Appendix B: Working Group Materials

SENATE
COUNSEL,
RESEARCH, &
FISCAL ANALYSIS

MEMO

To: Senator Judy Seeberger

From: Ann Marie Lewis, Senate Counsel (ann.marie.lewis@mnsenate.gov)

Date: August 11, 2025

RE: Restrictive Procedures Statutes

Definitions (Section 125A.0941)

Minnesota Statutes, section 125A.0941 defines several terms related to restrictive procedures such as seclusion. "**Restrictive procedures**" is defined as the use of **physical holding** or **seclusion** in an emergency. It prohibits the use of restrictive procedures as punishment or discipline.

"**Physical holding**" is defined as physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The statute goes on to say what is not physical holding. Physical holding is not physical contact that:

(1) helps a child respond or complete a task;
(2) assists a child without restricting the child's movement;
(3) is needed to administer an authorized health-related service or procedure; or
(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

"**Seclusion**" is defined as confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Seclusion is not removing a child from an activity to a location where the child cannot participate in or observe the activity.

"**Emergency**" is defined as a situation where immediate intervention is needed to protect a child or other individual from physical injury.

Standards for Restrictive Procedures (Section 125A.0942)

Minnesota Statutes, section 125A.0942 establishes the requirements and limitations applicable to restrictive procedures. The section also addresses behavior supports and reasonable force. The requirements can be broken down into five buckets:

(1) restrictive procedure plans;

(2) use of restrictive procedures;
(3) physical holding and seclusion;
(4) prohibited actions; and
(5) staff training.

I. Restrictive Procedures Plans (125A.0942, subd. 1)

A school using restrictive procedures must have a publicly available plan that:

(1) lists allowed restrictive procedures;
(2) describes positive behavior strategies and provide mental health service links;
(3) details staff training on de-escalation;
(4) explains the monitoring and review processes, including post-use debriefing, quarterly oversight committee review to track patterns, injuries, staff training needs, nonemergent use of restrictive procedures, disproportionality by race, gender, or disability status, and the role of police or school resource officers;
(5) includes written documentation on staff training; and
(6) identifies the oversight committee members that includes a mental health professional, school psychologist, or school social worker; positive behavior strategies expert, special education administrator, and a general education administrator.

II. Use of Restrictive Procedures (125A.0942, subd. 2)

Restrictive procedures may only be used by certain trained, licensed professionals or paraprofessionals. The training required is detailed in **subdivision 5**. A school must notify the parents the same day or within two days of using a restrictive procedure.

A. District IEP or IFSP Meetings (125A.0942, subd. 2, paragraph (c))

As appropriate, a district must hold a meeting of the individualized education program (IEP) or individualized family service plan (IFSP) team, conduct functional behavioral analyses, consider positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the IEP, IFSP, or behavior intervention plan (BIP).

If a restrictive procedure is used on two separate school days within 30 days, or shows a pattern of use, and the child's IEP, IFSP, or BIP doesn't provide for the use, or at the parent or district's request after a restrictive procedure is used, an IEP or IFSP meeting must be held to review interventions, supports, and possibly review the IEP, IFSP, or BIP.

At a child's annual IEP or IFSP team meeting, the district must review use of restrictive procedures when the child's IEP or IFSP provides for using restrictive procedures in an emergency.

B. Considerations During the IEP or IFSP Meetings (125A.0942, subd. 2, paragraphs (d), (e), and (f))

If existing interventions and supports are ineffective in reducing the use of restrictive procedures, the IEP or IFSP team must consult other professionals working with the child, experts in behavior analysis, mental health communication or autism, culturally competent professionals, review resources, and consider reevaluating the child.

The IEP or IFSP team must review known medical or psychological limitations, including parent volunteered medical information, that contraindicate the use of restrictive procedures. A prohibition must be documented in the child's IEP, IFSP, or BIP. An IEP or IFSP team may plan to use restrictive procedures and include the procedures in the child's IEP, IFSP, or BIP. However, use is limited to behavior that constitutes an emergency.

III. **Physical Holding or Seclusion (125A.0942, subd. 3)**

Physical holding or seclusion must comply with the following requirements:

(1) used only in an emergency and the least intrusive intervention to respond to the emergency;
(2) cannot be used for discipline;
(3) holding or seclusion must end with the threat of harm ends;
(4) requires constant staff observation;
(5) detailed staff incident reporting; and
(6) seclusion room requirements include observation window, size, lighting, ventilation, compliance with building, fire, and safety codes, and registration with the commissioner of education.

The commissioner of education must collect district data and stakeholder recommendations for reducing the use of restrictive procedures. The commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion.

IV. **Prohibited Actions (125A.0942, subd. 4)**

The following actions are prohibited:

(1) corporal punishment, prone restraints, and certain physical holds prohibited under section 121A.58;
(2) pain-inducing positions;
(3) sensory deprivation or aversive stimuli as punishment;
(4) restricting or denying access to medical equipment or assistive technology, except to prevent damage to property or injury;
(5) abusive behaviors considered maltreatment of minors under chapter 260E;
(6) withholding meals, water, or bathroom access;
(7) restricting breathing or communication;
(8) prone restraint; and
(9) seclusion for children birth through grade 3 beginning September 1, 2024.

V. **Staff Training (125A.0942, subd. 5)**

A staff person who uses restrictive procedures must be trained in the following skills and knowledge areas:

(1) positive behavioral interventions;
(2) communication intent of behaviors;
(3) relationship building;
(4) alternatives to restrictive procedures;
(5) de-escalation;
(6) emergency standards;
(7) emergency medical assistance
(8) physiological and psychological effects of physical holding and seclusion;

(9) signs of distress and positional asphyxia;
(10) reporting and documentation requirements.

VI. **Behavior Supports and Reasonable Force (125A.0942, subd. 6)**

Schools are encouraged to establish schoolwide positive behavioral support systems. Use of reasonable force must be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion by an unauthorized or untrained staff person. The commissioner must recommend, by February 1, 2024, a plan to urgently end seclusion statewide with timelines, resources, and training needs identified.

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MINNEAPOLIS
PUBLIC SCHOOLS

Presentation to the Minnesota Legislative Coordinating Commission Seclusion Working Group

October 8, 2025

Agenda

1. Introductions
2. Minneapolis Public Schools (MPS) Overview
3. Guiding Values and History of Prohibiting Seclusion
4. Strategies to Support Students
5. Questions

Introductions

Today's Presenter

Dr. Liz Keenan

Associate Superintendent,
Special Education & Student Support Services
Minneapolis Public Schools

MINNEAPOLIS PUBLIC SCHOOLS

Overview of MPS

About MPS

Our Students and Schools

- MPS serves more than 30,000 students who speak more than 100 languages from birth to adult annually
- MPS serves babies in Early Childhood Family Education (ECFE), adult learners taking GED and Community Education classes, and everyone in between
- MPS has community schools and magnet schools and pathway programs in the arts, language immersion, global studies, STEAM, and montessori
- MPS special education provides birth to 22 programming for around 6,500 students with special needs

2024-2025 school year demographics*

American Indian	**5.6%**
Asian	**3.4%**
Black or African American	**26.0%**
Hispanic or Latino	**23.0%**
White	**36.2%**
Two or more races	**5.8%**
Receive English Learner services	**22.5%**
Receive Special Education services	**18.6%**
Eligible for free or reduced meals	**56.4%**

*Per MN reporting classifications
October 1, 2024; K-12 (pulled 10/1/2025)

MINNEAPOLIS PUBLIC SCHOOLS

Values and History

Guiding Values and History of Avoiding Seclusion

- MPS has prohibited the use of seclusion since 2011
- Our perspective on seclusion:
  - It does not address root causes of student behavior
  - It does not teach a student better coping strategies or address the underlying reasons for their behavior
  - Rather than de-escalating a situation, confining a child often increases their distress and anxiety, leading to more behavioral problems
- Our focus has been on strategies to support students proactively and in response to a crisis

Our Approach

Instead of reactive discipline, MPS adopted proactive and therapeutic strategies to manage behavior and support students' emotional needs

- **Positive behavior supports:** School-wide frameworks that teach appropriate behaviors and reinforces positive actions
- **De-escalation techniques:** Training staff to recognize early signs of distress and intervene before a crisis occurs
- **Sensory and calm-down rooms:** Providing students with a voluntary, calm space where they can safely regulate their emotions
- **Restorative practices:** Creating a strong sense of community and holding students accountable for repairing harm, rather than using punitive measures

Supporting Students

Supporting Students

Multi-tiered and wide-ranging support system:

- **Sensory rooms:** calming spaces where students can go voluntarily with supervision (over 50 throughout the district)
- **MPS Foundations:** required training for any staff member who works with students that could require redirection and/or social emotional supports (1500 staff trained)
- **Social workers:** directly support students with social-emotional supports and make connections to resources
- **Mental health team:** direct supports for students experiencing mental health crisis

Staff Training

- School districts are required to train staff who work with students with disabilities
- ***MPS Foundations*** is the Minneapolis Public Schools training program for staff to appropriately support students during redirection and/or in need of social emotional supports
- The training covers the following topics:
    - *MPS' Climate Framework* (guides our work to be a place where students, families, staff and community feel and experience a sense of belonging, safety, wellness and respect)
    - Impact of trauma
    - Regulation and the signs of dysregulation
    - Verbal de-escalation strategies
    - As a last resort in an emergency, the appropriate way to use of physical intervention and follow-up action steps when these restrictive measures must be used

Questions

As a Setting VI teacher who has worked with high school–aged students exhibiting severe aggression, I have found seclusion to be an effective emergency intervention when students pose an immediate danger to staff and peers. We have a legal and ethical duty to maintain safety for everyone in the building, and eliminating seclusion removes one of the few remaining tools available in these high-risk situations.

It is evident that both MDE and the Minnesota Disability Law Center lack a clear understanding of the day-to-day realities and needs of Setting VI programs. There is a growing disconnect between those working directly with students and those making policy decisions without firsthand classroom experience. Furthermore, special education programs are already experiencing significant staffing shortages, particularly within Setting VI settings. Removing seclusion as an emergency option will likely increase staff injuries, exacerbate burnout, and negatively impact retention. Ironically, this shift may result in increased reliance on physical restraints, which are more intrusive and restrictive than seclusion.

The approach proposed from MDE, MN Disability Law Center, and other advocacy groups raises serious concerns about safety and does not reflect the complex realities of serving students with intensive behavioral needs. Additionally, the unexpected removal of seclusion for K–3 students was demonstrably harmful, leaving staff with virtually no effective interventions, other than physical restraints, for managing severe aggression directed at peers and staff. The failure to learn from this prior decision and the attempt to replicate it reflects a serious disregard for the safety of both students and staff in our state

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SOUTHWEST WEST CENTRAL SERVICE COOPERATIVE

SWWC

Education & Administrative Resources

Open Letter In Opposition to AML007-7

Seclusion Amendment - Seclusion Working Group
January 14, 2026

Dear members of the Seclusion Working Group,

We as community members have come together to share our voice in opposition to the AML007-7 amendment being presented in the Seclusion Working Group.

In 2023, after vetting a range of concerns with the safety and long-term mental health consequences of seclusion, as well as the growing adoption of viable alternatives, the MN Legislature made the decision to limit the practice of seclusion by prohibiting it for our youngest learners. Today, as individuals and organizations, we stand with the Solutions Not Suspensions Coalition to state our strong opposition to any amendment being discussed in the seclusion working group that would roll back protections for our youngest learners from the use of seclusion. The K-3 seclusion ban must stay in place

The State of Minnesota banned seclusion for K-3, and the Minnesota Department of Education — with robust stakeholder support — recommended ending all seclusion in schools by 2026.

We cannot go back.

Seclusion is used at disproportionate rates on Black and Indigenous children, and is only used on our children with disabilities. With the K-3 ban on seclusion currently in place, we have seen a 40% drop in its use across the state. This means that our youngest children, because of their size and ability to be overpowered, have been physically pushed into these rooms at much higher rates than their older counterparts. The ban on seclusions is working to protect Minnesota's most vulnerable students.

The AML007-7 amendment will reverse the current ban on seclusions. It is worth noting that after 9 meetings, and 6 months of work, the language in AML007-7 has not changed since its introduction on the Senate floor in spring of 2025, even with the work the Seclusion workgroup has engaged in over the course of these meetings.

Please, vote against recommending AML007-7. The K-3 Seclusion Ban must stay in place because our children in Minnesota deserve to be safe and exist with dignity and respect.

Sincerely,

Solutions Not Suspensions Coalition

ABBEYCARE, INC.

Ava Roots
(Paraprofessional)
Ali Alowonle
(Restorative Practitioner)
Tiffani Lam
(Mother)
James Bradford III
2nd Chance Mentoring LLC
Dr. Bernadeia H. Johnson
(Associate Professor)
Minnesota State University
Mustafa Diriye
(Executive Director)
Anwar Institute of Learning
Tonya Draughn
(Executive Director)
UpLift Minnesota
Benita Blackwell
(Founder)
IMperfect Academy
Khulia Pringle
(Executive Director)
S.T.A.N.D. UP Minnesota
Parents United
Tiffini Flynn Forslund
(Teacher)
Aditi Rajendran
(Assistant Professor)
University of Minnesota
Laichia Vang
Jen Westmoreland
(Community Advocate)
Blanca Caldas
(Associate Professor)
University of Minnesota
Hanna Williams
(Organizer)
Neighbors of Every Learner
Katie Bentley
Sara Metz
(Parent)
Bayla McDougal
(Retired Teacher)
Ryan Haenze
(Legal Advocate)
Disability Law Center
Brittany Clausen
(Owner)
Envision Greatness
Marika Pfefferkorn
(Executive Director)
Midwest Center for School Transformation
Hertzey Hertz
Song Vang
(Parent/Therapist)
Sarah Beam
(School-based Mental Health Therapist)
Change Inc.
Ms. Julia Freeman
(Director of Community Engagement)
Voices for Racial Justice
Mary Heather Moore
(Assistant Principal, Federal Setting 4)
ISD 916
Sonja D. Peterson
(Staff Attorney)
Disability Law Center
Faith Dietz
Tina Rucci
(Public Policy Director)
The Arc MN
Jeannie Amado
Sara Wagner
Anita Chikkkatur
Jason Kise
Christopher Eckman
Thomas Rochon
Navin Solórzano O'Brien
(Lead Community Organizer)
Educators 4 Excellence MN
Lizbeth Bourgerie
Nasra Hassan
(Legal Advocate)
Disability Law Center
Zoë Bourgerie
Nicole Donoso
(Policy Organizer)
Voices for Racial Justice
Maren Christenson
(Executive Director)
Multicultural Autism Action Network
Joshua Crosson
(Executive Director)
EdAllies
Demitrea Kelley
(Advocate)
Disability Law Center
Malaika Eban
(Executive Director)
Legal Rights Center
Carmella Doby
(Founder)
Juvenile Relief Center
Meredith Samuelson
(Parent/Educator)
Ellie Wilson
(Executive Director)
Autism Society of Minnesota
Chase Hand-Peoples
(Direct Support Worker)
Abbeycare
Jennifer Giesen
MidMinnesota Legal Aid

Paula Cole
(Executive Director)
Educators 4 Excellence MN
Danielle Mkali
(Vice President)
Nexus Community Partners
Rachel Nichole
Dominique N Buffett
(Parent)
Laura Jean
(Public Policy Coordinator)
PACER Center
Camilla Williams
(Mother)
John
Curtis Charles Goodsky
Nicole Pearlstein
Satara Strong-Allen
(Executive Director)
Love First Community Engagement
Jasmine Greene

Sec. .... Minnesota Statutes 2024, section 125A.0942, subdivision 2, is amended to read:

Subd. 2. **Restrictive procedures.** (a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.

(b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph ~~(f)~~ (h).

(c) The district must hold a meeting of the individualized education program or individualized family service plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program, individualized family service plan, or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program, individualized family service plan, or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program or individualized family service plan meeting when the child's individualized education program or individualized family service plan provides for using restrictive procedures in an emergency.

(d) The use of seclusion as a restrictive procedure for children in grades 1 through 6 must be explicitly agreed to:

(1) by all parents or guardians with legal decision-making authority regarding the child;

(2) through informed written consent which is separate from any other consent obtained through the individualized education program or individualized family service plan; and

(3) in the parents' or guardians' primary language, following the district's language access plan under section 123B.32, and with all necessary interpretation and cultural supports to ensure adequate understanding of said consent.

A parent or guardian's failure to respond to a request for consent must not be considered consent to the use of seclusion.

(e) In addition to all other statutory requirements, notwithstanding paragraph (c), if a school uses a seclusion room as a restrictive procedure on a child in grades 1 through 6, on two separate school days within 20 calendar days, the district must hold a meeting of the individualized education program or individualized family service plan team to reobtain explicit written consent for the further use of seclusion. The required meeting under this paragraph must also:

(1) discuss the effectiveness of the continued use of seclusion as a restrictive procedure on the child;

(2) discuss other options for behavior interventions and other supports; and

(3) include showing the parents or guardians the room where seclusion has occurred or may occur in the future.

(f) If the individualized education program or individualized family service plan team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

~~(e)~~ (g) At the individualized education program or individualized family service plan meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program, individualized family service plan, or behavior intervention plan.

~~(f)~~ (h) An individualized education program or individualized family service plan team may plan for using restrictive procedures and may include these procedures in a child's individualized education program, individualized family service plan, or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program, individualized family service plan, or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

(i) The commissioner of education must provide outreach and education to parents or guardians of children subject to seclusion as a restrictive procedure which must include, but is not limited to:

(1) what seclusion is and is not;

(2) an explanation regarding the appropriate uses of seclusion and that it is a safety procedure to be used only in cases of emergency;

(3) what constitutes an emergency under statute for purposes of using seclusion; and

(4) information regarding legal safeguards surrounding the use of seclusion.

Sec. .... Minnesota Statutes 2024, section 125A.0942, subdivision 3, is amended to read:

Subd. 3. **Physical holding or seclusion.** (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion is not used to discipline a noncompliant child;

(3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

(4) staff directly observes the child while physical holding or seclusion is being used;

(5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released;

(iv) a brief record of the child's behavioral and physical status; and

(v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

(b) By February 1, 2015, and annually thereafter, stakeholders may, as necessary, recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures and the commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and recommendations to clarify and improve the law governing districts' use of restrictive procedures. The commissioner must consult with interested stakeholders when preparing the report, including representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. Beginning with the 2016-2017 school year, in a form and manner determined by the commissioner, districts must report data quarterly to the department by January 15, April 15, July 15, and October 15 about individual students who have been secluded. By July 15 each year, districts must report summary data on their use of restrictive procedures to the department for the prior school year, July 1 through June 30, in a form and manner determined by the commissioner. The summary data must include information about the use of restrictive procedures, including use of reasonable force under section 121A.582. Beginning with the 2025-2026 school year, in a form and manner determined by the commissioner, districts must report data monthly,

by the 15th of each month in the school year, to the department, to the district's restrictive procedures oversight committee, and to the district's special education advisory council, about individual students in grades 1 through 6 who have been secluded. By September 1 of each year, the department must submit a summary report on the use of seclusion by the district to the school board of the district in which the school using seclusion is located. The report must include, but is not limited to, the number of seclusion rooms used, where the rooms are located, the grade and federal setting level of the students who were in seclusion, how many students were in seclusion that year, how many times it was used, demographics of students who were in seclusion, known positive behavioral interventions used within the school, and any known funding sources for mental and behavioral health support for the school.

Sec. .... Minnesota Statutes 2024, section 125A.0942, subdivision 4, is amended to read:

Subd. 4. **Prohibitions.** (a) The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under chapter 260E;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso;

(10) prone restraint; ~~and~~

(11) the use of seclusion on children from birth through ~~grade 3 by September 1, 2024~~ kindergarten; and

(12) the use of seclusion on children from grade 1 through grade 6, unless the use of seclusion is explicitly agreed to as provided in section 125A.0942, subdivision 2, paragraph (d), by the child's parent or guardian and the individualized education program team members in attendance. Except as provided in this section, failure of any part of the individualized education program team to attend a meeting on seclusion will not bar the remaining team members from consenting to the use of seclusion as provided by statute. If an individualized education program meeting is convened to discuss the use of seclusion as part of an explicit behavior intervention or crisis action plan, either the child's treating mental health professional or a school district mental health professional, and a licensed school nurse or registered nurse must be part of the child's individualized education program team and must be present at the meeting to discuss seclusion. A parent or guardian must be shown the seclusion room before providing explicit written consent for the use of seclusion. In cases of administrative dispute, or other judicial or quasi-judicial dispute or proceeding, an administrative law judge, mediator, arbitrator, judge, or other presiding official is prohibited from ordering the use of seclusion over the objection of a child's parent or guardian. Nothing in this section requires a school to create a seclusion room if one does not exist.

(b) At the end of each school year, a school district must report disaggregated data to the Department of Education on the students with the use of seclusion in their individualized education program. By January 10 of each year, the commissioner must report on its website the number of students statewide with the use of seclusion in their individualized education program based on the school district reports.

Sec. .... **[125A.101] NOTICE OF PROCEDURAL SAFEGUARDS; TRANSLATION.**

The Department of Education must develop and maintain an oral translation of the notice for procedural safeguards provided to the parents of a child with disabilities.

Hello,

I am writing from the perspective of a Setting IV principal to share considerations about maintaining seclusion as an available intervention when used appropriately.

In Setting IV programs, we serve students with significant and complex needs. At times, student behavior can escalate to a level where there is an immediate risk of harm to the student or others. In these situations, seclusion, when used as a last resort, with proper training, can be an essential tool to ensure the safety of students and staff while continuing to support students' educational needs.

As administrators and educators, we do not take the use of restrictive procedures lightly. Our staff receive ongoing training in restrictive procedures with a strong emphasis on prevention, de-escalation, and the use of positive behavioral supports.

I appreciate the opportunity to share this perspective and welcome continued collaboration as we work to ensure policies and practices reflect the realities of Setting IV environments while upholding our commitment to student safety, staff safety, and ethical practice.

Thank you for your time and consideration.

Amy Swaney

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Amy Swaney
Assistant Director of Special Education/Principal
Intermediate School District 917
Concord Education Center
Office-612-902-9311
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Hello,

I am an LICSW currently working in ISD 917 and previously in ISD 287. I am writing in support of the ***Runway with Support*** **proposal** from the seclusion working group and the shared goal of reducing seclusion whenever possible.

In Level 4 settings, however, there are times when seclusion remains necessary to ensure the immediate safety of students and staff. While the implementation of Ukeru has been a positive addition, it is not always sufficient; we have observed situations in which highly escalated students are able to tear apart Ukeru mats, limiting their effectiveness.

When a student's amygdala is fully activated and other regulation strategies are inaccessible, seclusion has, at times, been the only intervention that allows for safe de-escalation. From a clinical and safety standpoint, maintaining a full continuum of interventions — with seclusion as a last resort — is critical in Level 4 programs. The safety and protection of both students and the dedicated staff who support them must remain a priority.

Thank you for the opportunity to share this perspective and for the continued collaboration on trauma-informed practices for our most vulnerable students.

Sincerely,
Ann Strom, MSW, LICSW

The "Runway with Support" Proposal - We are calling for the preservation of seclusion as an emergency tool for the time being, coupled with funding and dedicated support for evidence-based alternatives.

- **The Mechanism:** While no one likes to use seclusion, we argue it should only be prohibited *if and when* suitable alternative tools have been identified, fully funded, and implemented with fidelity. Programs such as Ukeru have been cited as examples of promising alternatives.
- **The Reality:** This creates a "runway." It mandates that the state provide funding and technical support *before* removing the safety net that helps us run programs without increased physical holds, law enforcement involvement, shortened days, or injuries to students and staff.

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Anonymous Minnesota Seclusion Accounts

The Multicultural Autism Action Network (MAAN) and Solutions Not Suspensions (SNS) collected these stories and testimonies. MAAN and SNS have not edited the language provided to us in these various testimonies, these are the words provided by the parents and individuals who have directly experienced seclusion in MN schools. These are their statements, unedited, as they were received.

