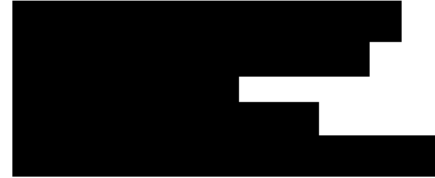


April 28, 2025

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



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT** for In the Matter of [REDACTED], 2025-04, 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 child, [REDACTED] a student in the [REDACTED] Public Schools (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 Code of Federal Regulations (CFR) 34 CFR Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complainant alleges the following issues:

1. Whether the District's personnel providing Student braille instruction are not qualified in violation of 34 CFR 300.156 and ARM 10.55.717.
2. Whether the District failed to reevaluate Student in a timely manner in violation of 34 CFR 300.303(a)(2).
3. Whether the District failed to consider whether Student needs assistive technology devices and services in violation of 34 CFR 300.324(a)(2)(v).
4. Whether the District failed to provide Student with physical education services in violation of 34 CFR 300.108.

### **Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint on February 27, 2025.

2025-04

2. The OPI Dispute Resolution Office issued the parties a Notice of Filing on March 3, 2025. The District was provided a copy of the Complaint as required by 34 CFR 300.153(d), and ARM 10.16.3662(3). Therefore, the Complaint was deemed filed on February 27, 2025.
3. The OPI's Dispute Resolution Office issued an Appointment of Investigator, Scope of Proceedings and Request for District Response on March 11, 2025. 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.
4. The District submitted its written response to the issues in the Complaint on March 21, 2025.
5. The District submitted additional information following interviews at the request of the Complaint Investigator.
6. The Complainant also submitted additional information to the Complaint Investigator during the investigation.

### **Investigatory Process**

The Complaint Investigator reviewed the following records:

- The original Complaint and all supporting documentation;
- The District's written response to the Complaint;
- Educational records relevant to this investigation;
- The Complaint Investigator interviewed the Complainant by telephone;
- The Teacher of the Visually Impaired (TVI) from the Montana School for the Deaf and Blind (MSDB) completed a questionnaire developed by Complaint Investigator regarding services.

By telephone, the Complaint Investigator interviewed the Physical Education Teacher, General Education Teacher, Case Manager, Braille Instructor, Physical Therapist and Superintendent 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.

### **Applicable Federal Regulations, State Statutes or Rules**

34 CFR 300.1	Purpose of IDEA
34 CFR 300.5	Assistive Technology Device
34 CFR 300.6	Assistive Technology Service

34 CFR 300.17	Free appropriate public education (FAPE)
34 CFR 300.39	Special Education
34 CFR 300.105	Assistive Technology
34 CFR 300.108	Physical Education
34 CFR 300.114	Least Restrictive Environment (LRE)
34 CFR 300.156	Personnel Qualifications
34 CFR 300.303	Reevaluations
34 CFR 300.304	Evaluation procedures
34 CFR 300.324	Development, review and revision of IEP
MCA 20-8-102	Objects and Purpose of MSDB
ARM 10.16.3136	Professional Staff Qualifications
ARM 10.55.717	Assignment of Persons Providing Instruction to Braille Students

**Relevant Time Period for Investigation**

Pursuant to 34 CRF 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 27, 2024, through February 27, 2025. Additional information beyond this timeframe was considered for the purpose of a full investigation of the complaint.

**Findings of Fact**

**Background**

1. The Student was in third grade at the District’s Elementary School during the 2024-2025 school year. The Student was identified as a learner with deaf-blindness and other health impairment. *Complaint; District Response Exhibit B: 4/17/24 IEP.*
2. Student was born with KID syndrome, a rare genetic disorder that results in deafness, blindness and thickened plaques of skin, often on fingers and feet which can limit mobility and be painful. *Complaint; District Response.*
3. Student is profoundly deaf and has bilateral cochlear implants and uses a Roger to assist with hearing at school. Student, who is ambulatory, uses a wheelchair and cane at times to allow access to the school building and grounds. As Student has aged, his vision loss has

progressed, and IEPs since second grade have continued to increase services focusing on Student's visual impairment. *Complaint; District Response.*

