



April 25, 2025

Sent via US Mail and/or SMFTS



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT:** In the Matter of [REDACTED], 2025-05, Alleged Violations of the Individuals with Disabilities Education Act (IDEA).

This is the Final Report pertaining to the above-referenced state special education complaint (Complaint) filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. [REDACTED] (Complainant), filed the Complaint on behalf of her child, [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 regulations at Code of Federal Regulations (CFR) 34 CFR Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complaint alleged the following issue:

1. Whether the District violated 34 CFR 300.613 by denying access rights and copies of records when Complainant requested all communications, emails and notes.

**Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint from the Complainant on February 28, 2025.
2. The OPI Dispute Resolution Office contacted the District's legal counsel on March 4, 2025, to see if the District received a copy of the Complaint as required by 34 CFR 300.153(d) and

ARM 10.16.3662(3). The District did receive a copy of the Complaint. Therefore, the Complaint was deemed filed on February 28, 2025.

3. Montana law provides the OPI's Early Assistance Program (EAP) with the Special Education Dispute Resolution Office may attempt to resolve the issues alleged in the Complaint. ARM 10.16.3660(3) and 10.16.3662(5). However, the Complainant indicated in a March 5, 2025 email to the OPI that she requests to move forward with the Complaint process.
4. The OPI Dispute Resolution Office issued a Notice of Filing, Clarification of Allegations and Request for Response on March 5, 2025. Clarification of the allegations included that Complainant previously filed a Complaint that addressed the issue of "Whether the District provided the Complainant with the opportunity to inspect and review educational records relating to her child that were collected, maintained, or used by the District under Part B in conformity with 34 CFR 300.613." The previous Complaint was based upon a request for records in June 2023 and OPI issued a Final Report (OSPI 2023-08) in that matter on December 6, 2023. The current Complaint alleges a violation in August of 2024.
5. The District submitted a written response to the issues in the Complaint on March 13, 2025.

### **Investigatory Process**

The following records were reviewed:

- The original letter of Complaint and all supporting documentation;
- The District's Response to the Complaint and all exhibits; and
- The District's responses to supplemental questions.

The Complaint indicated that Complainant would be providing supporting documentation at a later date. The OPI Dispute Resolution Office emailed Complainant on March 17 and April 1, 2025, to see if there was additional documentation or information to be considered during the investigation. No additional information was provided.

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

34 CFR 300.613	Access Rights
34 CFR 99	FERPA
ARM 10.16.3560	Special Education Records

### **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 February 28, 2024, through

February 28, 2025. Additional information beyond this timeframe was considered for the purpose of fully investigating the Complaint.

### **Findings of Fact**

1. At the time of the filing of the Complaint, Student was enrolled in the District.
2. On October 25, 2024, Complainant emailed the Principal and requested the following: "For my records, I need to know who you forwarded my September 26, email to for scheduling and if they forwarded their communication to set up times, I would like that communication as well." The Principal responded and listed everyone who the email and follow up email was forwarded to and who was involved with scheduling. *District Response: October 25, 2024 Emails.* Complainant responded to the Principal's email requesting that the district "...please provide copies of written or electronic communications, sent or received, in their original format, with the people mentioned below." *District Response: October 25, 2024 Emails.*
3. On November 13, 2024, Complainant emailed the Principal stating she had asked for email communications with the administrative office related to speech services and other services related to Student's needs and that she "...would still like a copy of those records, specifically anything that addresses speech and for the sake of transparency, other written, typed or email communications involving [Student] and Sped services." *District Response: November 13, 2024 Email.*
4. On November 28, 2024, Complainant emailed the Principal formally requesting, via an attached letter, to revoke services, testing and meetings and stated, "...I previously asked for all communications about [Student] but I have not yet received those. I also need records of whomever has looked (accessed) at documentation about [Student] as it pertains to [Student's] Special Education file. If you could please direct me to the person, that I need to contact, to receive those electronic/written or similar communications pertaining to her files or education, I would appreciate your help." The Principal's email was forwarded to the District's Special Education Director. *District Response: November 28, 2024 Email.*
5. On December 8, 2024, Complainant emailed the District's Special Education Director to "...request any written or electronic communications that the district has about my daughter's education....I'm requesting all electronic communications, emails, or written correspondence from December 2023 up until this date, December 8th, 2024, that the district has about [Student] either directly or indirectly about her education. Including

emails about myself ... in which, the district/employees have made derogatory remarks about in the past.” *District Response: December 8, 2024 Email.*

6. On December 10, 2024, Complainant sent the same email as was sent on December 8, 2024, again to the District’s Special Education Director, but requested confirmation that he received the request. *District Response: December 10, 2024 Email.*
7. On December 10, 2024, the District’s Special Education Director forwarded the request to the District’s Clerk. *District Response: December 10, 2024 Email.*
8. On December 11, 2024, the District’s Clerk responded to Complainant regarding her records request and cited District Policy regarding a public records request.
9. On January 10, 2025, Complainant emailed a letter to the District’s Superintendent stating that she has:

...requested information about my daughter’s special education file, to include any emails between staff members in electronic and/or written form as well as any notes taken during any meetings (formal or informal) by any staff member(s) that are employed or contracted with [District]. I am also, specifically, requesting any communications or notes in written or electronic form that went to [Speech Language Pathologist] or that [Speech Language Pathologist] sent other members of the district about my daughter... If [Speech Language Pathologist] or any other members took notes about [Student’s] education as it pertains to special education, I’m again requesting notes, emails or documentation in any form that they were created.

