



September 8, 2025

Sent via US Mail and SMFTS



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: FINAL **REPORT**: In the Matter of [REDACTED], 2025-07, Alleged Violations of the Individuals with Disabilities Education 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] (Student), a student in [REDACTED] Public Schools (District). The Complainant alleges the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulation at 34 Code of Federal Regulations (C.F.R.) Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complaint alleged the following issues:

1. Whether the District provided the Student with a free appropriate public education (FAPE) in conformity with 34 C.F.R. §§ 300.17 and 300.101. Specifically,
  - a. Whether the District failed to implement the Student's IEP by not providing special education and related services, including transportation, in violation of 34 C.F.R § 300.323.
  - b. Whether the District failed to address that the Student had not made progress or met any of Student's IEP goals in violation of 34 C.F.R. § 300.324.
  - c. Whether the District violated the IDEA discipline provisions by removing Student for more than 45 days and not providing educational services or conducting a manifestation determination in violation of 34 C.F.R. § 300.530.
2. Whether the District failed to provide Student's special education services through "appropriately and adequately trained" personnel in violation of the 34 C.F.R § 300.156

when they did not reschedule the autism specialist's appointment or provide for other specialized assistance.

3. Whether the District failed to include Student in state assessments in violation of 34 C.F.R. § 300.160.
4. Whether the District amended Student's IEP regarding communication with Complainant without Complainant's consent in violation of 34 C.F.R. § 300.324(a)(4) and ARM 10.16.3505.
5. Whether the District failed to provide Complainant with periodic reports of Student's progress toward meeting annual goals in violation of 34 C.F.R. § 300.320(a)(3).
6. Whether the District violated Complainant's right to meaningful participation by not allowing Complainant to sit in the classroom with Student in violation of 34 C.F.R. § 300.322.

### **Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on May 20, 2025.
2. The OPI Dispute Resolution Office contacted the District on May 21, 2025, and the District had not received a copy of the Complaint as required by 34 C.F.R. § 300.153(d) and ARM 10.16.3662(3).
3. The OPI Dispute Resolution Office issued a Notice of Filing on May 21, 2025. Because the District had not received a complete copy of the Complaint, OPI determined the filing date by adding three days from the date OPI mailed the Complaint to the District. See OPI's Frequently Asked Questions: IDEA State Complaints, Question 13, <https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/IDEA%20Fiscal/2024.05.20%20State%20Complaint%20FAQs%20Rev.%204.%202024.pdf?ver=2024-05-23-160613-020> (last visited September 6, 2025). The Complaint was deemed filed on May 23, 2025.
4. By mutual agreement of the parties, the OPI agreed to pause the state complaint process as of June 4, 2025, and extend the 60-day timeframe of the state complaint process, in order to engage in mediation as permitted under 34 C.F.R § 300.152(b)(1)(ii).
5. On July 22, 2025, after receiving the Mediator Report, which indicated the parties had reached an impasse, the state complaint process was resumed as of July 23, 2025, continuing with the 60-day timeframe for Final report. ARM 10.16.3662(8). A Request for District Response, Appointment of Investigator and Scope of Proceedings was issued on July 24, 2025.
6. The District submitted a written response to the issues in the Complaint on August 4, 2025.

7. The Complainant provided a written response to the District's Response on August 12, 2025.

**Investigatory Process**

The investigator reviewed the following records:

- The original letter of Complaint and all supporting documentation;
- The District's Response to the Complaint and all exhibits;
- The Complainant's Reply to the Response with attachments; and
- The education records relevant to this investigation.

The investigator interviewed the Complainant.

The District Superintendent and Special Education Teacher completed questionnaires.

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

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

34 CFR § 300.17	FAPE
34 CFR § 300.101	FAPE
34 CFR § 300.156	Personnel Qualifications
34 CFR § 300.160	Participation in assessments
34 CFR § 300.320(a)(3)	Definition of Individualized Education Program
34 CFR § 300.322	Parent Participation
34 CFR § 300.323	When IEPs must be in effect
34 CFR § 300.324(a)(4)	Development, review and revision of IEP
34 CFR § 300.530	Authority of School Personnel
ARM 10.16.3505	Parental Consent

**Relevant Time Period for Investigation**

Pursuant to 34 C.F.R. § 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 May 23, 2024, through May 23, 2025. Additional information beyond this timeframe was considered for the purpose of fully investigating the Complaint.

## **Findings of Fact**

1. During the 2024-2025 school year, the Student was in the sixth grade. The Student was previously identified as a learner eligible for services under the IDEA categories of Emotional Disturbance and Other Health Impairment. *District Response*.
2. During the time period relevant to this Complaint, the Student received services according to a November 2023 IEP, and an April 24, 2024 unsigned amendment. Relevant information from the November 2023 IEP included:
  - a. The Complainant was concerned with the Student falling more and more behind. The school staff were concerned with the Student's lack of writing, dislike for reading and physical aggression when he was upset.
  - b. The Student's behavior impeded his learning or that of others.
  - c. Present levels of academic achievement and functional performance outlined the Student needed support in math, reading, social/emotional/behavioral and writing.
  - d. All services were delivered in a special education setting and included 208 minutes a week of math, reading, written expression, and social/emotional/behavioral, for a total of 832 minutes per week.
  - e. Measurable goals were developed to support the Student's needs. The Student had four goals.
    - i. GOAL 1: Math: multiplication facts.
    - ii. GOAL 2: Reading: fluency words per minute.
    - iii. GOAL 3: Social/Emotional/Behavioral: anger/conflict management.
    - iv. GOAL 4: Written Expression: main idea and dictating sentences.
  - f. Supplementary aids and services were described for classroom assessments and instruction. On assessments, the Student could provide verbal responses, take tests in the resource room and utilize a word bank for fill in the blank tests. Instructional accommodations included: repeated instructions, preferential seating, tests read orally, extended time, use of fidget toys, peer buddy, pre-teaching, and prepping for changes in schedule.
  - g. The IEP noted the Student participated in statewide and districtwide assessments with accommodations.