4. Student often chooses not to go out for recess because of weather or pain related to KID syndrome but a friend or other Staff member stays in the classroom with Student. This year, a buddy system was developed so other students may sign up to play with Student, since it is hard for Student to find classmates at recess. There are always students wanting to play with Student. Student gets along well with classmates and participates in all class activities. *Interviews with General Education Teacher and Braille Instructor; 4/17/2024 IEP.*
5. Student's April 17, 2024 IEP, which was implemented during most of the timeframe of this Complaint, provides for the following services:
  - a. Special education services in the regular education classroom for communication (50 minutes per week), social-emotional-behavioral (60 minutes per week), self-help/independence (15 minutes per week), and braille instruction (450 minutes per week). Special education services in the special education setting for braille instruction (450 minutes per week) and speech/language (60 minutes per week).
  - b. Related services included physical therapy (PT) in the special education setting (30 minutes per week) and orientation and mobility (O & M) in the regular education setting (15 minutes per week).
  - c. Student's assistive technology (AT) goals included using voice over on his iPad in 95% of opportunities across six trials as measured by teacher charted data and when presented with a question about his condition or AT systems (microphones), Student will provide an educational response in 80% of charted opportunities as documented by District Staff.
  - d. The Supplemental Aides and Services section of the IEP is two and a half pages long and includes numerous instructional supports in the areas of physical, hearing, vision, communication/learning, general, health.
    - i. Staff roles and training included:
      1. Audiologist will train school staff on the use/care of a cochlear implant and Hearing Assistive Technology (HAT) system;
      2. Once a month a teacher of the deaf (TOD) will check in with staff for questions or need of support. Also to observe student in a variety of school settings and some one on one with Student (when possible). Frequency of the visits will be flexible depending on the needs of Student and the educational team.



- b. Helping the District obtain braille materials and technology;
- c. Participating in IEP meetings and providing input on Student's needs; and
- d. Serving as a state level consultant and collaborator, not a decision maker.

*Questionnaire Vision Outreach Consultant.*

- 9. Additionally, the District works in consultation with a MSDB Deaf/Hard of Hearing Outreach Consultant (Hearing Outreach Consultant) who is a TOD and a member of the IEP team. *District Response, Exhibit B: 4/17/24 IEP.*

**September 2024 Vision Report**

- 10. Complainant requested assessments via email in January of 2024 due to noticing a dramatic decrease in Student's ability to see. *Complaint.*
- 11. Permission for a vision evaluation by MSDB was signed by Complainant on February 23, 2024. *District Response, Exhibit F: Consent for Evaluation.*
- 12. A Functional Vision Assessment, Learning Media Assessment, Expanded Core Curriculum Assessment and Assistive Technology Assessment for Students who are Blind or Visually Impaired were given to Student in the fall of 2024. *District Response, Exhibit J: 9/4/2024 Vision Report.*
- 13. The assessments were conducted by the O & M instructor, Vision and Hearing Outreach Consultants. The assessments could not be completed by District Staff nor the educational cooperative that work with the District. The two TVIs that worked regularly with Student had the necessary training and expertise to complete the requested assessment. The O & M instructor was only at the District on Fridays. Student was absent on many Fridays which impacted the ability to complete the assessment. In addition, the Vision Outreach Consultant is over 200 miles away from the District's boundaries and trying to coordinate the two schedules with Student's attendance was challenging. *Interviews with Special Education Teacher and Superintendent; District response.*
- 14. The September 2024 AT assessment contained several recommendations:
  - a. Exploring text-to-speech and speech-to-text accessibility features (Voice Over) on iPad, should be an effective communicator using these features and practice regularly with help of teachers;
  - b. Learn how to navigate the accessibility features of all his tools and know when and how to use them;

