

FINAL REPORT
Complaint Investigation
Monticello Montessori Charter School #474/Dayna Berg
C-21-02-08a

The Idaho State Department of Education (SDE) received a state complaint on February 8, 2021, from Dayna Berg (hereinafter referred to as "the Complainant"), on behalf of [REDACTED] (hereinafter referred to as "the Student"), against the Monticello Montessori Charter School District #474 (hereinafter referred to as "the District"). The 60-day timeline for the investigation of this complaint began on February 8, 2021 and expires on April 9, 2021. The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA).

Complaint Issues and Allegations

The SDE accepted the following allegations for investigation:

- 1. Did the district grant reasonable request for an IEP team Meeting? [Idaho Special Education Manual 5.3.B] page 90**

The Complainant alleged:

"I have requested many IEP follow-up meetings with the IEP team. The meetings have been refused"

- 2. Did the District implement the IEP as written? [34 CFR 17 (d)]**

The Complainant alleged:

"the IEP it states that there was an agreement that we would reconvene in 3 months with the school psychologist present"

- 3. Did the District consider information provided by the Parent determining the content of the Student's IEP? [34 CFR §300.304 (a)(1)]**

The Complainant alleged:

"the school never provided the school psychologist an opportunity to look over my son's private evaluation"

- 4. Did the District afford parents participation in IEP meetings with respect to: the identification, evaluation, and education placement of the Student? [34 CFR §300.321 (a)(1)]**

The Complainant alleged:

"[the Director/Sp Ed Teacher] wrote the IEP"

*"I would like fluency, and many other important goals to be added
They are not involving me in anyway other than having me present at the
meetings"*

5. Did the District develop an IEP in accordance with regulations? [34 CFR §300.324]

The Complainant alleged:

"wrote the IEP without having the Eligibility Report"

"there are no measurable goals"

"no data on where my son has started out, his end goal"

*"asked for a monthly progress report for my son, in effort to gain any type of data
Collection"*

*"[the Director/Sp Ed Teacher] said that monthly progress reports are not
possible"*

6. Did the District provide the Parent with a copy of the IEP and Written Notice in a timely manner? [34 CFR §300.322 (f)]

The Complainant alleged:

*"The IEP meeting was held on October 1 & I did not receive the IEP until after
November 17"*

7. Did the District convene a legally constituted IEP team in determining the Student's location of services? [34 CFR §300.321 (a)(1-5)]

The Complainant alleged:

"failing to have required team members at meetings"

Scope of SDE Review and Authority

The SDE administers the federal regulations and state regulations governing special education programming requirements for children with disabilities. The implementing federal regulations to the Individuals with Disabilities Education Act (IDEA) and the corresponding state rules require investigations into complaints regarding violations of

these provisions. The SDE has investigated the complaint and issues this report and Corrective Action Plan (CAP) pursuant to 34 CFR §300.152 (a)(5).

Facts discussed that occurred prior to February 8, 2020 or after February 8, 2021 are for background information only. Federal regulations limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint was received. 34 CFR §300.153 (c).

Complaint Investigation Review

The SDE's complaint investigation in this matter included the following:

- Review of Complainant's complaint and supporting documentation
- Review of the District's documents
- Virtual video and audio interview with the Complainant and the Student's father
- Virtual video and audio interview with the District administrator*
- Virtual video and audio interview with the District special education director/special education teacher*
- Virtual video and audio interview with the Student's general education teacher*
- Virtual video and audio interview with the District's contracted speech/language pathologist
- Virtual video and audio interview with the District's contracted occupational therapist
- Research of applicable federal regulations, state rules and case law
- Review of the District's compliance with the IDEA, its implementing regulations and state rules

*The District's attorney, Jill Holinka, listened to this interview.

Findings of Fact

1. Complainant filed a complaint on February 8, 2021. No issues raised in the complaint are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.
2. Student is currently [REDACTED] years old and in the [REDACTED] grade.
3. Student transferred to the District at the beginning of the 2020/2021 school year and was always enrolled in the District during the time relevant to the complaint.

