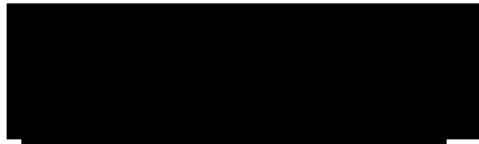




November 21, 2025

Sent via US Mail and/or SMFTS



THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT:** In the Matter of [REDACTED] 2025-12, 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] [REDACTED], (Complainant), an adult student in the [REDACTED] Public Schools (District), filed the Complaint on behalf of students with disabilities attending [REDACTED] High School (School). 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 (CFR) Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complaint alleged the following issue:

Whether the District's "No Tardy" policy or procedures denies students with disabilities a free appropriate public education (FAPE).

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint by the Complainant on October 2, 2025.
2. The OPI Dispute Resolution Office contacted the District on October 7, 2025, and the District received a copy of the Complaint as required by CFR 34 CFR 300.153(d) and ARM 10.16.3662(3).

3. The OPI Dispute Resolution Office issued a Notice of Filing on October 8, 2025, documenting that the Complaint was deemed filed on October 2, 2025.
4. 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 an October 8, 2025 email to the OPI that he requests to move forward with the Complaint process.
5. A Request for District Response and Scope of Proceedings was issued on October 14, 2025, requesting the District files its response within 10 days and sends a copy to the Complainant.
6. The District submitted a written response to OPI on the issue in the Complaint on October 23, 2025. The Complainant reached out to the OPI on October 27, 2025, indicating he did not receive a copy of the District's Response. The OPI followed up with the District that same day. The District inadvertently forgot to send a copy to the Complainant and provided it right away.
7. Pursuant to ARM 10.16.3662(7) complainants have 10 days after receiving the district's response to submit additional relevant information. The Complainant submitted information titled "Rebuttal to District's Response" on October 28, 2025. That same day, the District filed an objection to the Complainant's Rebuttal to District's Response.
8. Regardless of what it is titled, ARM 10.16.3662(7) allows the Complainant an opportunity to submit "additional relevant information to the dispute resolution office..."
9. Upon receipt of the District's Response, the Dispute Resolution Office began an appropriate investigation. ARM 10.16.3662(6).

Investigatory Process

The following records were reviewed:

- The original letter of Complaint and all supporting documentation;
- The District's Response to the Complaint;
- Additional information provided by the Complainant; and
- The responses to the District's supplemental questions.

Applicable Federal Regulations, State Statutes or Rules

34 CFR 300.17	FAPE
34 CFR 300.101	FAPE
34 CFR 300.324	Development, review, and revision of IEP
34 CFR 300.530	Authority of school personnel
34 CFR 300.536	Change of placement because of disciplinary removals

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 October 2, 2024, through October 2, 2025. Additional information beyond this timeframe was considered for the purpose of fully investigating the Complaint.

Findings of Fact

1. Complainant is an adult student at the District School and has standing to file the Complaint pursuant to ARM 10.16.3662(1).
2. The High School Student Handbook contains attendance policies including a “No Tardy” procedure which states in pertinent part:
 - a. Students are to be in class and ready to work before the bell for the class period. When the bell rings the teacher will take roll. Students who are not in the classroom when roll is taken shall go to the attendance clerk and then a study hall room to check in and spend the remainder of the class period. Students are to come prepared to occupy their time with productive, educational activities. Teachers can also send classwork to the student in the study hall room.
 - b. The class period spent in the study hall room will be counted as an absence for that class period and will count towards the “ten day rule.” Failure to check into the study hall room will be treated as truancy. A student who chooses to be tardy more than one time in a semester will be assigned additional disciplinary actions.
3. A parent or guardian may excuse a student’s absence.
 - a. If a student has been excused for their tardy referred to in the policy as tardy-extended (ET) for the first period only, the first three instances are recorded by the attendance secretary, and the student is sent to class with a pass.
 - b. The fourth instance will be recorded by the attendance clerk, and the school will call the parent to discuss the issue and student will be sent to the study hall room.
 - c. Additional tardies will result in additional disciplinary actions.

High School Student Handbook, Page 24-25.