- c. Begin keyboarding utilizing modified keyboards with high contrast, keyboarding is not a long-term tool, but Student should have a clear understanding of its use; and
  - d. As Student becomes more proficient in braille reading and writing he should be introduced to electronic braille devices and screen readers to help navigate Student's technology.
15. The IEP Team convened on December 13, 2024, to discuss the assessments and the District proposed to reconvene to develop a new IEP in January which would allow District to consider implications from evaluation and AT ideas generated by Complainant and advocate. *District Response Exhibit J: 12/13/24 Prior Written Notice.*
  16. Complainant disagreed with the AT assessment and requested an independent educational evaluation (IEE). The parties are currently working through the process. *District Response; Complainant Interview.*
  17. Complainant contacted an outside evaluator in March 2025 for completion of the IEE. She signed consent for the evaluator to talk to Staff about Student's abilities and progress on April 12, 2025. The IEE has not been completed. *4/21/25 Email to Complaint Investigator.*
  18. Complainant would like Student to have access to a refreshable braille display to independently operate and access a computer alongside his peers. *Complaint.*
  19. The Vision Outreach Consultant believes that it is important for visually impaired students to have a good foundation in braille before they move on to more complex assistive technology (AT) equipment such as refreshable braille displays and screen readers. Student will continue to be exposed to more advanced and complex AT as Student's use of the braille language improves. *Interview with Braille Instructor; District Response Exhibit K: 3/13/2025 Email from Vision Outreach Consultant.*
  20. Student has been introduced to a range of AT tools including a refreshable braille display (limited due to fluency), magnifiers (discontinued due to photophobia), a screen reader, and an iPad (classroom for magnification). He is not able to use them all independently yet and expressed frustration with the refreshable braille display due to his reading speed. Continued focus on literacy fundamentals are recommended with the goal of achieving 75% mastery of the braille code (140 contractions) before shifting to routine use of the refreshable braille displays. *Questionnaire Vision Outreach Consultant.*

### **Subsequent IEP**

21. On January 31, 2025, the IEP Team reconvened to draft a new annual IEP, and that meeting was continued to a second meeting on February 13, 2025. Although outside the timeframe

of this Complaint, the IEP was signed with exceptions on March 2, 2025. *District Response, Exhibit C: 1/31/2025 IEP.*

22. One of the exceptions was to the AT goals which included continuing with the use of voice over and working on keyboarding fluency skills. *District Response, Exhibit C: 1/31/2025 IEP.*

### **Braille Instruction**

23. Student is dependent on braille to participate successfully in the general education curriculum and receives direct instruction in braille. *Complaint; Interviews with General Education Teacher and Braille Instructor*
24. The Vision Outreach Consultant has consulted since Student was in preschool and is very familiar with Student's needs and abilities. When there are questions or concerns with Student's learning or the curriculum, school staff reach out to the Vision Outreach Consultant and a response is usually available that same day. *Interviews with Braille Instructor, Special Education Teacher; Questionnaire Vision Outreach Consultant.*
25. The braille curriculum used with Student, Building on Patterns (Patterns), was recommended by the Vision Outreach consultant and is a structured and widely accepted resource supported by the American Printing House for the Blind. *Questionnaire Vision Outreach Consultant.*
26. Student participates with peers in the District's third-grade curriculum. Student performs at grade level in all areas except oral reading fluency. All general education curriculum materials are translated into braille by the Braille Instructor so that Student may have accessibility to the general education curriculum. *District Response, Exhibit B: 4/17/24 IEP; Interviews with General Education Teacher and Braille Instructor.*
27. The Vision Outreach Consultant recommended Student begin braille instruction in kindergarten at 30 minutes per week. The IEP Team considered the recommendation but determined a reduced level of instruction. The Vision Outreach Consultant recommended the braille instructor, who she knew was qualified and experienced, and she began providing instruction in first grade. In first grade, Student received 30 minutes per week of braille instruction. The Vision Outreach Consultant and Braille Instructor expressed concerns that level of service would not be sufficient for Student to become proficient in braille. *Questionnaire Vision Outreach Consultant.*
28. The Student's braille instruction has since increased based on the needs of the Student. In second grade Student's braille instruction was for 300 minutes a week. Student's January 31, 2025 IEP again proposed increasing Student's braille instruction services from 450

minutes per week to 575 minutes per week in the general education classroom and keeping 450 minutes per week in special education setting. *District Response, Exhibit C: 1/31/25 IEP; Questionnaire Vision Outreach Consultant.*