Fardowsa's story

My name is Fardowsa. When my son was 12, he started at a new school that was overwhelming for him. I had asked to visit while school was in session to see if it was a good fit, but they only allowed a visit when the building was empty. Once school started, I didn't hear much and assumed things were going well.

One day I got a call saying my son was injured and needed to be picked up. I rushed to the school and, on my way to his classroom, saw a janitor standing by a closet. Inside, my son was banging on the door, trying to get out. I was horrified. The janitor said he had been put in that closet nearly every day since school started — for almost two months — and I had never been told.

At a meeting, the school claimed he had only been secluded once and that it "didn't count" other times because the door wasn't locked. But my son was clearly traumatized. He was overwhelmed by the sensory environment, yet no one discussed his needs with me. Seclusion didn't help — it only taught him that school isn't safe. Several years later school still does not feel like a safe place to him.

Mason's story

My name is Jamie. I recently moved to Duluth, MN with my now 16-year-old son, after living in Two Harbors for 13 years. My son, who was diagnosed with Autism at the age of 3, was part of the Lake Superior School district since he was 4. Mason went to a special program before going into kindergarten. The program was supposed to help him learn skills so he was ready to be with his peers, but that didn't happen. He was secluded in "special rooms" over 250 times because of his behavior. In first grade we tried a private school that asked my son to leave after attending for less than a month. He resumed a life of abuse and seclusion at yet another district. In second grade he was referred to a Co-op that oversees special ed services for 13 counties.

They decided to put together a level 4 (which is the most restrictive setting) program in a "central location". This school was over 60 miles away from our home. This so-called school consisted of 4 kids and was in a hallway of a church. …. He finally started in our home district for the first time at FOURTEEN years old.

He was not welcomed. He had to sit alone at lunch and was never included in anything

in or outside of school. He had been isolated his whole life and it should come as no surprise that he hated school because of how alone he felt. He was segregated, isolated, and alone. Because his peers never spent time around him, they didn't know how to react, so being mean was their go-to. My son is on his 6th school in ten years. The harm of seclusion and isolation never goes away. If any of his schools had actually taken the time to learn how to support kids like him, we wouldn't be where we are today. No child deserves to feel like they don't matter.

M's Story

When we first met M he was a second grader. He was one of these kids that the schools are talking about when they tell their horror stories. When we first met him the school had just completed data collection that showed 200 "infractions" in a single week, which included everything from hitting, spitting, throwing furniture, and elopement. When we met M, he had experienced multiple seclusions, restraints, and missed over 70 days of school due to suspensions. M's ticket on the school-to-prison pipeline was bought and paid for before he was eight years old. His family reached out to our organization for help, and we could quickly see that the IEP he had in place was woefully inadequate. He did not have the right diagnoses or support in place, so the first step was to get those in place, and then work on finding him a school that could meet his needs. He moved to a new school halfway through his 2nd grade year, and it made a world of difference for him to move to a place that did not see him as a problem child, but rather as a struggling child in need of support.

When he moved to a calm, sensory-friendly environment, where his teachers were focused on building a relationship with him, things did a 180 degree turn for him. We just attended his 4th grade IEP meeting, and his teacher said "I was going to pull discipline data but there wasn't any." This same child who was written up 200 times in one week has had no suspensions, no seclusions, no restraints in over two years. It is important to note that it wasn't the child that changed, it was the adults who changed their approach and the environment that met his needs. Those two things made all the difference in the world.

Anonymous Minnesota Parent and Child:

"Why did you send me to that school?" This is a question I have heard too many times. And, each time I have not had an answer that justifies. My now 16-year-old African-American son wonders why he was sent to a Level 4 school. Why was he shoved alone into a seclusion room with blue padding and chaotic writing on the walls? Why did adults stand outside the thick door and do nothing while he screamed?

The experiences did absolutely nothing but enrage him, making him feel like a caged

animal. He was not threatening the lives of others. He was not threatening his own life. How was an autistic six year old supposed to interpret the experience in seclusion? He was being forced to comply with a punishment system that his disability did not allow him to understand. The tragic reality was, the punishment was cruel and unusual.

Our son was adopted at birth and received a disability diagnosis at the age of 4. We were led to believe the Level 4 school was a great option for him. Before placing him in the school, I requested to visit while the school was in session. I was told a visit would be a HIPAA violation. So, no visitors were allowed. This, however, was not a policy as I discovered in May. I demanded to visit for a day. I, as his parent, was faced with the sorrowful reality of each day. There was nothing appropriate about this education setting. There was nothing enriching.
After that horrific year and a hard fight, he was placed in a different school and awarded what is sadly a luxury. That being his own one-on-one paraprofessional. This changed everything. She grew to know him. A bond was built and trust was earned. We, as his parents, worked tirelessly with his teachers and administration and together built on his successes, instead of tearing him down for his failures. The cost and rewards system was thrown out, replaced instead by a strongly built behavioral plan, filled with personalized motivators. Adults work better with motivators, too. Who doesn't love a bonus or a free lunch? He is now a sophomore. And, after first grade has never spent time in seclusion.

Now, if we could adequately answer the question as to why it ever happened. We can't. So we fight to ensure it never happens to other children. Minnesota can and must do better.

Hello Andrew, please share this statement with whomever you feel is sufficient for the seclusion work group.

I am a Setting IV special education social worker in my fourth year working with students who demonstrate significant behavioral needs. In my experience, seclusion is used only as part of a carefully developed crisis response plan and strictly as a last resort. Prior to seclusion, staff consistently implement multiple de-escalation strategies, including verbal supports, staff switches, environmental adjustments, removal of other students, and the use of blocking pads. These interventions are reviewed after each incident, and student plans are frequently adjusted to reduce the need for hands-on responses.

Despite these efforts, staff experience injuries each year as a result of severe physical aggression from students, highlighting the real safety risks present in these settings. When continuous aggression places the student, peers, or staff at risk and other interventions have been unsuccessful, seclusion remains a necessary tool to ensure immediate safety while allowing the student space to regain regulation. Additionally, some guardians express a clear preference for seclusion over other restrictive procedures and actively advocate for its inclusion in their child's crisis plan as the least harmful and most appropriate option for their student.

Thank you,

Brianna Hansen, MSW, LGSW

To Whom it May Concern:
I am writing to express my support of preserving seclusion as an emergency tool in schools for the time being. In addition, funding and dedicated support for evidence-based alternatives should be in place. I have worked in the field of Special Education for 20 years. The majority of that time has been within Intermediate School Districts. In order to keep students and staff safe, we need a variety of tools and strategies. While no one likes to use seclusion, until suitable alternative tools have been identified and fully funded, we are putting students and staff at risk by removing the use of seclusion in emergency situations. Removing seclusion without suitable alternative tools will result in increased injuries to students and staff and increased law enforcement involvement.

Thank you,
--

Brooke Peterson, Ph.D.

Preferred Pronouns: she, her

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Seclusion Work Group

Where we are now and how we got here

Prior to 2023

- Seclusion only allowed, with certain provisions and restrictions, in an “emergency.”
- Emergency defined by Minn. Stat. 125A.0941:

> (b) "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

2023 Session

- Law passed as part of the Education Omnibus Bill banning the use of seclusion “on children from birth through grade 3 by September 1, 2024.”
- Seeberger voted “Yes” on the Education Omnibus Bill without knowing this was in the bill. The issue was never caucused or discussed on the Senate Floor.
- Seeberger would have voted “No” had she been aware of this provision in the Education Omnibus Bill.

2024 Session

- Seeberger contacted stakeholders to discuss the seclusion ban and her concerns with it.
- Seeberger set up tours of schools with seclusion rooms in attempts to illustrate the issue, and to define what seclusion was and was not.
- Many stakeholders did not attend these tours despite being invited.
- Activists opposing seclusion in schools refused to discuss ways to address the needs of students and schools which were unmet by the ban.

2025 Session

- Because activist would not entertain any discussion on how to best meet the needs of all students, Seeberger drafted SF 1830 which eliminates all changes made in 2023 and reinstitutes seclusion as it was prior to the 2023 session.

SF 1830

SENATE
STATE OF MINNESOTA
NINETY-FOURTH SESSION

S.F. No. 1830

(SENATE AUTHORS: SEEBERGER and Farnsworth)

DATE	D-PG	OFFICIAL STATUS
02/24/2025	486	Introduction and first reading Referred to Education Policy

A bill for an act

relating to education policy; allowing for the use of seclusion as a restrictive procedure; amending Minnesota Statutes 2024, section 125A.0942, subdivisions 4, 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2024, section 125A.0942, subdivision 4, is amended to read:

Subd. 4. **Prohibitions.** The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under chapter 260E;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso; and

(10) prone restraint~~; and~~.

~~(11) the use of seclusion on children from birth through grade 3 by September 1, 2024.~~

Sec. 2. Minnesota Statutes 2024, section 125A.0942, subdivision 6, is amended to read:

Subd. 6. **Behavior supports; reasonable force.** (a) School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports.

(b) Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379. Any reasonable force used under sections 121A.582; 609.06, subdivision 1; and 609.379 which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion used by an unauthorized or untrained staff person.

~~(c) By February 1, 2024, the commissioner, in cooperation with stakeholders, must make recommendations to the legislature for urgently ending seclusion in Minnesota schools. The commissioner must consult with interested stakeholders, including parents of students who have been secluded or restrained; advocacy organizations; legal services providers; special education directors; teachers; paraprofessionals; intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2; school boards; day treatment providers; county social services; state human services department staff; mental health professionals; autism experts; and representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities. The recommendations must include specific dates for ending seclusion by grade or facility. The recommendations must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.~~

Amendment 007-7

- Only after SF 1830 was dropped did activists come to the table to discuss the issue.
- After weeks of negotiation, and amendment to SF 1830 was agreed up, Amendment 007-7.
- Amendment 007-7 passed the Senate Floor with the approval of Senator Mann, who originally offered the amendment in 2023 banning seclusion up through grade 3.

Amendment 007-7

- Amendment 007-7 contained many provisions which were good and which IMPROVED the operation of Minnesota's seclusion statute, and IMPROVED things for families of students.
- Amendment 007-7 also allowed seclusion to be used in grades 1-3 (not kindergarten or younger) with additional safeguards and parameters.
- Amendment 007-7 also extended these safeguards and parameters up through grade 6 (where seclusion is currently allowed WITHOUT these additional safeguards and parameters).

2025 Session

- The House refused to hear or consider SF 1830 or Amendment 007-7.
- The only thing that could be agreed upon between the Senate and the House during Conference Committee was submitting the issue of seclusion to a Working Group.
- It is a well known tactic to shunt unpopular topics to a Working Group in hopes the issue will fade away.

Seclusion Working Group

- The Seclusion Working Group met from August 15, 2025 through January 28, 2026.
- Per the legislation establishing the Working Group, the Working Group expires on January 31, 2026 – 3 days after the final meeting.
- Per the legislation establishing the Working Group, the Working Group must report its findings and recommendations regarding the use of seclusion to the chairs and ranking minority members of the legislative committees with jurisdiction over kindergarten through grade 12 education no later than January 30, 2026.

Seclusion Working Group

- At its penultimate scheduled meeting on January 14, 2026, the Working Group was able to vote on recommendations that were arrived at by consensus.
- At that meeting, areas of disagreement were identified which included:
  - A timeline for elimination of seclusion; and
  - Whether and to what extent seclusion should be allowed in grades 1-3
- Chair Seeberger then scheduled an additional meeting to discuss the areas where there was no agreement.

Seclusion Working Group

- An additional, previously unscheduled, meeting was held on September 21, 2026 to discuss the areas where there was no consensus.
- That meeting was held via Zoom to accommodate the needs of the members given its late scheduling.
- No proposed recommendations were received from any Working Group member as to the areas subject to discussion on September 21, 2026.
- Therefore, Chair Seeberger drafted Chair's Recommendations which were circulated to the members.

Seclusion Working Group

- On September 21, 2026 members discussed the Chair's Recommendations which focused on a timeline for the elimination of seclusion, and the permitted use of seclusion in grades 1-3.
- Of the five Recommendations submitted by the Chair, only one was reserved for discussion at the last meeting on January 28, 2026.
- Three Recommendations were defeated by a tie vote (6-6), and one Recommendation passed by a vote of 7-5. However, after the vote closed, a member stated they had voted the wrong way. The Chair commiserated since that happened to her in 2023 and was why we now had this working group. The vote was not re-opened.

Seclusion Working Group

- Recommendations that did not pass included:
  - That the Department of Education develop and maintain an oral translation of the notice for procedural safeguards provided to the parents of a child with disabilities;
  - That the Commissioner of Education provide outreach and education to parents/guardians of children subject to seclusion as a restrictive procedure to help ensure understanding of the procedure;
  - That any use of seclusion up through grade 6 only be allowed if parents/guardians EXPLICITLY consent to its use, and the provision of additional supports to parents/guardians to ensure any such consent was fully informed and understood.

Seclusion Working Group

- It is expected that the draft report will not be approved by the Seclusion Working Group given the passage of one of the Chair's Recommendations.
- The situation therefore reverts to the status quo with a ban on seclusion in grades 1-3, and SF 1830 being the bill in play.
- In failing to modify provisions for the use of seclusion in grades 1-3, the activists throw out the good and helpful provisions of Amendment 007-7, and the useful work done over the past 5 months by the Working Group.
- Activists also disregard the data which shows that, in the absence of seclusion, physical holds have increased dramatically, as have injuries to staff and students.

SECLUSION WORKING GROUP
CHAIR'S RECOMMENDATIONS
21 January, 2026

A. With the overarching goal of completely ending seclusion in all districts throughout Minnesota, all districts will reduce the use of seclusion by 50% annually until seclusion is used less than 5% of the time in any school year. (student percentage) All districts will strive to have a vetted alternative to seclusion in place as soon as practicable. MDE will work with districts to provide the support and technical assistance necessary to phase out the use of seclusion. Discuss and vote on next time.

B. Minn Stat 125A.0942, subdivision 2, be amended to include lines 1.26 – 2.13, and lines 3.1 – 3.8 as set forth in amendment AML007-7, EXCEPT lines 1.26 and 2.4 are changed to read grade 1 through grade 12. Subsequent sections should be renumbered accordingly. MDE will draft a separate consent form specific to the use of seclusion. MDE will develop a streamlined and easy-to-use process for complaints relating to seclusion/restrictive procedures.

C. Minn Stat 125A.0942, subdivision 4, be amended to include lines 6.2 – 6.24 as set forth in amendment AML007-7 EXCEPT line 6.4 is changed to read grade 1 through grade 12.

D. Minn Stat Ch 125A be amended to add section 125A.101 as set forth in lines 6.25 – 6.27 of the amendment AML007-7.

E. MDE and/or the legislature must evaluate the elimination of seclusion to determine if the data shows that the use of physical holds has increased. Students must also be [evaluated] for trauma associated with the use of physical holds. If the data shows that the use of physical holds has increased in relation to the decrease in use of seclusion, then schools must be allowed to use seclusion subject to the provisions of Minn Stat 125A.0942, subdivision 4.

Seclusion Working Group

December 17th, 2025

Compiled Recommendations

Mandatory Staff Training, Staff Supports, and Culture Shift

Member	Recommendations

Nicole Woodward, Dave Haveman, Kate Hulse	• Require the IEP team to include a mental health professional or practitioner (school psychologist, school social worker, school counselor, licensed school nurse or other licensed mental health provider serving the district). The team must consider contraindications and alternative restrictive procedures to use during an emergency before adding seclusion to a student's IEP/IFSP/BSP.
	• Mandatory annual staff training for all special education staff and related services providers:
	  ○ MN Statute 125A.0942
	  ○ Effects of trauma on the brain and brain state-dependent functioning
	  ○ Effective practices for post-restrictive procedures team debriefing meetings

Melissa Winship	• Require annual, standardized, and evidence-based training for all staff on prevention, and safe crisis management. Training must include modules on the neurobiology of stress and trauma, effective de-escalation, and legal compliance.
Kate Heiser, Erin Sandsmark	• Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION. *Also listed in Funding.* • Mandate training on ableism for schools to increase understanding that what is perceived as "behavior" is often part of the person's disability

	• Broaden the scope of those who receive training in co-regulation and de-escalation strategies. Often there is only a single interventionist per school who has received this training. These strategies are invaluable to everyone in the educational environment and should be offered to lunchroom staff, bus drivers, paras, library personnel, social workers as well as students themselves. Everyone who comes in contact with students should be trained in conflict resolution and de-escalation strategies. • Train educators on how to support demand avoidant students. Teach educators what demand avoidance is, how it presents, and how "conventional" strategies often have the opposite of the desired effect. • Shift outmoded control and compliance-based strategies and focus on communication and connection instead. Teachers are often rewarded for their ability to "control" their classroom, and punished for their leniency when they prioritize connection over control and communication over compliance. This is an outdated way of thinking that actually causes harm, especially to students with a trauma history. • Open an honest dialogue about the harm that is done when school becomes a place where trauma occurs. Even though it may be a painful process, we cannot solve the problems we are not willing to admit exist. We need to talk about what happens when school becomes a place where trauma occurs, how it has happened in the past, and what can be done to prevent it from happening in the future. • Encourage educators to explore any strategy that will break the cycle of trauma. We have seen successful de-escalation through humor, through music, through physical exercise, through changing environment, and all of these strategies should be explored. • Build bridges between educators and adults with disabilities. As parents and advocates, we have learned that adults with disabilities are often our greatest teachers and can help us gain insight into better understanding and supporting our kids. We are fortunate in Minnesota to have a rich community of adult advocates who are more than willing to share their experiences and expertise.

	When we passed the ableism bill in 2023, we had hoped that a discussion with adults with disabilities would become part of teacher training for every teacher supporting students with disabilities. That dream has not been realized, and it is a missed opportunity. • Teach children about their nervous system, and what is actually happening to their brains and bodies when they are in fight/fight/freeze/fawn mode. Helping kids understand what they are going through, and helping adults understand what children need to feel safe cannot be over-emphasized. Strategies like teaching "I feel ____. I need ____. ____ helps me." taught when a child is regulated and utilizing whole communication has proven an effective strategy as long as the adults honor it.
Greta Kjos	• Any action should include solving for the issues with data collection and monitoring the impact on students and staff including police/EMS calls, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and whether there is disproportionate impact on students of color and with disabilities. • Shift from culture of violation/repercussion regarding seclusion/ restraint to one of culture to one that encourages safety with kindness and compassion alongside the use of PBIS and de-escalation strategies. Create a culture of collaboration, de-escalation and learning debriefs vs a punitive approach to schools struggling with student behavior. This staff mindset shift flows to the student culture and becomes rooted in what Ukeru calls comfort over control. • Designated and trained de-escalation mentor response teams who work with schools side-by-side and onsite on PBIS, de-escalation strategies and reduction in use of seclusion. Ukeru, for example, offers this mentoring/ coaching in a train-the-trainer model. Schools are either identified as schools in need of assistance (e.g. improper use of seclusion, increased seclusion/ restraints happening, etc) or it is requested by the school themselves. The response teams could act as a mobile crisis team who assists onsite during crisis and/or after a crisis to debrief and work collaboratively to improve skills and procedures. The response teams

	could be embedded in the school staff as well. Prioritize the schools currently using seclusion with options being available to all schools. • Ongoing staff training (including de-escalation, bias-awareness, team-based crisis response) with priority being current schools using seclusion rooms (50 school districts). This training is inclusive of all staff in the building from teachers to custodians to build a culture of regulation and skills for de-escalation. • State-wide training standards on de-escalation, use of alternatives over seclusion, awareness of response teams to ensure consistent and equitable, and non discriminatory practices.
Additional Recommendations?	

Data Collection, Monitoring, and Accountability

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Seclusion data (frequency, duration, etc.) must be explicitly reviewed by the IEP team no less than annually or whenever requested by the parent/guardian or the district. • Continuation of quarterly district-based Restrictive Procedures Oversight Committee meeting requirements Implement an accountability structure similar to the Accountability, Rationale, & Context (ARC) report that is required annually based on Minnesota Test of Academic Skills (MTAS)/Minnesota Alternate Assessment rates. MDE, in consultation with Minnesota Administrators for Special Education (MASE) would set an annual seclusion rate threshold at which they would like districts to be below. They would pull data from Stepwell (just like they do for MTAS from the TestWes), compile a data visualization, and send to districts to analyze. If a district is routinely and significantly above the threshold OR their use data is not improving at an acceptable rate, then MDE could allocate additional resources to that building to address needs and provide targeted support. • Incorporate restraint and seclusion data into the disproportionality calculation and accountability system.

Melissa Winship	• Mandate a standardized, disaggregated data collection system for all seclusion incidents, and require a systemic review process to identify patterns of misuse and implement Corrective Action Plans (CAPs) for high-usage schools.
Jessica Heiser and Erin Sandsmark	• Require school districts to publicly document the number seclusions each year in a public-facing manner so parents have visibility to high seclusion use schools. Ensure data includes disaggregation by race and disability. • Create an accessible mechanism for parents and families to report when they think seclusion is being misused that does not require them to go through their school (MDE?). Make sure that every family has that contact information every time seclusion is used.
Greta Kjos	• Any action should include solving for the issues with data collection and monitoring the impact on students and staff including police/EMS calls, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and whether there is disproportionate impact on students of color and with disabilities. • Oversight and data collection to increase appropriate use of seclusion, eliminate improper use of seclusion and improve the use of de-escalation strategies. Require an annual review and setting of strategic targets for training and improvement in identified areas of need.
Additional Recommendations?	

Alternatives to seclusion

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Continuum of crisis intervention strategies (e.g., CPI and Ukeru)
Melissa Winship	• Mandate that districts select and implement at least one vetted, evidence-based alternative to seclusion focused on proactive behavioral support and early de-escalation.

Jessica Heiser and Erin Sandsmark	• Consider an audit of outdated practices that escalate rather than de-escalate students with disabilities. Practices such as “whole body listening” or goals for eye contact often increase dysregulation. Practices such as sensory profiles, helping students identify regulation strategies, and allowing unlimited access to breaks increase a student’s ability to regulate and decrease disruptive behavior. • Engage with families in collaborative problem-solving before behavior occurs. Open and honest conversations about what helps and what hurts can often help teams avoid difficult situations. Once a restricted procedure is used, families and educators often find themselves in an antagonistic position. Time invested in a collaborative relationship before that happens can provide a foundation on which to build during times of stress.
Greta Kjos	• Evidence-based Positive Behavioral Interventions & Supports from organizations like Ukeru and others. Attention should be paid to the culture of the organization chosen as well as the implementing practice to ensure alignment with goals. • Prevention and early intervention through more school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers) Also.listed.in.Funding.
Additional Recommendations?	

Funding

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Funding and support for increasing layered supports • The focus needs to be on building systems and supports that diminish - or eventually eliminate - the need for seclusion. This requires fair and sustainable funding, training, technical support, and resources to ensure equitable opportunities for improvement statewide; with emphasis on greater Minnesota where lack of resources and funding

	create unique barriers. Direct funding mechanisms should be utilized whenever possible.
Melissa Winship	• Allocate specific, sustained funding to districts to cover costs associated with implementing new alternatives, including dedicated time and resources (e.g., substitute coverage, stipends) for high-quality staff training.
Jessica Heiser and Erin Sandsmark	• Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION. Also.listed.in.Mandatory.Staff.Training?. staff.supports?and.culture.shift. • We often see school districts reducing or eliminating related services in an effort to reduce costs. Speech therapy services and OT services are often the first on the list to be cut in times of difficult budgets, but communication and self-regulation skills are two of the best tools we have to help reduce problem behavior
Greta Kjos	• Prevention and early intervention through more school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers). Also.listed.in.Alternatives.to.Seclusion.
Additional Recommendations?	

