



December 11, 2024

Sent via US Mail and/or SMFTS



THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT** for In the Matter of [REDACTED] 2024-08, 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] (Complainants) filed the Complaint on behalf of their son, [REDACTED] (Student), a student in the [REDACTED] (District). The Complainants allege 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 Code of Federal Regulations (C.F.R.) 34 C.F.R. Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complainants allege the following issues:

1. Whether the District violated IDEA by the Student not being educated in the least restrictive environment.
2. Whether the District violated IDEA by not providing accommodations for the Student to participate in extracurricular activities, including cross country, during the fall of 2024.

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received two separate IDEA State Complaint forms from the Complainants on October 18, 2024, each alleging a different issue. These were combined and considered as one complaint.

2. The District was provided a copy of the Complaint as required by ARM 10.16.3662(3) and 34 C.F.R. § 300.153(d).
3. The OPI Dispute Resolution Office issued the parties a Notice of Filing of IDEA State Complaint and Scope of Proceedings on October 25, 2024. Pursuant to 34 CFR § 300.152(c)(2), the OPI notified Complainants that the Due Process Hearing Decision and Order issued on October 26, 2023, was binding on Issue 1 and therefore Issue 1 must be dismissed.
4. The parties participated in an OPI facilitated IEP meeting on October 28, 2024.
5. On October 29, 2024, OPI Early Assistance Program (EAP) Director reached out to the parties to determine if the issues were resolved or if additional resolution was requested.
6. On October 30, 2024, the District indicated through email that the District was open to informal dispute resolution options but there was no response from the Complainants.
7. The OPI's Dispute Resolution Office issued an Appointment of Investigator, Scope of Proceedings and Request for District Response on November 1, 2024.
8. The OPI's Dispute Resolution Office received the District's written response on November 12, 2024.
9. Complainants provided a reply to the District's response on November 13, 2024, and provided additional documentation to the reply on November 14, 2024.

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;
- Additional records and reply to the District's response provided by Complainants;
- The Complaint Investigator interviewed the Complainants via telephone;
- The Complaint Investigator interviewed by telephone the District Special Education Teacher/Case Manager, English Teacher, Principal, and Superintendent with District's legal counsel present;
- The OPI provided the Complainants 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. § 300.107	Nonacademic Services
34 C.F.R. § 200.117	Nonacademic Settings
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 10.16.3661, 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 October 18, 2023, through October 18, 2024. Additional information beyond this timeframe was considered for the purpose of a full investigation of the Complaint.

Findings of Fact

1. At the time the Complaint was filed, Student was 15 and a ninth grader at the District's high school during the 2024-2025 school year.
2. During the 2023-2024 school year, Complainants disenrolled Student from the District on February 7, 2024. Student was then home-schooled for the remainder of the school year. Student reenrolled in the District during the summer before the 2024-2025 school year. *District Response, Exhibit 9, October 28, 2024 Proposed IEP.*
3. Student's case manager emailed Complainants on August 5, 2024, welcoming Student back to the District and requesting to set up an IEP meeting as soon as possible. *August 5, 2024 Email.*
4. The IEP in effect during the timeframe of this Complaint is Student's seventh grade, February 8, 2023 IEP that was amended and signed by the Complainants on May 22, 2023. *District's Response, Exhibit 9, February 8, 2023 IEP.*
5. The IEP Team met on October 28, 2024, and the District proposed an IEP that Complainants have not yet consented to. *District's Response, Exhibit 9, October 28, 2024 IEP; Interview with District Special Education Director.*

6. Student's February 8, 2023 IEP addresses extracurricular activities under the Supplementary Aids and Services section and provides the following:
 - Service: Participation in Extracurricular Activities
 - Location: Specific Sport Location
 - Delivery: Paraprofessional
 - Duration: Participation is determined by [Student] otherwise qualified to participate in the activity.

District Response, Exhibit 1, February 8, 2023 IEP.

7. Beginning in June 2024, the District notified *all* parents of high school students about the requirements for participating in fall sports including cross country. The information was available on Infinite Campus and direct messages were sent to all parents. *Interview with High School Principal; District Response Exhibit 3 (emphasis added).*
8. All students interested in participating in sports in the District were required to attend a mandatory meeting accompanied by at least one parent prior to the start of the season, complete the sports packet, and have a physical before being allowed to participate. *Interviews with High School Principal and Superintendent; District Response, Exhibit 5, District Activities-Athletic Handbook 2024-2025.*
9. The sports packet, which includes information about concussion protocol, contact information and Montana High School Association (MHSA) requirements, was also available on the District's website. *Interview with High School Principal.*
10. Additionally, all parents were informed about the fall sports meeting via an email sent from the Principal on August 6, 2024. *Interview with High School Principal and Superintendent; District Response, Exhibit 6.*
11. Many of the requirements for participation in sports, including the required number of practices prior to competing, physicals, age requirements and concussion protocols are mandated by the Montana High School Association. The rules apply to all students interested in participation in sports. *District Response, Exhibit 2, MHSA 2024-2025 Handbook.*
12. Complainants attended the August 12, 2024 fall sports meeting and picked up packets for the Student and a sibling. *Interview with Complainants.*
13. Complainants emailed the case manager on August 13 and August 27, 2024, and among other things, requested Student be able to participate in cross country, Future Farmers of