4. An Eligibility Report dated May 7, 2019 identified Student as having a developmental delay and found that Student qualified for special education and related services.
5. On September 30, 2020, the Complainant sent an email to the special education teacher and copied to the District administrator, the contracted occupational therapist, the contracted speech/language pathologist, and the contracted school psychologist. The attachment to the email requested specific curricula, methodologies, numerous accommodations, specific services, and schedules.
6. A meeting to conduct an annual review of Student's IEP occurred on October 1, 2020. The IEP was written by the special education teacher on an unspecified date after the IEP team meeting. Meeting notes indicated the special education teacher would gather all the information and make a tentative plan, after being able to receive all current information, would write the IEP.
7. The October 1, 2020 meeting notes state, "[The special education teacher] gathered all the information and indicated to make a [tentative] plan, after being able to receive all the current information, seeing the red flags he can put together a plan for [the Student]."
8. At the end of an October 1, 2020 IEP team meeting, the Complainant requested a "follow-up meeting" in three months, with the school psychologist present.
9. The October 1, 2020 IEP nor the meeting notes contained a commitment for the IEP team to reconvene three months following the IEP team meeting.
10. The Student had been evaluated by a pediatric neuropsychologist. The IEP team was aware of the evaluation report at the time of the October 1, 2020 IEP team meeting. The IEP team did not have a copy of the evaluation report for consideration at the meeting.
11. The District had not received a copy of the Student's eligibility report at the time of the October 1, 2020 IEP team meeting.
12. The pediatric neuropsychologist's report was considered by the school psychologist sometime after October 6, 2020. The school psychologist reportedly told the special education teacher there was nothing in the report that warranted any changes to the Student IEP, which had not been written at that time.
13. A November 17, 2020 email indicated the Complainant had not yet received a copy of the Student's October 1, 2020 IEP.
14. The Complainant requested a follow-up meeting via email on December 15, 2020. The Student's general education teacher replied via email the District re-scheduled the "IEP follow-up meeting" for January 5, 2021.

15. The District provided a Zoom invitation titled "IEP follow-up."
16. The January 5, 2021 meeting did not take place. The Complainant indicated she did not attend the meeting because the school psychologist had not been invited. The District indicates the Complainant was a no-show for the meeting.
17. The Complainant requested a follow-up meeting via a January 12, 2021 email and requested the school psychologist, occupational therapist, speech/language pathologist, district administrator, and special education teacher to attend the meeting.
18. On January 12, 2021, the District administrator emailed the general education teacher and the special education teacher. The District administrator stated the following:
 - a. The school members of the team should meet first to decide what topics will be covered in the meeting
 - b. The Complainant can disagree, and the school can remain unmoved
 - c. The Complainant should submit questions of the school psychologist in advance, and the school psychologist should only participate for ten minutes so the school is not billed for service time that is not critical, since the District pays quite a hefty sum for the school psychologist's time
 - d. The speech/language therapist and the occupational therapist should only participate for five minutes each, and after the school psychologist's ten minutes
 - e. The entire meeting should be limited to thirty minutes
19. The Complainant sought an IEP amendment meeting via a January 25, 2021 email.
20. On January 28, 2021, the District provided the Complainant with Written Notice refusing to change the Student's IEP.

Analysis and Decision

1. Did the district grant reasonable request for an IEP team Meeting, as required by the Idaho Special Education Manual 5.3.B page 90?

It is the District's responsibility to hold an IEP team meeting upon the reasonable request of an IEP team member. The Complainant is a member of the IEP team. A reasonable request might include consideration of medical information, a newly acquired Eligibility Report, a request for changes in methodology or curriculum, etc.

The District held that the Complainant had requested a follow-up meeting on October 1, 2020, not a follow-up IEP team meeting. The District stated that the Student had one IEP team meeting, and only one IEP team meeting was required per year.

In response to the Complainant's January 12, 2021 email request for a follow-up meeting, the district administrator sent an email to the Student's general education teacher and the special education teacher stating the "parent can disagree, and the school can remain unmoved." The email stated a willingness to include the school psychologist, but only for 10 minutes; and, to include the speech/language pathologist and the occupational therapist for five minutes each after the school psychologist's participation. The Student's general education teacher confirmed to the Complainant that the speech/language pathologist would be present, but the school psychologist would not be in attendance.