Use of Seclusion – Timeline

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Our position is that setting a timeline is arbitrary. Rather, the focus needs to be on building systems and supports that diminish - or eventually eliminate - the need for seclusion. This requires fair and sustainable funding, training, technical support, and resources to ensure equitable opportunities for improvement statewide; with emphasis on greater Minnesota where lack of resources and funding create unique barriers. Direct funding mechanisms should be utilized whenever possible. We recommend leveraging the resources available through the regional service cooperatives and exploring interagency partnerships to enhance technical assistance (CAREI, NAMI, MN School-Based Behavior Analysts, etc.) • Limit seclusion to be permitted for students receiving setting 3 or setting 4-level services only. This would prohibit use for the vast majority of students across the state. • The use of seclusion as a restrictive procedure for children in grades 1 through 6 must be explicitly agreed to: (1) by all parents or guardians with legal decision-making authority regarding the child; (2) through informed written consent which is separate from any other consent obtained - through the individualized education program or individualized family service plan; (3) in the parents' or guardians' primary language, following the district's language access plan under section 123B.32, and with all necessary interpretation and cultural supports to ensure adequate understanding of said consent. A parent or guardian's failure to respond to a request for consent must not be considered consent to the use of seclusion.
Jessica Heiser and Erin Sandsmark	• Eliminate the use of Seclusion by 2026 per MDE recommendations. • Continue the ban on PreK-3rd Seclusions as is. • Continue the ban on PreK-3rd grade seclusions with improved implementation policy and funding for schools to adjust course, and provide support for alternative systems outside of seclusion.

	• Eliminate use of Seclusion in a different time frame, with more time to adopt improved implementation strategies for a shifting system without seclusion, that prioritizes other methods of de-escalation like Ukeru.
Greta Kjos	• Reducing or banning the use of seclusion without providing tools, supports, and training can lead to reactive measures including increased restraints, increased calls to law enforcement and/or EMS, more suspensions, home-based and level 4 placements, increased trauma and the continued disproportionate impact on BIPOC and disabled students, as well as staff and students feeling unsafe. Any successful policy toward reducing or banning the use of seclusion must be paired with investments in prevention, de-escalation, and support structures. At the core is building a culture of regulation, de-escalation and inclusion in our schools and that takes investment in time and money. • According to Ukero, they have seen the best outcomes when seclusion remains an option while alternatives are implemented. It is NAMI MN's position that investments need to be made in evidence-based alternatives and implemented as an additional tool, with accountability to staff for necessary shifts in new tools/ strategies and culture. Seclusion should remain available during implementation while the goal is to ultimately eliminate the need for seclusion.
Additional Recommendations?	

Seclusion Working Group

December 17th, 2025

Compiled Recommendations

Mandatory Staff Training, Staff Supports, and Culture Shift

Member	Recommendations

Nicole Woodward, Dave Haveman, Kate Hulse	• Require the IEP team to include a mental health professional or practitioner (school psychologist, school social worker, school counselor, licensed school nurse or other licensed mental health provider serving the district). The team must consider contraindications and alternative restrictive procedures to use during an emergency before adding seclusion to a student's IEP/IFSP/BSP.
	• Mandatory annual staff training for all special education staff and related services providers:
	  ○ MN Statute 125A.0942
	  ○ Effects of trauma on the brain and brain state-dependent functioning
	  ○ Effective practices for post-restrictive procedures team debriefing meetings

Melissa Winship	• Require annual, standardized, and evidence-based training for all staff on prevention, and safe crisis management. Training must include modules on the neurobiology of stress and trauma, effective de-escalation, and legal compliance.
Kate Heiser, Erin Sandsmark	• Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION. Also.listed.in. Funding¡ • Mandate training on ableism for schools to increase understanding that what is perceived as "behavior" is often part of the person's disability

	• Broaden the scope of those who receive training in co-regulation and de-escalation strategies. Often there is only a single interventionist per school who has received this training. These strategies are invaluable to everyone in the educational environment and should be offered to lunchroom staff, bus drivers, paras, library personnel, social workers as well as students themselves. Everyone who comes in contact with students should be trained in conflict resolution and de-escalation strategies. • Train educators on how to support demand avoidant students. Teach educators what demand avoidance is, how it presents, and how "conventional" strategies often have the opposite of the desired effect. • Shift outmoded control and compliance-based strategies and focus on communication and connection instead. Teachers are often rewarded for their ability to "control" their classroom, and punished for their leniency when they prioritize connection over control and communication over compliance. This is an outdated way of thinking that actually causes harm, especially to students with a trauma history. • Open an honest dialogue about the harm that is done when school becomes a place where trauma occurs. Even though it may be a painful process, we cannot solve the problems we are not willing to admit exist. We need to talk about what happens when school becomes a place where trauma occurs, how it has happened in the past, and what can be done to prevent it from happening in the future. • Encourage educators to explore any strategy that will break the cycle of trauma. We have seen successful de-escalation through humor, through music, through physical exercise, through changing environment, and all of these strategies should be explored. • Build bridges between educators and adults with disabilities. As parents and advocates, we have learned that adults with disabilities are often our greatest teachers and can help us gain insight into better understanding and supporting our kids. We are fortunate in Minnesota to have a rich community of adult advocates who are more than willing to share their experiences and expertise.

	When we passed the ableism bill in 2023, we had hoped that a discussion with adults with disabilities would become part of teacher training for every teacher supporting students with disabilities. That dream has not been realized, and it is a missed opportunity. • Teach children about their nervous system, and what is actually happening to their brains and bodies when they are in fight/fight/freeze/fawn mode. Helping kids understand what they are going through, and helping adults understand what children need to feel safe cannot be over-emphasized. Strategies like teaching "I feel ____. I need ____. ____ helps me." taught when a child is regulated and utilizing whole communication has proven an effective strategy as long as the adults honor it.
Greta Kjos	• Any action should include solving for the issues with data collection and monitoring the impact on students and staff including police/EMS calls, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and whether there is disproportionate impact on students of color and with disabilities. • Shift from culture of violation/repercussion regarding seclusion/ restraint to one of culture to one that encourages safety with kindness and compassion alongside the use of PBIS and de-escalation strategies. Create a culture of collaboration, de-escalation and learning debriefs vs a punitive approach to schools struggling with student behavior. This staff mindset shift flows to the student culture and becomes rooted in what Ukeru calls comfort over control. • Designated and trained de-escalation mentor response teams who work with schools side-by-side and onsite on PBIS, de-escalation strategies and reduction in use of seclusion. Ukeru, for example, offers this mentoring/ coaching in a train-the-trainer model. Schools are either identified as schools in need of assistance (e.g. improper use of seclusion, increased seclusion/ restraints happening, etc) or it is requested by the school themselves. The response teams could act as a mobile crisis team who assists onsite during crisis and/or after a crisis to debrief and work collaboratively to improve skills and procedures. The response teams

	could be embedded in the school staff as well. Prioritize the schools currently using seclusion with options being available to all schools. • Ongoing staff training (including de-escalation, bias-awareness, team-based crisis response) with priority being current schools using seclusion rooms (50 school districts). This training is inclusive of all staff in the building from teachers to custodians to build a culture of regulation and skills for de-escalation. • State-wide training standards on de-escalation, use of alternatives over seclusion, awareness of response teams to ensure consistent and equitable, and non discriminatory practices.
Additional Recommendations?	

Data Collection, Monitoring, and Accountability

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Seclusion data (frequency, duration, etc.) must be explicitly reviewed by the IEP team no less than annually or whenever requested by the parent/guardian or the district. • Continuation of quarterly district-based Restrictive Procedures Oversight Committee meeting requirements Implement an accountability structure similar to the Accountability, Rationale, & Context (ARC) report that is required annually based on Minnesota Test of Academic Skills (MTAS)/Minnesota Alternate Assessment rates. MDE, in consultation with Minnesota Administrators for Special Education (MASE) would set an annual seclusion rate threshold at which they would like districts to be below. They would pull data from Stepwell (just like they do for MTAS from the TestWes), compile a data visualization, and send to districts to analyze. If a district is routinely and significantly above the threshold OR their use data is not improving at an acceptable rate, then MDE could allocate additional resources to that building to address needs and provide targeted support. • Incorporate restraint and seclusion data into the disproportionality calculation and accountability system.

Melissa Winship	• Mandate a standardized, disaggregated data collection system for all seclusion incidents, and require a systemic review process to identify patterns of misuse and implement Corrective Action Plans (CAPs) for high-usage schools.
Jessica Heiser and Erin Sandsmark	• Require school districts to publicly document the number seclusions each year in a public-facing manner so parents have visibility to high seclusion use schools. Ensure data includes disaggregation by race and disability. • Create an accessible mechanism for parents and families to report when they think seclusion is being misused that does not require them to go through their school (MDE?). Make sure that every family has that contact information every time seclusion is used.
Greta Kjos	• Any action should include solving for the issues with data collection and monitoring the impact on students and staff including police/EMS calls, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and whether there is disproportionate impact on students of color and with disabilities. • Oversight and data collection to increase appropriate use of seclusion, eliminate improper use of seclusion and improve the use of de-escalation strategies. Require an annual review and setting of strategic targets for training and improvement in identified areas of need.
Additional Recommendations?	

Alternatives to seclusion

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Continuum of crisis intervention strategies (e.g., CPI and Ukeru)
Melissa Winship	• Mandate that districts select and implement at least one vetted, evidence-based alternative to seclusion focused on proactive behavioral support and early de-escalation.

Jessica Heiser and Erin Sandsmark	• Consider an audit of outdated practices that escalate rather than de-escalate students with disabilities. Practices such as “whole body listening” or goals for eye contact often increase dysregulation. Practices such as sensory profiles, helping students identify regulation strategies, and allowing unlimited access to breaks increase a student’s ability to regulate and decrease disruptive behavior. • Engage with families in collaborative problem-solving before behavior occurs. Open and honest conversations about what helps and what hurts can often help teams avoid difficult situations. Once a restricted procedure is used, families and educators often find themselves in an antagonistic position. Time invested in a collaborative relationship before that happens can provide a foundation on which to build during times of stress.
Greta Kjos	• Evidence-based Positive Behavioral Interventions & Supports from organizations like Ukeru and others. Attention should be paid to the culture of the organization chosen as well as the implementing practice to ensure alignment with goals. • Prevention and early intervention through more school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers) Also.listed.in.Funding.
Additional Recommendations?	

Funding

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Funding and support for increasing layered supports • The focus needs to be on building systems and supports that diminish - or eventually eliminate - the need for seclusion. This requires fair and sustainable funding, training, technical support, and resources to ensure equitable opportunities for improvement statewide; with emphasis on greater Minnesota where lack of resources and funding

	create unique barriers. Direct funding mechanisms should be utilized whenever possible.
Melissa Winship	• Allocate specific, sustained funding to districts to cover costs associated with implementing new alternatives, including dedicated time and resources (e.g., substitute coverage, stipends) for high-quality staff training.
Jessica Heiser and Erin Sandsmark	• Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION. Also.listed.in.Mandatory.Staff.Training?. staff.supports?and.culture.shift. • We often see school districts reducing or eliminating related services in an effort to reduce costs. Speech therapy services and OT services are often the first on the list to be cut in times of difficult budgets, but communication and self-regulation skills are two of the best tools we have to help reduce problem behavior
Greta Kjos	• Prevention and early intervention through more school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers). Also.listed.in.Alternatives.to.Seclusion.
Additional Recommendations?	

Use of Seclusion – Timeline

Member	Recommendations
Nicole Woodward, Dave Haveman, Kate Hulse	• Our position is that setting a timeline is arbitrary. Rather, the focus needs to be on building systems and supports that diminish - or eventually eliminate - the need for seclusion. This requires fair and sustainable funding, training, technical support, and resources to ensure equitable opportunities for improvement statewide; with emphasis on greater Minnesota where lack of resources and funding create unique barriers. Direct funding mechanisms should be utilized whenever possible. We recommend leveraging the resources available through the regional service cooperatives and exploring interagency partnerships to enhance technical assistance (CAREI, NAMI, MN School-Based Behavior Analysts, etc.) • Limit seclusion to be permitted for students receiving setting 3 or setting 4-level services only. This would prohibit use for the vast majority of students across the state. • The use of seclusion as a restrictive procedure for children in grades 1 through 6 must be explicitly agreed to: (1) by all parents or guardians with legal decision-making authority regarding the child; (2) through informed written consent which is separate from any other consent obtained - through the individualized education program or individualized family service plan; (3) in the parents' or guardians' primary language, following the district's language access plan under section 123B.32, and with all necessary interpretation and cultural supports to ensure adequate understanding of said consent. A parent or guardian's failure to respond to a request for consent must not be considered consent to the use of seclusion.
Jessica Heiser and Erin Sandsmark	• Eliminate the use of Seclusion by 2026 per MDE recommendations. • Continue the ban on PreK-3rd Seclusions as is. • Continue the ban on PreK-3rd grade seclusions with improved implementation policy and funding for schools to adjust course, and provide support for alternative systems outside of seclusion.

	• Eliminate use of Seclusion in a different time frame, with more time to adopt improved implementation strategies for a shifting system without seclusion, that prioritizes other methods of de-escalation like Ukeru.
Greta Kjos	• Reducing or banning the use of seclusion without providing tools, supports, and training can lead to reactive measures including increased restraints, increased calls to law enforcement and/or EMS, more suspensions, home-based and level 4 placements, increased trauma and the continued disproportionate impact on BIPOC and disabled students, as well as staff and students feeling unsafe. Any successful policy toward reducing or banning the use of seclusion must be paired with investments in prevention, de-escalation, and support structures. At the core is building a culture of regulation, de-escalation and inclusion in our schools and that takes investment in time and money. • According to Ukero, they have seen the best outcomes when seclusion remains an option while alternatives are implemented. It is NAMI MN's position that investments need to be made in evidence-based alternatives and implemented as an additional tool, with accountability to staff for necessary shifts in new tools/ strategies and culture. Seclusion should remain available during implementation while the goal is to ultimately eliminate the need for seclusion.
Additional Recommendations?	

DEPARTMENT OF EDUCATION

Via encrypted email and US Mail

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on each issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue 2 is presented first for organizational purposes.

Issue 2

The Complainant alleges that, for the past calendar year, the District failed to follow due process procedures when developing the Student's individualized education program (IEP). Specifically, the Complainant alleges the District relied on District policy to unilaterally determine the provision of supplementary aids and services for the Student, specifically a one-to-one paraprofessional, instead of relying on the IEP team process to make an individualized determination regarding the Student's needs for special education and related services to enable the Student to be educated in the general education environment to the maximum extent appropriate.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. According to District records, the Student attended school within the District during the [redacted] school year, from [redacted].

2. The Complainant is the [redacted].

Student's Most Recent Evaluation

3. The Student's most recent evaluation report is dated [redacted] ([redacted] Evaluation Report) and was written by a prior Minnesota school district the Student attended. In pertinent part, the report indicates the Student has experienced significant trauma, and that "[a]nniversaries, memories and trauma dates are often difficult for [Student] to handle."

4. The Student's [redacted] Evaluation Report includes a Functional Behavior Assessment (FBA). In pertinent part, the FBA provides:

> [Student] refuses to follow adult directions and will become silly and disruptive in school settings. [Student] will frequently challenge adult directions and classroom rules. These behaviors are often associated with anxiety, defiance, task avoidance, disruption and poor self control in the school settings. The severity of these behaviors can range from being minor to very severe. The duration of these behaviors can occur anywhere from [one to two] minutes to [two to three] hours in length. . . .
>
> . . . .
>
> Behavior interventions and supports that have been used in the past have been somewhat effective. If staff is able to pre-intervene when they see that [Student] is starting to get upset, removing him from the classroom to a safe spot has been effective. The use of breaks has been beneficial for [Student] as well. These breaks help [Student's] body to be more calm as he goes back to the classroom. Small group instruction in the area of social skills has helped

> [Student] to learn the skills that he may be lacking. One-on-one paraprofessional support in the classroom has been beneficial to help [Student] keep on track as well as to model age appropriate behaviors and decrease frustrations when working on daily work. Rewarding [Student] for positive behavior has also been beneficial. This has been done through a daily point chart. [Student] is able to spend bucks that he earns in a prize box each week. The use of a break area when [Student] is not able to handle the classroom has been beneficial for helping [Student] to reset and return to the classroom settings. [Student] also benefits from using a quiet place to complete work when the classroom is busy or loud.
>
> . . . .
>
> Regulated intervention will be used as a last resort after non-verbal de-escalation techniques have been tried. The care, safety, security, and welfare of staff and students are always considered whenever regulated interventions are implemented. Parents will be called following significant behaviors.

Student's March [redacted] IEP and Behavior Intervention Plan – Paraprofessional Support

5. The Student's IEP in effect at the beginning of the [redacted] school year is dated [redacted] (March [redacted] IEP) and was written while the Student was attending school at a previous Minnesota school district. Attached to the Student's March [redacted] IEP is a Behavior Intervention Plan (March [redacted] BIP).

6. The Present Level(s) of Academic Achievement and Functional Performance (PLAAFP) section of the March [redacted] IEP provides, in pertinent part:

   "[Student] continues to have para[professional] support throughout his day to help with self regulation skills, social skills, direction following, and navigating himself throughout the day. . . ."

7. The Student's March [redacted] IEP further provides for 320 daily minutes of paraprofessional behavioral support in the general education classroom, with the accompanying explanation:

   > [Student] will need transition support from the lunchroom to recess, then back into the building. He will also need monitoring, redirection and positive reinforcement during whole group instruction and independent work times in the morning and afternoon. [Student] needs supervision and support throughout the school settings. As [Student] reaches his goals, adult time may be decreased. Behaviors observed have been running from staff, hitting staff, being verbally inappropriate and difficulty following school wide rules. [Student] also presents difficulty with using student bathrooms, so the paraprofessional support will assist with bringing him to the restroom in a different setting.

> Overall, [Student] will have adult coverage either para[professional] or teacher throughout his day.

8. The following pertinent accommodations, modifications, and support is set forth in the Student's March [redacted] IEP:

> "A paraprofessional will be available in all school settings to provide [Student] with redirection with his behavior and to help ensure safety in the school settings."

Development of Student's October [redacted] IEP and BIP – Paraprofessional Support

9. On [redacted] which was the first day of the [redacted] school year, the Student enrolled at the District. District staff sent a Notice of Team Meeting to the Student's parents that same date for an IEP team meeting on [redacted] to review and revise the Student's March [redacted] IEP.

10. Notes taken during the [redacted] IEP team meeting reflect the parties discussed, in pertinent part, providing 300 minutes of paraprofessional support to the Student during the school day.

11. Via prior written notice dated [redacted] the District proposed an IEP dated that same date. The prior written notice provides, in pertinent part, "The team considered decreasing pupil support minutes but decided against this option because [Student] requires extra support during transitions as well as core classes."

12. On [redacted] the District received the Student's parents' parental consent/objection form agreeing with some, and objecting to some, of the [redacted] proposed IEP.

13. On [redacted] District staff met with the Student's mother to discuss revisions to the Student's proposed IEP.

14. Via prior written notice dated [redacted] the District proposed an IEP dated [redacted] (October [redacted] IEP), for which the Student's parents consented in writing on [redacted] Attached to the Student's October [redacted] IEP is a BIP (October [redacted] BIP).

15. The PLAAFP section of the Student's October [redacted] IEP provides, in pertinent part, "[Student] continues to show needs that warrant significant assistance and support from teaching staff throughout his school day."

16. The Student's October [redacted] provides for 300 daily minutes of paraprofessional support in the general education setting five times per week, with the accompanying explanation:

> Pupil support staff[1] will work with [Student] for 300 minutes a day in the general education setting. Pupil support staff will work to monitor behaviors and intervene when necessary. Pupil support staff will point out triggers and

[1] During interviews, District staff clarified that it uses the term "pupil support staff" to refer to paraprofessional support.

> warning signs so that [Student] can choose to use coping skills rather than escalate to verbal or physical aggression and make preferred coping skills available to him. Pupil support staff will also modify assignments and activities so that [Student] is willing to attempt them and modify the learning environment so that [Student] is likely to be comfortable and compliant. Pupil support staff will monitor [Student's] sensory/calming breaks throughout the school day and transition [Student] to speech and other special education services throughout the school day. Pupil support staff will ensure implementation of the behavior chart and incentive program. Pupil support staff will also assist with [redacted] techniques as directed by the special education teacher per the BIP and collect data related to IEP goals and objectives.

Paraprofessional Services

17. In the written complaint, the Complainant reports, in pertinent part:

> [Student's] mother requested that [Student] have one-to-one paraprofessional support. The District stated it would not provide that service, because it does not provide that service to any student. In an email that [Student's] Special Education Teacher sent to another staff member, she stated[,] "I have told her, [Student's mother], numerous times that we do not have [one to one]. I am not sure where she is getting that idea. It specifically says in the IEP that it is up to [three] students as well." On the contrary, nowhere in [Student's] IEP does it specifically state that his paraprofessional support will be shared with up to three other students.
>
> Furthermore, a district cannot universally ban providing one-to-one paraprofessional services as this limits the range of services to student[s] with disabilities. . . .

18. During this investigation, the Complainant reported he and the Student's mother requested in multiple IEP team meetings that the Student have one-to-one paraprofessional support—that is, one paraprofessional assigned only to the Student and no other students, given the Student's behavioral needs. They reported a one-to-one paraprofessional worked well in the Student's previous school. They reported the District told them they only do "shared paraprofessionals"—that is, paraprofessionals that provide support to more than one student. The Complainant reported the District provided a one-to-one paraprofessional for the Student for the last two weeks the Student attended School in [redacted].

19. In its written response to the complaint, the District states, in pertinent part:

> IEP teams [ ] determine the amount of pupil support assistance [paraprofessional support] students will receive. The Student's IEPs indicate that each day the Student had 300 minutes of pupil support assistance and

> between 50 and 75 minutes of special education service from licensed special education staff. . . .
>
> The Special Education Supervisor did inform the Parent that the District does not list one on one paraprofessionals on the IEP and that the District defines Pupil Support Assistance as support provided by a paraprofessional or other adult to one to three children in the areas of behavior, health, activities of daily living, instrumental activities of daily living, academics, transition, or functional skills. The District's practice is to not list one on one support on IEPs because the District cannot guarantee the constant provision of one to one pupil support assistance. Additionally, since the goal is for the student to function independently, it is believed constant one to one support would not increase independence and would not enable the student to participate in the general education environment to the maximum extent appropriate.
>
> The practice did not impact the provision of adult support for the Student based on his needs. The Student was provided with adult support from one or more school staff (paraprofessional, licensed staff, or Behavior Support Specialists) during the school day.

20. During interviews, the Special Education Supervisor reported the District uses paraprofessional support for between one to three students with one adult, depending on the needs of the student. For example, the District may pair one adult with one higher needs student and two lower needs students. The Special Education Supervisor reported the District does have a number of students that have a one-to-one paraprofessional, which include, for example, students with high medical needs, or high behavioral, low cognitive students who require that level of support. The Special Education Supervisor reported that, given the Student's goals towards gaining independence, they started the Student with paraprofessional support services of greater than a one-to-one ratio.

21. The Assistant Superintendent, [redacted] similarly reported that, although the District discourages the assignment of a one-to-one paraprofessional, the District does use them when necessary and provided specific examples of students who have a one-to-one paraprofessional.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about events that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101.

3. Federal regulations at 34 C.F.R. § 300.115 provide, in pertinent part:

   (a) Each [district] must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

   (b) The continuum required in paragraph (a) of this section must –

   . . . .

   (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

4. Federal regulations at 34 C.F.R. § 300.320(a) provide, in pertinent part:

   (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include –

   . . . .

   (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –

   (i) To advance appropriately toward attaining the annual goals;

   (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and

   (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section[.]

5. Federal regulations at 34 C.F.R. § 300.42 defines "supplementary aids and services" as:

   [A]ids, 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.