29. Student has made significant improvement in braille this past year. Student is at level 6 in Unit 1 of braille instruction in the Patterns curriculum. Student has been making rapid progress in the Patterns program, but because of the callouses on Student's fingers, Student is only able to use index fingers to read braille. *Interviews with Braille Instructor and Special Education Teacher.*
30. The Braille Instructor is a paraeducator with certification in braille instruction and twenty years of experience as a braille instructor.
  - a. In 2012, she received a Certificate of Braille Competency from a university consistent with standards set forth by the National Library Service. In 2015, she earned a certificate of completion of Transitioning to Unified English Braille (UED). She has also received additional training in Nemeth Braille Code for Mathematics and Science Notation (NEMETH) and how to train to use an abacus (ABACUS). *District Response, Exhibit D: Certificate of Braille Competency; Certificate of Achievement in UED; Interview with Braille instructor.*
  - b. The Braille Instructor has maintained continuing education requirements. *District Response, Exhibit N: Renewal Units.*
  - c. Part of Braille Instructor's responsibilities is to translate all third-grade curriculum into braille readable format for Student. *Interview with Braille Instructor.*
  - d. The Braille Instructor works under the direct supervision of the certified Special Education Teacher at the District. *Interviews with Special Education Teacher, Braille Instructor; District response.*
  - e. Student is with the Braille Instructor throughout the day, except for required Staff breaks. The Braille Instructor accompanies Student to the classroom, related services, physical education and recess and is there to assist Student in participating in learning activities. *Interview with Braille Instructor.*
31. The Vision Outreach Consultant believes the current braille instruction being provided to Student, under the supervision of a licensed teacher, is appropriate and aligned with the IEP and relevant state and federal requirements. *Questionnaire Vision Outreach Consultant.*

## **Attendance**

32. Due to ongoing medical appointments and pain, Student misses a significant amount of school. This year, Student has missed 20 full days and has been tardy in the morning 83 times. Student often leaves school up to one hour early. Attendance is taken twice, once in the morning and once in the afternoon. To date, for the 2024-2025 school year, Student was marked absent 31 times in the morning and 40 times in the afternoon. *Exhibit G: Attendance records*
33. Student's absences are excused but Student's learning is impacted by the frequent absences. *District Response, Exhibit G: Attendance records; Interviews with General Education Teacher and Braille Instructor.*
34. When Student is absent, tardy or leaves early, the school will work with Student individually to get Student caught up with missed materials. Sometimes this catch-up cuts into braille instruction time but Student continues to make progress in braille. *Interviews with General Education Teacher and Braille instructor.*

## **Physical Education**

35. Complainant has reported concerns with the physical characteristics of the school grounds. The playground has woodchips in certain areas. There are sidewalks, grass sections and dirt pathways that Student has to cross. Parent reports these concerns limit Student's ability to navigate the school grounds. *Pictures and Video from School Grounds; Interview with Complainant Interview with Superintendent.*
36. When Student goes outside with the wheelchair, Student can have difficulty maneuvering the wheelchair through woodchips to play on favorite playground equipment. *Interview with Complainant.*
37. Over the summer of 2024, the Superintendent met with Complainant to discuss accessibility concerns and changes were made to several outdoor areas. Although the District believed concerns were addressed, Complainant still reports accessibility issues for recess and physical education. *Interviews with Superintendent and Complainant.*
38. Student attends regular physical education with the Braille Instructor and has the use of a wheelchair as needed. Student is able to participate fully with classmates in all activities, whether in a wheelchair or standing. Student can choose to use a wheelchair or take a break if fatigued or in pain. *Interviews with Physical Education Teacher, Physical Therapist and Braille Instructor.*