*District Response, November 2, 2023 IEP (Exhibit 1, Pages 1-8).*

3. The April 24, 2024 amendment outlined the following revisions:

- a. Assignment of a new case manager. This person is the director of special services at the district's cooperative.
- b. Social/emotional/behavior goals were revised to better match the "lagging" skills identified in the Student's Behavior Intervention Plan (BIP).
- c. A shortened day was implemented, changing the Student's placement.
- d. There was team agreement that additional supplementary aids and services were necessary.
- e. It was agreed that the Student should be reevaluated in the fall prior to the development of the Student's annual IEP.

*Parent Reply to District Response, November 2, 2023 IEP amended on April 24, 2024 (Pt. 2, Page 1).*

4. Notes from an April 16, 2024 conversation, including the Complainant, her advocate and case manager, stated the following relevant information:
  - a. Communication with home was changed and updated in the supplementary aides and services section.
    - Continue home-school notebook for everyday communication.
    - Communicate discipline or behavior incidents in a detailed manner through email within two business days.
    - Provide behavior/discipline data prior to team meetings to review placement.
  - b. The Student's day included 2 hours and 20 minutes of services per day Monday–Thursday and 6 hours of services on Friday. The schedule was attached to the IEP.
  - c. The District would provide compensatory education services for missed services. The time and place would be determined between Complainant and District.
  - d. The Complainant understood that the BIP was a working document, providing guidance for all staff to assist throughout the Student's day in all environments.
  - e. A "plan" outlined the Student's school day for the remainder of the 2023-2024 school year.
  - f. The Student's behavior plan was updated on April 9, 2024, including some handwritten notes about the function of the Student's behavior, indicating it was attention seeking, which could be positive or negative.

*Parent Reply to District Response, November 2, 2023 IEP amended on April 24, 2024 (Pt. 2, Pages 11 - 23).*

5. At the April 24, 2024 IEP meeting, participants included the Complainant, her advocate, the Special Education Case Manager, and the District Superintendent. There is no signature on the IEP approval page for the April amendment. *Parent Reply to District Response, November 2, 2023 IEP amended on April 24, 2024 (Pt. 2, Page 9) and Complainant Interview.*
6. In July 2024, the District and Complainant reported the IEP Team began meeting and planning for the 2024-2025 school year. The Team reached agreement in August regarding the time and structure of Student's day. Although the Student ended the 2023-24 school year attending approximately two hours per day, the Complainant and District compromised to increase the Student's day to four hours. The Complainant explained this allowed the Student to participate in lunch and recess with peers. *District Response (Page 2) and Complainant Interview.*
7. A Prior Written Notice (PWN) dated August 6, 2024, explained the Student would attend school for a half day, would have 1 to 1 paraprofessional support throughout the day, a behavior checklist or notebook would be developed, and transportation would be provided by the Complainant through an individualized transportation contract (TR4). Transportation is not a service included as part of the Student's November 2023 IEP or the April 2024 amendment. *District's Response; Complainant Interview; and District Staff Questionnaire (Attachment 1, Page 5).*
8. Just prior to the start of the 2024-2025 school year, the District Superintendent and the Complainant exchanged a series of emails discussing the TR4. The Complainant indicated the TR4 would not work, as she did not have the ability to provide transportation. She requested the school make other arrangements. The Complainant notified the District on August 13, 2024, that both of her children would be ready for pick up the first day of school August 14, 2024. *Complaint, Emails (Pages 25-55).* The Complainant stated she transported the Student until the school began providing transportation in November 2024. *Complainant Interview.*
9. The District sought the Complainant's consent to conduct assessments as part of the Student's reevaluation in early September 2024. Assessments were proposed in the areas of academic achievement, behavior, communication, psychological, social emotional, autism, and occupational therapy. The Complainant provided consent on September 4, 2024. *District's Response, Evaluation Plan (Exhibit 2, Page 2).*