6. Here, the District ensured a continuum of alternative placements, including supplementary aids and services, such as paraprofessional support, was available to the Student, as required by 34 C.F.R. § 300.115. Although not implemented specifically for the Student, District staff consistently and credibly reported the District offers one-to-one paraprofessional support as needed to students in the District.

7. Additionally, the Student's March [redacted] and October [redacted] IEPs, to which the Complainant and Student's mother consented, set forth paraprofessional services in the amounts of 320 and 300 daily minutes, respectively, in accordance with 34 C.F.R. § 300.320. Unless determined necessary by the IEP team, the Student's IEP was not required to set forth staffing ratios for paraprofessional support. *See, e.g., Reinholdson ex. rel. Simon v. Sch. Bd. of Indep. Sch. Dist. No. 11*, No. Civ. 02-4225 ADM/AJB, 2005 WL 1819976, at *6-7 (D. Minn.) ("[V]ariable paraprofessional support is in keeping with the Individuals with Disabilities Education Act's (IDEA's) mandate of providing students with education in the least restrictive environment [(LRE)].") (internal citations omitted).

Decision

The District is not in violation.

Issue 1

The Complainant alleges that, for the past calendar year, the District failed to provide services in conformity with the Student's IEP and BIP by failing to appropriately respond to the Student's behavior. The Complainant further alleges the District improperly used restrictive procedures, namely seclusion, in lieu of developing and/or implementing an appropriate BIP and/or reviewing and revising the Student's IEP to address the Student's needs and without following the statutory requirements regarding restrictive procedures.

Findings of Fact

1. The facts set forth above are incorporated herein.

Provision of Accommodations, Modifications, and Supports in Conformity with Student October [redacted] IEP

2. In the written complaint, the Complainant reports, in pertinent part:

> [Student's] IEP and BIP gave [Student] preferential seating and the "option for flexible seating." This was not followed through by staff. On two *documented* occasions, [Student] was refused a "wobble stool" that was to be designated for his use. Because of this refusal on both of these occasions, [Student] became upset. On [redacted] [Student] was denied his chair, which caused him to become triggered. On [redacted] [Student] was denied his chair and once again triggered. . . . (Emphasis in original.)

3. During this investigation, the Complainant provided notes from the District's electronic student information system, Skyward, that provide, in pertinent part:

> [redacted] [Student] was asked to use a blue student chair instead of a wobble stool. [Student] didn't respond. [Paraprofessional] counted to [five] and the [S]tudent still didn't sit in the other chair. She gave him a choice of following directions or going to [the case manager's room]. He still gave no response. She then took the wobble stool from [Student] and he stood and elbowed her. [Student] took a different wobble stool and started going around the table trying to avoid [Paraprofessional]. After a minute or two he left the room[.]
>
> . . . .
>
> [redacted] [Student] was told to wait in the hall while [ ] class left the room to transition to the other math classes. He [indiscernible] those directions and after around 15 seconds he entered [ ] room. When he came back out he asked if he got a wobble stool today. [Indiscernible], because he didn't follow the directions. He went back into [ ] room, threw his water bottle at [ ] easel white board, and left the [indiscernible] again.

4. During the investigation, the Complainant further alleged the District improperly utilized a calming space with the Student to isolate the Student for extended periods of time rather than to use the space only to take a break, as needed.

5. In its written response to the complaint, the District reports:

> The District disagrees with the allegation that services were not provided for the last calendar year. Services were provided in accordance with the [Student's] IEP and BIP while the [S]tudent was enrolled in the District[.] . . . The District modified programming and set up a separate room to address the Student's behavior needs. The Parent decided to withdraw the [S]tudent before the new IEP, or a new placement[,] could be implemented.

6. The Student's March [redacted] IEP and BIP, in effect from [redacted] contains the following pertinent information the PLAAFP section:

> In the classroom setting, [Student] continues to have paraprofessional support throughout his entire day. This support is [used] for modeling age appropriate behaviors and intervening when behaviors are not appropriate for the classroom setting. [Student] will often work [outside] of the classroom in a quieter setting after instruction has been delivered. This has been successful for [Student] because he is able to regulate his body much better in a quiet setting. [Student] continues to take breaks outside of the classroom to wind him down. . . .

. . . .

> [Student] continues [to] make great gains in the area of social and emotional skills. He has done a nice job of adjusting to the staff and routines at [school in prior school district]. [Student] continues to have para[professional] support throughout his day to help with self regulation skills, social skills, direction following, and navigating himself throughout the day. . . . If there is [] violence towards an adult or if he cannot get his body regulated, he takes his break in the school social workers [sic] office until he is regulated and ready to return to learning. This has proven to be successful and has worked with shaping his behaviors within the school settings.

7. The Student's March [redacted] IEP contains six annual goals in the areas of articulation, following instructions, self-control, group work skills, social skills, and independence in work completion, respectively.

8. The Student's March [redacted] IEP further provides for the following special education and related services:

Statements of Special Education and Related Services	**Start Date**	**Frequency**	**Indirect Minutes per Session**	**Direct Minutes per Session**	**Location**	**Anticipated Duration**
Speech/Language	[redacted]	4/week	5	5	Special education room	1 year
Behavioral Skills	[redacted]	5/week	20	30	Resource room	1 year
Behavioral Skills	[redacted]	5/week	5	30	Regular classroom	1 year
Social Skills	[redacted]	3/week		20	Resource room	1 year
Task Management Skills	[redacted]	5/week		30	Resource room	1 year

9. The LRE Explanation section of the Student's March [redacted] IEP provides:

> When out with general education students [Student] will need to be supervised due to difficulty managing himself and his body. [Student] will eat lunch with his peers in the cafeteria and will also have paraprofessional support during this time. He will come to the resource room [three] days a week during lunch for his social skills instruction. He will have adult support for his specialist time. [Student] will receive speech services [four times] per week. [Student] will be in the general education class during math instruction and will have a special education teacher in the room to work on behavioral skills. He will continue to have the grade level curriculum presented in both math and language arts and will work on each of these with adult support. [Student] will be part of a power half hour group where he will work on his task management skills. This will occur at a grade level intervention time, so [Student] will not miss out on any

core academics. If [Student's] behaviors are significant enough where he is distracting to his peer's learning or teacher's ability to teach, he will have curriculum presented outside the classroom in a smaller setting until he has regained self control and is able to be part of the classroom setting.

10. The following pertinent accommodations, modifications, and supports are set forth in the Student's March [redacted] IEP:

> [Student] will be provided breaks outside of the classroom to calm his body throughout his day.
>
> [Student] will be allowed to return to the special education classroom when upset or needing to calm down.
>
> Following instruction by the mainstream teacher, [Student] will be permitted to return to the special education classroom to complete assigned work and to access a quiet space.
>
> [Student] will be directed to return to the special education classroom when [Student's] behavior significantly disrupts the learning of others within the mainstream classroom, as determined by the classroom teacher.
>
> . . . .
>
> A paraprofessional will be available in all school settings to provide [Student] with redirection with his behavior and to help ensure safety in the school settings.
>
> School staff will be provided information regarding [Student's] disability.

11. The Student's March [redacted] BIP provides, in pertinent part:

> [Student] refuses to comply with request to follow adult directions and can be physically aggressive toward adults (hitting, kicking, pushing). . . .
>
> . . . .
>
> Replacement behaviors including learning problem solving skills through small group instruction, specifically dealing with de-escalation strategies – i.e. say "OK," or use "I" statements. Using language such as "reset" or "break" time rather than time-out. Being taught to exit a classroom on his own when his behaviors are not appropriate for the classroom time. Teaching [Student] to not run when being asked to stop doing a behavior. Teaching [Student] how to copy or handle anxieties when they surface.
>
> . . . .

> Through small group instruction, [Student] will learn self-control skills and monitor daily what challenges were presented and what skills he used in the situation. [Student] will also be positively reinforced for desired behaviors in the school settings. [Student] works very hard to earn behaviors bucks which he can spend at the end of the week. This tangible positive behavior reward system has been effective for [Student].
>
> . . . .
>
> Regulated interventions will be used as a last resort after verbal and non-verbal de-escalation techniques have been tried. The team will access the school liaison officer if there is violence towards adults and peers. This is meant to be a teaching tool for [Student]. At last resort, the team will use CPI techniques to keep both [Student] and staff safe. The care, safety, and welfare of staff and students are always considered whenever regulated interventions are implemented. [all sic]

12. The Student's October [redacted] IEP, in effect beginning [redacted] reflects the following pertinent information in the PLAAFP section: the Student "continues to present with significant emotional, behavior, and social difficulties[,]" which include, "hyperactive/disruptive behaviors, impulsivity, attention problems, defiant/rule-breaking behaviors, anxious behaviors, depressive symptoms, and interpersonal difficulties." The PLAAFP section further provides, "[Student] continues to show needs that warrant significant assistance and support from teaching staff throughout his school day."

13. The Student's October [redacted] IEP sets forth six annual goals: one in the area of communication, and five in the area of social, emotional, behavioral, which encompass similar areas as set forth in his March [redacted] IEP—that is, following instructions, self-control skills, group work skills, social skills, and independence in work completion.

14. The Student's October [redacted] IEP further provides for the following special education and related services:

Instruction or Service Provider	**Instruction or Service Provided**	**Location**	**Anticipated Frequency**	**Indirect Minutes per Session**	**Direct Minutes per session**	**Service Start Date**	**Service End Date**
[Name redacted]	Articulation	Special ed[ucation]	12 per Monthly [sic]	5	5	[redacted]	[redacted][2]

[2] This is the date the District proposed a revised IEP reflecting updated services for the Student.

Instruction or Service Provider	Instruction or Service Provided	Location	Anticipated Frequency	Indirect Minutes per Session	Direct Minutes per session	Service Start Date	Service End Date
[Name redacted]	Behavioral/Social/ Emotional - Learning Skills	General ed[ucation]	5 per Week	0	30	[redacted]	[redacted]
[Name redacted]	Behavioral/Social/ Emotional – Self Management	Special ed[ucation]	3 per Week	20	0	[redacted]	[redacted]
[Name redacted]	Behavioral/Social/ Emotional – Social Skills	Special ed[ucation]	5 per Week	0	20	[redacted]	[redacted]
[Name redacted]	Mental Health – Skills Training	Special ed[ucation]	2 per Week	5	20	[redacted]	[redacted]

15. The LRE Explanation section of the Student's October [redacted] IEP provides:

> Due to significant social skills deficits related to his emotional behavioral disorder, [Student] will have Behavioral/Social/Emotional-social skills services in the special education setting for 20 minutes direct [five] days per week. This will take place during General education Math work time. [sic] [Student] will have Behavioral/Social/Emotional-learning skills services in the general education setting for 30 minutes direct [five] days per week. This will take place during social studies/science. Due to noncompliance behaviors and physical and verbal behaviors, [Student] will have Behavioral/Social/Emotional – self management services in the special education setting for 30 minutes indirect [three] days per week. This will take place as needed.

16. The Student's October [redacted] IEP lists the following pertinent accommodations, modifications and supports:

> [Student] will be provided breaks outside of the classroom to calm his body throughout his day.
>
> Preferential seating.
>
> [Student] will be allowed to return to the special education classroom when upset or needing to calm down.
>
> [Student's] classroom setting will be changed if the team feels that [it is] driving undesired behaviors in the school setting.
>
> Following instruction by the mainstream teacher, [Student] will be permitted to return to the special education classroom to complete assigned work and to access a quiet space.

> [Student] will be directed to return to the special education classroom when [Student's] behavior significantly disrupts the learning of others within the mainstream classroom, as determined by the classroom teacher.

17. The Student's October [redacted] BIP identifies target behavior as physical aggression and non-compliance and corresponding triggers. The BIP further provides, in pertinent part:

> A calming space will be created for [Student] in his case managers [sic] area. When [Student] is physically aggressive [he] will be removed from the classroom and escorted to his case managers [sic] area. While here he will take a [five] minute break before seeing if he is ready to process. If he is not ready he will have another break and check in periodically until he is ready. The break will take place in a safe and quiet area.
>
> . . . .
>
> [Student] will be seated near the general education teacher. [Student] will have the option for flexible seating. [Student] will be seated away from peers that are known triggers of his behaviors in all learning environments. This includes peers perceived as friends that he is distracted by. [Student] will be verbally praised for instance of appropriate conversation and play with peers. When [Student] is inappropriate with adults and peers staff [sic], [Student] will state the specific behavior to enhance his understanding of activities that gain positive versus negative attention.
>
> . . . .
>
> Skills to be taught to support replacement behaviors (what underlying skills are needed for the student to utilize replacement behaviors):
> Following directions with minimal prompting, following directions that he does not agree with, determining that his body is deregulated and needs a break, knowing appropriate social boundaries, participating in motor activities that meet his motor need, coping strategies, breathing techniques, social thinking.
>
> Consequences (How he will respond to acceptable replacement behaviors):
> 1) Physical aggression: [Student] will receive positive praise for using appropriate coping strategies. [Student] will receive stickers on his chart for choosing to do the safe thing.
> 2) Non Compliance: [Student] will receive verbal praise from staff members when he is compliant. He will be able to stay in class and maintain proximity with peers. [Student] will also have a positive reward system in place with his case manager.

> Consequences (How we will respond to inappropriate behaviors)[:]
> 1) Physical aggression: When [Student] is physically aggressive [he] will be removed from the classroom and escorted to his case managers [sic] area. While here he will take a [five] minute break before seeing if he is ready to process. If he is not ready he will have another break and check in periodically until he is ready. The break will take place in a safe and quiet area.
> 2) Non Compliance: When [Student] is non compliant [sic] he will be reminded to follow directions and be redirected to the appropriate task. If he does not follow adult prompts, engage [Student] in a different yet appropriate conversation. If [Student] refuses to follow direction he will compete his work at another time in his case managers [sic] office.
>
> . . . .
>
> [redacted] trained staff may need to use holds or transports to keep [Student] and others around safe.

18. Neither the Student's October [redacted] IEP nor the October [redacted] BIP reflect how the Student's parents would like to be notified if a restrictive procedure is used with the Student.[3]

19. During this investigation, the complaint investigator toured the School to view the case manager's room and the Student's "calming room" described by the Complainant in his complaint. The case manager's room is an [redacted] suite, with a door from the main School hallway that opens into a [redacted]. Upon entering the [redacted] where District staff provide special education instruction to students. According to District staff, the [redacted] was the primary space the Student used as calming space during the [redacted] school year until about [redacted]

20. The [redacted] has an entrance—an open door frame—but no door. The [redacted] contains drop ceiling tiles, some of which are uneven and pushed up, and a large overhead light covered by a blue fabric light cover that softens the lighting. Although there is nothing on the walls or the ground, there is one covered outlet on the same wall as the entrance to the [redacted] as well as an edged, round, metal fixture approximately two to three inches in diameter that protrudes less than a quarter of an inch out of the middle of one wall, about two feet above the ground.

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[3] In its written response to the complaint, the District acknowledges the Student's October IEP and BIP fail to address how the Student's parents would like to be notified if a restrictive procedure is used with the Student.

21. Down the [redacted] next to the [redacted] is a room that served as the Student's [redacted] beginning in early [redacted] However, during interviews, District staff described the Student's [redacted] as containing a large sticker incentive chart/mural, visual calming strategies on the walls, including Zones of Regulation, and a workspace for the Student.

22. During interviews, District staff further consistently and credibly reported the Student utilized the [redacted] and, as of [redacted] the Student's [redacted] regularly when needing a break to calm down. District staff consistently and credibly reported the Student utilized the break spaces only when the Student needed a break or was experiencing a particularly triggering time of the year for him, and that they worked on the Student's IEP goals and objectives when in the calming space. District staff further reported the Student was in the [redacted] or his [redacted] and the general education classroom approximately an equal amount of the school day.

23. District staff further consistently and credibly reported the Student was given preferential seating, as set forth in his October [redacted] IEP. District staff further reported the Student regularly sat near the classroom teacher during circle time and instructional time.

24. District staff inconsistently reported whether the Student was given flexible seating options, as set forth in his October [redacted] IEP. For example, some District staff reported the Student had available options for flexible seating in every classroom, including his calming room, such as wobble stools, t-stools, a seat-bowl that sits on the floor, twist boards, and bungee cords the Student could put around the legs of chairs to kick his feet on for sensory purposes. Other District staff reported the wobble stool was offered to all students, including the Student, in the general education classroom only on a rotational basis, although District staff did not recall specific incidences in which the Student was denied the use of flexible seating, such as a wobble stool.

Use of Seclusion

25. In the written complaint, the Complainant reports:

> The [District] has failed to maintain its restrictive procedure plan. The District's plan states that "The District does not use seclusion."[4] [underlining removed for accessibility] However, the District has used seclusion procedures on [Student]

[4] The District acknowledges its Restrictive Procedures Plan states, "The District does not use seclusion." Although the District reports it did not intend to use seclusion at the School, it acknowledges it does use seclusion at a different school within the District.

> on multiple occasions. Thus, the District has failed to properly maintain a reliable plan.
>
> . . . .
>
> The District does use seclusion as a restrictive procedure and has a room in which they use to carry out this restrictive procedure. Thus, this room needs to be properly registered with the [C]ommissioner [of Education]. In failing to register the room [School] staff used as a seclusion room, the District has violated state law. (Emphasis (removed underlining) in original.)

26. The Complainant's written complaint further provides:

> [Student's] [BIP] allowed trained staff to use holds as a restrictive procedure measure when [Student] became physically aggressive. Seclusion, however, was not a defined or agreed upon restrictive procedure to be used. Despite this, [Student] was subjected to seclusion on multiple occasions. The District masked the use of seclusion as breaks. [Student's] IEP allowed staff to require him to take breaks in his case managers [sic] area when he became physically aggressive. Instead of appropriately using breaks as a calming and safety tool, staff secluded [Student] in a small room. . . .

27. The Complainant's written complaint further provides:

> In the most egregious form of seclusion by the District, staff members held mats over the seclusion room door to bar [Student] from leaving. [Student's] mother witnessed one of the occasions. The first occurred on [redacted] when she came to school to help calm [Student]. This use of seclusion was never reported or documented by the [S]chool. The second time was on [redacted] which was noted in the School's Student Discipline Report. However, this note did not document it as seclusion.
>
> Despite placing [Student] in seclusion on multiple occasions throughout the [redacted] school year, the District never completed a [redacted] Form for Restrictive Procedures as it had for the use of physical restraints. Nor did the District properly document the use of seclusion. . . .
>
> . . . .
>
> Staff failed to notify [Student's] parents after secluding him during his time at [School]. Despite [Student] being secluded on multiple occasions, [Student's] parents were not notified that [Student] had been secluded.

28. In its written response to the complaint, the District reports, in pertinent part:

> The District agrees with the allegation that seclusion was used with the Student because egress from a room called the [redacted] was barred using a [three]-foot-high mat on [redacted] Staff notes indicate the mats were also placed in front of the room entry on [redacted] and [redacted]
>
> The [redacted] does not have a door. The Student was always observed by two staff members. The primary purpose of the mat was to protect staff from being injured. The room is not registered as a seclusion room and the District does not plan to register it.

29. During interviews, District staff acknowledged using blue mats to bar the Student's egress from the [redacted] while the Student was alone in the [redacted] District staff recalled this being done as few as four times and as many as 10. District staff consistently and credibly reported egress was barred only when the Student was attempting to cause physical injury to himself or others. District staff further consistently reported staff were always watching Student while the Student was alone in the [redacted] regularly attempted verbal de-escalation with the Student during the incident, and permitted the Student to leave the [redacted] when the Student's body was calm and he was no longer being physically aggressive toward staff.

30. District staff further recalled an incident, though could not recall when or the exact circumstances, in which District staff barred egress by using the mats to contain the Student in the entire back hallway of the [redacted]. During that incident, the Student was able to enter any one of the six rooms located off of the back hallway, many of which contain desks, chairs, bookshelves, and other items.

31. District staff acknowledged they did not document as seclusion, nor notify the Student's parents, of any of incidents where District staff barred the Student's egress from a room or space at School. District staff consistently and credibly reported they did not realize they were secluding the Student.

32. During interviews, the District's Special Education Lead Teacher reported that when she saw District staff in the School barring the Student's egress in the [redacted] in about [redacted], she informed staff to immediately stop barring his egress. District staff consistently and credibly reported they did not use seclusion with the Student at School after they were informed to stop barring his egress in that manner during the [redacted] school year.

Use and Documentation of Physical Holds

33. In the written complaint, the Complainant reports:

> The District used restrictive physical holds on [Student] six times within 26 calendar days. The first hold during those 26 days took place on [redacted] and the last was on [redacted] These six incidents do not include any of the undocumented use of seclusions. Despite

> the recurrent use of holds, no formal meeting to review, modify, or consider other alternative actions or training took place. A formal meeting did not take place until [redacted] to review and revise [Student's] IEP.

34. During the time period covered by this complaint, the District provided eight [redacted] Forms for Restrictive Procedures for the [redacted] school year, which reflect 11 physical holds used on the Student on eight separate school days. The physical holds involving the Student ranged from one minute to two minutes in length. The documentation reflects the following dates and times of the physical holds:

Date of Physical Hold	Start Time of Physical Hold	End Time of Physical Hold
[redacted]	9:45 a.m.	9:47 a.m.
[redacted]	9:19 a.m.	9:20 a.m.
[redacted]	9:21 a.m.	9:22 a.m.
[redacted]	9:07 a.m.	9:09 a.m.
[redacted]	9:11 a.m.	9:13 a.m.
[redacted]	7:53 a.m.	7:54 a.m.
[redacted]	7:56 a.m.	7:57 a.m.
[redacted]	7:40 a.m.	7:41 a.m.
[redacted]	11:40 a.m.	11:41 a.m.
[redacted]	9:03 a.m.	9:04 a.m.
[redacted]	9:12 a.m.	9:14 a.m.

35. As the District acknowledges in its written response to the complaint, notes taken by District staff on [redacted] reflect a physical hold was used with the Student from about 8:36 a.m. to about 8:37 a.m. District staff did not fill out a [redacted] Form for the [redacted] incident, and there is no documentation reflecting the Student's parents were notified.

36. The eight [redacted] Forms, as well as District staff notes for the incidents, reflect that the Student was engaging in physically aggressive behavior immediately preceding the physical hold. For example, the notes from the [redacted] incident reflect, "[Student] hit [District staff] [four times]—punch arm, threw shoes, threw granola bar." Similarly, the [redacted] Form reflects "Student was hitting and kicking staff for three minutes continuously," as well as reports injuries to 13 different individuals, including eight staff and five students.

37. During interviews, District staff reported that, although the eight Critical Incident Forms reflect post-physical holding use de-briefings occurred among District staff, no such de-briefs occurred.

[redacted] ***IEP Team Meetings***

38. Documentation provided by the District reflects the following IEP team meetings occurred during the [redacted] school year, with the following documented purposes:

IEP Team Meeting Date	Documented Purpose
[redacted]	Review the Student's March [redacted] IEP and BIP

IEP Team Meeting Date	Documented Purpose
[redacted]	Student's Outside Therapist to discuss trauma and supports
[redacted]	No documented purpose[5]
[redacted]	Review the Student's October [redacted] IEP and BIP
[redacted]	Review the Student's October [redacted] IEP and BIP

39. During interviews, District staff consistently and credibly reported discussing at IEP team meetings contraindications for using restrictive procedures with the Student. District staff specifically recalled the Student's history of trauma being a primary contraindicator, and the IEP team agreed physical holds would only be used in an emergency situation where the Student was injuring himself or others.

40. District staff further consistently and credibly reported discussing during IEP team meetings possible interventions for the Student other than restrictive procedures, such as positive behavioral interventions and supports, creating and using a separate calming space, and use of the [redacted].

