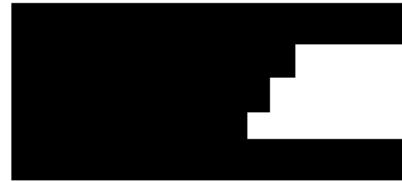


April 14, 2025

Sent via US Mail and/or SMFTS



THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT: In the Matter of** [REDACTED] 2025-03 Alleged Violations of the Individuals with Disabilities Education Improvement Act (IDEA) and Montana Special Education Laws.

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 child, [REDACTED], a student in the [REDACTED] School District (District). The Complainant alleges the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 USC 1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulations at 34 Code of Federal Regulations (CFR) Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complaint alleged the following issues:

1. Whether the District violated child find by failing to evaluate the Student in violation of 34 CFR 300.111.
2. Whether the District failed to conduct an initial evaluation after Complainant requested one in violation of 34 CFR 300.301 and ARM 10.16.3320.
3. Whether the District failed to provide Complainant prior written notice after refusing to conduct an initial evaluation in violation of 34 CFR 300.503.
4. Whether the District failed to provide Complainant a copy of procedural safeguards upon request for an initial evaluation in violation of 34 CFR 300.504(a)(1).

5. Whether Complainant was denied the opportunity to request an independent educational evaluation (IEE) at public expense in violation of 34 CFR 300.502.
6. Whether the District denied Student a free appropriate public education (FAPE) in violation of 34 CFR 300.101.

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint on February 13, 2025.
2. Th OPI Dispute Resolution Office contacted the District on February 14, 2025, and the District was provided a copy of the Complaint as required by ARM 10.16.3662(3) and 34 CFR 300.153(d).
3. The OPI Dispute Resolution Office issued the parties a Notice of Filing (Notice) on February 19, 2025, which included a copy of the Complaint as required by ARM 10.16.3662(4)(a).
4. After receipt of the Notice, the District notified the OPI Dispute Resolution Office that they did not receive the attachments to the Complaint originally submitted by the Complainant. The filing date was not changed.
5. The OPI's Dispute Resolution Office issued an Appointment of Investigator, Scope of Proceedings and Request for District Response on February 24, 2025. It was noted that the Early Assistance Program determined that based upon the nature of the allegations, it would be futile to attempt to resolve the issues informally. Additionally, the parties were notified that any allegations prior to February 13, 2024, were dismissed.
6. The OPI's Dispute Resolution Office received the District's Written Response on March 6, 2025.

Investigatory Process

The investigator reviewed the following records:

- The original Complaint and all supporting documentation;
- The District's Written Response to the Complaint; and
- Educational records relevant to this investigation;

The Complaint Investigator interviewed by telephone the Complainant.

The Complaint Investigator interviewed by telephone the District Special Education Director (Director) with District's legal counsel present.

The OPI provided the Complainant and the District the opportunity to submit additional information for consideration during the Complaint investigation. The Complainant requested the Complaint Investigator interview the Parenting Coordinator (PC). The Complaint Investigator attempted to interview the PC but did not hear back from her and was unable to interview her.

Applicable Federal Regulations, State Statutes or Rules

34 CFR 300.1	Purpose of IDEA
34 CFR 300.8.	Child with a disability
34 CFR 300.17	Free appropriate public education
34 CFR 300.111(a)	Child find
34 CFR 300.300(a)	Parental consent
34 CFR 300.301(a) and (b)	Initial evaluations
34 CFR 300.304(a)	Evaluation procedures
34 CFR 300.306	Determination of eligibility
34 CFR 300.320	Definition of an individualized education program
34 CFR 300.323	When IEPs must be in effect
34 CFR 300.324	Development, review, and revision of IEP
34 CFR 300.502(a), (b), (c), and (e)	Independent educational evaluation
34 CFR 300.503(a) and (b)	Prior notice by the public agency
34 CFR 300.504(a)(1)	Procedural safeguards notice
ARM 10.16.3007	Eligible students under the IDEA
ARM 10.16.3122	Local educational agency responsibility for students with disabilities
ARM 10.16.3125	LEA child find responsibilities
ARM 10.16.3320	Request for initial evaluation