10. The Complainant described the Student's transition to school during September as difficult. The Student often refused to go to the school. According to the Complainant, the Student was afraid and struggled with School Staff working with him. Initially, the Complainant had worked with the District and planned to briefly attend school with the Student to observe and assist with the transition to the classroom. The Complainant reported this occurred a few times but did not continue long term. *Complainant Interview*.
11. The Complainant explained that on at least five occasions in September when the Student was marked excused "absent" from school, it was really school refusal. The Complainant reported she and the Student sat in the car outside of the school building, because he refused to go in. *Complainant Interview*.
12. The District and Complainant reported the IEP team met on October 30, 2024. Participants signed a signature page indicating they met, but the Student's IEP was not modified from the April 24, 2024 amendment. *District Response (Exhibit 1, Page 10), Complainant Interview and District Staff Questionnaire*.
13. The Student's attendance detail indicated the Student was present 7 out of 11 days in August, 7 out of 17 days in September, and 16 out of 19 in October. *School Calendar 2024-2025 and District Response, Attendance Detail (Exhibit 4, Pages 3-4)*.
14. On November 21, 2024, the Student was involved in an incident involving physical aggression, significant destruction of school property and disruption of the educational environment. The Student was suspended for 3 days and was allowed to return to school on December 2, 2024. The suspension was right before a holiday break and school was not in session on November 27, 28 and 29. *District Response, November 21, 2024 Letter (Exhibit 3, Page 2-4) and 2024-2025 School Calendar*.
15. An Evaluation Report dated December 5, 2024, summarized the multiple observations and formal assessments completed as part of the Student's reevaluation. The IEP Team determined the Student continued to meet criteria as a student with an Other Health Impairment and Emotional Disability. The Complainant stated the Student had a medical diagnosis of Autism. No medical or evaluation information was provided by the Complainant during the reevaluation process. At the completion of December 5, 2024 IEP meeting, the Team determined further assessments were needed to rule out Educational Autism. The Complainant provided consent for additional assessments on December 5, 2024. *District Response, December 5, 2024 Evaluation Plan and Evaluation Report (Exhibit 2)*.
16. The IEP Team used the reevaluation information to continue developing the Student's IEP over several meetings. After the IEP meeting on December 19, 2025, the IEP team members

signed the IEP indicating their participation. However, the Complainant did not provide her signed consent approving the IEP. The proposed IEP is summarized as follows:

- a. The Student's strengths shared by both Complainant and staff indicated the Student likes hands on learning, taking things apart, is passionate about tractors and mechanics, and is good with online games.
- b. Educational concerns from the Complainant focused on the Student's relationship with staff and peers. Complainant is concerned with the BIP. Staff expressed significant concerns with the Student's behavior particularly his violent behavior with non-preferred tasks. Challenges have increased in frequency to the point that all staff do is manage behavior with little to no educational engagement.
- c. It was documented the Student's behavior impeded his learning or the learning of others.
- d. Measurable goals were developed to support the Student's needs as follows:
  - i. Four math goals: completing math tasks, both written and hands on with minimal prompting, subtraction, and double-digit addition.
  - ii. Three occupational therapy goals: letter writing, lacing shoes and participating in a fluid sensory diet to decrease behaviors.
  - iii. Three reading goals: answer comprehension questions, site words and identifying word meaning, and fluency words per minute.
  - iv. Behavior goals and objectives: utilize taught self-regulation strategies, recognize early signs of frustration, completing academic task, and safe behavior.
  - v. Three written expression goals: complete written expression tasks, orally dictate sentences about given topic, and correctly edit a sentence.
- e. All special education and related services were to be delivered in a special education setting and included 60 minutes a week of math and reading, 30 minutes of written expression and 600 minutes of social/emotional/behavior, for a total of 750 minutes per week. The Student would receive 40 minutes a week of occupational therapy and transportation.
- f. The Student would continue attending school on a shortened day. This schedule was implemented based on a plan to help the Student engage meaningfully within a timeframe he can manage successfully. The modified schedule was to allow the student to access structured support, develop coping strategies and participate in academic activities without becoming aggressive. The goal was with consistent

support and incremental adjustment to transition to a longer day as he manages emotional responses with the school setting.

- g. Instructional accommodations included consistent daily routine, advance notice when routine changed, frontload if new staff are assigned to work with Student, brain breaks, start and end times for tasks, visual schedules, sensory activities, extended time, snack break and a BIP.
- h. The Student would participate in statewide and districtwide assessments with accommodations.
- i. A behavior log would be provided each day via email to Complainant and at the end of the week printed out and sent home with Student.
- j. A BIP outlined targeted behaviors, lagging skills, antecedents, consequences, function and accommodations/teaching strategies, interaction strategies, response strategies, and crisis plan and procedures.

*District's Response, December 5, 2024 IEP (Exhibit 1, Page 11-28).*

- 17. At the completion of the additional assessment, the Autism Diagnostic Observation Schedule, Second Edition (ADOS-3), the Evaluation Report Team reconvened on December 19, 2024. The Team determined the Student didn't meet the criteria as a student with Autism according to the state's Autism eligibility criteria checklist. The District explained not meeting criteria for Autism didn't change the Student's medical diagnosis of Autism. *District Response, December 20, 2024 PWN (Exhibit 2, Page 20).*
- 18. The PWN proposed implementing the Student's IEP. The IEP Team used current data and information from the Student's reevaluation to update the Student's IEP and BIP. The Complainant had made a request to modify the Level 2 portion of the Student's Behavior plan, requesting she be called before law enforcement. The District rejected that proposal due to safety concerns. *District Response, PWN (Exhibit 1, Page 30).*
- 19. Attendance records indicated the Student attended 8 out of 15 days in November and 2 out of 13 days in December. *School Calendar 2024-2025 and District Response, Attendance Detail (Exhibit 4, Page 2).*
- 20. On January 29, 2025, the District Superintendent informed the Complainant the Student had been suspended for one day for significant destruction of property, physical assault to three employees and disruption of the educational environment. The Student was to be allowed to return to school on February 3, 2025. *District's Response, January 29, 2025 Letter (Exhibit 3, Page 1).*