41. In pertinent part, notes taken contemporaneously with the [redacted] meeting[6] reflect the parties present discussed the Student's needs and programming, and how to create a "Trauma Sensitive Learning Environment" for the Student. The notes further provide, in pertinent part:

    - Revise schedule
    - Add times to be a helper
    - Have a list of visual jobs for him
    - Create safe place
    - Teach the skill to go to the safe place when dysregulated
    - Create visuals for schedule
    - Create visual for expectations and rewards
    - Time to teach skills
    - Change restroom routine – use staff restroom
    - Train para[professionals] and staff working with him
    - In[-]service class
    - Explore technology opportunities for learning
    - Social Thinking times in schedule
    - Change morning routine – meet [paraprofessional] and record lunch in office
    - Safe place first thing in the morning
    - Keep specials, snack time
    - Discuss language arts time

[5] The District did not provide a Notice of Team Meeting or Record of Team Meeting for the [redacted] meeting.
[6] Although the notes are dated [redacted], this date appears to be in error and should instead reflect [redacted].

42. During interviews, the Assistant Superintendent, who was the [redacted] School Principal, recalled that, on about [redacted], she discussed with the Student's mother some concerns regarding the Student's behavior at School and that the holidays are a particularly trauma-inducing time for the Student. Based on that discussion, the then-School Principal sent an email to District staff dated [redacted], which provides:

> As you know, [Student] is struggling as we head into the break. We put a new plan into place at the end of last week given that [Student] was showing us through behavior that he wasn't able to be successful. We'd like to give that plan some time after break as well.
>
> However, for the next three days, we will have [Student] work out of the safe zone in the [redacted] We will attempt to have him go to class for the first 10 minutes of the period (specials, LA [Language Arts], math) but if he escalates physically he will remain in the safe zone through the rest of the week.
>
> We want to be sure that all of our staff, along with [Student], are physically and emotionally safe so are making this adjustment to his plan for the week. We're asking that the paraprofessional staff who work with [Student] help support him in the [redacted]. We're also asking [Social Worker], her interns, and [Student's case manager] to support him in that room as well. While we want to hold high academic standards, we also want to decrease anxiety and stress for [Student] for the upcoming days. Please partner with [Student's case manager] to decide how much pressure to put on academics.

43. During this investigation, the Student's mother reported she understood the Student would be reporting to his general education classroom for about 10 minutes at the start of each subject, and then taking a break in the [redacted] to regroup. However, she reported District staff kept the Student in the [redacted] almost the entirety of the school day on [redacted], even when the Student was calm. She reported, for example, she visited the Student for lunch during one of those three days, and the Student was calm and stated he wanted to go back into his general education classroom to see his friends. She reported she believed the District improperly kept him in the [redacted] when the Student was calm and not needing a break.

44. During interviews, District staff consistently and credibly reported the Student had some behavioral incidents right away in the mornings on [redacted], and given the Student's trauma is triggered around holidays, District staff utilized the [redacted] with the Student more frequently those three days. District staff further reported they worked on the Student's IEP goals and objectives while in the [redacted] on [redacted].

45. On [redacted], the Student had a behavioral incident at School, for which the District issued him a two-and-a-half day suspension from School. In pertinent part, notes of the behavioral incident reflect the Student "looked at the para[professional] in the eyes and punched her in the nose. The para[professional] was injured and was required to leave work to seek medical attention from a doctor."

46. According to a Notice of Team Meeting, the parties met for an IEP team meeting on [redacted], to review and revise the Student's IEP. According to the Notice of Team Meeting, the following individuals attended: the Student's parents, the Student's outside therapist, the Student's case manager, the Executive Director of Student Services, the School Social Worker, the Director of Special Education Programs, the speech-language pathologist, the Special Education Lead Teacher, the School Principal, the occupational therapist, and the Student's general education teacher.

47. The [redacted] meeting agenda reflects the parties discussed, in pertinent part: supports and benefits needed for the Student to be successful in School, communication between the Student's parents and the District, behavioral data on the Student, programming options, the Student's October [redacted] BIP, and specific steps to follow when the Student's behavior is heightened.

48. The District did not provide notes from the [redacted] meeting. During interviews, District staff consistently reported the parties discussed special education programming at a separate facility, in which the Student's parents were not interested.

49. Via email to the School Principal later on [redacted] the Student's mother stated:

> Due to concerns for [Student's] safety, and the trauma he is incurring from your staff and your school, and the lack of understanding for trauma and how to work with those with trauma, today [redacted] was [Student's] last day at [School] and the [District].
>
> I will come to gather his things (from his room, from his locker, from his desk, from the [redacted], art, and anywhere else) and the rest of my copies of the communication papers from the black binder tomorrow[,] [redacted] around 9:30 [to] 9[:]45[a.]m.

50. The School Principal responded via email to the Student's mother that same date, stating:

> I am truly sorry to learn that [Student] will not return to our school. On behalf of all of us who have worked with [Student], I wish him and your family all the best. I will have his belonging[s] ready for you by 9:30 tomorrow in the main office.

Proposed Corrective Action

51. In its written response to the complaint, the District proposes the following corrective action:

    - Provide training to administrators, all licensed special education staff, Behavior Support Specialists and paraprofessionals on the use of restrictive procedures[;] specifically[,] that barring egress from a room is defined as seclusion and is not to be used in schools other than [school name omitted].

- Remind all licensed special education staff, Behavioral Support Specialists and paraprofessionals of the procedures for using and documenting the use of physical holds, including the parental preferences for notifications in the BIP/IEP.

- Work with MDE to determine how the alleged incidents of seclusion should be reported in the annual report on restrictive procedures.

- Update the Plan for Restrictive Procedures to include the use of seclusion at the [school name omitted]. (Plan for Restrictive Procedures[.]) The District would continue to prohibit the use of seclusion at other buildings.

- Continue to provide training to all licensed special education staff, Behavior Support Specialists and paraprofessionals on trauma.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about events that occurred prior to [redacted], such facts are for contextual purposes only.

Provision of Accommodations, Modifications, and Supports in Conformity with Student's October [redacted] IEP

2. School districts must make available to each eligible student a FAPE, consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101.

3. Skyward documentation reflects the District refused to allow the Student to use a wobble stool on two occasions—[redacted] and District staff reported the Student did not have the consistent option to utilize a flexible seating in the general education classroom, given that some District staff reported a wobble stool was offered to all students, including Student, only on a rotational basis there. Therefore, the District did not provide flexible seating options to the Student in conformity with his October [redacted] IEP and BIP, in violation of 34 C.F.R. § 300.17.

4. The record, including District staff interviews, supports a conclusion that District staff allowed the Student to use the [redacted] to take a break when needed, or for preventative behavioral strategies during times of the year that are particularly triggering for him, in conformity with his October [redacted] IEP and BIP.

Use and Documentation of Restrictive Procedures

5. Minnesota Statutes, section 125A.0941(f) defines restrictive procedures as: "the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child."

6. Minnesota Statutes, section 125A.0941(g) defines seclusion as: "confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion."

7. Minnesota Statutes, section 125A.0941(c) defines physical holding as:

> Physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service procedure; or
>
> (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

8. Minnesota Statutes, section 125A.0941(b) defines emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

9. Minnesota Statutes, section 125A.0942, subdivision 3(a) provides, in pertinent part:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

(4) staff directly observes the child while physical holding or seclusion is being used.

10. As the District acknowledges, on at least four and as many as 10 occasions during the [redacted] school year, including on at least [redacted] and [redacted], District staff confined the Student alone in the [redacted] and at least once in the [redacted], and prevented the Student from leaving the room or hallway, which constitutes seclusion as defined by Minnesota Statutes, section 125A.0941(g).

11. As the District acknowledges, and as the record, including District staff notes and [redacted] Forms, reflects, District staff physically held the Student, as defined by Minnesota Statutes, section 125A.0941(c), 12 times on nine separate school days, between [redacted].

12. The record, including District staff interview, District staff notes, and [redacted] Forms, support a conclusion that District staff used seclusion and physical holds with the Student only in emergency situations to protect the Student or others from injury, in accordance with Minnesota Statutes, section 125A.0941(b), (c), and (g), and section 125A.0942, subd. 3(a)(1)-(4). Specifically, District staff used seclusions and physical holds only to protect the Student and others from physical injury and only when the Student had escalated to the point of hitting, kicking, or punching District staff or others.

13. Minnesota Statutes, section 125A.0942, subdivision 1, provides, in pertinent part:

(a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:

(1) Lists the restrictive procedures the school intends to use[.]

14. As the District acknowledges, by maintaining a Restrictive Procedures Plan that reflects the District does not use seclusion at any school within the District, the District failed to maintain a Restrictive Procedures Plan that accurately lists the restrictive procedures the District intends to use at each school within the District, in violation of Minnesota Statutes, section 125A.0942, subd. 1(a)(1).

15. Minnesota Statutes, section 125A.0942, subdivision 3(a)(6) provides:

(6) [T]he room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others[.]

16. Minnesota Statutes, section 125A.0942, subdivision 3(a)(7) provides:

(7) [B]efore using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the [C]ommissioner [of Education], who may view that room.

17. As the District acknowledges, the [redacted] has not been registered with the Commissioner of Education as a seclusion room. Additionally, the [redacted] does not have a secure ceiling, as the drop ceiling tiles were uneven and pushed up, and contains a protruding round metal object that the Student could have used to injure himself. Likewise, the [redacted] contain many objects, such as tables, chairs, and bookshelves, the Student could have used to injure himself or others. Therefore, the District secluded the Student in a room—[redacted]—and a space—[redacted]—that do not meet the statutory standards for seclusion rooms, in violation of Minnesota Statutes, section 125A.0942, subd. 3(a)(6)-(7).

18. Minnesota Statutes, section 125A.0942, subdivision 3(a)(5) provides:

(5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding began and the time the child was released; and

(iv) a brief record of the child's behavioral and physical status.

19. Minnesota Statutes, section 125A.0942, subdivision 2(b) provides:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

20. As the District acknowledges, on at least four and as many as 10 occasions during the [redacted] school year, including on at least [redacted], the District did not document the use of seclusion with the Student, did not conduct a post-use debriefing, and did not notify the Student's parents of the use of seclusion. Similarly, as the District acknowledges, the District did not document the use of a physical hold with the Student on [redacted], did not notify the Student's parents the same day or within two days of the use of the [redacted] physical hold, and did not conduct any post-use debriefings when District staff used physical holds with the Student. Therefore, the District failed to follow the documentation and notification requirements for the use of restrictive procedures, in violation of Minnesota Statutes, section 125A.0942, subds. 2(b) and 3(a)(5).

21. Minnesota Statutes, section 125A.0942, subdivision 2(f) provides:

> An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

22. As the District acknowledges in its written response to the complaint, the District failed to indicate in the Student's October [redacted] IEP or BIP how the Student's parents want to be notified when a restrictive procedure is used on the Student, in violation of Minnesota Statutes, section 125A.0942, subd. 2(f).

23. Minnesota Statutes, section 125A.0942, subdivision 2(c) provides:

> The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a

child's annual individualized education program meeting when the child's individualized education program provides for using restrictive procedures in an emergency.

24. Minnesota Statutes, section 125A.0942, subdivision 2(d) provides:

> If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

25. Minnesota Statutes, section 125A.0942, subdivision 2(e) provides:

> At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

26. The District failed to hold meetings of the Student's IEP team within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days during the [redacted] school year, in violation of Minn. Stat. § 125A.0942, subd. 2(c). For example, records provided by the District reflect District staff used physical holds on the Student on [redacted], but did not hold an IEP team meeting until [redacted]. Similarly, records provided by the District reflect District staff used a physical hold on the Student on [redacted] and seclusion on [redacted], but did not hold an IEP team meeting until [redacted].

27. The record, including District staff interviews and notes of IEP team meetings, support a conclusion that members of the IEP team discussed possible interventions to use with the Student in light of his behavioral concerns during the [redacted] and [redacted] IEP team meetings, including positive behavioral interventions and supports such as adding times for the Student to be a helper, creating a separate calming room for the Student, creating a "trauma sensitive learning environment" for the Student, and use of the [redacted], with the Student, in accordance with Minn. Stat. § 125A.0942, subd. 2(d).

28. The record, including District staff interviews, supports a conclusion that, during the [redacted] and [redacted] IEP team meetings, the IEP team reviewed relevant medical and psychological information the Student's parents provided that may contraindicate the use of physical holds with the Student, in accordance with Minn. Stat. § 125A.0942, subd. 2(e).

Decision

1. The District violated 34 C.F.R. § 300.17 when it failed to provide accommodations, modifications, and supports to the Student in conformity with his IEP by failing to provide flexible seating options to the Student in conformity with his October [redacted] IEP on at least [redacted].

2. The District violated Minn. Stat. § 125A.0942, subd. 1(a)(1), when it failed to maintain a Restrictive Procedures Plan that accurately lists the restrictive procedures the District intends to use at each school within the District.

3. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(6)-(7), when it secluded the Student in a room and space that do not meet the statutory standards for seclusion rooms.

4. The District violated Minn. Stat. § 125A.0942, subds. 2(b) and 3(a)(5), when it failed to follow the documentation and notification requirements for the use of restrictive procedures, including failing to document the use of seclusion, failing to document one use of a physical hold, failing to conduct post-use debriefings for any restrictive procedures, and failing to notify the Student's parents the same day or within two days of the use of seclusion and the use of one physical hold, from about [redacted].

5. The District violated Minn. Stat. § 125A.0942. subd. 2(f), when it failed to indicate in the Student's October [redacted] IEP or BIP how the Student's parents want to be notified when a restrictive procedure is used on the Student.

6. The District violated Minn. Stat. § 125A.0942, subd. 2(c), when it failed to hold IEP team meetings within 10 calendar days after District staff used restrictive procedures on the Student on two separate school days within 30 calendar days, during the [redacted] school year.

Corrective Action

The District's proposed corrective action mentioned above is accepted with the following additional requirements:

1. Within 30 calendar days of this complaint decision, the District will contact Ellen Seibert at MDE at ellen.seibert@state.mn.us or 651-582-8620, to discuss the time, date, and structure of the District's training for School special education staff on providing services, including accommodations, modifications, and supports, in conformity with IEPs, consistent with 34 C.F.R. §§ 300.17 and 300.101.

2. Within 30 calendar days of this complaint decision, the District will contact Ellen Seibert at MDE to discuss the time, date, and structure of the District's training to all District administrators and special education staff regarding trauma-informed practices.

3. Within 30 calendar days of this complaint decision, the District will contact Ellen Seibert at MDE to discuss the time, date, and structure of MDE's training for District administrators and special education staff regarding the use of, and due process related to, restrictive procedures, consistent with Minn. Stat. §§ 125A.0941 and 125A.0942.

4. Within 30 calendar days of this complaint decision, the District will provide to Ellen Seibert at MDE the written reminder it has provided to all licensed special education staff, Behavioral Support Specialists, and paraprofessionals of the procedures for using and documenting the use of restrictive procedures, including the parental preferences for notifications in the BIP/IEP, and conducting post-use debriefings.

5. Within 30 calendar days of this complaint decision, the District will contact Ellen Seibert at MDE to discuss how to report prior, unreported incidents of seclusion at the District.

6. Within 30 calendar days of this complaint decision, the District will provide to Ellen Seibert at MDE the District's updated Restrictive Procedures Plan that accurately lists the restrictive procedures the District intends to use at each school within the District.

7. All training and related corrective action must be completed by [redacted]. Verification of completion of training must be submitted to Ellen Seibert at MDE no later than [redacted].

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the Ellen Seibert at 651-582-8620.

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: [redacted]

DEPARTMENT OF EDUCATION

Via encrypted email and US mail

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of Students from [redacted]

Dear [redacted]

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] and all other students with disabilities (Students) attending [redacted] in [redacted] (District) who utilized the [redacted] room inside the [redacted] and/or the [redacted] room inside the [redacted] during the [redacted] school year. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted] one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted] The District provided a written response to the complaint on [redacted] The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges that during the [redacted] school year, the District improperly used [redacted] rooms," including the [redacted] room inside the [redacted] and/or the [redacted] room inside the [redacted] at [redacted] (School) for seclusion and/or disciplinary removals without following proper procedures.

Findings of Fact

1. The Students are eligible for, and in need of, special education and related services who attended the School for a period of time during the first half of the [redacted] school year and utilized one of the [redacted] rooms" for various purposes.[1]

2. The School is an elementary school within the District. [redacted] serving primarily students with autism and emotional or behavioral disorders. The District reports that Staff and Students started using these spaces, including the [redacted] rooms described below, at the start of the [redacted] school year.

3. The Complainant is [redacted]

4. The Complainant alleges:

> [District] staff are using a padded room for student discipline, parents are not notified when their child is in the padded room, and the school staff is not documenting when/length of time/the reason the child was required to be in the padded room.

5. The District reports:

> The District believes that the use of the [redacted] space in both the [redacted] [[redacted] Room A] and in the [redacted] program [[redacted] Room B] are being used appropriately. The District also follows policies and procedures when incidents involving student restraint or seclusion are deemed necessary.

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[1] The following Students were eligible for, and in need of, special education and related services who attended the School for a period of time during the first half of the [redacted] school year and utilized one of the [redacted] rooms" for various purposes: [redacted]

> The [redacted] room spaces in each of the two special education areas are structured for different uses by the staff and students. The use of the space in the [redacted] [[redacted] Room A] is less structured, while the space in the [redacted] Room B] has a more defined purpose.

6. [redacted] Room A is a small room located within the [redacted] which the District reports is available for use by any special education student at the School. The District reports that 11 Students used this room, for varying purposes, between September [redacted] and December [redacted].[2]

7. [redacted] Room B is a small room located within the [redacted] used exclusively by students within the [redacted]. The District reports that 10 Students used this room, for varying purposes, between September [redacted] and December [redacted].[3]

8. [redacted] Room A and [redacted] Room B have the same features and dimensions. Each room is separated from the hallway or common space by a door with a window. The doors do not lock. Each [redacted] room includes an outer section, measuring five and a half feet deep by five and a half feet wide, and an inner section, also measuring five and a half feet by five and a half feet. The two spaces are delineated by a doorframe (with no door) measuring 36 inches wide, resulting in walls measuring 14 inches wide on either side of the doorframe. The inner section of the [redacted] room has padded walls and no other fixtures. The outer section of each room includes a light switch that can be operated manually or by a motion sensor.

9. During a site visit, the rooms were observed to be empty of objects when not in use, with the exception of one or two gym mats and, in one room, a small beanbag. At another time during the site visit, both rooms were observed to be in use. In [redacted] Room A, the lights were turned off, and a Student was observed in the inner section of the room, working with an occupational therapist and a portable sensory light. In [redacted] Room B, a Student was observed napping in the outer portion of the room with the lights turned off.

The District's Restrictive Procedures Plan (RPP)

10. The District's RPP was revised in August [redacted]. The RPP provides:

> In the event of an emergency, [District] intends to use the restrictive procedure of physical holding... [District] intends to use the following [redacted] holds, taught to all staff administering holds through [redacted] training:

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[2] District staff reported that the following Students used [redacted] Room A, for various purposes, during the time period covered by the complaint: [redacted]

[3] District staff reported that the following Students used [redacted] Room B, for various purposes, during the time period covered by the complaint: [redacted]

> (1) [redacted] Higher-level holding in a seated position; (2) [redacted] Higher-level holding in a standing position; (3) [redacted] Team control position; and (4) [redacted] Children's Control position... [District] does not use the following restrictive procedure: seclusion.

11. The RPP further provides that District staff "will implement a range of positive behavior strategies as a proactive approach to teaching positive behavior skills to students, thereby reducing students exhibiting challenging behaviors and the need for physical holds." The RPP further provides a partial list of positive behavior strategies utilized at the District, including redirection, correction, staff escort to breakout space, allowing a student to go to a safe place to "relax/regroup," verbal de-escalation, processing with staff, and direct instruction of social skills and behavior management.

12. The RPP further describes that District staff will receive training on behavior management, and further describes that all District staff employed at School received training in 2016 on "non-verbal classroom management skills and strategies that educators use in order to foster student independence and maximize engagement, while preserving relationships between the adults and children." The District provided documentation that on [redacted] CPI de-escalation training was provided to 16 new paraprofessionals.

13. The RPP further describes how the District will monitor and review the use of restrictive procedures, including a process for reporting the use of restrictive procedures and conducting post-use debriefing meetings. A copy of the Districts "Restrictive Procedures Form" for physical holding is attached to the RPP and includes data fields for the following information: a description of the incident that led to the physical holding or seclusion, a description of the physical holding; why a less restrictive measure failed or was determined by staff to be inappropriate or impractical, the time the physical holding or seclusion began and the time the student was released, and a brief record of the student's behavioral and physical status.

14. The RPP also identifies an oversight committee, including a mental health professional, an expert in positive behavior strategies, a special education administrator, and a general education administrator, and outlines a quarterly meeting schedule for the committee. The District reports that the oversight committee met most recently on [redacted] Notes from this meeting document that the oversight committee discussed a recent increase in restrictive procedures, due potentially to recent construction, requested data regarding a potential increase in restrictive procedures on late start days, and a recommendation that students with multiple restrictive procedures be considered by district-wide behavior team for additional interventions.

15. The RPP further describes that District staff members who use restrictive procedures, including paraprofessionals, receive [redacted] training in the 12 skills and knowledge areas, including District policies and procedures for timely reporting and documenting incidents involving the use of a restrictive procedure and school wide programs on positive behavior strategies. The District provided documentation that a District administrator is a certified [redacted] instructor with an active certification. The District further provided documentation that this individual provided [redacted] training to all relevant staff in [redacted].

16. The RPP further provides links to available mental health services.

17. Neither of the calming rooms have been registered with MDE as seclusion rooms. The District's special education director acknowledged that neither room has been registered, and reports that the District does not intend to register either room as a seclusion room.

Student Individualized Education Programs (IEPs)

18. At the start of the time period covered by the complaint, all 21 Students had IEPs that had been reviewed within the past year. IEPs for eight of these Students included a positive behavior intervention plan (PBIP) for the Student.[4] For example, [redacted] PBIP provides, in part:

> Instead of engaging in problematic behaviors to avoid academic tasks: [redacted] needs to learn strategies for seeking assistance or following directions. When needing to escape, [redacted] can be taught how to appropriately escape from a task or activity such as requesting a break...
>
> If [redacted] attempts to escape a task or activity, provide him with an alternate way of completing the task. Provide him with one-two prompts using an alternate way of completing the tasks and then provide him with wait time to initiate the task. Avoid providing [redacted] with an adult audience when he engages in these behaviors. Offer him a sensory break or a walk... If he does not respond to the prompts and is disruptive to the classroom, bring him into the hallway to re-teach. The goal is to re-enter the classroom and finish the assigned activity.
>
> If [redacted] becomes upset walk him to the calming room so he can take a quiet break free of distractions and an audience.
>
> Give him positive praise for transitioning, use a visual for regulation and use minimal or no words so he can calm down.

19. Each Student's PBIP includes, as part of the plan for reducing or responding to the Student's behavior, a plan for the Student to take breaks outside of the classroom. For example:

> [redacted] EP: "[S]cheduled breaks will occur throughout [redacted] day. In addition, he will be allowed to initiate a break on his own when he feels that he is becoming frustrated."

[4] IEPs for [redacted] included a PBIP for the Student.

> [redacted] IEP: "If Jack engages in destructive or injurious behaviors, then call case manager or [special education] staff. He can go to a break with staff or to the quiet room."
>
> [redacted] IEP: "Josiah is typically redirected either with words or with a visual... he may be escorted to a calming area to de-escalate."

20. Although 13 Students do not have PBIPs in their IEPs, most of their IEPs include some positive behavior supports, including, for example, paraprofessional support, sensory tools and strategies, scheduled sensory breaks, and positive reinforcement. For example, [redacted] IEP provides, "Break times will be available to [redacted] when he is visually upset, as requested by [redacted] or observed by staff. [redacted] will also have [two] scheduled breaks out of class for regulation (one in the morning, one in the afternoon)." [redacted] IEP provides for [redacted] to receive "a reward system for good choices, smiles, pieces of a picture, etc. Rewards can be earned based on the agreement of what is needed to earn the reward (30 smiles, [five] pieces of the picture, etc.)."

