluated. It was stated the Woodcock Johnson (WJ) would be re-given. The Student would still have to meet a 76 standard score in reading comprehension to indicate disability.
- f. According to the District's universal screening tool (midyear January 2024) the Student's reading scores were in the average range. The Student's processing speed was below average, and this limited the amount of work the Student could complete. Workload and repetition were important to consider for the Student.
- g. After reviewing existing data, the Team decided to propose an evaluation plan for parent consideration and consent.

Complaint, pages 24-26.

- 6. After reviewing existing data, the Team determined additional data were necessary to complete the reevaluation and sent the Evaluation Plan to parent on January 29, 2024. Parent signed an evaluation plan providing consent for reevaluation on March 5, 2024. The evaluation plan specified that Student "has been referred for comprehensive evaluation for the following reasons: reading comprehension will be reevaluated to determine his current comprehension skills." Student was to be observed and assessed in academic achievement and classroom based assessments. *District's Additional District Document Transmittal, October 1, 2024.*
- 7. During Staff interviews, the Coordinator indicated that she worked with the Student's team during the REED meeting, but she did not attend the evaluation team meeting. Additionally, she explained that her role did not include supervising any staff at the Student's school. She assisted teams districtwide providing support in understanding and implementing IDEA requirements. As part of the District's Response, the Coordinator's license as a teacher and administrator, including endorsements in special education K-12 and principal K-12, was provided. *District's Written Response, Exhibit E, and District Interviews, October 2, 2024.*
- 8. The Evaluation Team convened on May 6, 2024, and completed an Evaluation Report after the reevaluation. Salient portions are summarized as follows:
 - a. Parents were concerned with the inconsistency of the Student's reading. The Student received outside tutoring and parents encouraged the focus towards reading. Parents have continued communication concerns.
 - b. The Student shared that school was currently going OK. He liked basketball. Math was his favorite subject. Writing was the hardest part of his day.

- c. Acadience Reading assessment summaries included the Student's beginning, midyear and end of year (except for fifth grade) performance on the universal screening tool and classroom-based progress monitoring tool from 2021-22 through the 2023-24 school year. These assessments documented the Student made some progress in wpm and MAZE but had decreased in retell. (Results were the same as those used in the REED).
- d. A twenty-minute classroom observation was conducted by the school psychologist. It was noted the Student was at the front of the room at a desk away from his peers at the beginning of the observation. He was working on a writing assignment that he still needed to complete. His peers were working on math warmups. Throughout the observation, the Student continued working on his writing assignment either at his assigned desk or at the desk in the front of the classroom. It was reported the Student was on task 100% of the time while he was observed.
- e. The Teacher administered a portion of the Woodcock Johnson IV (WJ-IV) Tests of Achievement to assist the Team to better understand the Student's reading comprehension. The cluster of reading scores included:

Reading Comprehension (overall)	87	20 percentile (limited to average)
Reading Comprehension (Ext.)	86	17 percentile (limited to average)
Passage Comprehension	88	
Reading Recall	90	
Reading Vocabulary	86	

- f. During the evaluation, the Teacher reported the Student struggled using context clues, and synonyms and antonyms were difficult. Additionally, when passages became more difficult and longer, the Student had to read out loud versus in his head. The WJ-IV scores were compared to his overall cognitive ability scores (administered in 2022). The report stated the Student needed a standard score of 76 or lower to continue to qualify as a student with a Specific Learning Disability in Reading Comprehension.

Complaint, pages 35-38.

- 9. According to the assessment manual provided by the District, when administering the WJ-IV:

“An examiner seldom needs to administer all of the tests or complete all of the interpretive options for a single person. The importance of selective testing becomes apparent as the examiner gains familiarity with the WJ IV ACH...Different assessments require different combinations of tools.”

Staff indicated that the reading comprehension cluster of the WJ-IV was chosen due to the student’s area of disability eligibility.

District’s Written Response, Exhibit C, page 2, and Staff Interviews, October 2, 2024.

10. The Evaluation Report was reviewed at a Team meeting on May 6, 2024. The following Team members attended:
 - a. The Parents
 - b. Special Education Teacher
 - c. General Education Teacher
 - d. School Psychologist
 - e. School Administrator

Additional District Document Transmittal, October 1, 2024.

11. Prior Written Notice dated May 6, 2024, stated the Evaluation Team determined the Student did not meet the disability criteria (severe discrepancy) for a Specific Learning Disability in reading comprehension under the IDEA. The Team, including the Parents, agreed to exit the Student from special education services and develop a Section 504 plan to ensure appropriate accommodations were put into place for his academic success. *Complaint, pages 39-40.*

Conclusions

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has Free Appropriate Public Education (FAPE) available to them, including special education and related services that meet the unique needs of the individual student. 34 CFR 300.1.
2. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 300.304 through 300.311. 34 CFR 300.303.
3. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP team and other qualified professionals as appropriate, must review existing evaluation data on the child and ...

On the basis of the review, and input from the child’s parents, identify what additional data, if any, are needed to determine, in the case of a reevaluation of a child whether the child continues to have such a disability and the education needs of the child; and whether the child continues to need special education and related services.