39. Adaptation to some of the activities is required because of Student's visual and physical limitations but Student is not left on the sidelines or not participating in some form in the games and activities. The Physical Therapist, Physical Education Teacher and Braille Instructor work collaboratively to modify activities, as needed, to allow Student to fully participate in physical education. *Interviews with Physical Education Teacher, Physical Therapist, and Braille Instructor.*
40. Grades indicate that Student is making progress and is able to participate in most physical education activities with accommodations. *Interviews with Physical Education Teacher, Physical Therapist and Braille Instructor; District response.*
41. The District will be conducting an adaptive physical education assessment at the request of Complainant. *District Response, Exhibit C: 1/15/25 IEP.*

## **Conclusions**

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

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has a FAPE available to them, including special education and related services that meet the unique needs of individual students. 34 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).
2. The IDEA defines FAPE as special education and related services that are: (a) provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state education agency, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) are provided in conformity with an IEP that meets the requirements of 34 CFR 300.320 through 300.324. 34 CFR 300.17.
3. FAPE must be individually designed to meet the unique needs of an eligible student, and a school district must offer an 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).

### **Braille Instruction**

4. The IDEA requires that the IEP team "[i]n the case of a child who is blind or visually impaired, provide for the instruction in Braille and the use of Braille unless the IEP Team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille

or the use of Braille), that instruction in Braille of the use of Braille is not appropriate for the child.” 34 CFR 300.324(a)(2)(iii).

5. Special education teachers, paraprofessionals and related service providers must meet the certification and/or licensure requirements of the State Education Agency to ensure that personnel necessary to carry out IDEA are properly trained, adequately prepared and have the requisite knowledge and skills to serve student with disabilities in their caseload. 34 CFR 300.156. Montana implementing law also requires that all special education and related services for students with disabilities are provided under the direction of qualified personnel. ARM 10.16.3136(2).
6. The Office of Special Education and Rehabilitation Services (OSERS) has indicated that braille instruction must be provided by knowledgeable and appropriately trained personnel. “Systematic and regular instruction from knowledgeable and appropriately trained personnel is essential for a child to become proficient in Braille. IEP Teams must ensure that the instructional time allotted for Braille instruction is sufficient to provide the level of instruction determined appropriate for the child.” *Dear Colleague Letter*, 61 IDELR 172 (OSERS June 19, 2013).
7. The MSDB serves as a consultative resource for parents and public schools in the state where visually impaired children are enrolled, and upon request, MSDB shall ensure that services and programs for visually impaired children are appropriate and sufficient. MSDB may provide assistance to the programs that the school determines is needed. MCA 20-8-102(2). In accordance with IDEA, districts must take all reasonable steps to provide instructional materials in accessible formats to students with disabilities. ARM 10.16.3122(7).
8. Administrative Rule of Montana 10.55.717(1) in the Accreditation Standards of School Leadership Subchapter of the ARMs outlines competencies for individuals providing instruction of braille to a student or producing braille materials:
  - An individual who has successfully completed “a program, for teaching visually impaired students, from an approved educator preparation program as defined in ARM 10.57.102.”
  - An individual who has successfully completed the National Certification in Unified English Braille Test and has maintained that certificate;
  - An individual who has successfully completed the Unified English Braille Exam (Washington State School for the Blind) and has maintained that certificate; or
  - An individual who has successfully completed the Literary Braille Transcribing Course available through the National Federation of the Blind.