21. The IEPs for 11 Students provide for the use of restrictive procedures on the Student in an emergency.[5] For example, [redacted] IEP provides, "In the event that [redacted] poses a safety risk to himself, other students, or school staff, it may be necessary for trained school staff to use non-violent physical crisis intervention techniques." [redacted] EP provides the following regarding restrictive procedures:

> When [redacted] begins showing unsafe behaviors towards others and himself (such as kicking, hitting, biting, climbing/jumping on furniture that is unstable), a restrictive procedure will be used. The procedure will end when [redacted] body is calm and safe, and he is able to take deep breaths and control. After a restrictive procedure, [redacted] will take a calming break in his safe place.

22. None of the IEPs for these Students document how the Student's parent wants to be notified when a restrictive procedure is used, or indicate whether the Student has any known medical or psychological limitations that contraindicate the use of a restrictive procedure.

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[5] IEPs for [redacted] provided for the use of restrictive procedures on the Student in an emergency.

23. However, evaluation plans for five of the 11 Students whose IEPs provide for the use of restrictive procedures document that, in completing the evaluation report, the Student's IEP team considered whether the use of restrictive procedures might be contraindicated for psychological or health reasons.[6] For example, [redacted] May 11, 2018 evaluation report provides the following:

> The team has considered any existing health concerns that may be contributing to the behavior... whether any restrictive intervention may be contraindicated for psychological or health reasons. The team has considered that [redacted] does not have any psychological or health conditions that would contraindicate the use of restrictive procedures when absolutely necessary to ensure the safety of [redacted] and peers or educational personnel.

24. However, for the remaining six of the 11 Students whose IEPs provide for the use of restrictive procedures, neither the Students' IEPs nor their evaluation plans provide any evidence that the Students' IEP teams considered whether the use of restrictive procedures might be contraindicated for psychological or health reasons.[7] Although [redacted] case manager reports that the IEP team annually discussed whether there were contraindications for the use of restrictive procedures with [redacted] District staff reported that, they do not recall having a conversation regarding contraindications for the other five Students.[8] For example, one case manager reported:

> I don't recall that being a part of our IEP meetings. Typically the students that come into my program are no strangers to restrictive procedures, nor [are] their parents. When a restrictive procedure does happen, the parent is notified the same day and that is their opportunity to communicate about what happened.

25. In addition, the IEPs for five of the 11 Students whose IEPs provide for the use of restrictive procedures document that the Students' IEP teams do not need to meet after two restrictive procedures are used

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[6] Evaluations for the following Students indicate that the Student's IEP team considered whether restrictive procedures might be contraindicated for the Student for psychological or health reasons: [redacted]

[7] Neither IEPs nor evaluation plans for [redacted] provide any evidence that the Student's IEP team considered whether the use of restrictive procedures might be contraindicated for psychological or health reasons.

[8] District staff reported that they did not recall having a conversation regarding whether the use of restrictive procedures might be contraindicated for [redacted] During the time period covered by this complaint, District staff used one or more restrictive procedures on [redacted]

on two separate school days within a 30 day period.[9] For example, [redacted] IEP provides the following:

> In the event that [redacted] poses a safety risk to himself, other students, or school staff, it may be necessary for trained school staff to use non-violent [p]hysical [c]risis intervention [t]echniques. Team agreed that in the event of two restrictive procedures within 30 days a meeting does not need to be held unless a team member request[s] a meeting.

[redacted] *Room A*

26. [redacted] Room A is located within the District's [redacted] The District reports that the [redacted] was built to house special education staff and programming available to all special education students within the building. District staff reported that [redacted] Room A is one room that is available for a variety of staff and student uses, in addition to a sensory room, a lounge, and other spaces.

27. The Complainant reports:

> On October 23, 2019, I called [redacted] regarding his upcoming IEP meeting. During the phone call [redacted] shared that [redacted] has been telling her that teachers have been putting him in a padded room at school. She stated that [redacted] told her he is in the room alone and the teacher stands in front of the door so he [cannot] get out... [redacted] stated that the [District] has never informed her that her son was put in a padded room.
>
> The next day I spoke by phone to [Staff] to let her know what [redacted] shared with me regarding [redacted] being put in a padded room. [Staff] stated that [redacted] has been put in the "[redacted] room" two times this school year when he is refusing to stay in the classroom and refusing to follow directions from staff. She said that she stands by the door to block him from running out until he calms down and is able to follow directions.
>
> [Staff] stated during [redacted] IEP meeting that the padded room is not a seclusion room and the school is not required to have cameras in the area of the padded room [or] notify parents when their child is placed in the room, and documentation is not required.

---

[9] IEPs for [redacted] indicate that the Student's IEP team does not need to meet after two restrictive procedures are used on the Student on two separate days within 30 days.

28. The District reports:

> The [redacted] space in the regular [redacted] Room A] is designed to be one quiet space option for students who have a variety of sensory, behavior, adaptive, and processing needs. [redacted] Room A] has a variety of items that might be used by students (based on their own preference) such as bean bag chairs, blankets, toys, sensory lights, and mats. During the [redacted] school year, several students have learned on their own and through coaching by the special education staff how they can effectively use the space to calm their bodies and refocus so as to continue with their school day. [redacted] Room A] is considered one of many program space options that students may utilize under the direction and supervision of the special education staff.
>
> In the event of a significant behavioral incident which does require the [redacted] trained special education staff to perform a restrictive procedure, [redacted] Room A] (if available) is used for that purpose. This space provides the best opportunity for privacy and self-dignity for the student during a time of severe emotional distress. It is also a space that provides the staff with the ability to monitor the student during extreme physical behavior episodes. If a restrictive procedure is used (in any location), the proper documentation and notifications are completed per district procedures. In the [redacted] Room A] area, visual aids and written directions and prompts are posted as reminders for proper procedures in the event that any restrictive procedures are necessary.

29. During interviews, District staff reported that [redacted] Room A was used by 11 Students during the time period covered by the complaint. The IEPs for the majority of these Students provide for the Student to spend less than 60 percent of their time outside the general education setting.[10]

30. During interviews, Staff reported that these 11 Students used [redacted] Room A for a variety of purposes. Staff reported, "[We have] been teaching our kids that it is a private room for you to go to when [you are] upset." District staff further reports that when a Student is upset and chooses to use [redacted] Room A, Staff will ask if the Student wants a staff member with them, and let the Student decide if they want the door open or closed. For example, Staff report that at the start of the 2019-20 school year, [redacted] used [redacted] Room A a few times when he was crying and wanted privacy. He entered

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[10] IEPs for the following Students provide for the Students to spend less than 21 percent of their day outside of the regular education environment: [redacted] IEPs for the following Students provide for the Students to spend between 21 percent and 60 percent of their day outside of the regular education environment: [redacted] IEPs for [redacted] provide for these Students to spend more than 60 percent of their day outside of the regular education environment.

[redacted] Room A by himself, while Staff monitored him from outside the room with the door open, and after he had "composed himself," he left the room on his own and returned to class.

31. Staff further report that some of the younger Students take naps inside the inner room, usually with a paraprofessional sitting inside the room with them or with the door propped open and a staff member nearby. District staff further reported that Students occasionally use [redacted] Room A as a quiet space to work on assignments or take tests.

32. Staff reported that for most Students, [redacted] Room A is a space that the Student can choose to use when their behaviors or emotions are dysregulated and they need a separate, calming space to relax and deescalate with staff assistance or supervision. For example, District staff reported that [redacted] uses [redacted] Room A because both home and her classroom can get "busy" for her, and if she needs a break, she uses a break card to let Staff know that she needs quiet time. Staff report that [redacted] often requests a sensory light from Occupational Therapy, or extra mats and blankets so that she can build a fort. Staff further report that during this time they either sit inside [redacted] Room A with [redacted] or prop the door open and monitor from outside the room, and the Student returns to her classroom when she is ready to do so.

33. Staff also reported that [redacted] has used the room twice when he was demonstrating escalated behavior, including running through the building and screaming. A District Staff member reports that, each time, [redacted] took her hand and walked to the calming room with her, and they stayed together in the calming room to talk about how [redacted] was feeling and the "size of the problem," until [redacted] was ready to go to class. Staff further reported that after [redacted] expressed concerns about the [redacted] room in early November, the District stopped allowing [redacted] to use it, although he has requested to do so.

34. However, District staff also reported that [redacted] Room A is used for seclusion at times. Staff reported that when a Student is hitting and kicking District staff, a gym mat is used to seclude the Student in the inner, padded portion of the room. Staff further reported that they hold the mat up, across the doorway between the inner and outer portion of the room. Staff report that the mat is usually held "about chest-height" on the adults, so the adults can always see the Student and most Students can see over the mat as well. Staff further reported that, during these incidents, two staff members hold the mats up, standing behind the partial walls, so they can use the walls to block their body, while a third staff member observes. Staff further reported that during these incidents they try not to talk, but offer short simple directions like "safe feet," "calm body," or "feet on the floor." Staff further report that, during these incidents, Students are generally not clamoring for Staff to talk with them but are focused on hitting or kicking the walls or the mat or trying to climb over the mat to reach Staff.

35. Staff further reported that, based on the training they have received, if they are holding the mat up in the [redacted] Room A, or otherwise not allowing a student to leave a space, they are blocking egress, and the incident would be considered seclusion, triggering reporting requirements. For example, one staff member reported, "If the mat is up and [we are] keeping them back in that [inner, padded] area for safety reasons, it is seclusion."

36. The District provided documentation of five seclusions, implemented on three Students that occurred in [redacted] Room A during the time period covered by the complaint.[11]

[redacted] *Room B*

37. [redacted] Room B is located within a suite designed specifically for the District's [redacted] a center-based program serving primarily students with autism and emotional or behavioral disorders. District staff reported that [redacted] Room B is used exclusively for staff and students in the [redacted] District staff further reported that [redacted] Room B is available for a variety of uses, in addition to a sensory room, a resource room, and other spaces.

38. The Complainant reports:

> I called [redacted] to check on [redacted] who had previously attended [the [redacted] at School]... during our conversation I asked [redacted] if [redacted] had ever been placed in a padded room while attending [School], [and] [redacted] parent] said she [did not] think so and asked [redacted] at that time, [redacted] said that he was put in the padded room a lot of times. He said they would put him in there, shut the door, and staff would stand in front of the door holding it shut so he could not get out. [redacted] also shared that sometimes he was in there so long he would fall asleep or he would need to wait until [a relative] would come to pick him up. [redacted] was very upset about what [redacted] had reported and stated the school never reported to her that [redacted] was ever placed in a padded room.

39. The Complainant further reports that "[redacted] has reported that he is put in a padded room by school staff."

40. The District reports:

> The use of [redacted] Room B] in the [center-based] program has a more defined purpose in conjunction with the sensory room, the self-contained classrooms and the resource rom. The proper use and expectations of each of the spaces are explained to all of the students. As with [redacted] Room A], students use [redacted] Room B] for a variety of reasons such as napping, reading, coloring, privacy, space away from everyone else, and significant physical and verbal aggression behaviors.

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[11] The District reports that, during the time period covered by the complaint, seclusion was implemented on [redacted] in [redacted] Room A.

In addition to the general use, this program also has some specific expectations for using [redacted] Room B] when students are escalating in behavior.

41. The District further reports:

The following are behavioral situations in which use of [redacted] Room B] may be used in the center based program:

Sometimes a student may be demonstrating escalated behavior which is no longer appropriate to the classroom and the student is unwilling or unable to calm down in that environment. The staff will request that the student take a break from the classroom. If they follow that directive independently, they have the option of using [redacted] Room B], the resource room, or the sensory room to calm their bodies down. However, if the student refuses to leave the group independently, the student loses the option of going to the resource room and sensory room, but must go to [redacted] Room B] to regroup and try to calm down.

At this point the student may or may not be escorted out of the classroom to the [redacted] room. Students are monitored the entire time they are using the alternative program areas. When a student is using the [redacted] room, they have the choice of having a staff person with them (physically joining them in the room) or they can choose to be alone, with staff monitoring from outside the room. A student may go from the [redacted] room to the sensory/resource room before reentering the class, once they are showing a calmer body. At any time in this process, the student is physically free to walk out of any program area.

If the behavior is not a major episode (as determined by the staff involved) that student can be left alone in the [redacted] room, they will be given a [five] dot duration map and at that point, they will reenter the classroom if they are showing a calm body and following directions.

If behavior is more extreme, such as physical aggression, staff may enter [redacted] Room B] with the student in the event seclusion or hold would be needed to keep the student and/or others safe. Staff accompanying a student in [redacted] Room B] does not necessarily involve a restrictive procedure. But the staff have a high enough level of concern for the well-being of the student that they want to ensure safe conduct, as a precautionary measure. Given the calm and quiet environment of [redacted] Room B], sometimes the processing of an incident is done in [redacted] Room B] between the Student and staff.

In all instances of extreme student behavior in which a restrictive procedure is determined necessary for the well-being of the student and others, the

> appropriate procedures, documentation, and reporting of the incident is completed. Any staff member involved in a restrictive procedure in the school district is [redacted] trained by district-certified [redacted] trainers. (internal formatting omitted)

42. During interviews, District staff reported that [redacted] Room B was used by 10 Students during the time period covered by the complaint. The IEPs for all of these Students provide for the Student to spend more than 60 percent of their time outside the general education setting.[12]

43. During interviews, District staff reported that, in the District's [redacted] Room B is used "as a progression of behavior." District staff reported that if the Students are having behaviors in the classroom, Staff will cue the Student to take a break. If the Student is able to leave the classroom on their own, they can choose from several places to take a break, including a sensory room, [redacted] Room B, or a resource room, which has couches and is a quiet place for a nap. If District staff escorts the Student out of the classroom, the Student is typically escorted to [redacted] Room B, where Staff reports that they enter the room with the Student to "assess where they are" and consider whether the Student can safely make a choice to move to their preferred break room.

44. District staff further reported that Students use [redacted] Room B in a variety of ways. For example, some Students choose to bring a mat or heavy blanket into [redacted] Room B to take a sensory break, take naps, or run back and forth between the padded walls if they need more movement. District staff further report that they often sit in [redacted] Room B with Students to "hash it out," or if the Student wants to be alone, Staff wait outside and check in with the Student. Staff reported that when Students are taking a break in [redacted] Room B, District staff are usually in the room with them to process or de-escalate; however, if a Student requests to be alone, they try to respect that because they want Students to trust them. Staff report that, in these circumstances, the door is usually closed, as it is difficult to prop open, but unlocked, and that Staff remain in the immediate vicinity to check in with the Student or observe the Student through the window. Staff further report that the Students are able to open the door, understand they can open the door when they choose, and that all Students do so when they choose to be done with their break.

45. For example, District staff reported that [redacted] used [redacted] Room B often during the start of the [redacted] school year, as he often struggled in the general education environment and was escorted back to the center-based classrooms for breaks. District staff reported that [redacted] generally chose to spend time in the sensory room because he sought movement, but occasionally used [redacted] Room B with staff to address his emotional needs. District staff reported that once inside [redacted] Room B, [redacted] "will cry and scream at us and say we don't care," and argue that other students should get in trouble

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[12] The following Students used [redacted] Room B, for various purposes, during the time period covered by the complaint, and received special education and related services within the [redacted]

instead of him. Staff further reported that [redacted] generally asks to be left alone while he is crying, so Staff will leave him and wait immediately outside. Staff further report that when [redacted] has calmed down, he will open the door and say he is ready to leave and then Staff will have a conversation with him before he returns to class.

46. However, District staff did report that [redacted] Room B was used when Students were escalated or physically aggressive, and did not want to be in the [redacted] room. Staff reported that in these instances, Staff generally stand in the doorway to physically block the doorway while they attempt to engage and deescalate the Student. However, Staff reported that if the Student's behavior becomes physically aggressive, they use physical holds to prevent injury to the Student or Staff. Staff reported that they try to maintain a consistent response to physical aggression, telling Students who are aggressive, "If you punch or kick me again, I will have to do a hold," and find that for most Students, the warning of a hold helps the Student calm down more quickly.

47. District staff reported that they generally did not use the mat to hold Students in the padded, inner portion of [redacted] Room B, as they worry about a pinching risk between the doorframe and the mat. District staff reported that, during the time frame covered by the complaint, they did use the mat once with [redacted] who disrobed and urinated in the calming room during a behavioral incident, and District staff used the mat to seclude him in the inner part of [redacted] Room B due to the fact that he was physically aggressive, naked, and trying to wipe urine on Staff.

48. During interviews, District staff reported that, based on training they have received, if the Student is trying to leave [redacted] Room B and they are stopping the Student from leaving the space, the incident is considered seclusion. The District provided documentation of two seclusions, implemented on two different Students, which occurred in [redacted] Room B during the time period covered by the complaint.[13]

District Documentation

49. District records indicate that, during the time period covered by the complaint, District staff used restrictive procedures on 12 Students, including the use of seclusion with six Students, as follows:

- [redacted]
  - [redacted] seclusion
  - [redacted] physical holding
  - [redacted] seclusion
  - [redacted] seclusion

[13] The District reports that, during the time period covered by the complaint, seclusion was implemented on [redacted] in [redacted] Room B. The District also provided documentation that seclusion was implemented on [redacted] in the resource room during this time period.

- [redacted]
  - [redacted] physical holding
  - [redacted] physical holding
  - [redacted] physical holding
- [redacted]
  - [redacted] seclusion
- [redacted]
  - [redacted] seclusion
- [redacted]
  - [redacted] physical holding (two separate incidents)
- [redacted]
  - October 21, 2019: physical holding
- [redacted]
  - [redacted] physical holding, seclusion[14]
- [redacted]
  - [redacted] physical holding (two separate incidents)
  - [redacted] : seclusion
  - [redacted] physical holding
- [redacted]
  - [redacted] physical holding
- [redacted]
  - [redacted] physical holding
  - [redacted] physical holding
  - [redacted] physical holding
- [redacted]
  - [redacted] physical holding, seclusion
- [redacted]
  - [redacted] physical holding
  - [redacted] physical holding
  - [redacted] physical holding

[14] The District's Restrictive Procedures Form documents that the seclusion of [redacted] on [redacted] took place in the resource room within the [redacted] space.

50. District records indicate that after the use of a restrictive procedure, District staff completed a Restrictive Procedures Form that includes a description of the incident that led to the physical holding or seclusion, a description of the physical holding or seclusion, a brief record of the Student's behavioral and physical status, what less restrictive measures were attempted and why they failed or were determined by Staff to be inappropriate or impractical, which District staff member observed the Student, the time the physical holding or seclusion began and the time the Student was released, what happened after the physical holding or seclusion ended, and whether the Student or Staff members were injured. The Restrictive Procedures Form further documents when a staff debriefing meeting occurred, who was present, and a summary of the meeting, as well as a record of when and how the Student's parent was notified of the use of a restrictive procedure.

51. For example, a Restrictive Procedures Form dated [redacted] provides the following information regarding the use of seclusion with [redacted] on [redacted]

> [redacted] stole [Play-Doh] from a classmate, when asked to return the [Play-Doh] she threw the container at the peer and staff. [redacted] then left the room without asking. She went into the flex space [and] hid under tables and refused to come out when given the choice to relax in the [redacted] room or in the office. She was then ignored until her behavior escalated and she began throwing chairs and pushing the tables around. [redacted] was then reminded that she needed to have a safe body. Then she began making loud noises and entered her classroom again being disruptive, [and] the class left the room. [redacted] then hid under the desks, threw things around, and did not have a safe body. The team asked her to walk to [redacted] Room A] to take a break. She continued screaming no, hit, bit, and kicked at staff. She was escorted to [redacted] Room A] by [Staff]...
>
> [redacted] was hitting and kicking and attempting to bite staff[. S]he was put in the back half of [redacted] Room A] by the mats. She was behind a mat and two staff were on the other side holding it up while she screamed, kicked, hit, and pushed against the mat.

52. The Restrictive Procedures Form regarding this incident further documents the use of "redirection, correction, verbal or non-verbal feedback" and other less restrictive interventions, the length of the seclusion, a summary from a staff debriefing meeting on the afternoon of [redacted] and a record that [redacted] parent was notified regarding the use of the restrictive procedure.

53. District records indicate that, following each use of a restrictive procedure with a Student, District staff notified the Student's parent of the restrictive procedure, often by email or phone. For example, with regard to restrictive procedures used with [redacted] on [redacted] District records indicate that District staff called [redacted] at 3:45 [p.m.] on [redacted] 4:00 [p.m.] on [redacted] and 4:30 [p.m.] on [redacted] to notify her about the behavioral incident and the use of restrictive procedures. District records further document that District staff sent [redacted] parent a copy of each Restrictive Procedures form on [redacted]

54. During the course of this investigation, [redacted] parent reported that she did not always receive a phone call regarding the use of restrictive procedures with [redacted] and that she believes that the District utilized, but did not report, additional restrictive procedures with [redacted]

55. District records document that, for five Students, District staff used restrictive procedures on the Student on two or more separate school days within a 30-day period.[15] For example, District staff used restrictive procedures on [redacted] and with [redacted]

56. With regard to one of these Students, [redacted] the District held an IEP team meeting for the Student within 10 calendar days of the second use of a restrictive procedure. District records document that the District used restrictive procedures with [redacted] and the District held an annual IEP team meeting for [redacted]. District records indicate that at this meeting, [redacted] IEP team discussed [redacted] behaviors and needs, and agreed to move [redacted] to a more restrictive placement at a different school.

57. However, with regard to the other four Students, although District staff used restrictive procedures on these Students on two separate school days within 30 calendar days, the District did not hold an IEP team meeting for any of these Students within 10 calendar days.[16] With regard to [redacted] although the District used physical holds with each Student on two separate days in [redacted] the District did not hold IEP team meetings for any of these Students until [redacted]

58. With regard to [redacted] with whom restrictive procedures were used on [redacted] the District held an IEP team meeting on [redacted] to "check in" with [redacted] parent. Records from this meeting indicate that the Student's IEP team discussed [redacted] behaviors, the use of restrictive procedures, and considered changes to her behavior plan, but did not revise her IEP or conduct a functional behavioral assessment (FBA).

Proposed Corrective Action

59. The District did not propose corrective action in its initial response. However, during an onsite visit, the District's special education director agreed to participate in training and consultation with MDE staff regarding the use of restrictive procedures.

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[15] The District used restrictive procedures on [redacted] on two separate school days within a 30-day period.

[16] The District did not hold IEP team meetings for [redacted] within 10 days after using restrictive procedures on the Student on two separate school days within a 30-day period.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. Minnesota Statutes § 125A.0941(f) defines restrictive procedures as "the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child."

3. Minnesota Statutes § 125A.0942, subd. 1(a) provides:

> Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a [RPP] for children with disabilities that at least:
>
> (1) lists the restrictive procedures the school intends to use;
>
> (2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;
>
> (3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4;
>
> (4) describes how the school will monitor and review the use of restrictive procedures, including:
>
> (i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and
>
> (ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; and
>
> (5) includes a written description and documentation of the training staff completed under subdivision 5.

4. Minnesota Statutes § 125A.0942, subd. 5(a) provides:

> To meet the requirements of subdivision 1, staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:
>
> (1) positive behavioral interventions;
>
> (2) communicative intent of behaviors;
>
> (3) relationship building;
>
> (4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;
>
> (5) de-escalation methods;
>
> (6) standards for using restrictive procedures only in an emergency;
>
> (7) obtaining emergency medical assistance;
>
> (8) the physiological and psychological impact of physical holding and seclusion;
>
> (9) monitoring and responding to a child's physical signs of distress when physical holding is being used;
>
> (10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;
>
> (11) district policies and procedures for timely reporting and documenting each incident involving the use of a restricted procedure; and
>
> (12) schoolwide programs on positive behavior strategies.

