



OFFICE OF PUBLIC INSTRUCTION

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Linda McCulloch
Superintendent

May 8, 2006

[Complainant]

[District]

THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: **FINAL REPORT** – In the matter of ***, 2006-01, Alleged Violation of the Individuals with Disabilities Education Act (IDEA).

Dear **** and Superintendent ****:

This is the Final Report pertaining to the above-referenced special education compliance complaint (Complaint) compiled and submitted pursuant to Admin. R. Mont. 10.16.3662.

**** (Complainant) alleges that the **** (District) violated the Complainant's child, **'s (Student), right to a free appropriate public education by failing to identify him as a student with a disability that would qualify him for services under IDEA. Additionally, the Complainant alleges that the District has violated Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990. This Complaint and Report will only address the alleged violation of Evaluation and Identification under IDEA as the other alleged violations fall under the jurisdiction of the Office of Civil Rights.

A. Procedural History

1. The Complaint. On February 14, 2006, the Montana Office of Public Instruction (OPI) received a Complaint signed by Complainant and dated February 13, 2006. I notified the District of the filing of the Complaint by letter dated February 14, 2006.
2. Early Assistance Program. The OPI's Early Assistance Program attempted to resolve the controversy pursuant to Admin. R. Mont. 10.16.3660. The director of the Early Assistance Program, Tim Harris, concluded resolution was not possible.
3. District's Written Response. On March 2, 2006, I received the District's Written Response.

"It is the mission of the Office of Public Instruction to improve teaching and learning through communication, collaboration, advocacy, and accountability to those we serve."

4. Complainant's Additional Information. The Complainant informed OPI that he had not received a copy of the District's Written Response. OPI faxed him a copy on April 14, 2006. On April 19, 2006 OPI received additional written information from the Complainant in response to the District's Written Response and pursuant to Admin. R. Mont. 10.16.3662(7)
5. Extension of Time to Complete Investigation and File Final Report. My letter dated April 10, 2006 extended the due date of this final report to April 28, 2006. My letter dated April 27, 2006 extended the due date of this final report for an additional two weeks or until May 12, 2006.

The findings and conclusions contained in the Final Report are based on the Complaint, the District's Written Response, supporting documents, and the Complainant's additional submissions. Both federal and state laws require that I review all relevant information and make an independent determination as to whether the District violated IDEA, 34 CFR 300.661 (a) (3) and Admin. R. Mont. 10.16.3662 (8). As part of my investigation hereunder, I engaged the services of Gary Garlock to review certain materials and interview parties.

B. Legal Framework

Federal and state law requires that a child shall have the opportunity for a comprehensive educational evaluation, in order for the student to receive a free appropriate public education. ARM 10.60.103, 34 CFR 300.530 – 543. In general, comprehensive educational evaluation means that assessments are administered in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. ARM 10.16.3321 requires:

- (3) For all initial evaluations and re-evaluations, the child study team report shall address a review of existing evaluation data on the student, including:
 - (a) Evaluations and information provided by the parents of the student;
 - (b) Current classroom-based assessments and observations which include the student's involvement and progress in the general curriculum; and
 - (c) Observations by teachers and related services providers.
- (4) The child study team shall determine whether the evaluation is adequate and whether the student has a disability, which adversely affects the student's involvement and progress in the general curriculum and because of that disability, needs special education.
- (5) The child study team shall prepare a written report of the results of the evaluation. The report shall include the results of assessments and shall include statements of implication for educational planning in terms understandable to all team members.
- (6) All child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services.
- (7) All child study team reports will identify a disability category or categories for each student with disability consistent with 20-7-401, MCA. This identification

of a disability category is for the purposes of data reports required by the office of public instruction.

- (8) Each participant of the child study team shall be provided an opportunity to submit a separate statement of conclusions if the report does not reflect the conclusions of the participant.
- (9) A copy of the report shall be provided to the parent.

C. Findings and Conclusions

1. The Student is a 10 year-old male attending *****. The school psychologist identified him as a student with a Learning Disability in math on January 8, 2003 while the Student was in first grade. The Student was later exited from special education services, as he no longer met the criteria for a learning disability in math. The Complainant requested in a letter dated November 4, 2005 that the Student be re-evaluated to determine the need for special education due to escalating behavior and information received from the Student's private psychologist indicating that he felt that the Student met the criteria for Asperger's Disorder. The District sent notice of their intent to conduct an evaluation to the Complainant dated November 15, 2005. The Complainant signed the Permission to Assess form on November 18, 2005, which was dated as received by the District on November 18, 2005.
2. School Psychologist ***** received a referral from the Student's teacher and the Principal Mr. ***** to conduct an evaluation to determine if the Student's behaviors were due to Asperger's syndrome, an emotional disorder, or other possible cause for special education placement. [The School Psychologist] conducted the evaluation and his written report is dated December 8, 2005.
3. [The School Psychologist] utilized the following procedures in conducting his evaluation of the Student: Records Review, Teacher Review, Student Review, Reynolds Intellectual Assessment Scales, Kaufman Test of Educational Achievement – Second Edition, Test Observation Form, Behavior Assessment System for Children, Classroom Observation, Multidimensional Self Concept Scale and the Childhood Autism Rating Scale.