Relevant Time Period for Investigation

Pursuant to 34 CFR 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 February 13, 2024, through February 13, 2025. 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 in second grade at an elementary school in the District during the 2024-2025 school year. *Complaint; District Response.*
2. On January 16, 2023, the parent referred the Student for a comprehensive evaluation. *District Response, Exhibit A: Referral for Comprehensive Educational Evaluation, January 16, 2023.*
3. A comprehensive evaluation of Student was completed and an Evaluation Report meeting was held on February 28, 2023, to determine if Student was eligible for special education services. *District Response, Exhibit A: Special Education Meeting Notice, Evaluation Report, February 28, 2023.*
4. The Evaluation Report Team determined that the Student did not meet disability criteria for the categories of autism and speech-language impairment. Additionally, it was determined that although the Student met disability criteria for specific learning disability because there was a severe discrepancy between cognitive and academic ability, the Student was finding success in the classroom and making academic progress, and therefore, the Student did not demonstrate the need for special education. Accordingly, Student was not eligible for special education services. *District Response, Exhibit A: Evaluation Report, February 28, 2023.*
5. Parents were provided a copy of their procedural safeguards at the Evaluation Report Team meeting. The District did not specifically inform the Parents about the right to an IEE at that meeting but did indicate that if there were questions regarding the procedural safeguards, to please call the District. *Complainant Interview.*
6. Parents did not request an IEE at public expense after the February 28, 2023 Evaluation Report Team meeting. *Complaint; Interview with Special Services Director.*
7. Because of several absences due to illness and because of an upcoming extended absence at the request of Student's father, which would result in Student missing 15 instructional days, on November 21, 2023, Complainant contacted the District and requested another initial evaluation of Student. Complainant was also concerned that Student was not making expected progress in academic areas. *Complainant Interview; Complaint, Attachment: November 21, 2023 Email.*
8. The District declined to evaluate Student and informed Complainant by email. *Complainant and District Staff Interviews.*

9. Following the completion of the 2023-2024 school year, the Complainant initiated an evaluation of Student at private expense. *Complaint, Attachment: 2024 Private Academic Evaluation and Dyslexia Screening, May 30, 2024, and July 23, 2024.*
10. On Friday, September 27, 2024, via email, the Complainant notified the District of the private Academic Evaluation and Dyslexia Screening and requested a comprehensive evaluation of Student. Complainant informed the District that Student's Father agreed to the evaluation request. The Director responded to the Complainant almost immediately setting out the special education process for referral and requesting to meet with Complainant and Student's Father the following week to finalize the paperwork. *District Response, Exhibit D, September 27, 2024 Email; Complaint, Attachment: September 27, 2024 Emails.*
11. The Complainant provided the Director with a copy of the Private Academic Evaluation and Dyslexia Screening. *District Response, Exhibit D: September 30, 2024 Email.*
12. The Student's Father emailed the Director on Monday, September 30, 2024, and notified the District that he did not agree with the request for an initial evaluation. Further, Student's Father notified the District that because the Parents did not agree, per court order, the Parenting Coordinator (PC) would have the final decision. *District Response, Exhibit D: September 30, 2024 Email.*
13. On September 30, 2024, the Director notified District Staff and Complainant that the initial evaluation process was on hold because the Parents were not in agreement to proceed with the initial evaluation and no additional paperwork would be signed until she had a chance to visit with the PC and review the Parenting Plan. *District Response, Exhibit D: September 30, 2024 Email.*
14. On October 2, 2024, Complainant responded to the District's email indicating that the PC was to facilitate discussion between Parents but was not the decision maker. A copy of the Parenting Plan and Order Appointing Parental Coordinator were provided to the District. *District Response, Exhibit D: October 2, 2024 Emails.*
15. Complainant emailed the Director on October 7, 2024, inquiring if she had spoken to the PC. The Director responded that she had not heard from the PC. Similarly, the Complainant reached out on October 25, 2024, to find out the status and the Director responded letting her know that they were playing phone tag. The Director notified the Parents on October 28, 2024, that she spoke to the PC and the PC will be in touch when she makes her determination. *District Response, Exhibit D, October 7, 25, and 28, 2024 Emails; Complaint, Attachments: October 7, 25, and 28, 2024 Emails.*