5. Minnesota Statutes § 125A.0942, subd. 1(b) provides

> Schools must publicly identify oversight committee members who must at least include:
>
> (1) a mental health professional, school psychologist, or school social worker;
>
> (2) an expert in positive behavior strategies;
>
> (3) a special education administrator;
>
> (4) a general education administrator.

6. The record supports a conclusion that, during the time period covered by the Complaint, the District maintained a RPP that describes how the school will implement a range of positive behavior strategies and provide links to mental health services; describes how the school will provide training on de-escalation techniques; and describes how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee. Despite this, the District did not make the RPP publicly accessible on the District's website and further, the RPP specified that the District did not use seclusion. By maintaining a RPP that reflects that the District does not use seclusion at any school within the District, the District failed to maintain a RPP that accurately lists the restrictive procedures the District intends to use at each school within the District, in violation of Minn. Stat. § 125A.0942, subd. 1(a)(1).

7. The record does support a conclusion that District staff who used restrictive procedures with the Students during the time period covered by the complaint completed training on the 12 skills and knowledge areas, as required by Minn. Stat. § 125A.0942, subd. 5.

8. Minnesota Statutes § 125A.0941(c) defines physical holding as:

> Physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service procedure; or
>
> (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

9. Minnesota Statutes § 125A.0941(g) defines seclusion as:

> Confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

10. Minnesota Statutes § 125A.0941(b) defines emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond

to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

11. Minnesota Statutes § 125A.0942, subd. 3(a) provides, in pertinent part:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used.

12. Minnesota Statutes § 125A.0942, subd. 3(a)(5) provides:

> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding began and the time the child was released; and
>
> (iv) a brief record of the child's behavioral and physical status.

13. Although one parent expressed concerns regarding the District's practices surrounding documenting and reporting restrictive procedures, the record, including Restrictive Procedure Forms and Staff interviews, supports a conclusion that, after each use of a restrictive procedure with a Student, the District documented a description of the incident that led to the physical holding or seclusion; why a less restrictive measure failed or was determined by District staff to be inappropriate or impractical, the time the physical holding began and the time the Student was released, and a brief record of the Student's behavioral and physical status, in accordance with Minn. Stat. § 125A.0942, subd. 3(a)(5).

14. The record supports a conclusion that both [redacted] Room A and [redacted] Room B were used, during the time period covered by the complaint, by a number of Students and District staff for a variety of reasons, including working one-to-one with Staff, napping, and taking breaks from classroom activities. The record further supports a conclusion that, generally, Students choose to enter the rooms but, at times, Staff directed Students into a [redacted] room to the Student from an activity to a location where

the Student could not participate in or observe the activity in their classroom for the purpose of allowing the Student to take a break or deescalate their behavior with Staff assistance and support.

15. However, the District acknowledged that it also used physical holding and seclusions with Students during the time period covered by the complaint. The record, including District staff interviews and Restrictive Procedure Forms, supports a conclusion that Students were put into physical holds and seclusion during emergencies to prevent injury to the Student and District staff, in accordance with Minn. Stat. §§ 125A.0941(c), 125A.0941(g), 125A.0941(b), and Minn. Stat. § 125A.0942, subd. 3(a)(1) – (4). Specifically, District staff implemented physical holds and seclusion when the Student had escalated to the point of hitting, kicking, and biting District staff.

16. Minnesota Statutes § 125A.0942, subd. 2(b) provides:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

17. Minnesota Statutes § 125A.0942, subd. 2(f) provides:

> An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

18. The record, including District staff interviews and Restrictive Procedures Forms, supports a conclusion that the Students' parents were contacted via telephone or email the same day, or within two days after, a restrictive procedure was used on their Student, in accordance with Minn. Stat. § 125A.0942, subd. 2(b).

19. Federal regulations at 34 C.F.R. § 300.321(a) provides:

> The public agency must ensure that the IEP Team for each child with a disability includes –
>
> (1) The parents of the child;
>
> (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
>
> (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

(4) A representative of the public agency who-

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the agency.

20. Federal regulations at 34 C.F.R. § 300.322(a) provides:

> Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including –
>
> (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
>
> (2) Scheduling the meeting at a mutually agreed on time and place.

21. Minnesota Statutes § 125A.0942, subd. 2(c) provides:

> The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program meeting when the child's individualized education program provides for using restrictive procedures in an emergency.

22. Minnesota Statutes § 125A.0942, subd. 2(d) provides:

> If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism;

> consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

23. Minnesota Statutes § 125A.0942, subd. 2(e) provides:

> At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

24. Minnesota Statutes, § 125A.0942, subdivision 2(f) provides:

> An individualized education program team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

25. During the time period covered by the complaint, IEPs for 11 Students provided for the use of restrictive procedures in an emergency. However, the District failed to indicate in each Student's IEP how the Student's parents want to be notified when a restrictive procedure is used on the Student, in violation of Minn. Stat. § 125A.0942, subd. 2(f).[17] Further, based on Student records and interviews of District staff, the District also failed to review any known medical or psychological limitations that contraindicate the use of a restrictive procedure for at least five Students, in violation of Minn. Stat. § 125A.0942, subd. 2(e).[18] Likewise, IEPs for five Students provide that, in the event District staff use restrictive procedures with the Student on two separate school days within a 30-day period, the Student's IEP team does not need to meet unless a team member requests a meeting, contrary to the requirements of Minn. Stat. § 125A.0942, subd. 2(c).[19]

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[17] The District failed to indicate in IEPs for the following 11 Students how the Students' parents want to be notified when a restrictive procedure is used on the Student: [redacted]

[18] The District failed to review any known medical or psychological limitations that contraindicate the use of a restricvtive procedure for the following five Students: [redacted]

[19] IEPs for [redacted] indicate that the Student's IEP team does not need to meet after two restrictive procedures are used on the Student on two separate days within 30 days.

26. Further, during the time period covered by the complaint, for five Students, the District used restrictive procedures on two or more separate school days within a 30-day period. Although the District did timely hold an IEP team meeting for one Student, the District did not hold IEP team meetings for the other four Students within 10 calendar days, in violation of Minn. Stat. § 125A.0942, subd. 2(c).[20]

27. Minnesota Statutes § 125A.0942, subd. 3(a)(6) provides:

> (6) The room for seclusion must:
>
> (i) be at least six feet by five feet;
>
> (ii) be well lit, well ventilated, adequately heated, and clean;
>
> (iii) have a window that allows staff to directly observe a child in seclusion;
>
> (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;
>
> (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and
>
> (vi) not contain objects that a child may use to injure the child or others.

28. Minnesota Statutes § 125A.0942, subd. 3(a)(7) provides:

> (7) before using a room for seclusion, a school must:
>
> (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and
>
> (ii) register the room with the commissioner, who may view that room.

29. The record supports a conclusion that during the time period covered by the complaint, the District utilized seclusion with six Students in either [redacted] Room A or [redacted] Room B, and on one occasion the resource room in the [redacted].[21] As the District acknowledged, neither [redacted] Room A nor [redacted] Room B has been registered with the Commissioner of Education as a seclusion room. Additionally, the inner section of each calming room, in which Students were secluded, does not measure at least six feet by five feet. The resource room in the [redacted] further has

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[20] The District did not hold IEP team meetings for [redacted] within 10 days after using restrictive procedures on the Student on two separate school days within a 30-day period.

[21] During the time period covered by the Complaint, the District utilized seclusion with [redacted] in a room that did not meet the statutory standards for seclusion rooms.

not been registered as a seclusion room, nor does it meet statutory requirements for a room for seclusion. Therefore, the District secluded Students in rooms—[redacted] Room A, [redacted] Room B, and the resource room in the [redacted]—that did not meet the statutory standards for seclusion rooms, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(6)-(7).

Decision

1. The District violated Minn. Stat. § 125A.0942, subd. 1(a)(1) by failing to maintain a RPP that accurately lists the restrictive procedures the District intends to use at each school within the District.

2. The District violated Minn. Stat. § 125A.0942, subd. 2(f) when it failed to indicate in 11 Students' IEPs how the Students' parents want to be notified when a restrictive procedure is used on their Student.

3. The District violated Minn. Stat. § 125A.0942, subd. 2(e) when it failed to review any known medical or psychological limitations that contraindicate the use of a restrictive procedure for at least five Students.

4. The District violated Minn. Stat. § 125A.0942, subd. 2(c) when it failed to hold IEP team meetings for four Students within 10 calendar days after the District used restrictive procedures on two or more separate school days within a 30-day period.

5. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(6)-(7) when it secluded six Students in rooms that did not meet the statutory standards for seclusion rooms.

Corrective Action

1. Within 10 days of the date of this decision, the District's special education director shall contact MDE's corrective action specialist, Sara Wolf at sara.k.wolf@state.mn.us, to discuss the District's training needs around restrictive procedures, consistent with Minn. Stat. § 125A.0942. MDE and the District will then develop a training plan, to be completed by the District before [redacted] The District shall submit documentation of the completion of training, including training materials and a list of attendees, no later than June 4, 2020.

2. Within 60 days of the date of this decision, the District shall contact the parents of relevant Students to schedule IEP team meetings to, as appropriate, indicate how the Student's parent wants to be notified when a restrictive procedure is used on their Student, review any known medical or psychological limitations that contraindicate the use of a restrictive procedure for the Student, and remove language indicating that the Student's IEP team does not need to meet within 10 calendar days after a restrictive procedure is used with the Student on two separate school days within a 30-day period. IEP team meetings shall be held for the following Students: [redacted] Documentation sufficient for verification that such meeting was held, and proposed revisions to the Student's IEP and behavior intervention plans (BIP), shall be provided to MDE's corrective action specialist by [redacted]

3. If the District intends to continue the use of seclusion within any of its schools, the District shall revise the District's RPP to accurately list the restrictive procedures the District intends to use at each school within the District. Further, the District shall ensure that seclusion is used only within rooms that meet the statutory requirements for seclusion rooms, as provided by Minn. Stat. § 125A.0942, subd. 3(a)(6), and properly registered with the commissioner of education under Minn. Stat. § 125A.0942, subd. 3(a)(7). By [redacted] the District shall submit to MDE in writing, attention corrective action specialist, the District's revised RPP. Once approved, the District will publish the revised RPP on its website within 14 calendar days. In lieu of revising its RPP, the District may, by [redacted] provide a written assurance that the District has discontinued the use of seclusion and provided training to Staff regarding alternative strategies to address Student behaviors.
4. The District shall develop a process to ensure that IEP team meetings are being held following the use of two restrictive procedures on two separate days within 30 calendar days, in accordance with Minn. Stat. § 125A.0942, subd. 2(c). Documentation sufficient for verification that such a process was developed shall be provided to MDE's corrective action specialist by [redacted]

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: [redacted]

DEPARTMENT OF EDUCATION

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email and US Mail

[redacted]

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted] one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges that, between December [redacted] and December [redacted] the District failed to appropriately plan for and respond to the behavior of the Student. Specifically, the Complainant alleges that the District improperly used disciplinary removals, change in placement, and restrictive procedures, in lieu of developing and/or implementing an appropriate behavioral intervention plan (BIP) and without following the statutory requirements regarding restrictive procedures.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended an elementary school within the District during the time period covered by the complaint.
2. The Complainant is the Student's parent.
3. The Complainant alleges:

> The [District is] keeping my child in the seclusion room longer than allowed [and] letting him use the bathroom in that room to where he starts to play and roll around in it... [redacted] my child was in the seclusion room for 45 minutes used the bathroom peed and pooped in it [sic]. They kept him in there to roll around and smear it everywhere and on himself.

4. The District reports:

> The restrictive procedures have only been used in emergency situations... The physical holds/seclusion end when the threat of harm ends. Staff observed the Student while the physical holding or seclusion was being used. The seclusion room at [School] has a window to see into the room and staff must be at the door to hold the locking mechanism. Staff are always watching when the Student is in seclusion. There is never a time the Student is not being monitored.
>
> The seclusion room is registered with [MDE] and has been inspected and approved by the Minnesota State Fire Marshall.

The District's Restrictive Procedures Plan

5. The District's restrictive procedures plan (RPP) was revised in [redacted] and is available on the website of the District's special education cooperative. The RPP provides for the use of physical holding and seclusion in an emergency situation, and reports "all seclusion rooms within the District meet all [MDE] requirements for such rooms and are registered with the state of Minnesota."

6. MDE records indicate that, in [redacted] the District registered [redacted] at the Student's school as a seclusion room. The District reports that this room, hereinafter referred to as the seclusion room, was the room used for seclusion with the Student. The seclusion room is accessed via the [redacted]

7. The RPP provides that District provides "positive behavioral interventions, supports, and strategies to improve the school environment and to teach children the skills to behave appropriately... many of the interventions and supports are tied to each building's Positive Behavior Intervention System (PBIS) model." The RPP further documents that the District utilizes "school wide direct instruction on social skills and the expected behavior in the building," school wide community building, and a variety of related curriculums.

8. The RPP further provides that the District trains staff on restrictive procedures through Handle with Care, including training on the 12 skill and knowledge areas, including de-escalation techniques, District policies and procedures for timely reporting and documenting each incident involving use of a restrictive procedure, and school-wide programs on positive behavior strategies.

9. The RPP further describes how the District will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee. The RPP also includes a link to a local organization that provides mental health services.

10. The District reports that, during the [redacted] school year, the District's restrictive procedures oversight committee met on [redacted] The District further reports that during the [redacted] school year, the oversight committee has met on [redacted] and [redacted] The agenda for these meetings indicates that at each meeting, the oversight committee reviews the total number of restrictive procedures by building, identifies students with high rates of restrictive procedures, reviews staff and student injuries, identifies students in need of follow up, and identifies any needed actions or trainings.

Student's Background Information

11. The Student's most recent special education evaluation was completed on [redacted] by another Minnesota school district [redacted]. The [redacted] does not included a Functional Behavior Analysis (FBA), but does provide the following information regarding the Student's behaviors:

> [Student] continues to lack appropriate/necessary social skills. He has two speeds. One speed is reckless and wide open. On these days [he is] loud, rough on toys, will spit and swear. He will destroy the room very quickly on these days and is very disobedient. He will lash out and hit adults during these episodes. The other speed is slow and steady where he gets a lot of work done, is quiet, is compliant and very obedient. On these days, [it is] very clear that he wants to do well and please. [Student] is showing an interest in playing with other kids. It takes close monitoring though because he lacks appropriate social skills and things can get out of hand very quickly. He does get into others' face/space.

> [Student] has the following behaviors often associated with [autism spectrum disorder]. He misinterprets others['] behaviors and social cues; he has a limited awareness of social boundaries, he has inappropriate social laughing at times; he is unaware of privacy issues... Doesn't transition well from preferred to non-preferred tasks; he lacks flexibility; he has a difficult time with unstructured times; he has temper tantrums... he has sudden mood changes.

12. The Student's individualized education program (IEP) dated [redacted] (September [redacted] IEP) was in effect at the start of the time period covered by the complaint. The Student's September [redacted] IEP includes five goals, including goals related to using five-word sentences, improving articulation, rote counting to 20, identifying sight words, independently writing his name, and a behavior goal regarding being socially appropriate with peers, being able to take a break, and identifying tools that will help him to calm when escalated.

13. The Student's September [redacted] IEP further provides for the Student to receive paraprofessional services and for District staff to implement positive behavior supports, including offering choices to minimize arguments and defiance, direct teaching of social skills, the use of social stories, incentive/reinforcement programs, sensory input activities, and the following:

> Staff will provide verbal prompts, stated in a positive manner including the desired behavior, to redirect [Student's behavior].
>
> If [Student] is a threat of physical harm to self or others, trained staff will utilize Handle with Care techniques to include use of restrictive procedures as a last resort to keep [Student] and others safe.
>
> Staff will use wait-time, visual representations, and non-verbal prompts as communication strategies.

14. The District reports:

> [The Student's] BIP was written and implemented during the [redacted] school year when Student was attending [the District] in kindergarten. This [BIP] was followed [until November [redacted]. Student left [District] [in March [redacted] and enrolled in another Minnesota school district. The Student re-enrolled into the [District in April [redacted] [The District] did not receive an updated/revised [BIP] from the previous school district when Student re-enrolled... [so] the [redacted] [BIP] was reviewed and updated to implement Student's return to [the District].
>
> The [redacted] BIP] was reviewed at the annual IEP team meeting on [redacted]. At the time of the annual IEP team meeting the team determined the [redacted] [BIP] was appropriate. The [redacted] [BIP] was successfully addressing the behaviors in the spring of [redacted] and into the fall of [redacted]. The lack of restrictive procedures from May [redacted] to April [redacted] shows the [redacted] BIP] was effective.

15. During interviews, District staff reported that the Student's [redacted] BIP was based on the Student's [redacted] special education evaluation [redacted] Evaluation Report), which was conducted by the District when the Student was enrolled in an early childhood program within the District. The Student's [redacted] evaluation report includes a FBA that describes the Student's behaviors as "tantrum behavior" that "can include protesting or refusing to do things" and "happens a few times in a week and is generally short lived." The [redacted] evaluation report further documents:

> It is hypothesized that [Student] demonstrates refusal and tantrum behaviors in order to delay to avoid behaviors that are frustrating or have a reason he does not understand (sic). He may demonstrate some behaviors to get the attention of a favorite person, but this seems to be largely with his dad.

16. The Student's [redacted] BIP includes several positive behavior interventions, including sensory tools for calming, point sheet to reinforce positive behaviors, earned privileges based on positive behaviors, proactively scheduled calming breaks, and the use of a penny board during academic tasks and routines to reinforce correct responses and expected behaviors. The [redacted] BIP further identifies set responses to noncompliance in various settings, including the use of physical holding as follows:

> If aggressive behaviors (hitting, kicking, attempting to bite, spitting) occur when removed from whole group, use [physical holding] as a last resort. Use prompts and simple language for calming "first calm body then all done." If he is calm, say "are you ready to sit calm?" If he says yes, then let him out of the hold and say "show me sitting calm."
>
> [If noncompliance continues] continue [physical hold] until [Student] is calm and quiet, giving him options to try to sit calm after every 30 [to] 60 seconds.

Restrictive Procedures

17. The District reports:

> Although the District did have a written and approved [redacted] BIP], the District agrees that it did not appropriately update the BIP when behavior by the Student began to escalate in [redacted]. While [District staff] consulted with [Complainant] and other staff regarding behavior, the changes were not documented and the [redacted] BIP was not updated. Behaviors continued into the fall [redacted] and again, while the teacher consulted with behavior intervention specialist, autism consultant, student's doctor and [Complainant], a new [BIP] was not developed until [redacted] and implemented on [redacted]

18. The District further acknowledges that it did not hold an IEP team meeting for the Student until [redacted] despite the fact that it repeatedly used restrictive procedures with the Student on two or more separate school days within a 30-day period.

19. During interviews, District staff reported that when the Student is starting to get escalated, his behaviors include fidgeting, tapping, banging into things, burping, or loud vocalizations. Staff further described that these behaviors can be redirected, but often the Student's behavior escalates to swearing, hitting, kicking, throwing objects, targeting peers, charging at staff, spitting, and climbing on tables and furniture.

20. Staff further reported that during the fall and winter of the [redacted] school year, these behaviors were generally managed without the use of restrictive procedures, and did not impede the Student's ability to follow his routine, interact with his peers, or participate in classroom activities. District records indicate the use of two physical holds in September [redacted], but no additional restrictive procedures during the fall or winter of the [redacted].

21. During interviews, District staff reported that they observed a significant escalation in the Student's behavior during the spring of the [redacted] school year. Staff reported that in late February or March, the intensity and magnitude of the Student's behaviors increased, and the Student was often not able to be redirected or calmed before his behavior escalated. District records indicate that the following restrictive procedures were used with the Student during the spring and summer of [redacted]

    - [redacted]: three minute hold
    - [redacted]: three minute hold
    - [redacted]: three minute hold
    - [redacted] four minute hold[1]
    - [redacted] three minute hold
    - [redacted]: four minute hold
    - [redacted] two minute hold
    - [redacted] two minute hold
    - [redacted]: three minute hold

22. During interviews, District staff reported, consistently and credibly, that during the spring of [redacted] restrictive procedures were used as a last resort when the Student was escalated for a long period of time and could not be calmed, and immediate intervention was needed to protect the Student and/or staff from physical injury. Staff report that they often blocked hitting or kicking for over 30 minutes "before we even think about restrictive procedures." For example, one District staff member reported that when the Student's behaviors became so escalated that he was climbing on cabinets and charging staff head-first, they attempted redirection until it became clear that the Student was likely to fall and hurt himself, so they initiated a physical hold.

[1] Although the District response indicated that this hold occurred on [redacted] this is likely a typographic error.

23. District records further document that during this time period, physical holds were conducted when, due to the Student's behaviors, immediate intervention was needed to protect the Student and/or staff from physical injury. For example, on [redacted]:

> [Student] was physical towards staff when he got to [the] [redacted] He was hitting, trying to kick as well as spitting at them and throwing chairs and desks over. He was directed that he needed to be safe with his body. He continued to escalate and hit and kicked staff again. He was given several redirects to have a safe body and hands. [Student] was assisted down and placed in a [physical hold] for safety of staff and students. When [Student] demonstrated a calm body, the hold was released and he was able to maintain control. He then continued with his day.

24. Staff reported that, when physical holds were used during the spring, the Student usually started calming down within two or three minutes, which allowed Staff to lead the Student through a "calming sequence" involving taking deep breaths and counting,[2] following which the Student would be calm and ready to continue on with his day.

25. District staff further report that during the spring of [redacted] they recognized that the Student's behaviors were escalating, and took several steps to address the Student's changed needs, including bringing in a behavior intervention specialist and autism consultant from the District's special education cooperative and trying different strategies to manage the Student's behavior. For example, District staff reported that because the function of the Student's behavior was to get attention, they reduced the attention provided to the Student during behavior incidents by providing only visual prompts, not verbal prompts. In addition, District staff reported that, because the Student's behaviors generally occurred at the same time each day, they developed a plan to proactively bring him to a quiet space prior to that time to work one-on-one with District staff in a space that was less likely to trigger his behaviors.

26. During interviews, District staff reported that the Student's behaviors continued to escalate at the start of the [redacted] school year. Staff reported that starting in the fall of [redacted] the Student would take longer to calm once the physical hold was initiated, and often after they completed the calming sequence, the Student would become re-escalated and "go straight back into making loud vocalizations, spitting at staff, climbing on furniture."

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[2] Staff described that this calming sequence might involve the following while conducting a seated hold. Staff tell the Student "show me calm body." When he does, they release one arm, saying "show me calm body. Hands in lap" and if the Student complies, releasing the other arm, remaining sitting on the floor with the Student. Staff would then say "hands in lap. Calm body," and lead the student through three deep breaths, counting to ten, three deep breaths, and counting backwards from ten. They would then get up and return to the Student's scheduled activity.

27. District records indicate that the following restrictive procedures were used with the Student during [redacted]

- [redacted] four minute hold
- [redacted] six minute hold, four minute hold
- [redacted] 12 minute hold, 67 minute seclusion
- [redacted] six minute hold
- [redacted] one minute hold, three minute hold, six minute hold
- [redacted] 14 minute hold, 17 minute hold
- [redacted] six minute hold, 10 minute hold, seven minute hold.

28. District records document that during this time period, physical holds were conducted when, due to the Student's behaviors, immediate intervention was needed to protect the Student and/or staff from physical injury. For example, on [redacted]

> [Student] was in gym with his mainstream class when he began to escalate... he began being physical towards staff – hitting, kicking, and spitting at them. Two staff helped him begin to walk to a safe location... He continued to stay escalated – hitting, kicking, and directly spitting at staff. A hold was implemented. [Student] calmed and started to return to the classroom, but he began to re-escalate again. He was directed back to [redacted]. He became physically aggressive with staff and another hold was implemented... Blocking, verbal redirects, offer break, and calming sequence had no impact on [Student's] behavior. He continued to escalate... When [Student] demonstrated a calm body, the hold was released and he was able to maintain control. He then continued with his day.