34 CFR 300.305 (a)(2)(i)(B).

4. In conducting a reevaluation, the public agency must—
 - a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - i. Whether the child is a child with a disability under §300.8; and
 - ii. The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
 - b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
 - c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

34 CFR 300.304(b).

Issue #1: Whether the District’s evaluation procedures were in violation of 34 CFR 300.304 through 300.306, including:

1a. Not assessing in all areas of suspected disability

1b. Lack of comprehensive evaluation

5. In order to determine the Student’s educational needs, the District was obligated to conduct a comprehensive reevaluation, ensuring that the Student is assessed in all areas related to the suspected disability. This can include as appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. 34 CFR 300.304(c)(4).
6. During the REED, it was noted the Student continued to need support. Specifically, the Teacher reported that sometimes he could read at grade level independently but most often needed support. Additionally, the Teacher expressed concern that the Student’s writing was unorganized. Parents expressed concern with the Student’s communication and writing. The Student said writing was the hardest part of his day. However, the reevaluation didn’t include any evaluation for writing or communication.

7. In completing a reevaluation, the District is required to conduct an evaluation that is sufficiently comprehensive to identify all of the Student's special education and related service needs, whether or not commonly linked to the disability category in which the child was classified. 34 CFR 300.304(c)(6).
8. Although other academic difficulties were raised by the Team, including the Student, the District proposed a narrow reevaluation related to reading comprehension only. No assessment data was collected to address the Student's other potential educational needs. The District failed to comprehensively evaluate in all areas of potential educational need related to the Student's disability(ies).

1c. Assessments used outside of guidelines of the publisher

9. Districts must ensure that the assessments and other evaluation materials are implemented in the way in which they were intended and administered by trained and knowledgeable personnel. 34 CFR 300.304(c)(1)(iii) through (v).
10. The record indicates that the assessments conducted by the District were appropriately selected and conducted for their intended purpose. The only formal assessment that was administered included portions of the WJ-IV. The test publisher permits portions of the assessment to be used to measure discrete skill levels. The Teacher conducted the assessment according to the publisher's instructions.

1d. Incorrect procedures used to determine eligibility

11. In conducting the evaluation, a reevaluation in this case, the public agency must – according to 34 CFR 300.304(b)(2), not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.
12. Upon the completion of the administration of assessments and other evaluation measures a group of qualified professionals and the parent determine whether the child is a child with a disability as defined in 34 CFR 300.8 and the educational needs of the child. 34 CFR 30.306(a)(1).
13. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 300.8 and the educational needs of the child, the public agency must:

(a) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations as well as information about the child's physical condition, social or cultural background and adaptive behavior; and

(b) ensure that the information from all these sources is documented and carefully considered.

34 CFR 300.306(c)(1).

14. Moreover, eligibility teams need to consider whether a student's educational improvements resulted from the student receiving specialized instruction. *L.J. v. Pittsburg Unified Sch. Dist.* 117 LRP 6572, 850 F.3d 996 (9th Cir. 2017). "A student does not become ineligible because he or she is performing at a satisfactory level with the aid of special education services." *Dept. of Educ. State of Hawaii v. Acen T.*, 76 IDELR 121, 2020 WL 1673674 at *7 (D. Haw. Apr. 6, 2020). In this case, the record lacks any mention that during the determination of continued eligibility the Team considered how the Student's specialized instruction may have been a factor in the improvements observed in the 2023-24 school year. Further, although the IEP Team decided a reevaluation was necessary to determine if the Student "continues to demonstrate the need for specially designed instruction through an IEP," the Evaluation Report and Prior Written Notice did not document why the Student no longer needs specially designed instruction.
15. The District's over reliance on the Student's standard score in reading comprehension on a single assessment for establishing continued eligibility was not the appropriate standard. Instead, the Team should have used information from a variety of sources and included a consideration of the Student's continued need for special education, which was clearly documented in the REED and the Evaluation Report.

Issue #2: Whether the District's representative at the IEP meeting was qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities in accordance with 34 CFR 300.321(a)(4)(i).

16. The IDEA requires that as part of a reevaluation that a group of qualified professionals and the student's parent determine whether the student continues to have such disability and the educational needs of the child. 34 CFR 300.305(a)(2).
17. The Montana Office of Public Instruction provided the following information on the required membership of the evaluation team:

Who are the required members of the Evaluation Team?

- The parent(s) of the student.

- Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
- Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student.
- If the student is being evaluated for a specific learning disability, at least one person qualified to conduct individual diagnostic examinations of the student, such as a school psychologist, speech-language pathologist, or remedial reading teacher.
- An administrator or designee who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of student with disabilities.
- Is knowledgeable about the regular curriculum; and
- Is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of evaluation results, who may be one of the described members of the team.
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate; and
- The student, if appropriate.

Special Education in Montana, Special Education Division, Q. 32, page 36 (August 2024).

18. The record includes signature pages and documentation that during the REED and the subsequent evaluation meeting on May 6, 2024, all required members were included. The Coordinator acknowledged attending the REED meeting as an additional participant supporting staff and parents in the REED process. Her role in the District was helping facilitate the implementation of practices districtwide. She is a credentialed District administrator. The Coordinator was not in attendance, nor was she a required team member at the May 6, 2024, evaluation meeting. A District Administrator attended the evaluation meeting. There is no violation.