*District Response: January 10, 2025 Email.*

10. The District compiled an email search on January 31, 2025, and provided it to the District’s legal counsel, but it was determined that the search did not include the proper timeframe requested by Complainant due to the constraints of the District’s email server. An additional flash drive was provided to legal counsel around February 26, 2025, and contained 55,458 pages, which needed to be reviewed prior to disclosing them to Complainant. On March 13, 2025, the District’s legal counsel mailed Complainant a flash drive containing 346 pages of email communications. *District Response.*
11. At the completion of the review, it was determined the search had not picked up on all relevant emails and the District was completing another search. *District Response.* The District indicated that it would be mailing additional emails to Complainant the week of April 15, 2025. *District Response to Supplemental Questions.*

12. The District did not locate any notes taken by District Staff regarding Student's education. *District Response to Supplemental Questions.*
13. The District processed the Complainant's requests for emails under Montana's public information laws and responded to Complainant's request in that context. *District Response.* None of the documents in response to Complainant's requests were education records. *District Response to Supplemental Questions.*

## **Conclusions**

1. The IDEA and the ARMs incorporate the rights afforded to parents in FERPA. 34 CFR. 300.612 and ARM 10.16.3560.
2. The IDEA addresses parental access rights to special education records in 34 CFR 300.613:
  - a. Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with the request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to 300.507 or 300.530 through 300.532, or resolution session pursuant to 300.510, and in no case more than 45 days after the request has been made.
  - b. The right to inspect and review education records under this section includes—
    - i. The right to a response from the participating agency to reasonable requests for explanations and interpretation of records;
    - ii. The right to request that the agency provide copies of the records containing information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
    - iii. The right to have a representative of the parent inspect and review the records.
3. IDEA defines education records as the type of records covered under the definition of "education records" in FERPA at 34 CFR Part 99. 34 CFR 300.611. According to FERPA, education records mean those records that are: (1) Directly related to a student; and (2) Maintained by an educational agency or institution or by a party acting for the agency or institution. 34 CFR 99.3.
4. Further, Montana law requires that "[t]he special education record retained by each LEA shall include access log, request for initial evaluation, permission for evaluation, summaries of assessments, test protocols, and other information that are not subject to

sole possession requirements of FERPA, evaluation reports, individualized education programs, and reports of the student's progress toward meeting annual goals of the individualized education program.” ARM 10.16.3560(3).

5. “The Supreme Court has interpreted the word “maintained” in FERPA as “to keep in existence or continuance; preserve; retain” and reasoned that “[t]he word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database.” *S.B. V. San Mateo-Foster City Sch. Dist.*, 739 Fed.Appx. 870, 873-874, 72 IDELR 147 (9th Cir. 2018) citing *Owasso Indep. Sch. Dist. No. I-011 v. Falvo*, 534 U.S. 426, 432-433 (2002).
6. A parent’s right to inspect and review education records directly relating to their child only applies to those records that are “maintained” by the District. The Ninth Circuit Court of Appeals held that a school district can satisfy its obligation by providing copies of emails that are printed and added to a student’s physical file rather than kept on a separate email server. *Id.*
7. FERPA excludes several types of records from being considered education records. 34 CFR 99.3. One type of record that is excluded are “records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.” 34 CFR 99.3(b)(1). Notes would fall under this exception, if they are used as a personal memory aid and not shared with anyone.
8. The Complainant’s emails to the District between October 25, 2024, and January 10, 2025, requested copies of communications between District Staff. These communications are not educational records, as that term is defined by the IDEA, FERPA, or Montana implementing laws.
9. Additionally, on January 10, 2025, Complainant requested notes taken by District Staff during meetings relating to the Student. The District was working on this request when the Complaint was filed on February 28, 2025. As of March 13, 2025, the District notified Complainant through its Response that it did not locate any notes to provide to Complainant. This was within the 45-day time period allotted under 34 CFR 300.613(a).

## **Decision**

Whether the District violated 34 CFR 300.613 by denying access rights and copies of records when Complainant requested all communications, emails and notes.

**OPI finds no violation. The District did not deny Complainant access to Student's education records under IDEA or Montana's implementing laws.**

**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*

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Danielle McCarthy  
OPI State Director of Special Education

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