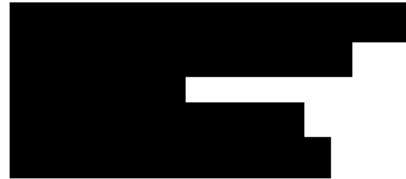




September 29, 2025

Sent via US Mail and/or SMFTS



THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: FINAL REPORT for In the Matter of [REDACTED] 2025-08, 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 the [REDACTED] School District (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 (C.F.R.) 34 C.F.R. Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complainant alleges the following issues:

1. Whether the District improperly removed Student from lunch and recess periods with his peers in violation of the least restrictive environment (LRE) requirements in 34 C.F.R. §§ 300.114 through 300.117.
2. Whether the District erred by not allowing amendment to the Student's Safety Plan through the IEP process when it is referenced in the IEP under supplementary aids and services.
3. 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).

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainant on May 23, 2025.
2. The District confirmed through email on May 28, 2025, that the District had not received a complete copy of the Complaint as required by ARM 10.16.3662(3) and 34 C.F.R. § 300.153(d).
3. The OPI Dispute Resolution Office issued a Notice of Filing on May 29, 2025, and provided a copy of the Complaint and all attachments (a total of 230 pages). 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 26, 2025). The Complaint was deemed filed on June 1, 2025.
4. By mutual agreement of the parties, the OPI agreed to pause the state complaint process as of June 3, 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 August 1, 2025, the OPI received the Mediator Report, which indicated that the parties had reached an impasse. Accordingly, the state complaint process resumed as of August 2, 2025.
6. The OPI's Dispute Resolution Office issued an Appointment of Investigator, Scope of Proceedings and Request for District Response on August 5, 2025. That same day, the District requested a three-day extension of time to file the District's written response due to a previously scheduled training commitment and travel. Pursuant to ARM 10.16.3662(5), the OPI determined there was reasonable necessity for the extension and that the Response was due on August 18, 2025.
7. The OPI's Dispute Resolution Office received the District's written response on August 18, 2025.
8. Complainant provided additional documents on August 27, 2025, and September 3, 2025.
9. The District, through their Attorney, provided additional documents requested by the Investigator on September 3, 2025.

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; and
- Additional records provided by Complainants.

The Complaint Investigator interviewed the Complainant via telephone.

The Complaint Investigator interviewed the District’s Special Education Cooperative Director, Case Manager and Assistant Principal via telephone with District’s Attorney 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 C.F.R. § 300.1	Purpose of IDEA
34 C.F.R. § 300.17	Free Appropriate Public Education
34 C.F.R. §§ 300.114 - 300.117	LRE
34 C.F.R. § 300.320	Definition of Individualized Education Program
34 C.F.R. § 300.321	IEP Team
34 C.F.R. § 300.324	Development, Review and Revision of IEP
34 C.F.R. § 300.530(f)	Authority of School Personnel

Relevant Time Period for Investigation

Pursuant to 34 C.F.R. § 300.153(c) and ARM 10.16.3662(2)(a), OPI has the authority to investigate alleged violations of IDEA and Montana special education laws that occurred within one year prior to the date a complaint was filed. In accordance with this limitation, the investigation and any findings of noncompliance will be limited to the period commencing June 1, 2024, through June 1, 2025. Additional information beyond this timeframe was considered for the purpose of a full investigation of the complaint.