21. On January 30, 2025, the District stated it began attempting to hire additional staff, specifically paraeducator staff to support the student throughout his school day. The District stated that job postings were placed on the District's website, school bulletin board, local community store and post office. The District sought to hire two paraeducators to support the Student. The District was unsuccessful in hiring staff. The District attributed some of the difficulty hiring staff due to a lack of qualified applicants and the small population of the community. *District Response, Job Posting (Exhibit 6) and District Staff Questionnaire (Question 10)*.
22. An outside consultant, whom Complainant referred to as an autism specialist, was scheduled to observe the Student on February 3, 2025. The observation had been scheduled earlier in the fall but had to be rescheduled due to the Student's absence. A series of emails were exchanged between the District and the Complainant just prior to February 3, 2025, after the Student had been suspended. Considering District Staff were not available on February 3 and there was an impending storm, it was determined the observations would need to be rescheduled. *District Response (Page 5) and Complaint, Emails (Pages 30-32)*.
23. An email dated February 2, 2025, from the Principal to the Complainant explained that due to the physical injuries that Staff suffered during the incident on January 29, 2025, the District did not have paraeducator staff to serve the Student for the next week. Compensatory services were to be calculated and provided when District Staff became available to work with the Student. *Complaint, Email (Page 32)*.
24. The IEP Team reconvened on February 6, 2025, and the District issued PWN on February 12, 2025, documenting the meeting. The PWN explained that the IEP Team met to continue the development of the Student's IEP, which remained unsigned. The District and Complainant discussed how to provide education services to the Student following the most recent incident in which Staff members were injured and property was destroyed. The District stated that the Complainant had neither approved nor identified issues with the December IEP until mid-January when she had requested modifications to the Student's strengths, accommodations and BIP. All of these changes were agreeable to the District. However, the District did not agree to the requested changes regarding the present levels because the District believed they reflected the Student's current data and abilities as written. The District indicated that staffing continued to be an issue and that there continued to be no staff to serve the Student. *District Response, February 12, 2025 PWN (Exhibit 1, page 52)*.
25. As part of other options discussed by the IEP Team, the District noted the Team discussed homebound services, which the Complainant rejected, and hiring the Complainant as paraeducator, which was rejected by the District. The Team agreed to meet weekly to update

options, including residential placement and services through another school district. *District's Response, February 12, 2025 PWN (Exhibit 1, Page 52)*.

26. Attendance records indicate the last day the Student attended was February 5, 2025. Beyond February 5, 2025, the Student's attendance is listed as "absence unexcused". *District's Response, Attendance Detail (Exhibit 4, Page 1 - 2)*.

27. Email invitations were sent to Complainant to participate remotely via Zoom in meetings on February 12, 19, and 24, 2025, between the District and the Complainant. After February 2025, the District explained that the discussions regarding options for providing services occurred primarily between the District's Attorney and the Complainant's Attorney. The attorneys exchanged emails between March and May 2025. The District's Attorney provided information on residential facilities that might have been appropriate placements for the Student, requested releases for the exchange of information from the Complainant, and continued to discuss providing tutoring services. The Complainant explained that she didn't believe tutoring was enough for the Student due to his need for socialization. She also stated she was not comfortable signing releases of information for the facilities because she was not familiar with them. *Staff Questionnaire Attachment 6, Emails (Pages 1-8, 31-40) and Complainant Interview*.

28. The District reported the following progress towards IEP goals:

a. October 22, 2024:

i. Math: Not expected to meet goal. Multiplication facts 0-12 with 100% accuracy, recalls 0,1, 2, 5 and 10.

ii. Reading: Not expected to meet goal. Read on level paragraph with fluency and comprehension 90% accuracy. Refuses to read. Enjoys having books read to him and answers comprehension questions orally.

b. March 24, 2025: Student has not been present for a sufficient amount of time to allow for monitoring. Progress undetermined.

i. Math: Goals not yet started.

ii. Reading: Goals not yet started.

iii. Social/Emotional/Behavioral: Goals not yet started.

c. May 19, 2025: Student has not been present for a sufficient amount of time to allow for monitoring. Progress undetermined.

i. Math: Goals not yet started.

ii. Occupational Therapy: Goals not yet started.

iii. Reading: Goals not yet started.

- iv. Social/Emotional/Behavioral Goals not yet started.
- v. Written Expression: Goals not yet started.

*District Response, Progress Reports (Exhibit 5, Page 1-9).*

29. The District noted that all Staff working with the Student were licensed according to ARM 10.16.31.36(1) and (2). Verification from the State indicated the Teacher had a current special education teacher license. The District further explained all special education services were provided under the direction of qualified personnel in compliance with federal requirements.