The Complainant sought an IEP amendment meeting via a January 25, 2021 email. On January 28, 2021, the District provided the Complainant with Written Notice refusing to change the Student's IEP.

The Complainant had frequently requested a follow-up meeting. In two emails, December 15, 2020 from the Complainant and December 15, 2020 from the Student's general education teacher, the desired follow-up meeting was described as an IEP follow-up meeting. No IEP team meeting occurred after the Student's October 1, 2020 IEP team meeting. The District did not schedule an IEP team meeting at the reasonable request of the Complainant.

The allegation is **founded**, and the District is in **non-compliance**.

2. Did the District implement the IEP as written, as required by 34 CFR 17 (d)?

It is the District responsibility to implement the IEP as written. Implementation includes providing all special education and related services, and any other commitments included in the IEP.

This allegation arose from the Complainant's complaint that the Student's IEP included a commitment for the IEP team to reconvene three months after the Student's October 1, 2020 IEP team meeting.

A review of the Student's October 1, 2020 IEP and the meeting notes found no commitment to reconvene in three months. During the Complainant's interview, the Student's father reviewed the IEP and could not find a commitment to reconvene in three months.

The special education teacher indicated that the Complainant expressed a desire for a three-month follow-up meeting during discussion at the end of the October 1, 2020 IEP team meeting.

The IEP contained no commitment for a follow-up meeting three months after the October 1, 2020 IEP team meeting.

The allegation is **not founded**, and the District is in **compliance**.

3. Did the District consider information provided by the Parent determining the content of the Student's IEP, as required by 34 CFR §300.304 (a)(1)?

It is the District's responsibility to consider information provided by the Complainant. Such information may include reports from private service providers, medical reports, etc. Such consideration involves a discussion of the information by the IEP team.

The District received a report from a pediatric neuropsychologist. Upon receipt of the report, the District forwarded the report to the District's contracted school psychologist. The school psychologist told the District the report contained nothing that would change the Student's IEP, even though the IEP had yet to be written by the special education teacher.

The Complainant's frequent requests for a follow-up IEP team meeting were in part to have the whole team consider the report from the neuropsychologist. The IEP team did not consider the report.

The allegation is **founded**, and the District is in **non-compliance**.

4. Did the District afford parents participation in IEP meetings with respect to: the identification, evaluation, and education placement of the Student, as required by 34 CFR §300.321 (a)(1)?

It is the District's responsibility to include the Complainant as a participant in the IEP team meetings. This participation is more than simply being present in the IEP team meeting. The District is responsible to give the Complainant an opportunity to participate in the team's discussion, to offer or request goals, services, methods and approaches to serving the Student.

The District did receive the Complainant's September 30, 2020 request for specific curricula, methodologies, numerous accommodations, specific services, and schedules. The team meeting notes of October 1, 2020 give some indication the Complainant was afforded an opportunity to discuss the request.

The team that gathered on October 1, 2020 included the required membership of an IEP team. The team did not develop, consider, or have the opportunity to reach consensus on an IEP as the IEP was written solely by the special education teacher after the team meeting.

The special education teacher shared his knowledge of the Complainant's requests. The Written Notice of January 28, 2021 indicates the District refused to change the Student's IEP to implement the requested additional services, changes to services and related services, and scheduling of any additional IEP team meetings.

The allegation is **founded**, and the District is in **non-compliance**.

5. Did the District develop an IEP in accordance with regulations, as required by 34 CFR §300.324?

It is the District's responsibility to develop the IEP in accordance with the implementing regulations of IDEA. The regulations specify the components to be included in the IEP such as present levels of performance, goals, and the way progress will be monitored. In developing of the IEP, the IEP team must consider the evaluation results of the Student.

The District did hold a meeting on October 1, 2020. The meeting had the required members of an IEP team, but the team did not develop an IEP or a draft IEP. The IEP was written by the special education teacher after the IEP meeting. The Complainant and other members of the IEP team did not have the opportunity to discuss, collaborate or reach a consensus on the IEP that was ultimately developed.

The Student's IEP was not sent to the Complainant until after November 17, 2020.

The IEP team did not have the Student's eligibility reports to consider. The IEP team did not have the neuropsychologist's report to consider.