Findings of Fact

1. At the time the Complaint was filed, Student was in the third grade and a student at the District's elementary school during the 2024-2025 school year. *Complaint; District Response.*
2. Student was eligible for special education services under the category of emotional disturbance. *April 14, 2024 IEP.*
3. Student attended another Montana school district since kindergarten and transferred to District's school at the start of the 2024-2025 school year. *District Response.*
4. Student was evaluated in March 2024 and determined eligible for special education services under the category of emotional disturbance (ED). *March 19, 2024 Evaluation Report.*
5. An IEP was developed at an IEP meeting on April 14, 2024. Parent provided consent and signed her approval on April 17, 2024. *April 14, 2024 IEP.*
6. The April 14, 2024 IEP included five social-emotional goals. Student received 30 minutes a week of social-emotional services to address behaviors in the regular education setting. Additionally, the supplementary aids and services section of the IEP included the following: frontloading, first/then prompts, smiley reinforcement chart, classroom schedule, brain breaks, PBIS positive behavior support and reference to the Safety Plan that had been developed to ensure Student's and other's safety and a reward system. *April 14, 2024 IEP.*
7. When Student acted inappropriately, Staff would immediately process the behavior with Student and discuss choices and what to do next time. Staff believed many of Student's behaviors were to get attention from others including adults. *Interview with Case Manager; Interview with Assistant Principal.*
8. Student had a check in, check out system daily to discuss the day. Staff would also check in with Student frequently throughout the day. Student would receive rewards for positive behaviors. *Interview with Case Manager; Interview with Cooperative Director; Behavior Data records.*
9. School Staff states that Student is able to complete grade level work successfully in the classroom. *April 14, 2024 IEP; Interview Case Manager.*
10. After Student's transfer to the District, the IEP Team met on September 11, 2024, to review Student's IEP and Safety Plan. *District Response.*

11. The IEP was accepted as written. Changes were made to the Safety Plan that had been implemented at the previous district. The Safety Plan was written to be in effect from September 12, 2024, until June 5, 2025. *September 11, 2024 Safety Plan; District Response; Interviews with Assistant Principal and Case Manager; September 11, 2024 Safety Plan.*
12. Complainant was involved in the changes made to the September 11, 2024 Safety Plan and signed off on the plan. The Safety Plan designates supervising staff members throughout Student's entire school day. Additionally, it called for alternative recesses and lunch in the cafeteria at the table with adults. Student was to be supervised at all times and was not allowed to have conversations with students in different grades without an adult being part of the conversation. Additionally, Student was to leave school with his sister, or if she was not present, he would be walked home by a Staff member. Student was not allowed on school property before or after school without adult supervision. *District Response; Interview with Assistant Principal; September 11, 2024 Safety Plan.*
13. Student had alternative recesses because of inappropriate behaviors and safety of peers:
 - a. Morning and afternoon alternate recess was with an adult and no peers, but Student had access to the entire playground including equipment. Beginning in October 2024, Student could ask a friend for recess and often did.
 - b. At lunch, Student was at recess with kindergarten through third grade students with additional adults. Student was not allowed on playground equipment but usually chose to play football with peers.
 - c. Student did not often have afternoon recess due to attending outside therapies. *Interview with Case Manager; Interview with Special Education Cooperative Director; Follow-up Information from District.*
14. Student was frequently absent for appointments and illnesses but was able to successfully complete missed work. *Interview with Case Manager.*
15. Student's behaviors occurred during unstructured times, such as recess, lunch, and transitions, and not when Student was with peers in the classroom. The Safety Plan was developed to address those specific times and ensure safety of the Student and others. *Interview with Case Manager; September 11, 2024 Safety Plan.*
16. Although Student's needs were primarily behaviors that impacted learning, neither the previous school district nor present District completed a functional behavior assessment (FBA) or behavior intervention plan (BIP). *Interview with Complainant.*

17. The District did not propose an FBA or BIP because Student's initial evaluation was less than one year old and because the reports indicated that Student's behaviors were attention seeking. *Interview with Special Education Cooperative Director; March 19, 2024 Evaluation Report.*
18. Staff did not see the need for a BIP because the Safety Plan was working and Student was improving. *Interview with Special Education Cooperative Director.*
19. There were multiple significant behavior incidents that involved school administration during the 2024-2025 school year:
 - a. September 4, 2024: Student yelled "move" and pushed another student off the playground equipment.
 - b. September 6, 2024: Student pushed another student down the stairs at recess.
 - c. September 9, 2024: Student was "humping" a log on the playground.
 - d. September 9, 2024: Student yelled "move" and pushed another student during morning recess. During lunch, Student struck another student on the head. At the last recess Student continued to play after the bell, then yelled and cursed at the paraeducator when told to "line up".
 - e. September 26, 2024: During physical education class, after being pushed, Student grabbed another student around the neck and body slammed them to the gym floor.
 - f. October 28, 2024: Student used profanity towards peers and teacher.
 - g. January 13, 2025: Student and another student were punching each other during recess.
 - h. January 22, 2025: Student stepped on another student's toes and then yelled "Shut up, It's not a big deal!"
 - i. January 30, 2025: Student repeatedly tackled two female classmates to the ground.
 - j. May 1, 2025: Student told another student an inappropriate sexual story and lied to Staff about it.