*District Response (Page 5); Public Search OPI Licensure Website.*

## **Conclusions**

### **FAPE**

1. The overarching purpose of the IDEA is to ensure that students with a disability have available to them a FAPE, including special education and related services that meet the unique needs of individual students and prepare them for further education, employment, and independent living. 34 C.F.R. § 300.1.
2. The FAPE standard was set by the hallmark United States Supreme Court decision in the *Rowley* case. *Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 553 IDELR 656 (U.S. 1982). The Court in *Rowley* held that an IEP must provide a “basic floor of opportunity” and that determining the contours of an appropriate education must be decided on a case-by-case basis. *Rowley*, 458 U.S. 176, 201, 553 IDELR 656 (U.S. 1982).
3. The Supreme Court clarified the FAPE standard in the *Endrew F.* case. The Court made it clear that “[t]o meet its substantive obligations under the IDEA, a school must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 399, 69 IDELR 174 (U.S. 2017). The Court rejected the “merely more than de minimus” standard for measuring appropriate progress. “After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement.” *Endrew F.*, 580 U.S. 386, 399, 69 IDELR 174 (U.S. 2017). The instruction offered must be “specially designed” to meet a child’s “unique needs” through an “[i]ndividualized education program.” *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 400, 69 IDELR 174 (U.S. 2017).

4. Schools have a fundamental obligation under the IDEA to provide FAPE to all eligible students, no matter the severity of their disability, and to address all areas of disability-related need. *Letter to Wentzell*, 69 IDELR 79 (OSERS and OSEP, Dec. 7, 2016). The right to FAPE is afforded to all eligible students, even students with the most severe cognitive or behavioral symptoms. *Timothy W. v. Rochester, N.H. Sch. Dist.*, 875 F.2d 954, 960, 441 IDELR 393 (1<sup>st</sup> Cir. 1989).

### **IEP Implementation**

5. A FAPE must be made available to each eligible child with a disability. 34 CFR § 300.101(a). In order to make FAPE available to each eligible child with a disability, the special education and related services, supplementary aids and services, and other supports in the child's IEP must be designed to enable the child to advance appropriately toward attaining his or her annual IEP goals and to be involved in, and make progress in, the general education curriculum based on the State's academic content standards for the grade in which the child is enrolled. *Dear Colleague Letter*, 66 IDELR 227 (OSERS and OSEP, Nov. 15, 2015).
6. The IDEA defines FAPE as special education and related services that: (a) are 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.
7. 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. 34 C.F.R. § 300.320(a) (emphasis added). A student's IEP team makes the determination as to what aids, services, modifications or supports are necessary and which of those must be included in the IEP.
8. As soon as possible, following the development of an IEP, the special education and related services are made available to the student. 34 C.F.R. § 300.323(c)(2). Public agencies must then implement the IEP as written for the student, including all required components. 34 C.F.R. § 300.17(d).
9. When looking at whether a public agency's failure to implement the IEP denies a student FAPE, the Ninth Circuit in *Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 47 IDELR 182, *amended* (9th Cir. 2007), adopted the materiality standard. If a material failure to implement the IEP is found, it may be considered a denial of FAPE. "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.

10. Related services include transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. 34 C.F.R. § 300.34(a). Transportation may include travel to and from school, between schools, around school buildings and specialized equipment (such as an adapted bus, lifts or ramps). 34 CFR § 300.34(c)(16).

11. In the comments to the federal regulations it states:

A child’s IEP team is responsible for determining whether transportation between school and other locations is necessary in order for the child to receive FAPE. Likewise, if a child’s IEP team determines that supports or modifications are needed in order for the child to be transported so that the child can receive FAPE, the child must receive the necessary transportation and supports at no cost to the parents.

71 Fed. Reg. 46576 (Aug. 14, 2006); *Questions and Answers on Serving Children with Disabilities Eligible for Transportation*, 53 IDELR 268 (OSERS, Nov. 1, 2009); *Letter to Anonymous*, 23 IDELR 832 (OSEP, Oct. 23, 1995).

12. Transportation was not included in Student’s November 2023 IEP or the April 2024 unsigned amendment. Transportation was added as a related service during the development of the December 2024 IEP; however, this IEP was never approved by Complainant. In this case, until transportation was determined necessary in order for the Student to receive FAPE, the District was not obligated to provide the service. Therefore, there was no violation for failure to provide Student transportation as a related service.

13. Staffing shortages do not excuse a school district's obligation under the IDEA to implement all of the services prescribed in students' IEPs. Implementation failures due to staffing shortages may result in a failure to implement that denies a student a FAPE. See, e.g., *Hempfield School District v. S.C.*, WL 384918, 124 LRP 3142 (E.D. Penn. January 31, 2024).

14. On February 3, 2025, the District notified the Complainant that as a result of the incident on January 29, 2025, Staff were injured and the District did not have sufficient staffing for the Student to return to school. The District indicated that compensatory services would be provided and that it was actively attempting to hire staff to work with the Student. Additionally, the District corresponded through the Complainant’s Attorney regarding other options for the

Student to receive services. Ultimately, the Student did not return to school during the 2024-2025 school year.

15. It is well decided that regardless of the severity of a student's disability a district does not have the choice to not provide services. While a district could consider a different educational placement for a student, it cannot discontinue services all together. *Vincent ex rel. B.V. v. Kenosha United Sch. Dist.*, WL 4470515, 59 IDELR 242, (E.D. Wisc. Sept. 26, 2012).
16. The District's staffing shortage was valid. There were challenges in finding new staff to support the Student. Furthermore, the Student's behavior had escalated, leading to injuries to Staff and safety concerns. However, the District was still obligated to provide the special education services in the Student's IEP. The failure to provide the services specified in the Student's IEP for four months resulted in a material failure to implement and a denial of FAPE.