Decision

1. Whether the District's evaluation procedures were in violation of 34 CFR 300.304 through 300.306, including:

- a. Not assessing all areas of suspected disability (34 CFR 300.304(c)(4));
The OPI finds a violation. The reevaluation conducted by the District did not include assessments to determine all of the student's educational needs related to his disability.
- b. Lack of comprehensive evaluation (34 CFR 300.304(c)(6));
The OPI finds a violation. The reevaluation conducted by the District was missing assessments in the areas of writing and communication which were both concerns expressed by the Team.
- c. Assessments used outside guidelines of the publisher (34 CFR 300.304(c)(1)); and
The OPI finds no violation. Assessment tools were not used contrary to publisher's instructions.
- d. Incorrect procedures used to determine eligibility (34 CFR 300.306 and ARM 10.16.3321);
The OPI finds a violation. The District relied on the results of a single assessment in determining the Student's continued eligibility.

- 2. Whether the District's representative at the IEP meeting was qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities in accordance with 34 CFR 300.321(a)(4)(i).
The OPI finds no violation. The Evaluation Team included a qualified district representative.

Corrective Action

- 1. The District shall conduct a comprehensive evaluation to gain a clear understanding of all the Student's educational needs related to his disability.
 - a. Within ten days of this Final Report, the IEP team shall reconvene to plan a comprehensive evaluation to determine the Student's current educational needs. The District shall provide the Parents with an evaluation plan and the information necessary to seek parental consent.
 - b. Within 30 days of the date of this Final Report, the evaluation should be completed (unless the Parents decline consent).
 - c. Within 10 days of the completion of the comprehensive evaluation, the Evaluation Report Team shall convene to determine the Student's eligibility. If the Student is found eligible, the IEP Team shall develop a current IEP within 10 days of the evaluation report team meeting.

- d. Evidence of completion of Corrective Action 1(a) through (c) shall be submitted by the District to OPI's Early Assistance Program Director, including copies of the evaluation plan, evaluation report, proposed IEP, and prior written notice, within 10 days of the required timeframe.
 2. The District shall provide the Student with compensatory services. The goal of compensatory education is to place the student in the position that the student would be in had the District provided the appropriate services in the first place. *Reid v. Dist. of Columbia*, 43 IDELR 32, 401 F.3d. 516 (D.C. Cir. 2005). In light of the fact that the Student was improperly exited as a student with a disability on May 6, 2024, the District shall provide compensatory education as follows:
 - a. 400 minutes of reading instruction.
 - b. The District, in consultation with the Parent, shall determine the schedule for provision of compensatory services considering the Student's ability to sustain his attention and his interest levels.
 - c. Compensatory services shall be completed by February 3, 2025. Student absence shall result in waiver of service for that day. Staff absence must be rescheduled. Any compensatory service declined or not utilized by February 3, 2025, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory service).
 - d. The schedule for compensatory services shall be provided to OPI within 30 days from the date of this Final Report.
 - e. Service provider logs verifying completion of the compensatory education services must be submitted to OPI by February 14, 2025.
 3. If the Evaluation Report Team determines Student is not eligible, at the completion of the evaluation report team meeting in Corrective Action 1, then this Corrective Action 3 will not apply. If the Student is found eligible, the District shall provide additional compensatory education services based on the Student's newly drafted IEP as determined below:
 - a. The District shall provide the amount of service(s) on the newly drafted IEP as compensatory service dating back to September 3, 2024, the first day of school for the 2024-25 school year, through the start date of the newly drafted IEP.
 - b. The District, in consultation with the Parent, shall determine the schedule for provision of compensatory services considering the Student's ability to sustain his attention and his interest levels. This includes coordinating the provision of prior compensatory services required in Corrective Action 2.

- c. Compensatory services shall be completed by June 2, 2025. Student absence shall result in waiver of service for that day. Staff absence must be rescheduled. Any compensatory service declined or not utilized by June 2, 2025, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory service).
 - d. The schedule for compensatory services shall be provided to OPI's Early Assistance Program Director within 30 days from the date of this Final Report.
 - e. Service provider logs verifying completion of the compensatory education services must be submitted to OPI's Early Assistance Program Director by June 16, 2025.
4. The District shall provide all special education teachers, school psychologists, case managers, and administrators with two hours of training on conducting comprehensive evaluations and determining continued eligibility through reevaluation. The District shall comply with the following conditions:
- a. The training shall be conducted by an independent professional with expertise in conducting comprehensive evaluations. The name and credentials of the trainer shall be provided to OPI's Early Assistance Program Director by December 2, 2024.
 - b. The training shall be completed by January 15, 2025.
 - c. The District shall submit evidence of completion, including sign-in sheets with the name of all participants, date(s) of training, and copies of all training material to OPI's Early Assistance Program Director by January 30, 2025.

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 CFR 300.507.

Patrick Cates
Student Support Services Senior Manager

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

██████████ Parents (via SMFTS only)