On the Reynolds Intellectual Assessment Scales (RIAS) the Student received a Verbal Intelligence Index (VIX) of 97 and a Nonverbal Intelligence Index (NIX) of 119 and a Composite Intelligence Index (CIX) of 106. [The School Psychologist] stated in his report that: "Although the Student's CIX is a good estimate of his general intelligence, a statistically significant discrepancy exists between the Student's NIX of 119 and VIX of 97, demonstrating generally better developed nonverbal intelligence or spatial abilities". On the Kaufman Test of Educational Achievement – Second Edition (KTEA-II) [The School Psychologist] states that: "The Student obtained scores in the average range in all areas. This suggests that he is achieving similar to an average student his age. He did exhibit relative weaknesses in the areas of math computation and written expression". On the Behavior Assessment System for Children (BASC-2) the Student's Self-Report indicates that he sees himself as average in all sub-

categories of this assessment. Mrs. ****, the Student's regular classroom teacher, and Mrs. ****, the Student's school counselor, completed the Teacher Rating Scale of the BASC-2. [The teacher's] observations indicate that the Student is demonstrating clinically significant behavior on the Behavior Symptom Index, the Externalizing Problems composite, the Internalizing Problems scales, Atypicality scale, and the Withdrawal scale. [The teacher] also observed that the following areas fell within the At-Risk range, School Problems and Adaptive Skills. [The school counselor's] observations indicate Clinical Significance in the areas of the Behavioral Symptom Index, the Externalizing Problems composite, Atypicality and Withdrawal scales. [The school counselor] also observed that the following areas fell within the At-Risk range, Internalizing Problems and the Adaptive Skills composite. [The school counselor] rated the Student as average in the School Problem composite. The Teacher Rating report is based on the teacher's rating of the Student's behavior. Any score in the Clinically Significant range suggests a high level of maladjustment. Scores in the AT-Risk range identify either a significant problem that may not be severe enough to require formal treatment or a potential of developing a problem that needs careful monitoring. [The teacher] completed the Childhood Autism Rating Scale (CARS). This rating scale looks at 15 areas and asks the respondent to rate whether the individual is age appropriate, mildly abnormal, moderately abnormal, or severely abnormal. On the CARS, [The teacher] rated the Student as being age appropriate in all areas except one and then only mildly abnormal for his adaptation to environmental change. [The School Psychologist] states, "This suggests that he does not have significant symptoms of autism, while at school".

4. On December 12, 2005 a Child Study Meeting was held to review the results of the comprehensive evaluation of the Student and to determine whether he meets the criteria for a disability under IDEA and is in need of specialized instruction. The result of this Child Study Team meeting was that the Student did not meet the criteria for a student with an emotional disturbance as indicated on the eligibility determination page of the District's form.
5. The Complainant disagreed with the results of the initial evaluation and requested an independent evaluation at district expense on January 4, 2006. The District presented the Complainant with a list of clinical psychologists on January 6, 2006 and the Complainant responded with his choice of a psychologist on January 24, 2006.

D. Allegations and Disposition

The Complaint contains essentially one substantive allegation, which is addressed below.

1. Allegation: There is reason to suspect student has a disability, which would qualify him/her for services under IDEA, but Student has not been identified by school.
2. Disposition: Granted. Due to the procedural oversight described below, I conclude that the child study team meeting held on December 12, 2005 was not completed pursuant to ARM 10.16.3321.

Administrative Rules of Montana require that "(A)ll child study team reports shall include a summary statement of the basis for making the determination whether the student has a disability and needs special education and related services." ARM 10.16.3321 (6).

Review of all child study team records of the meeting held on December 12, 2005 reveal that no minutes of the meeting were recorded. The principal and special education teacher concur that no minutes were kept of the proceedings of the meeting. The only summary statement found concerning the basis for making the determination whether the student has a disability and needs special education and related services was the Criteria for Emotional Disturbance Checklist Form, which was not completed. For example: The first characteristic: An inability to build or maintain satisfactory relationships with peers and teachers was not circled yes or no. The portion of the checklist that addresses that the conditions shall meet the criteria of having been present: To a marked degree (marked with a question mark) not circled yes or no. Over a long period of time (circled yes) and Adversely affecting the student's educational performance (marked with a question mark) not circled yes or no. The local education agency has planned and implemented one or more positive behavioral interventions specific to the individual student was not marked.

E. Order

Based on the information gathered during the investigation, it is determined that the District did not follow required procedures in conducting the Child Study Team Meeting on December 12, 2005. The District is ordered to reconvene the December 12, 2005 Child Study team and properly complete the Child Study Team Meeting in order to review the results of the comprehensive evaluation of the Student and to determine whether he meets the criteria for a disability under IDEA and is in need of specialized instruction. The District is reminded to carefully and faithfully follow all procedures as required by federal and state law.

Separate from this Order is a caution to the District to review any subsequent Child Study Team Meetings to assure that the appropriate procedures were followed.

Sincerely,

Cathy Warhank, Compliance Officer
Chief Legal Counsel