- America (FFA) or other sports he is interested in. *Interview with High School Principal; District Response, Exhibit 10; Complaint.*
14. In situations where the cost of physicals was prohibitive, if contacted, the District had available alternatives to ensure the physical was completed. *Interviews with High School Principal and Superintendent.*
 15. Complainants did not contact District personnel about alternatives for obtaining a sports physical. *Interview with High School Principal.*
 16. Complainants indicated that they would not spend the money for a physical since they didn't think Student would be allowed to participate in cross country. *Interview with Complainants.*
 17. Complainants completed the packet and provided a physical for the Student's sibling but did not do so for Student. *Interview with Complainant; Complainant's Reply; Interview with High School Principal.*
 18. Student did not participate in cross country during the fall of 2024. *Interview with Complainants.*
 19. The District would convene an IEP meeting to determine any additional accommodations for Student to participate in cross country after the packet and physical were completed and turned in. *Interviews with Special Education Director and High School Principal.*
 20. FFA is a co-curricular activity meaning participation in FFA requires all students to be enrolled in an agricultural class. Upon enrollment in an agricultural education class, the student is an enrolled member of the District's FFA. *District Response Exhibit 7, Guide to Agricultural Education and Agriculture Class Policies and Expectations.*
 21. Student was not enrolled in an agriculture class until October 28, 2024, after the Complaint was filed. *District Response, Exhibit 8, Student Schedule.*

Conclusions

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has a Free Appropriate Public Education (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 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. § 300.17.

3. 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." *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S.Ct. 988, 999-1002 (2017), 69 IDELR 174. The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Endrew F.*, 137 S.Ct. at 999.
4. 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 C.F.R. § 300.320(a).
5. If a Student's IEP specifically provides for participation in an extracurricular activity as a necessary component for FAPE, then the district must ensure those services are provided. *Letter to Anonymous* (OSEP 1990), 16 IDELR 180. Otherwise, the IDEA requires districts to take steps, including the provision of supplementary aids and services determined necessary by the student's IEP team, to provide nonacademic services and extracurriculars in a manner necessary to allow students with disabilities to participate. 34 C.F.R. § 300.107(a); 71 Fed. Reg. 46,583 (2006). Students with disabilities must be afforded an equal opportunity to participate in extracurricular activities or nonacademic services such as athletics, recreational activities, and special interest groups or clubs. 34 C.F.R. §§ 300.107 and 300.117.
6. The IEP must be implemented, as written, including all required components. 34 C.F.R. § 300.17(d). The Ninth Circuit in *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, *amended* (9th Cir. 2007), 47 IDELR 182, 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. The February 8, 2023 IEP did not require Student's participation in cross country or any other extracurricular or nonacademic activities in order to receive a FAPE. "[P]articipation is determined by [Student] otherwise qualified to participate in activity." If Student qualified for an activity, Student is to be provided paraprofessional support at the specific sport location.

8. Student was provided with an equal opportunity for participation in cross country and other extracurricular or nonacademic activities. Complainants were provided with adequate notice of the MHSA and District requirements for participation in sports. Complainants failed to complete the requirements for their child to participate.
9. Since Student failed to complete the required sports packet and physical, Student was not allowed to participate in cross country, and therefore, Student did not need accommodations.
10. At the time of the filing of the Complaint, Student had not enrolled in an agriculture class, a requirement for participation in FFA. Since Student had not met the prerequisite for participation in FFA, Student was not eligible at that time to join FFA.

Decision

1. Whether the District violated IDEA by the Student not being educated in the least restrictive environment.

This issue was dismissed in the October 25, 2024 Notice of Filing of IDEA State Complaint and Scope of Proceedings. Pursuant to 34 CFR § 300.152(c)(2), the Due Process Hearing Decision and Order issued on October 26, 2023, is binding.

2. Whether the District violated IDEA by not providing accommodations for the Student to participate in extracurricular activities, including cross country, during the fall of 2024.

The OPI finds no violation. Student was provided the same opportunity to participate in extracurricular activities as all other students, but the failure to complete the MHSA and District requirements prevented participation. Student's IEP provided for supplementary aids and services for participation in extracurricular activities that Student was otherwise qualified to participate in, but because the Student did not participate, there was no need for implementation.

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

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State Director of Special Education

C: Mandi Gibbs, Dispute Resolution/EAP Director (SMFTS only)

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