2024-2025 Behavior Detail Report.

20. The District collected additional daily behavioral data from September 4, 2024, through May 1, 2025:
 - a. The majority (68%) of Student's negative behaviors occurred during unstructured times such as recess or lunch.

- b. Data on negative behaviors were divided into five levels:
 - i. Level 1 was nonsexual behaviors toward peers, and there were six incidents reported.
 - ii. Level 2 was nonsexual behavior towards staff, and there were 13 incidents reported.
 - iii. Level 3 was sexual behavior but not towards peers or staff, and there were no incidents reported.
 - iv. Level 4 nonphysical but sexual behaviors with peers or staff, and there was one incident reported.
 - v. Level 5 was physical and/or sexual in nature with peers or staff on school property, and there were 12 incidents reported.
- c. Behaviors were further broken down into types and the number of incidences: spitting (3); physical (6); profanity (3); lying (1); stealing (3); inappropriate talk (1); disrespectful (4); sexual behavior (1); safety (3); refusal (2); disruptive (1); violent nature (2); and glaring (1).
- d. The largest percentages of negative behaviors were physical and disrespectful behaviors. Level 5 behaviors decreased over the course of the school year and there were days with zero negative behaviors reported.

2024-2025 Behavior Data Records.

- 21. There were additional reports from Staff of inappropriate language and behaviors, but the behaviors often occurred when adults were in the vicinity of Student but were not close enough to hear or see the inappropriate language. The large playground had numerous locations where students could hide from immediate sight of Staff which was part of the reason for the alternative recess and limitations on the equipment because the incidents often occurred at recess. Staff were unable to closely monitor Student's behaviors during the regular recess without those restrictions. Not all behaviors were referred to administration or included in the behavior data. *Interview with Case Manager; 2024-2025 Behavior Data records.*
- 22. Overall, Student's behaviors improved over the 2024-2025 school year, but inappropriate sexualized and other behaviors, including inappropriate touching that impacted other students' safety, continued to occur. *District Response; Interview with Assistant Principal.*
- 23. All Staff that worked with Student communicated through email and the District's communication app, Do Jo. The paraeducator reported daily whether Student had a good

- or bad day. Complainant was kept informed about Student's daily progress and any issues that arose. *Interview with Case Manager; Interview with Assistant Principal*
24. Student had been participating in and successfully completed a sexualized behavior treatment program and was also in therapy with a private provider. *Interview with Complainant; Interview with Assistant Principal.*
 25. Complainant had signed releases of information for the District to communicate with the Student's private providers. The District attempted to communicate with the provider of the behavior treatment program, but no information was received. *Interview with Parent; Interview with Case Manager*
 26. Student's private therapist did participate in at least one IEP meeting. *Interview with Case Manager.*
 27. In January 2025, Complainant began to question the implementation of the Safety Plan. Student's annual IEP meeting was held on March 11, 2025. *District Response; Interview with Complainant.*
 28. Parent requested that the Safety Plan be eliminated or revised to allow Student contact with peers. *Interview with Complainant.*
 29. Changes to the Safety Plan were proposed by the District on March 11, 2025. The District reported Complainant would not agree to the Safety Plan revisions unless the Safety Plan was eliminated. However, the District believed that Student was being successful because of the Safety Plan and the supports it provided. *Interviews with Case Manager and Assistant Principal; March 11, 2025 Proposed IEP.*
 30. Some of the proposed changes to the updated Safety Plan included: participation in lunch recess as long as Student stayed clear of playground equipment; eating lunch in the cafeteria with an adult and inviting a peer to join for lunch or to play; and an alternative recess without the presence of younger children. *September 11, 2024 Updated March 11, 2025 Safety Plan; Interview with Case Manager.*
 31. The March 11, 2025 IEP meeting ended early before the IEP was finalized. The discussion became heated and the Superintendent ended the meeting early. *Interview with Assistant Principal; March 11, 2025 Proposed IEP.* Another IEP meeting was convened on April 14, 2025, and at this meeting a proposed IEP was completed; however, it was determined that the IEP Team would reconvene to address some short-term benchmarks, and Complainant wanted to address the Safety Plan and more freedom for Student. *Interview with Complainant; Interview with Assistant Principal; Prior Written Notice (PWN) Proposed March 11, 2025 IEP.*