16. During the brief conversation with the PC on October 28, 2024, the Director shared Student's progress. The PC did not provide the Director with a decision regarding the request for an initial evaluation. *Interview with Director.*
17. On October 31, 2024, the PC via Our Family Wizard, stated, "I have spoken to a few of the professionals at school regarding an IEP for [Student] and if it is appropriate at this time. It is felt that it is NOT appropriate at this time." The PC informed the Parents that although the Student is behind, he is making progress and they could reevaluate it next year. This information was not provided to the District until it was included as an attachment to the Complaint. *Complaint, Attachment: October 31, 2024 Our Family Wizard, Message from PC; Complainant Interview.*
18. Parents, who were divorced, had a split custody arrangement with a Parenting Plan. The Parenting Plan, approved and adopted by the Court on August 6, 2024, provided that "[t]he [P]arents shall have joint decision-making authority over school and religion." *District Response, Exhibit E: Parenting Plan, July 29, 2024, pp. 6-7.*
19. The Court also issued an Order Appointing Parental Coordinator on July 29, 2024, that was to remain in effect for six months. The PC was to engage in reasonable and cost-effective efforts to assist parties to reach consensus and make mutually agreeable decisions regarding disputed child-related issues. Relevant information regarding education decisions included:
 - a. If and when these efforts fail to support the parents to reach agreement, the PC is hereby authorized to make certain decisions and recommendations the PC concludes are in the children's best interests.
 - b. The PC is to facilitate the resolution of disputes regarding their implementation of the Parenting Plan.
 - c. Scope of Authority: The PC shall make decisions with the scope of this Order. Limited decision making shall include resolving disputes regarding the children's education.
 - d. The PC was ordered to decide disputes between the parties for certain issues, which specifically included education decisions. Those decisions are legally binding and will continue in effect unless modified by the parties by Agreement or by the Court.
 - e. In reaching any decisions the PC was to apply the following standards, in order of importance:

- i. The plain language of any court orders concerning parenting time, periods of placement, and related parental rights and responsibilities;
 - ii. The best interests of the child; and
 - iii. Considerations of fairness to parents relevant to their child-related rights, responsibilities and relationships.
- f. As required by the Court, the PC may communicate with school personnel who are familiar with the issues and/or conflicts between the parties.

District Response, Exhibit F: July 31, 2024 Order Appointing Parenting Coordinator.

20. On January 16, 2025, Parents were informed in an email that Student was screened for dyslexia as part of a general screening for all students and demonstrated low or no risk for dyslexia. *District Response, Exhibit I: January 16, 2025 Email.*
21. District records noted that Student was finding success in the classroom and making academic progress while receiving Tier 2 supports. *District Response, Exhibit C: Student Records; Complaint, Attachments: Report Cards, Assessment Records, Notice of Tier 2 Interventions, Kindergarten through Second Grade Assessments, Star Family Report, and Class Dojo, November 11, 2024 to February 1, 2025.*