### **Progress**

17. The IEP must aim to enable the child to make progress. "After all, the essential function of an IEP is to set out a plan for pursuing academic and functional advancement." *Endrew F.*, 580 U.S. 386, 399, 69 IDELR 174 (U.S. 2017). The instruction offered must be "specially designed" to meet a child's "unique needs" through an "[i]ndividualized education program." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 580 U.S. 386, 400, 69 IDELR 174 (U.S. 2017).
18. If it turns out a child is not making progress at the level the IEP team expected, the team must revisit the IEP with the *Endrew F.* standard in mind and revise it as necessary to ensure the student is receiving appropriate special education and related services and that the goals are individualized and ambitious. *Questions and Answers on Endrew F. v. Douglas County Sch. Dist. Re-1*, 71 IDELR 68 (US DOE Dec. 7, 2017).
19. The educational record lacked information regarding the Student's progress toward IEP goals. Although the record contains progress reports, there was nothing that indicated the Student was making progress on IEP goals. In fact, the progress reports for the first half of the school year indicated the Student would not meet goals and for the second half of the school year, that the goals had not been attempted because the Student was not in attendance.
20. In this case, the Student had significant behavioral challenges, including being absent for a substantial part of the 2024-2025 fall semester. These behavioral needs, including truancy, substantially limited his ability to participate and make progress. Although the IEP Team met multiple times through the 2024-2025 school year, the Student's IEP and the Team did little to address the Student's ongoing attendance and behavioral needs. Instead, the Team

reduced services, shortened the Student's time at school, and simply reduced expectations. It is clear from the record the decision for a shortened school day was not based on the unique needs of the Student. Rather it was in response to the Student's lack of motivation and difficult behavior.

21. As part of the protections afforded under the IDEA, students with disabilities have the right to attend school for the same length as non-disabled students. *School day* has the same meaning for all children in school, including children with and without disabilities. 34 C.F.R. § 300.11(c)(2). Absent a decision by the IEP team based on a student's unique educational needs, a FAPE includes the right to attend school for the full school day. The failure to provide the same instructional time for students with disabilities is actionable under the IDEA as a denial of FAPE. *K.F. v. Francis Howell R-III Sch. Dist.*, WL 723751, 49 IDELR 244 (E.D. Mo. March 17, 2008). Affording a student less than a full day in order to eliminate the occurrence of the student's problematic behavior rather than teaching new skills is contrary to the IDEA's goal that an IEP results in appropriate progress.
22. Here, in order for an IEP to be sufficiently ambitious, the District needed to have a clear understanding of the Student's behavior and propose an IEP that would be reasonably calculated to result in educational benefit in light of his unique needs. The District failed to appropriately address Student's lack of progress.

### **Disciplinary Protections**

23. The Complainant alleged that the District failed to comply with the disciplinary protections provided under the IDEA, in accordance with 34 C.F.R. §§ 300.530 through 300.536, specifically by failing to conduct a manifestation determination review (MDR) following a disciplinary incident on February 20, 2025.
24. When a student with disabilities violates a code of conduct, the student may be removed from their current educational placement to the same extent as children without disabilities, until the school determines that removals resulted in a change of placement. A change of placement occurs when the removal is for more than 10 consecutive school days, or the child has been subjected to a series of removals greater than 10 cumulative days that constitute a pattern. 34 C.F.R. § 300.536(a).
25. The IDEA requires that the District conduct a manifestation determination within 10 school days of a decision to change the Student's placement due to a violation of a code of conduct. 34 C.F.R. § 300.530(e). The manifestation determination is a review of a child's misconduct to determine whether that conduct is a manifestation of the child's disability.

26. During the 2024-2025 school year, the Student had two reported disciplinary incidents on November 21, 2024, and January 29, 2025. These resulted in the Student being removed from his educational setting for a total of four school days. These removals did not constitute a change in placement or trigger the requirement for the District to conduct a manifestation determination. The Complainant and District described there were other times that the Complainant had taken the Student home as a result of his dysregulated behavior, but even if these instances are counted as additional removals, the Student was not removed for violations of the School's code of conduct for 10 school days. The Student's removals did not constitute a change of placement according to 34 C.F.R. § 300.536(a). Therefore, no violation.

### **Qualified Staff**

27. The IDEA requires that the State establish and maintain qualifications to ensure that school personnel working with students with disabilities are qualified. 34 C.F.R. § 300.156(a). Special education teachers and related service personnel must hold licenses consistent with state licensing or educator licenses for the subjects they teach or services they provide. ARM 10.16.3136(1). All special education and related services must be provided under the direction of qualified personnel. ARM 10.16.3136(2).
28. Each local educational agency or district must require that each teacher who implements education services to students with disabilities obtains specific skills which enable the teacher to deal effectively with students under the teacher's supervision. ARM 10.16.3136(4).
29. The Complainant's concern focused on whether Staff that were working with the Student had adequate and appropriate training from the outside consultant because the February 2025 observations were canceled due to an impending winter storm.
30. In this case, the Teacher working with the Student was appropriately credentialed and provided adequate and appropriate training to all Staff. Although the consultation may have assisted in the Staff obtaining additional skills for working with Student, the fact that it was canceled does not mean the Staff was not qualified pursuant to IDEA to provide special education services to Student.