The Student's IEP does include specific data-supported baselines for each goal. Each goal is measurable and corresponds to the baseline. Each goal has appropriate and specific progress monitoring schedules.

While the IEP team did not have the Student's eligibility report or the neuropsychological report, the special education teacher did have the neuropsychological report. The special education teacher received feedback from the school psychologist regarding the neuropsychological report, but that feedback was not shared with the IEP team.

The allegation is **founded**, and the District is in **non-compliance**.

6. Did the District provide the Parent with a copy of the IEP and Written Notice in a timely manner, as required by 34 CFR §300.322 (f)?

It is the District's responsibility to provide the Complainant with a copy of the Student's IEP in a timely manner--within a reasonable period of time. The IEP contains Written Notice. The Idaho Special Education Manual (Glossary page xxx) defines a reasonable time as a period of ten (10) calendar days unless there are exceptional circumstances that warrant a shortened period of time, such as an emergency or disciplinary meeting.

The IEP team met on October 1, 2020. The Complainant had not received a copy of the IEP or Written Notice until after November 17, 2020.

The allegation is **founded**, and the District is in **non-compliance**.

7. Did the District convene a legally constituted IEP team in determining the Student's location of services, as required by 34 CFR §300.321 (a)(1-5)?

It is the District's responsibility to include the required members of an IEP team when holding an IEP team meeting for the Student. The required membership of the IEP team would include, at a minimum, the Complainant, the Student's special education teacher, a representative of the District (usually an administrator), and a general education teacher of the Student.

The meeting of October 1, 2020 included the District's administrator, the Student's general education teacher, the special education teacher, the Complainant, the school psychologist, the occupational therapist, and the speech/language pathologist. No IEP was developed during the meeting. The members did not have an opportunity to review, discuss or reach a consensus. The IEP team could not discuss the Student's location of services during the October 1, 2020 meeting, as those decisions were made by the special education teacher after the meeting.

The allegation is **founded**, and the District is in **non-compliance**.

Additional Complaint Issues and Allegations

The SDE added the following allegations as part of the investigation:

8. Did the District ensure that the Complainant was a member of any group that makes decisions on the educational placement of the Student? [34 CFR §300.327]

It is the District responsibility to include the Complainant in decisions regarding the Student's educational placement. The educational placement includes the services and related services the Student receives and the location of the Student's special education and related services.

On January 12, 2021, the District administrator engaged in predetermination to:

- Limit the Complainant's participation to topics approved by the District.
- To require the Complainant to submit questions in advance.
- To limit the Complainant's opportunity to talk to the entire IEP team.
- To limit the Complainant's opportunity to talk with individual contracted related service providers.
- To limit the duration of the meeting.

The District sought to limit the Complainant's participation. The District sought to limit the availability of the IEP team members. The District sought to curtail the Complainant's opportunity to discuss the Student's educational placement. The District sought to ensure its plan prevailed.

The allegation is **founded**, and the District is in **non-compliance**.

9. Did the District determine the Student's placement in consideration of considering the strengths of the Student, the concerns of the Parent for enhancing the education of the Student, the results of the initial or most recent evaluation of the Student, and the academic, developmental, and functional needs of the Student? [34 CFR §300.116]

It is the District's responsibility to consider the Student's academic, development, and functional needs; the concerns of the Complainant; and the strengths and needs of the Student when determining special education and related services. Such determination is not to be based on the resources of the District or the cost of the services.

On January 12, 2021, the District administrator emailed the special education teacher and the Student's general education teacher with a plan to limit the school psychologist's participation in a meeting to ten minutes so the school would not be billed for services time that [in the District's opinion] was not critical, since the District paid a hefty sum for the school psychologist's time.

The allegation is **founded**, and the District is in **non-compliance**.

Corrective Action Plan

The District is out of compliance in eight of nine allegations and is in violation of the IDEA. The following corrective actions are ordered by the SDE to address the findings of non-compliance addressed in this report.

Regarding Allegations 1, 3, 4, 5, 7, 8, & 9:

The District will convene the Student's IEP team no later than **April 16, 2021**.