4. Removal from a class period due to being tardy would be considered a disciplinary removal.
District Response.

5. The District's attendance policy limits the total number of absences from classes to 10 per semester. If the total number of absences in a class exceeds 10 per semester (not including absences due to school sponsored activities), the student may be dropped from the class and assigned to a study hall. Students may appeal the 10 absences. Additionally, a student who anticipates more than 10 absences may appeal in advance. "Consequences for students on a 504 or IEP will be determined by appropriate planning meetings." *District Board Policy* [REDACTED] *High School Student Handbook, Page 35.*
6. If a student is on an IEP and is chronically tardy, the District will call an IEP team meeting to discuss and adjust the IEP as necessary. *District Response.*

Conclusions

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has Free Appropriate Public Education (FAPE) available to them, including special education and related services that meet the unique needs of the individual student. 34 CFR 300.1.
2. A FAPE must be made available to each eligible child with a disability. 34 CFR 300.101(a). 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 CFR 300.320 through 300.324. 34 CFR 300.17.
3. 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 CFR. 300.320 through 300.324. 34 CFR 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.
4. FAPE must be individually designed to meet the unique needs of an eligible student, and a school district must offer an IEP that is reasonably calculated to enable a student to make progress appropriate in light of the student's unique circumstances. *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 553 IDELR 656, 458 U.S. 176 (1982) and *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. 386 (2017).
5. Further, in developing an IEP that is reasonably calculated to enable a student to make progress appropriate in light of their unique circumstances, if a student's behavior impedes their learning, then the IEP team must consider the use of behavioral interventions and

supports to address the behavior. 34 CFR 300.324(a)(2)(i). This could include attendance related behaviors adversely affecting a student's learning. *OPI Special Education in Montana, Student Attendance, Question 3, p. 68.*

6. All students are required to follow school policies and rules. The IDEA does not prevent school districts from having a code of conduct or school policies which violations result in students with disabilities being removed from their educational placement. However, the IDEA does provide additional protections for students with disabilities when a change of placement occurs due to disciplinary removals.
7. The IDEA does not require the continuation of education services for students with disabilities who are removed for 10 cumulative school days or less in a school year, unless it provides services to children without disabilities who are similarly removed. 34 CFR 300.530(d)(3). 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 there is a change of placement. 34 CFR 300.530(b)(1). 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 that constitute a pattern. 34 CFR 300.536(a). The public agency or district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. 34 CFR 300.536(b)(1).
8. When a change of placement occurs due to disciplinary removals, then the District must convene a manifestation determination review (MDR) meeting within 10 school days. 34 CFR 300.530(e). The MDR meeting participants include the parent and relevant members of the IEP team. 34 CFR 300.530(e). The participants must consider all relevant information in the child's file, including, but not limited to, the IEP, any teacher observations and relevant information provided by the parents, to determine if the conduct was a manifestation of the child's disability. The conduct in question is a manifestation of the student's disability when it was caused by or had a direct and substantial relationship to the child's disability, or the conduct was the district's failure to implement the IEP. 34 CFR 300.530(e)(2).
9. Once a student has been subjected to disciplinary removals for 10 days, the student must continue to receive educational services to enable the child to continue to participate in the general education curriculum, although in an alternative setting, and to progress toward meeting the goals in the student's IEP. 34 CFR 300.530(d). After a child has been removed for 10 days in one school year, school personnel, in consultation with at least one teacher, determine the extent of services needed to enable the child to participate in the general education curriculum and make progress toward IEP goals. 34 CFR 300.530(d)(4).

10. Violation of the District’s “No Tardy” policy could result in a student with disabilities being removed from their educational placement without receiving educational services. Further, removals pursuant to the policy could be determined to be a change of placement for an individual student with disabilities pursuant to 34 CFR 300.536. If a change in placement occurs, then the additional procedures set out in 34 CFR 300.530 must be followed for that individual student. The existence of the “No Tardy” policy and its related procedures do not violate the IDEA or result in a denial of FAPE to students with disabilities.

Decision

Whether the District’s “No Tardy” policy or procedures denies students with disabilities a free appropriate public education (FAPE).

The OPI finds no violation. The District’s “No Tardy” policy and procedures do not deny students with disabilities a FAPE.

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

Danielle McCarthy
OPI State Director of Special Education

- c: Mandi Gibbs, OPI Dispute Resolution/EAP Director (via SMFTS only)
- John Gorton, OPI School Improvement/Compliance Unit Manger (via SMFTS only)
- ██████████, Attorney for the District (via SMFTS only)
- ██████████, District Director of Student Services & Special Education (via SMFTS only)