Conclusions

Child Find and Request for an Initial Evaluation

1. A District has an ongoing affirmative obligation to establish procedures to ensure that all students with disabilities living within the District's boundaries are identified, located and evaluated. 34 CFR 300.111(a)(1)(i); ARM 10.16.3125(1). When a District has reason to suspect that a student may have a disability and need special education services, it is their obligation to request an initial evaluation. 34 CFR 300.301(a); ARM 10.16.3320.
2. The District had previously evaluated Student in 2023 and Student was not found eligible. Although the child find obligation continued, the District was monitoring Student's progress and felt that Student was making adequate progress with targeted interventions.
3. A parent may also initiate a request for an initial evaluation to determine if a student is a child with a disability and eligible for special education services. 34 CFR 300.301(b); ARM 10.16.3320(1). If a parent requests an initial evaluation, and the district does not suspect the student is a student with a disability, the district may deny the request and must provide prior written notice outlining how they determined an evaluation was not necessary. 34 CFR 300.503(a); ARM 10.16.3320(3). If the parents disagree, they may request a due process hearing to challenge the refusal. ARM 10.16.3320(3).

4. When a district proposes to conduct an initial evaluation to determine if a student qualifies as a student with a disability, they must, after providing the parent with prior written notice (34 CFR 300.503 and 300.304(a)) and the procedural safeguards notice (34 CFR 300.504), obtain informed consent from the parent prior to conducting the evaluation. 34 CFR 300.300(a)(1)(i). Districts propose evaluations through the evaluation plan form, which may serve as prior written notice when provided with the referral form and which instructs the district to provide the IDEA Special Education Procedural Safeguards Notice. The evaluation plan notifies the parent of the specific assessments the district intends to conduct to determine eligibility and documents the parent's written informed consent. If parents do not want their child to be evaluated, they may deny permission to evaluate on the evaluation plan. *OPI's Special Education in Montana, Prior Written Notice, Question 8, p. 25, and Evaluation Plan, Question 1, p. 29.*
5. Except if a judicial decree or order provides otherwise, the biological or adoptive parent, when attempting to act as parent under this part and when more than one party is qualified to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make decisions for the child. 34 CFR 300.30(b)(1). If parents are divorced, the parental rights apply to both parents equally, unless a court order of State law specifies otherwise. 71 Fed. Reg. 46568 (August 14, 2006).
6. Complainant emailed the Director and requested an initial evaluation on Friday, September 27, 2024, and notified her of the private Academic Evaluation and Dyslexia Screening. The Director promptly responded to Complainant's email and requested a meeting with her and the Student's Father to discuss the requested evaluation and proceed with the required paperwork. The District accepted Complainant's request for an initial evaluation pursuant to ARM 10.16.3320, and was prepared to proceed with developing an evaluation plan and obtaining parental consent to conduct an initial evaluation, but on Monday, September 30, 2024, the District received an email from Father that he did not agree with Complainant's request.
7. Complainant and Student's Father are divorced, and the District properly sought a copy of the Parenting Plan to determine if both Parents needed to provide consent for educational decisions. The Parenting Plan clearly stated that education decisions must be made jointly, meaning both parties must give consent when it is necessary to do so. Further, the Court had appointed a PC to assist the parties when they could not reach consensus and to specifically make education decisions when the Parents were unable to agree. The District provided requested information to the PC during a phone call. On October 31, 2024, the PC informed

the Parents that she did not think an evaluation was appropriate. The District stopped the evaluation process in order to comply with the Parenting Plan and Order Appointing Parenting Coordinator.

8. The District never got to propose or refuse to conduct an initial evaluation, due to the Parents' disagreement with the request and therefore prior written notice was not required.