### **State Assessments**

31. An IEP means a written statement for each child with a disability that is developed, reviewed and revised in a meeting in accordance with 34 C.F.R. §§ 300.320 through 300.324, and that must include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child

on State and districtwide assessments consistent with section 612(a)(16) of the Act. 34 C.F.R. § 300.320(a)(6)(i).

32. The Student's IEP stated the Student would participate in statewide and district wide assessments with accommodations. The District reported the Student participated in state and district assessments. The District acknowledged there could have been assessments that were administered on days the Student did not attend school. However, the Student was not excluded from statewide or district assessments.

#### **Parent Consent**

33. IEP teams are to meet on at least an annual basis to review and revise a student's IEP. 34 C.F.R. § 300.324(b)(i).
34. Montana law goes beyond the parental consent for services requirements of the IDEA set out in 34 CFR § 300.300(b), which require informed consent for the initial provision of special education and related services and requires parental consent prior to implementing any changes to an IEP. ARM 10.16.3505.
35. If parental consent has not been obtained, then the district should work with the parent to obtain their consent. ARM 10.16.3505(2)(c). If the district cannot obtain parental consent within a reasonable time and the parent has not specifically refused the IEP, the district shall send written notice requesting approval and stating that the student will be provided services in accordance with the new IEP as developed by the district 15 days from the date of the notice. ARM 10.16.3505(2)(c)(i). If the parent does not respond, then the district may implement the new IEP without parental consent subject to the parent's right to an impartial due process hearing. ARM 10.16.3505(2)(c)(ii).
36. Parents may also choose to sign an IEP with exceptions. If the district and the parent cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP can be implemented in the areas of agreement and the student's last agreed upon IEP would remain in effect in the areas of disagreement. ARM 10.16.3505(2)(b).
37. In this case, the District indicated that the most recent IEP for which the Complainant granted consent was in November 2023. The records reflect that the April 2024 amendment was implemented without obtaining the required consent. Although this amendment was developed outside of the time period relevant to this Complaint, it was implemented by the District without consent during the Complaint timeframe.
38. Throughout the 2024-2025 school year, the IEP Team convened on several occasions to develop the Student's annual IEP, which was due in November 2024. Documentation

shows that an IEP was developed and proposed in December 2024, yet the Complainant did not grant consent or sign with exceptions. In situations where consent is not provided, a district is obligated to collaborate with the parent to obtain approval, and if they are unable to obtain consent for an IEP they propose that offers the student a FAPE, they must continue to implement the services prescribed in the prior IEP that was agreed upon. If after reasonable effort the differences are not resolved and if a district believes FAPE will not be provided, the district must file a due process complaint. See *OPI's Special Education in Montana Guide* (Question 54, Page 64)

<https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/Guides/OneGuideFINAL.pdf?ver=2025-03-27-105155-440> (last visited September 8, 2025).

39. In this instance, the District's failure to obtain the Complainant's consent prior to implementing Student's IEP resulted in a violation.

#### **Reporting Progress**

40. The IEP for each student with a disability must include a statement of how the student's progress toward meeting the annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 34 C.F.R. § 300.320(a)(3).
41. The IDEA does not require a district to use any particular method to track a student's progress toward his annual IEP goals. 71 Fed. Reg. 46662 (Aug. 14, 2006). Instead, the IDEA leaves that decision up to the IEP Team.
42. Once the IEP team decides how the district will measure the student's progress, it must document that method (or methods) in the IEP. 34 C.F.R. § 300.320(a)(3).
43. The District provided the Complainant with periodic reports of progress as required by the Student's IEP. This included reports on October 2024, March 2025 and May 2025. Progress reports were provided as required in 34 C.F.R. § 300.320(a)(3). The violation, as outlined previously in this Final Report, was the District's failure to respond to the Student's lack of progress.

#### **Parent Participation**

44. The IDEA provides parents the right to participate in the IEP process at IEP team meetings. 34 C.F.R. § 300.322.
45. The District's obligation to provide opportunities for meaningful parental participation in the IEP process must include consideration of parents' suggestions and, to the extent appropriate,

incorporating them into the IEP. *Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 42 IDELR 109 (6th Cir. 2004), *cert. denied*, 546 U.S. 936, LRP 46999 (U.S. 2005), *on remand*, 46 IDELR 45 (E.D. Tenn. 2006), *aff'd*, 258 Fed.Appx. 863, 49 IDELR 123 (6th Cir. 2008).

46. In this case, the Complainant was an active participant in the IEP process and attended Team meetings. The Complainant provided suggestions and information, which assisted in the development of the Student's IEPs. This satisfies the District's obligation to provide the Complainant a meaningful opportunity to participate in the IEP and placement decision making process.
47. In the fall of 2024, in an effort to support the Student's difficulties with entering school in the mornings, the Complainant requested to accompany the Student to his classroom to support and observe. Eventually, the Complainant attended with the Student a few times, but this practice did not continue. The Complainant's desire to escort the Student to class does not negate the fact that she was a meaningful participant in the IEP process as outlined in 34 C.F.R. § 300.322. The record indicates that the Complainant had opportunities for meaningful participation in the IEP process.