32. A third IEP meeting was convened on May 5, 2025, where an updated IEP and Safety Plan were proposed. The Safety Plan would continue through the end of the school year and then a new safety plan would be considered at the beginning of the next school year. Services for Student under the proposed IEP were increased from 30 minutes per week to 100 minutes of services in the classroom and 25 minutes per week of pull-out services. *Interview with Complainant; Interview with Case Manager; March 11, 2025 Proposed IEP and PWN.*
33. The IEP Notes indicate that the Safety Plan will be uploaded into Infinite Campus in addition to being noted in the Supplementary Aids and Services Section of the IEP. *March 11, 2025 Proposed IEP.*
34. Complainant did not consent to the proposed IEP. Complainant agreed with the new goals and services but wanted changes made to the Safety Plan before she would consent to the IEP. *Interview with Complainant; Interview with Case Manager; March 11, 2025 Proposed IEP and PWN.*
35. The PWN indicated that the Safety Plan was not tied to the IEP. *PWN Attached to March 11, 2025 Proposed IEP.*
36. The process for amending the Safety Plan was not set out in the Student's IEP.
37. The Safety Plan and proposed amendments to it were discussed with IEP Team members including Complainant. *September 11, 2024 Safety Plan.*
38. The Case Manager for Student was a full-time classroom teacher, mentor to a new special education teacher and a case manager for three special education students. She acknowledged that progress reports were not timely completed. *Interview with Case Manager.*
39. The April 14, 2024 IEP was the last IEP Complainant consented to and was implemented throughout the 2024-2025 school year. It provided for progress reports to be issued every semester. *April 14, 2024 IEP.*
40. Complainant was provided two progress reports on April 14, 2025, and June 4, 2025. *Progress Reports.*
41. The two progress reports are substantially the same and indicate that Student had mastered two goals. The data on the progress reports is insufficient to substantiate progress on any of the goals and is inconsistent at times with what the requirements of the goal are. For example, on goal five the April 14, 2025 Progress Report, it was noted that Student was not successful 100% of the time, but the goal actually required 75% success with maintaining boundaries. *Progress Reports.*

42. Staff reported that Student had a “fantastic, successful year.” Student was always happy and never complained about restrictions. Student had shown great improvement in behaviors and accepting responsibility for behaviors when they occurred. *Interview with Case Manager; Interview with Assistant Principal.*
43. The IEP Team met again in August 2025 to review the Safety Plan and discuss the IEP. Complainant reported that she has consented to a new Safety Plan but has not yet signed the Proposed IEP. *Interview with Complainant; Interview with Special Education Cooperative Director.*

Conclusions

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has a Free Appropriate Public Education (FAPE) available to them, including special education and related services that meet the unique needs of individual students. 34 C.F.R. § 300.1.
2. The IDEA defines FAPE as special education and related services that are: (a) provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the state education agency, including the requirements of this part; (c) include an appropriate preschool, elementary school, or secondary school education in the State involved; and (d) Are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. § 300.17.

Least Restrictive Environment

3. To the maximum extent appropriate, students with disabilities are to be educated with non-disabled peers and special classes, separate schooling, or other removal from the regular education environment occurs only if the nature or severity of the student’s disability is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily. 34 C.F.R. § 300.114(a)(2). Each public agency must ensure that a continuum of alternative placements is available to meet the needs of students with disabilities. 34 C.F.R. § 300.115(a).
4. A student’s educational placement is to be determined by a group of persons, including the parents and other persons knowledgeable about the student, the meaning of the evaluation data and the placement options. 34 C.F.R. § 300.116(a)(1). The placement decision is determined at least annually, is based on the student’s IEP and is as close as possible to the student’s home. 34 C.F.R. § 300.116(b). Unless the IEP requires something different, the student should be educated in the same school as he would attend if nondisabled. 34 C.F.R. § 300.116(c). In selecting the student’s least restrictive environment (LRE)

consideration must be given to any potential harmful effect on the student or quality of services that he needs. 34 C.F.R. § 300.116(d). A student must not be removed from the regular classroom solely because of needed modifications to the general education curriculum. 34 C.F.R. § 300.116(e).