IEE

9. Following completion of a comprehensive evaluation that parents disagree with, they may request an independent educational evaluation (IEE) at public expense. 34 CFR 300.502(b)(1). Only one IEE can be requested per each of the district's evaluations. 34 CFR 300.502(b)(5). An IEE "means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." 34 CFR 300.502(a)(3)(i). Public expense "means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent..." 34 CFR 300.503(a)(3)(ii).
10. Parents may also choose to obtain an IEE at their own expense and share the results with the district. 34 CFR 300.502(c). The results of an IEE must be considered by the district in any decision made with respect to the provision of FAPE to the student, if it meets agency criteria as set forth in 34 CFR 300.502(e).
11. Here, the Complainant did not request an IEE at public expense but did provide an IEE that was obtained at her own expense. The District properly requested a copy of the IEE, but the process of the initial evaluation was put on hold prior to the consideration of whether the IEE met agency criteria and would be considered during the eligibility determination.

FAPE

12. 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 CFR 300.1. The IDEA requires that FAPE is made available to all students with disabilities. 34 CFR 300.101(a); ARM 10.16.3122(1).
13. 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) provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 300.324. 34 CFR 300.17.

14. In order for a student to receive a FAPE, the student first must be determined to be a child with a disability. 34 CFR 300.306. A child with a disability is defined as, a child evaluated in accordance with the evaluation procedures set out in IDEA and found to meet the eligibility criteria for one of the disability categories and by reason thereof need special education and related services. 34 CFR 300.8(a)(1). Within 30 days of determining a student is eligible, a meeting must be held to develop an IEP. 34 CFR 300.323(c)(1).
15. The Student has not been determined to be a child with a disability; therefore, an IEP has not been developed and the District is not obligated to provide FAPE.

Decision

1. Whether the District violated child find by failing to evaluate the Student in violation of 34 CFR 300.111.

The OPI finds no violation. Student had previously been evaluated and found not eligible. The District was monitoring Student's progress and did not suspect that Student was a child with a disability who needed special education services. Upon receipt of Complainant's request for an initial evaluation and receipt of the private evaluation results, the District agreed to proceed with an initial evaluation but was unable to do so.

2. Whether the District failed to conduct an initial evaluation after Complainant requested one in violation of 34 CFR 300.301 and ARM 10.16.3320.

The OPI finds no violation. The Parents disagreed regarding the September 27, 2024 request for the initial evaluation, and their Parenting Plan required educational decisions to be made jointly. Further, the Court appointed a PC to have educational decision-making authority when the parties didn't agree. The PC ultimately decided that an evaluation was not appropriate.

3. Whether the District failed to provide Complainant prior written notice after refusing to conduct an initial evaluation in violation of 34 CFR 300.503.

The OPI finds no violation. While the District could have prepared a PWN outlining the reasons why the September 27, 2024 initial evaluation request was not proceeding, the District was not proposing or refusing to evaluate, therefore, there was no requirement to provide PWN.

4. Whether the District failed to provide Complainant a copy of procedural safeguards upon request for an initial evaluation in violation of 34 CFR 300.504(a)(1).

The OPI finds no violation. Districts must provide a copy of the procedural safeguards notice upon initial referral or parent request for an evaluation. Although the Complainant did make a referral for an initial evaluation on September 27, 2024, and the District intended to propose an evaluation plan and move forward with the evaluation process, due to the Parenting Plan and the authority of the PC, the process was put on hold and therefore the procedural safeguards were not provided.

5. Whether Complainant was denied the opportunity to request an independent educational evaluation (IEE) at public expense in violation of 34 CFR 300.502.

The OPI finds no violation. Complainant was not denied the opportunity to request an IEE at public expense and did not make a request for an IEE at public expense during the timeframe of this Complaint.

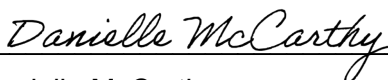
6. Whether the District denied Student a free appropriate public education (FAPE) in violation of 34 CFR 300.101.

The OPI finds no violation. Since Student was not eligible for special education services, no special education services could be provided. There was no denial of FAPE.

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 CFR 300.507.



Danielle McCarthy
State Director of Special Education

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

John Gorton, School Improvement/Compliance Unit Manger (SMFTS only)

██████████ District Special Education Director (SMFTS only)

██████████, District Attorney (SMFTS only)