1. The IEP Team will include at least the following members:
 - a. The Student's general education teacher
 - b. The special education teacher
 - c. The District's administrator
 - d. The Complainant
 - e. The occupational therapist
 - f. The speech/language pathologist
 - g. The school psychologist
 - h. Individual(s) the Complainant invites
2. All members of the IEP team will be present for the entire meeting or meeting(s).
3. The District will request the State Department of Education to provide IEP facilitation. The District shall contact the SDE at least 14 days prior to the IEP team meeting to schedule the facilitator.

4. The IEP team will review and consider the Student's eligibility report and the neuropsychologist's report.
5. The IEP team will consider the Complainant's suggests regarding methodology and curricula.
6. The team will discuss, consider, and have the opportunity to reach a consensus on any proposed revisions of the IEP.
7. Written Notice will be provided to the Parent within 10 calendar days of the IEP team meeting.

The District will provide a verification of the IEP team meeting to the Dispute Resolution Coordinator at the Idaho State Department of Education on or before **April 23, 2021**. The verification must include the following:

- a. The date(s) of the meeting(s)
- b. The general topics discussed during the meeting(s)
- c. A list of all participants
- d. Signatures of all participants
- e. The time each participant arrived and departed the meeting(s)
- f. A copy of the Written Notice

Regarding Allegations 1, 3, 4, 5 & 7:

The Monticello Charter School Board will provide a letter of assurance that henceforth, all IEP team members will have the opportunity during the IEP team meeting to develop, review, and reach a consensus on proposed IEPs. The letter of assurance will be delivered to the SDE Dispute Resolution Coordinator on or before **April 23, 2021**.

Regarding Allegations 6:

The Monticello Charter School Board will provide a letter of assurance that henceforth, parents of students with disabilities will be provided a copy of their respective child's completed IEP, including Written Notice, within a reasonable period of time as defined by the Idaho Special Education Manual, following IEP team meetings developing or amending an IEP. The letter of assurance will be delivered to the SDE Dispute Resolution Coordinator on or before **April 23, 2021**.

Regarding Allegations 9:

The Monticello Charter School Board will provide a letter of assurance that henceforth, the District will determine a student's special education placement in consideration of the strengths of the Student, the concerns of the Parent for

enhancing the education of the Student, the results of the initial or most recent evaluation of the Student, and the academic, developmental, and functional needs of the Student. The letter of assurance will be delivered to the SDE Dispute Resolution Coordinator on or before **April 23, 2021**.

Regarding Allegations 1, 3,4, 5, 6, 7 & 8

The LEA will participate in professional development training provided by Special Education Support and Technical Assistance (SESTA) prior to **June 15, 2021**. The training will include the following:

1. Reasonable request from an IEP team member for an IEP team meeting
2. Having a member of the IEP Team available for sufficient time to hear Parent's concerns and participate in discussion
3. Consideration of information provided by a parent of a student with a disability
4. Providing an IEP and Written Notice within a reasonable period of time
5. Requirements for Written Notice (Invitation to a Meeting)
6. When and how often to hold an IEP team meeting
7. Avoiding Administrative convenience
8. Avoiding predetermination

It is the District's responsibility to reach out to their SESTA Coordinator to set up training dates, times, and topics as soon as possible. Please remember that the SESTA Coordinator will need at least three weeks ahead of the training to adequately prepare.

Staff participating in the training will include the Director of Special Education/Student's special education teachers, the School Administrator, the Student's general education teacher, and any other District staff as deemed appropriate by the District.

The District will provide the SDE Dispute Resolution Coordinator a copy of the agenda for the training, the training materials provided and the sign-in sheet with original signatures and email addresses of the participants no later than **June 15, 2020**.

This Final Report marks the end of the Complaint Investigator's involvement in this matter. All future inquiries should be directed to Jeff Brandt, Dispute Resolution Coordinator, Idaho State Department of Education.

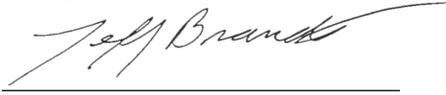
Dated this 22nd day of March 2021, by



C. Mark Hill

Mont Hibbard
Complaint Investigator

Accepted by:

A handwritten signature in cursive script that reads "Jeff Brandt". The signature is written in black ink and is positioned above a horizontal line.

Jeff Brandt
SDE Dispute Resolution Coordinator