5. Parents must be a member of the group that makes a decision on the educational placement of their student. 34 C.F.R. § 300.501(c).
6. The LRE requirements also apply to nonacademic settings. Students with disabilities must participate in nonacademic settings, including meals and recess periods, with nondisabled peers to the maximum extent appropriate for the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for them to participate in nonacademic settings. 34 C.F.R. § 300.117. The "... 'regular educational environment' encompasses regular classrooms and other settings in schools such as playgrounds in which children without disabilities participate." 71 Fed. Reg. 46,585 (Aug. 14, 2006).
7. Individualized determinations must be made about what constitutes appropriate instruction and services for each student with a disability and the placement in which instruction and services are provided, decisions must be individualized and placement in regular classes may not be the least restrictive placement for every student with a disability. U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS), Q & A on U.S. Supreme Court Case Decision *Endrew F. v. Douglas County School District Re-1*, Q 17 (Dec. 7, 2017).
8. Here, Student's IEP determined his LRE to be in the regular education setting, and Student attended all general education classes and received his social, emotional and behavioral service minutes in the regular education setting. Student's Safety Plan, referenced in the Supplementary Aids and Services section of the IEP, removed Student from the regular education environment during unstructured times, including lunch and recess, which affected the Student's educational placement.
9. Student's LRE was appropriately determined and individualized by his IEP Team. Since Student's inappropriate and potentially harmful behaviors occurred during unstructured times, Student had restrictions on access to peers and increased supervision for safety reasons. The IEP Team, including Complainant, were a part of the process that determined Student's educational placement during nonstructured times, and Complainant signed consent to the IEP and the Safety Plan that was implemented by the District during the duration of the Complaint timeframe.

IEP Process

10. In order for a student to receive FAPE, the district must offer an IEP that is "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County School District. RE-1*, 137 S.Ct. 988, 999-1002, 69 IDELR 174, (2017). The primary function of an IEP is to develop a plan to achieve academic and functional advancement. *Endrew F.*, 137 S.Ct. at 1000.
11. IEPs are developed annually by the IEP team, which must include the parent. 34 C.F.R. §§ 300.320 and 300.321. Parents of a student with a disability must be afforded the opportunity to meaningfully participate in meetings with respect to the identification, evaluation, educational placement of their student and the provision of FAPE. 34 C.F.R. § 300.501(b).
12. 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 (emphasis added).
13. A student's IEP team makes the determination as to what services, modifications or supports are necessary and which of those must be included in the IEP. For each student eligible for special education and related services under the IDEA, it is the obligation of the district to convene an IEP team meeting to develop an IEP, an *individualized* education program, designed to meet the student's needs that is developed, reviewed and revised in accordance with 34 C.F.R. §§ 300.320 through 300.324 (emphasis added). 34 C.F.R. § 300.320(a).
14. IEP teams must consider the use of positive behavioral supports and interventions and other supports when a student's behaviors impede the learning of the student or other students. 34 C.F.R. § 300.324(a)(2)(i). The decision of what is appropriate for a student is made by the IEP team based upon the individual needs of the student.
15. Supplementary aids and services needed by a child to receive FAPE are included in the IEP. 34 C.F.R. § 300.320(a)(4). "Supplementary aids and services mean aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with 300.114 through 300.116." 34 C.F.R. § 300.42.
16. The IDEA only requires a behavior intervention plan (BIP) when there has been a disciplinary change of placement. 34 C.F.R. § 300.530(f). Montana law also requires a BIP when the student has an aversive treatment plan pursuant to ARM 10.16.3346. The IDEA

does not require a BIP when the IEP team determines the student's behavior impedes the learning of the student or others. A BIP is also not automatically required for a student who is eligible under the category of emotional disturbance. 71 Fed. Reg. 46,683 (Aug. 14, 2006).