9. A person who has met the requirements set out in ARM 10.55.717 must maintain their facility with “contracted” (grade two) standard literary Braille code through continuing education opportunities. ARM 10.16.55.717(4). The employing district is responsible for monitoring the appropriate assignment of personnel providing braille instruction and assuming maintenance of their certification. ARM 10.55.717(2).
10. If a paraprofessional *who has not successfully met the requirements in ARM 10.55.717(1)*, is assigned to work with a student who as a visual impairment, “the paraprofessional will be supervised by the designated special education teacher in collaboration with a teacher of the visually impaired who holds a credential from an approved educator program as defined in ARM 10.57.102.” ARM 10.55.717(7) (emphasis added).
11. Here, the District’s Braille Instructor is a paraeducator with over 20 years of experience who meets the requirements set out in ARM 10.55.717 to provide instruction of braille to Student. Additionally, the Braille Instructor is supervised by the District’s licensed special education teacher and consults regularly with the Vision Outreach Consultant, a TVI from MSDB. The Vision Outreach Consultant, who was a member of the Student’s IEP Team, recommended the curriculum used and assists the District in developing and implementing a braille program that has allowed Student to make progress.
12. Although Student began with a small amount of braille instruction in first grade, his instruction significantly increased last year in second grade. Student has been making excellent progress in learning Braille despite only being able to use his index fingers to read braille.

### **Reevaluations**

13. A district must ensure that a reevaluation is conducted if it determines that the educational or related services needs, including improved academic achievement and functional performance of the child, warrant a reevaluation, or if the child’s parent, or teacher requests a reevaluation. 34 CFR 300.303(a). Reevaluations must be completed in accordance with 34 CFR 300.304 through 34 CFR 300.311. 34 CFR 300.303(a).
14. Neither Montana law nor IDEA mandate a timeframe for completion of reevaluations. “Although there is not a specific timeframe, the reevaluation must be conducted *within a reasonable timeframe*, like the timeframe for an initial evaluation. Once the decision is made that a reevaluation is necessary, delaying proceeding with the evaluation to determine continued eligibility for special education and related services and whether additions or modifications to the IEP are needed could result in the student not receiving a FAPE.” *OPI Special Education in Montana, Question 27, p. 35* (emphasis added).

15. Reevaluations must be completed by trained and knowledgeable personnel. 34 CFR 300.304(c)(1)(iv). Assessments are selected and administered to ensure that when assessing students with impaired sensory skills, the assessment results accurately reflect the student's aptitude or achievement rather than student's impaired sensory skills. 34 CFR 300.304(c)(3).
16. At Student's May 1, 2024 IEP meeting, the IEP Team discussed waiting to reevaluate in October 2024 at the Vision Outreach Consultant's recommendation, so Student could acclimate to third grade which would result in a more accurate skill level of his abilities. The IEP Team agreed to wait until October for the assessments. However, Complainant disagreed and signed the IEP with exceptions on June 22, 2024, one of which was wanting the assessments completed within 30 days of school starting.
17. Complainant signed consent for MSDB to evaluate Student on February 23, 2024. The Vision Report dated September 4, 2024, included assessments conducted at the at the beginning of the 2024-2025 school year. The IEP Team convened on December 13, 2024, to consider the evaluation. At that meeting, the District proposed a meeting in January to develop a new IEP instead of an amendment to consider the implications and ideas generated by the Complainant and Advocate.
18. There were limited professionals with the necessary qualifications and training to perform the requested assessments. Attempts to arrange the schedules for both evaluators were challenging. That combined with the Student's frequent absences lead to difficulty in conducting the assessments. The timeframe for the reevaluation was reasonable under the circumstances.

### **Assistive Technology**

19. As part of developing an IEP, one of the special factors the IEP team must consider is whether the student needs AT devices and services. 34 CFR 300.324(a)(2)(v). When the IEP team determines that a student needs AT devices or services in order to receive FAPE, the District must provide those devices and/or services. 34 CFR 300.105(a). *See also, Dear Colleague Letter on the Provision of Assistive Technology Devices and Services for Children with Disabilities under the IDEA*, 124 LRP 1839 (OSERS January 22, 2024). The need for AT devices and services should be considered at every IEP meeting. *Id.*
20. An AT device is any item, piece of equipment, or product system used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 CFR 300.5. An AT

service is any service that assists a child with a disability in the selection, acquisition or use of an AT device. 34 CFR 300.6.