### **Decision**

1. Whether the District provided the Student with a free appropriate public education (FAPE) in conformity with 34 C.F.R. §§ 300.17 and 300.101. Specifically,
  - a. Whether the District failed to implement the Student's IEP by not providing special education and related services, including transportation, in violation of 34 C.F.R. § 300.323.  
**The OPI finds a violation. When the District stopped serving the Student due to Staff shortages and safety, this resulted in a denial of FAPE.**
  - b. Whether the District failed to address that the Student had not made progress or met any of Student's IEP goals in violation of 34 C.F.R. § 300.324.  
**The OPI finds a violation. The District's failure to address the Student's lack of progress resulted in a denial of FAPE.**
  - c. Whether District violated the IDEA discipline provisions by removing student for more than 45 days and not providing educational services or conducting a manifestation determination in violation of 34 C.F.R. § 300.530.  
**The OPI finds no violation. The Student's removals did not require the District to conduct a manifestation determination.**

2. Whether the District failed to provide Student's special education services through "appropriately and adequately trained" personnel in violation of the 34 C.F.R. § 300.156 when they did not reschedule the autism specialist's appointment or provide for other specialized assistance.

**The OPI finds no violation. Staff were appropriately and adequately trained.**

3. Whether the District failed to include Student in state assessments in violation of 34 C.F.R. § 300.160.

**The OPI finds no violation. The Student's IEP included a description of how the Student would participate in statewide and district assessments.**

4. Whether the District amended Student's IEP regarding communication with Complainant without Complainant's consent in violation of 34 C.F.R. § 300.324(a)(4) and ARM 10.16.3505.

**The OPI finds a violation. The District did not obtain parental consent as required.**

5. Whether the District failed to provide Complainant with periodic reports of Student's progress toward meeting annual goals in violation of 34 C.F.R. § 300.320(a)(3).

**The OPI finds no violation. The District provided periodic reports of progress as outlined in the Student's IEP.**

6. Whether the District violated Complainant's right to meaningful participation by not allowing Complainant to sit in the classroom with Student in violation of 34 C.F.R. § 300.322.

**The OPI finds no violation. The Complainant actively participated in the special education process consistent with 34 C.F.R. § 300.322.**

### **Corrective Action**

1. Within 14 days of this Final Report, the Student should be returned to School.
  - a. Within seven days of this Final Report, the School shall reconvene the IEP Team to review and revise the Student's current IEP.
  - b. The District shall immediately retain appropriate staff to provide services required in the Student's IEP. This could include contracting with other districts or cooperatives and may include placement outside of the district.

- c. The District shall provide confirmation of the Student's enrollment, a copy of the IEP and verification that appropriate staff have been hired to provide services outlined in the IEP. Documentation must be provided to the OPI's EAP Director by September 30, 2025.
  2. At the same time, the District shall contract with an independent behavior professional possessing specific expertise in evaluating students with challenging behaviors, to conduct a Functional Behavior Assessment to gain a clear understanding of the function of the Student's behavior and specific strategies to support the Student in accessing his education.
    - a. Within 10 days of this Final Report, the District shall provide the name of the evaluator, along with their credentials to OPI's Early Assistance Program (EAP) Director.
    - b. Within 10 days of this Final Report, the District shall provide the Complainant with an Evaluation Plan of the proposed evaluation(s) and the information necessary to seek informed consent.
    - c. Within 30 days of the date the Complainant consents to the Evaluation Plan, the evaluation should be completed (unless the Complainant declines consent).
    - d. Within 10 days of receiving the evaluation results, the IEP Team shall convene to develop an IEP incorporating the evaluation results. The behavior expert must assist in the development of an updated BIP to be included in the IEP.
    - e. Documentation must be submitted to OPI's EAP Director within 10 days of the IEP Team's development of the Student's IEP, including the updated BIP.
  3. The District shall provide the Student with compensatory services. The goal of compensatory education is to place the student in the position that the student would be in had the District provided the appropriate services in the first place. *Reid v. Dist. of Columbia*, 401 F.3d 516, 43 IDELR 32 (D.C. Cir. 2005). In light of the fact that the Student made no documented progress on his IEP goals, the District shall provide compensatory education as follows:
    - a. 18 hours of math instruction by a qualified instructor.
    - b. 27 hours of English language arts instruction by a qualified instructor.
    - c. 180 hours of behavior management and/or social skills instruction by a qualified counselor, behavior interventionist, or other credentialed professional.

- d. The District, in consultation with the Complainant, shall determine the schedule for provision of compensatory services considering the Student's ability to sustain his attention and his interest levels.
- e. Compensatory services shall be completed by July 1, 2026. Student's absence shall result in waiver of service for that day. Staff absence must be rescheduled. Any compensatory service declined or not utilized by July 1, 2026, shall be deemed waived (assuming the District has made a good faith effort to timely commence and provide all compensatory service).
- f. The schedule for compensatory services shall be provided to OPI's EAP Director within 30 days from the date of this Final Report.
- g. Service provider logs verifying completion of the compensatory education services must be submitted to OPI's EAP Director by July 15, 2026.

**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.

*Patrick Cates*

---

Patrick Cates  
OPI Safety and Student Supports, Senior Manager

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