17. A student's IEP must be reviewed periodically, but not less than annually, to determine if the annual goals are being achieved and address reevaluation results, information about the student provided to, or by, the parents, the student's anticipated needs or any other matters. 34 C.F.R. § 300.324(b)(1). If a student's IEP requires changes after the annual IEP is developed, the student's IEP may be amended. 34 C.F.R. § 300.324(a)(4)(i).
18. The IEP Team determined that Student's behaviors impeded his learning and that of others. To address behavior concerns, Student's IEP included five measurable annual goals in the area of social emotional behavioral learning. Additionally, the supplementary aids and services included positive behavior supports and a Safety Plan specific to Student's individual behavioral needs which required increased supervision and restricting access to peers.
19. The IEP Team met at the beginning of the 2024-2025 school year, after Student transferred into the District, to review Student's IEP from the previous school. The IEP Team accepted the IEP from the previous school and revised the Safety Plan with input and consent from Complainant. The District continued to collect behavioral data throughout the year to track Student's progress and along with the drafting of Student's annual IEP in the spring, proposed revisions to the Safety Plan over the course of multiple IEP meetings, which Complainant participated in.
20. Although parties disagreed as to the whether the Safety Plan is a part of the IEP and whether the Safety Plan could be amended through the IEP process, the educational record shows that the Safety Plan was incorporated in the IEP and the requirements for amending it were met. Further, the District did not implement the proposed IEP and Safety Plan when it was unable to obtain Complainant's consent.
21. The IDEA requires IEPs to be reviewed periodically, at least annually. The needs of the student must determine how often the IEP team may need to meet and how often the IEP needs to be revised.

Reporting Progress

22. The IEP must be implemented, as written, including all required components. The Ninth Circuit in *Van Duyn v. Baker School District*, 502 F.3d 811, 47 IDELR 182, *amended* (9th

Cir. 2007), adopted the materiality standard for failure to implement an IEP. "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." *Van Duyn*, 502 F.3d at 822. Therefore, if a material failure to implement is found, it may be considered a denial of FAPE.

23. 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).
24. The IDEA does not require any particular method to track a student's progress towards annual goals. 71 Fed. Reg. 46,662 (Aug. 14, 2006). The IDEA leaves the decision up to the IEP team.
25. Once the IEP team decides how the student's progress will be measured, it must document that description in the IEP. 34 C.F.R. § 300.320(a)(3).
26. Pursuant to Student's April 14, 2024 IEP, which was implemented throughout the timeframe of this Complaint, progress reports were to be provided to Complainant every semester. The District admitted it did not timely provide a progress report to Complainant after the first semester of the 2024-2025 school year. Additionally, although the measurable annual goals set out a specific measurement, the two progress reports provided in April and June 2025 were substantially the same and included insufficient data to determine the level of progress Student actually made on each goal. The omission of a timely progress report was a procedural violation, but it did not rise to a material failure to implement the IEP and was not a denial of FAPE.

Decision

1. Whether the District improperly removed Student from lunch and recess periods with his peers in violation of the least restrictive environment (LRE) requirements in 34 C.F.R. §§ 300.114 through 300.117.

The OPI does not find a violation. The Student's LRE was determined in accordance with the requirements in IDEA.

2. Whether the District erred by not allowing amendment to the Student's Safety Plan through the IEP process when it is referenced in the IEP under supplementary aids and services.

The OPI does not find a violation. Throughout the 2024-2025 school year the District followed the appropriate procedures for IEP revision to the Student's IEP and incorporated Safety Plan. The District involved Complainant in discussions on updates to the IEP and Safety Plan and sought her consent to the proposed IEP and Safety Plan.

3. 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 a violation. The District acknowledged that progress reports were not provided as required by the IEP.

Corrective Action

Since the District did violate IDEA, the District must ensure progress notes are provided to Complainant as required by the Student's IEP. Those progress reports must include progress for each IEP goal with the data supporting progress achieved or lack thereof.

The District must submit proof of providing Complainant with Student's progress reports as required in Student's IEP and a copy of the progress reports issued during 2025-2026 school year. This documentation must be submitted to OPI's Early Assistance Director at the end of each semester, by January 31, 2026, and June 30, 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 Student Support Services Senior Manager

- c: Mandi Gibbs, OPI Dispute Resolution/EAP Director (SMFTS only)
John Gorton, OPI School Improvement/Compliance Unit Manger (SMFTS only)

[REDACTED] Attorney for the District (SMFTS only)

[REDACTED] Educational Services Director (SMFTS only)

[REDACTED]

[REDACTED]