21. The need for AT devices or services are determined by the IEP team using the *Andrew F.* standard of whether the AT devices and services are necessary in order for the child to make progress appropriate in light of the child's circumstances. *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. 386 (2017).
22. Decisions about instructional materials and methodologies are within the discretion of the local district, provided the methodology and materials selected allow the student to receive FAPE. 71 Fed Reg. 46,665 (2006). Although parents may prefer a specific methodology or instructional method for their child, as long as the methodology selected by the IEP team is appropriate and allows the student to receive FAPE, parental preferences are not required. *M.M and B.M. v. Sch. Bd. of Miami-Dade County, Florida*, 45 IDELR 1, 437 F3d 1085 (11<sup>th</sup> Cir. 2006).
23. During the timeframe of this Complaint, Student's IEP Team considered Student's AT needs during multiple IEP meetings. Student's IEP contained AT goals and provided Student with AT devices that were compatible with Student's braille skills. Student received an AT assessment as part of the vision evaluation conducted in the fall of 2024, and the results were considered by the IEP Team. The AT assessment recommended establishing foundational skills in braille before exposure to more advanced technology such as a refreshable braille display and screen reader. Complainant disagreed with the AT assessment and has requested an IEE.

#### **Physical Education**

24. Special education services include physical education designed to meet the needs of a student with a disability. 34 CFR 300.39(a)(1)(ii). Physical education is defined in IDEA as the development of physical and motor fitness, fundamental motor skills and patterns, and skills in aquatics, dance, individual and group games and sports (including intramural and lifetime sports). This definition also encompasses special physical education, adapted physical education, movement education and motor development. 34 CFR 300.39(b)(2).
25. Districts must provide physical education to every child with a disability if the district provides physical education to children without disabilities in the same grades. 34 CFR 300.108(a). Students with disabilities must be afforded the opportunity to participate in the regular physical education program available to nondisabled students unless the student is enrolled full time in a separate facility or the student needs specially designed physical education as prescribed in the student's IEP. 34 CFR 300.108(b).

26. The IDEA's least restrictive environment (LRE) mandate is that students are to be educated in regular classroom settings to the maximum extent appropriate. 34 CFR 300.114(a)(2)(i). Special classes, separate schooling or removal from regular educational opportunities only occurs if the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved. 34 CFR 300.114(a)(2)(ii). Supplementary aids and services are aids, services and supports provided in regular education classes to enable students with disabilities to be educated with nondisabled students to the maximum extent possible. The LRE mandate applies to physical education classes. 71 Fed. Reg 46,577 (2006).
27. Student participates in regular physical education with classmates and has been able to actively participate in all aspects of the physical education curriculum, albeit, with supplementary aids and services. At times, because of Student's individualized needs, Student may complete an alternative or modified task with the assistance of the Braille Instructor. Also, Student may choose, because of pain or fatigue, to forego a specific activity, but Student is not prevented or denied access to the physical education curriculum or programming. The Physical Therapist, Physical Education Teacher and Braille Instructor work collaboratively to modify physical education activities to allow Student full participation.
28. After the filing of this Complaint, the District agreed to conduct an adaptive physical education assessment, the IEP Team will then consider if Student needs specially designed physical education.

### **Decisions**

1. Whether the District's personnel providing Student braille instruction are not qualified in violation of 34 CFR 300.156 and ARM 10.55.717.

**The OPI finds no violation.** The Braille Instructor has the required qualifications to provide braille instruction to Student.

2. Whether the District failed to reevaluate Student in a timely manner in violation of 34 CFR 300.303(a)(2).

**The OPI finds no violation.** The timeframe for conducting the assessments was not unreasonable given the circumstances.

3. Whether the District failed to consider whether Student needs assistive technology devices and services in violation of 34 CFR 300.324(a)(2)(v).

**The OPI finds no violation.** The District has considered Student's AT needs by adding measurable annual goals in AT as well as conducting an AT assessment.


4. Whether the District failed to provide Student with physical education services in violation of 34 CFR 300.108.



**The OPI finds no violation.** The District has provided Student with physical education services through participation in the regular classroom setting with the provision of supplementary aids and services.

**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)
-  Director (SMFTS only)
- , District Attorney (SMFTS only)