29. During interviews, District staff reported that as the intensity of the Student's behaviors increased during the fall of [redacted] District staff continued to meet with the special education cooperative's behavior intervention specialist and autism consultant and refine their strategies for addressing the Student's behaviors. One District staff member reported, "We tried ignoring strategies, distraction strategies, switching out people, [and] having the same person." In addition, District staff made changes to the Student's schedule and set up an alternate classroom space for the Student to work one-to-one with staff.

30. District staff further report that at this time, they also considered whether physical holds continued to be the most appropriate way to manage the Student's attention-seeking behaviors, particularly as the intensity and length of these physical holds increased and their effectiveness appeared to decrease. For example, District records indicate that on [redacted], the District utilized a 12-minute physical hold with the Student, but the Student re-escalated again quickly, so the District attempted to utilize seclusion, as follows:

> [Student] was helped to [redacted] He continued to hit, spit, throw chairs, climb on tables and be physical with staff so a hold was implemented. [Student] calmed

> his body and was fine... He then re-escalated and became physical towards [Staff]. [District administrator] made the decision to implement seclusion as his behavior continued to escalate – hitting, kicking, spitting, etc. Seclusion resulted in parent to come pick him up... Seclusion was implemented until [Complainant] arrived. Taking him out of seclusion was tried several times but he continued to re-escalate when the door was opened.

31. The Student's IEP team met on [redacted] District staff report that at this meeting, the Student's IEP team discussed the Student's increasing behaviors, as well as the Student's medication needs and their relationships to the Student's behaviors. District staff further report that the IEP team discussed whether to use physical holds or seclusion with the Student to manage emergencies, different ideas to manage his behavior, and other ways to ensure the Student received positive attention from staff. District staff report that they understood that the Complainant agreed that it would be appropriate to try seclusion with the Student during emergencies.

32. Following the IEP team meeting, the District provided a proposed IEP as well as prior written notice dated [redacted] (October [redacted] IEP). The District reports that a new BIP ([redacted] BIP) was sent home at the same time. The prior written notice stated:

> Student's behavior has significantly reduced the amount of academic and learning time that he has been receiving. Programming options and planning are being revised as [Student's] needs arise and increase. School is also working closely with his doctor to find the correct med[ication]s for him.

33. District records indicate that on [redacted] the Complainant signed the parental consent form, and indicated that she agreed with the District's proposed October [redacted] IEP. District records further indicate that the Student's October [redacted] IEP and October [redacted] BIP went into effect on [redacted]

34. The Student's October [redacted] IEP provides for the Student to continue receiving the same special education and related service minutes as required by his September [redacted] IEP, and includes the same accommodations and modifications. The October [redacted] IEP also includes six goals, including four goals which are the same as the Student's September [redacted] goals or less ambitious. For example:

> September [redacted] IEP: [Student] will increase his math skills from a current level of being able to rote count to 10 and being able to identify numbers 1, 2, 3, 10 and 11 to being able to rote count to at least 20 with [one-to-one] correspondence and being able to identify at least numbers 1 [through] 50 as measured by periodic data and teacher observation by September 2019.
>
> October [redacted] IEP: [Student] will increase his math skills from a current level of being able to rote count to [five] and being able to identify numbers 1, 2, 3, 10 and 11 to being able to rote count to at least 20 with [one-to-one] correspondence and being able to identify at least numbers 1 [through] 30 as measured by periodic data and teacher observation by September [redacted]

> September [redacted] IEP: [Student] will be able to improve his writing skills from a current level of being able to trace his first and last name and being able to trace his sight words to being able to independently write his first and last name as measured by student work by September [redacted]
>
> October [redacted] IEP: [Student] will be able to improve his writing skills from a current level of being able to trace his first and last name and being able to trace his sight words to being able to independently write his first and last name as measured by student work by September [redacted]
>
> September [redacted] IEP: [Student] will increase his social skills from a current level of being socially inappropriate with peers by seeking their attention for inappropriate things, not being able to tell when he needs to take a break[,] and using minimal self-regulation strategies to being able to be socially appropriate with peers 80 [percent] of the time and being able to take a break and identify tools that will help him to calm as measured by teacher observation and data collection by September [redacted]
>
> October [redacted] IEP: [Student] will increase his social skills from a current level of being socially inappropriate with peers by seeking their attention for inappropriate things, not being able to tell when he needs to take a break[,] and using minimal self-regulation strategies to being able to be socially appropriate with peers 50 [percent] of the time and being able to take a break and identify tools that will help him to calm as measured by teacher observation and data collection by September [redacted]

35. The Student's October [redacted] BIP includes updated information regarding the Student's target behaviors and provides the following function of these behaviors: "Social attention from specific peers or adults in the environment. May also serve access to a desired item or activity (sic)." During interviews, District staff reported that the October [redacted] BIP was based on the Student's [redacted] FBA as well as more current behavior data collected by District staff.

36. The Student's [redacted] BIP further provides several prevention-based strategies, and lists the following steps to address the Student's target behaviors:

> 1) When [Student] is engaging in early warning sign behaviors such as burping and swearing, he will be visually prompted to engage in a calming sequence or "calm body" behaviors. No verbalizations will be provided at this point... If [Student] engages in a calming sequence or "calm body" behaviors, staff will verbally praise and provide token reinforcement...
> 2) If [Student] continues to escalate and... engages in minimally threatening physical aggressions (spitting, light hitting, throwing small items, etc[.]), he will be physically blocked with minimal eye contact and no verbalizations will be given. Staff will provide a [second] visual prompt to engage in calming sequence...

3) If [Student]... becomes physically aggressive to the point that staff feels there is an eminent (sic) threat for harm, [Student] will be physically guided to the... seclusion room area... If [Student] does not come willingly or continues to physically escalate, threatening the safety of staff, a [redacted] one or two person escort will be used to safely transport [Student] to the seclusion area. If a [redacted] transport is used, staff will immediately initiate a seclusion procedure once in the room.
4) Once the... seclusion is completed (this may include visual prompts for appropriate behavior such as sitting, clothes on, etc[.]), [Student] will be visually prompted to engage in his calming sequence while in the seclusion room area with the door open. Once he successfully completes the calming sequence, he will move to a table area outside the seclusion area and be given a brief scheduled activity to complete. Once completed, [Student] will return to his regularly scheduled activity.
5) Restrictive procedures: If the student's problem behavior cannot be redirected and it is posing an immediate threat to their safety or the safety of others, the following restrictive procedures may be used[:] Seclusion/restraint. Parents will be notified the same day if any restrictive procedures (including the use of a resource officer to guide to the appropriate area) are used.

37. District records indicate that the following restrictive procedures were used with the Student during October and November 2019:

- [redacted]: nine minute hold
- [redacted]: two minute hold, 40 minute seclusion, five minute seclusion
- [redacted]: 56 minute seclusion
- [redacted]: 64 minute seclusion
- [redacted]: 40 minute seclusion

38. During interviews, District staff reported that the Student's behaviors continued to escalate in October, as the District implemented seclusion, as discussed in the Student's [redacted] IEP team meeting. Staff further reported that during seclusions, the Student's escalated behavior continued, and the Student also began demonstrating other behaviors, including disrobing, urination, defecation, self-stimulation, and sexualized behaviors.

39. During interviews, District staff further reported that during seclusion incidents, District staff monitored the Student closely from outside the room, but generally did not interact with him, per his BIP. District staff reported that while in the seclusion room, the Student continued to demonstrate a wide range of escalated behaviors, often for an extended period of time. Staff report that the Student's behaviors were "all or nothing," and when the Student was ready, he calmed down, dressed himself, and said, "I'm ready." Staff reported that their experience has been that if the door was opened before the Student

started his calming routine, the Student's behaviors escalated again immediately, leading to further risk of harm.

40. Records from a staff debriefing meeting following the [redacted] seclusion document that District staff discussed the Student's urination and/or defecation in the seclusion room, and agreed to incorporate a proactive bathroom break for the Student shortly before he moved to a quiet space for his one-on-one work session, prior to the time period when his behaviors generally occurred. Staff reported that although the Student always used the restroom at this time, it did not seem to have an effect on whether the Student urinated or defecated during a seclusion incident. Staff further reported that there was generally no warning that the Student had to use the restroom or was otherwise about to engage in these particular behaviors.

41. During interviews, District staff acknowledge that, at times, the seclusion of the Student may have lasted past the need for immediate intervention to protect the Student and/or staff from physical injury, due primarily to the Staff's uncertainty about how to appropriately address the Student's self-stimulation and sexualized behaviors and, on some occasions, the need for Staff to gather necessary materials to clean and change the Student following soiling episodes. The District's special education director further reported that District staff are currently engaged in conversations about how those types of behaviors should be handled with any student should the need arise in the future.

42. The parties agree that, following a behavior incident on [redacted], the Complainant kept the Student home from school for the next several days. The Complainant reports that she originally planned to homeschool the Student, but decided that this was not appropriate for his needs. She further reports that she then requested that the District hold an IEP team meeting to review the Student's IEP and BIP before he returned to school.

43. This Complaint was filed on [redacted].

44. District records document that on [redacted], the Student's IEP team met "to discuss [Student's BIP] and to make changes to programming to re-enter him into school." Notes from the [redacted] IEP team meeting document that the Student's IEP team discussed the Complainant's request for a more consistent paraprofessional schedule, and the need to consider the use of assistive technology for the Student. The notes further document:

> [Teacher] reported that [Student] generally does well in the mornings in her classroom until sometime from 10:30 [to] 11:00 [a.m.] He is much more focused and able to engage in classwork. After the 10:30 [a.m.] time, they have changed [Student's] programming to more preferred activities with several breaks in order to decrease his non[-]compliance and physical aggression...
>
> [Staff] also shared that the team had started using... a [discrete] trial program with high rates of reinforcement and high rates of trials. This was going well. [Staff] also reported that finding ways to increase reinforcement would be good. She reported that [Student] loves staff attention, so increasing activities that increase staff attention will be important in programming...

> Team reviewed that [Student] has had 19 [r]estrictive [p]rocedures this year, with [six] of them being seclusion and 13 being physical holds... In reviewing the seclusions, they are generally lasting longer than the holds, with the last hold resulting in a new behavior. [Staff] discussed the concerns with both physical holds and seclusion.

45. Notes from the [redacted] IEP team meeting further document that the IEP team agreed on a new programming schedule for the Student, including [one-to-one] instruction with "access to preferred activities and frequent breaks with high levels of staff attention and reinforcement" during the times when his behaviors tend to occur. Notes further indicate that the IEP team agreed to revise the Student's BIP to indicate that physical holding will be used in an emergency, not seclusion, in order to block the Student's opportunity to engage in new behaviors during seclusions. The IEP team further agreed that these new plans would go into effect on [redacted].
46. The District reports that the Student returned to school on [redacted].
47. Following the [redacted] EP team meeting, the District provided the Complainant with a revised BIP (December [redacted] BIP) and prior written notice dated [redacted]. The [redacted] prior written notice documents:

> The BIP has been changed to include physical holds instead of seclusion in cases of emergency situations where [Student] is harming himself or others...
>
> The team considered keeping seclusion as an option, but decided to resort to a physical hold in emergency situations due to the behaviors that [Student] has exhibited and due to the length of time seclusions were lasting. Holds have been less duration than seclusions and new behaviors have occurred in seclusion. The team considered having the same paraprofessional with him all day, however decided it was best for [Student] to be able to be flexible with staff, so only familiar people will work with [Student] throughout the school day... this will be the same when physical holds need to be utilized – a familiar staff [member] who is able to implement as well as trained in [redacted] will be facilitating the hold.
>
> The nurse has been in contact with the doctor to gain a new med[ication] administration time of 11:00 [a.m.] instead of 11:30 [a.m.] The team is also looking into a communication device or system that fits [Student's] needs. The team will utilize a visual schedule of staff's pictures so that [Student] knows which staff member will be working with him next. [Student] will also have a visual schedule that he will utilize. The [occupational therapist] will consult with the team on any weighted vest or other sensory measure that may be effective for [Student].

48. On [redacted] the Complainant signed the parental consent/objection form, indicating that she agreed with the District's proposed December 2019 BIP.

49. The Complainant reports that the Student has been increasingly successful at school following his return to school in [redacted] She reports that she is pleased that District implemented a more consistent paraprofessional schedule for the Student, provided a visual to help the Student know which paraprofessional to expect, and agreed that only staff that know the Student should address his behaviors.

50. Although the Student's progress reports during the time period covered by the complaint indicate that the Student is making adequate progress on each IEP goal, data reported for at least some goals and objectives indicates that the Student has made minimal, if any, progress in those areas. For example:

> [redacted]: "He is able to rote count to 10 inconsistently and shows great regression over breaks and even over weekend. [Student] needs a lot of redirection and support to carry out academic tasks."
>
> [redacted]: "[Student] is able to rote count to 10 and often times needs a lot of prompting to count to 10. His behaviors have prevented us from working on academics in the last few months and it has been hard to keep him working on the same types of work for very long."

51. During interviews, District staff reported that the Student made progress on his IEP goals, stating that for the majority of the [redacted] school year, the Student did well at school and made "lots of gains." However, District Staff further reported that the Student's behavior affected his progress and Staff's ability to gauge his progress. Staff recalled that at the Student's [redacted] IEP team meeting, the IEP team discussed that with his behaviors in the spring, Student had regressed on some of his IEP goals, although the Staff member indicated that the Student also showed regression during breaks from school.

52. The Complainant reports that the Student did not make progress on his IEP goals during the time period covered by the complaint. She reports that the Student cannot count independently, and only writes his name if she writes it first and he traces over it. She further reports that he regressed in his ability to interact appropriately with peers and his ability to request calming strategies when escalated.

District Documentation

53. In its initial response, the District provided documentation that District staff who used restricted procedures with the Student received training—either a full [redacted] course or a refresher course—between [redacted]. In many cases, District staff attended more than one training course during this time period.

54. The District provided documentation that indicates that, following the use of each restrictive procedure, District staff completed an [redacted] form" documenting a description of the incident, why a less restrictive measure failed, the time the restrictive procedure began and ended, and a record of the Student's behavior and physical status.

55. The District reports that it conducted post-use debriefing meetings with staff following the use of restrictive procedures. During interviews, District staff reported that District staff who worked directly with the Student generally held informal post-use debriefings during the school day or immediately after school, and also had standing weekly meetings with the school psychologist, principal, and other relevant staff at which any recent restrictive procedures were used. During these meetings, District staff completed "Staff Debriefing Meeting" forms.

56. District records document that on most occasions, the Student's teacher used an online communication program to report each use of a restrictive procedure to the Complainant. These communications usually took place the same day as the restrictive procedure. For example, on [redacted] the Student's teacher wrote:

> I just wanted to let you know that I had to do a hold on [Student] this morning. It was [three] minutes long. He was hitting and kicking staff and was not regulated. He again has been having a rough morning—highly escalated, trying to seek attention from peers (positive and negative), extremely socially inappropriate behavior.

57. District staff reported, and District records indicate, that the parties engaged in frequent contact, often multiple times per day. For example, one District staff member reported that sometimes when the Student was still having escalated behaviors, she was on the phone with the Complainant describing what was happening and discussing how to proceed for the day.

58. Although the District initially reported that the Complainant may not have been notified with regard to restrictive procedures on [redacted] the District did provide records documenting these communications. For example, although there is no record that District staff used the District's online communication program to inform the Complainant about the restrictive procedure on [redacted] the District's "[redacted] form documents that the Complainant was notified by phone on [redacted] at 1:00 p.m.

Proposed Corrective Action

59. In its initial response, the District proposed the following corrective action:

    1) By [redacted] the District will propose a comprehensive evaluation plan for Student.
    2) By [redacted] the District will propose and update the [BIP] from the meeting on [redacted] to include only physical holds.
    3) By [redacted] the District will providing training to all licensed special education staff on statutory requirements regarding restrictive procedures.

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[3] Again, although the District's response indicated a physical hold that occurred on [redacted] this is believed to be a typographical error and refer, instead, to a physical hold on [redacted]

> The training will include: Review of the District [RPP]; Use of Restrictive Procedures; Parent [N]otification; IEP [team] meeting requirements; [BIP] requirements; documentation and review of restrictive procedures data, including medical information that may impact use of restrictive procedures.

4) By [redacted] the District will provide training to all licensed special education staff on components of a BIP and the importance of reviewing and updating as necessary.
5) By [redacted] the District will develop a process to ensure the IEP team meetings are being held following two restrictive procedures being used on two separate days within 30 calendar days.

60. During the course of this investigation, the District provided documentation that it proposed a revised BIP to the Complainant on [redacted] which the Complainant consented to on [redacted] The District reports the December [redacted] BIP has been implemented. District staff further report that the District is moving forward with initiating a special education re-evaluation of the Student, to include an FBA, by the end of [redacted]

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP pursuant to 34 C.F.R. §§ 300.17 and 300.101.

2. Minnesota Statutes § 125A.0941(f) defines restrictive procedures as "the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child."

3. Minnesota Statutes § 125A.0942, subd. 1(a) provides:

> Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:
>
> (1) lists the restrictive procedures the school intends to use;
>
> (2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;
>
> (3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4;
>
> (4) describes how the school will monitor and review the use of restrictive procedures, including:

(i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and

(ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; and

(5) includes a written description and documentation of the training staff completed under subdivision 5.

4. Minnesota Statutes § 125A.0942, subd. 5(a) provides:

To meet the requirements of subdivision 1, staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving the use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

5. The record supports a conclusion that, during the time period covered by the Complaint, the District maintained and made publically accessible on the special education cooperative's website a RPP that lists the restrictive procedures the school intends to use; describes how the school will implement a range of positive behavior strategies and provide links to mental health services; describes how the school will provide training on de-escalation techniques; and describes how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee. This is in accordance with Minn. Stat. § 125A.0942, subd. 1.

6. The record further supports a conclusion that District staff who used restrictive procedures with the Student during the time period covered by the complaint completed training on the 12 skills and knowledge areas, as required by Minn. Stat. § 125A.0942, subd. 5.

7. Minnesota Statutes § 125A.0942, subd. 3(a)(5) provides:

> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding began and the time the child was released; and
>
> (iv) a brief record of the child's behavioral and physical status.

8. The record, including [redacted] forms, supports a conclusion that the District documented a description of the incident that led to the physical holding or seclusion; why a less restrictive measure failed or was determined by staff to be inappropriate or impractical; the time the physical holding began and the time the child was released; and a brief record of the child's behavioral and physical status, each time physical holding or seclusion was used, in accordance with Minn. Stat. § 125A.0942, subd. 3(a)(5).

9. Minnesota Statutes § 125A.0941(c) defines physical holding as:

> Physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service procedure; or

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

10. Minnesota Statutes § 125A.0941(g) defines seclusion as:

> Confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

11. Minnesota Statutes § 125A.0941(b) defines emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

12. Minnesota Statutes § 125A.0942, subd. 3(a) provides, in pertinent part:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used.

13. The record, including District staff interviews, [redacted] forms, and Staff Debriefing Meeting forms, supports a conclusion that the Student was put into physical holds and seclusion during emergencies to prevent injury to the Student and District staff, in accordance with Minn. Stat. §§ 125A.0941(c), 125A.0941(g), 125A.0941(b), and Minn. Stat. § 125A.0942, subd. 3(a)(1) – (4). Specifically, District staff implemented physical holds and seclusion when the Student had escalated to the point of hitting, kicking, and charging at District staff. The record further supports a conclusion that the Student often remained escalated for an extended period of time, and, especially during the fall of [redacted] was prone to re-escalation when the hold was released or the door was opened. District staff acknowledged that at times, seclusion of the Student continued after the threat of physical injury had ended, because the Student's continued re-escalation, sexualized behaviors or the need to clean the Student after soiling caused District staff to determine that the Student could not safely return to the classroom or activity, consistent with Minn. Stat. § 125A.0942, subd. 3(a)(3).

14. Minnesota Statutes § 125A.0942, subd. 4 prohibits the following actions or procedures:

    "(8) denying access to bathroom facilities."

15. The record, including [redacted] forms, Staff Debriefing Meeting forms, and District staff interviews, supports a conclusion that the Student was not denied access to bathroom facilities, under Minn. Stat. § 125A.0942, subd. 4. While the Student did urinate and/or defecate in the seclusion room during the time period covered by this complaint, it occurred without warning, and was not due to District staff denying him access to bathroom facilities. Further, the record shows District staff implemented a plan to provide a proactive bathroom trip prior to the time when the Student's behaviors were expected and discontinued the use of seclusion after the Student demonstrated defecation behaviors.

16. Federal regulations at 34 C.F.R. § 300.324(b) provide in relevant part that each school district must ensure that the IEP team:

    (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved; and

    (ii) Revises the IEP, as appropriate, to address:

    (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

    (B) The results of any reevaluation conducted under § 300.303;

    (C) Information about the child provided to, or by, the parents as described under § 300.305(a)(2);

    (D) The child's anticipated needs; or

    (E) Other matters.

17. Minnesota Statutes § 125A.0942, subd. 2(c) provides:

    The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program meeting when the child's

individualized education program provides for using restrictive procedures in an emergency.

18. Minnesota Statutes § 125A.0942, subd. 2(d) provides:

> If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on [10] or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

19. Minnesota Statutes § 125A.0942, subd. 2(e) provides:

> At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

20. The record supports a conclusion that, starting in or around [redacted] the Student's behaviors began to increase in intensity, and starting in [redacted] the District began using restrictive procedures on the Student during emergencies, including, on several occasions, the use of restrictive procedures on two separate school days within 30 calendar days. Although the record does support a conclusion that, when the Student's behaviors started to escalate, the District took steps to consult with experts in behavior intervention and autism, develop additional behavior supports for the Student, and experimented with other strategies to address the Student's behaviors, the District acknowledges that it should have, during the [redacted] held IEP team meetings, conducted a FBA, and updated the Student's [redacted] BIP in light of the Student's escalated behavior. The District further acknowledges that during the time period covered by the complaint, it did not hold IEP team meetings for the Student within 10 calendar days after two or more procedures were used with the Student within 30 calendar days. The District's failure to hold IEP team meetings to address the Student's escalated behavior, outdated BIP, and the use of restrictive procedures on two separate school days within 30 calendar days is in violation of Minn. Stat. § 125A.0942, subd. 2(c), and 34 C.F.R. § 300.324(b).

21. The record, including progress reports and the Student's IEPs, indicate that the Student made minimal to no progress on at least some of his IEP goals during the time period covered by the complaint. Further, during interviews, District staff reported that it was difficult to work on academics with the Student due to the frequency and intensity of his behaviors. The record supports a conclusion that the District's failure to respond to the Student's escalated behavior and frequent need for restrictive procedures by

holding an IEP team meeting, conducting an FBA, and/or revising the Student's [redacted] IEP and [redacted] BIP resulted in educational harm to the Student.

Decision

The District violated Minn. Stat. § 125A.0942, subd. 2(c) and 34 C.F.R. § 300.324(b) when it failed to hold IEP team meetings for the Student to address the Student's increase in violent behavior, outdated BIP, and the District's frequent use of restrictive procedures, including a failure to hold an IEP team meeting within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days.

Corrective Action

The District's proposed corrective action is accepted, with the modifications described below:

1. By [redacted] the District will propose a comprehensive evaluation plan, including an FBA, for the Student. Documentation sufficient for verification that such evaluation was proposed shall be provided to MDE's corrective action specialist, Sara K. Wolf at sara.k.wolf@state.mn.us, by [redacted]

2. Upon completion of the Student's comprehensive evaluation, the District shall promptly convene an IEP team meeting for the Student to review the evaluation report and revise, as appropriate, the Student's October [redacted] IEP and December [redacted] BIP. At this meeting, the Student's IEP team shall further consider the Student's need for compensatory education services to remedy any educational harm resulting from the District's failure to hold an IEP team meeting in the [redacted] to address the Student's escalated behaviors and the District's use of restrictive procedures. Compensatory education should be reasonably calculated to help the Student make the same progress toward IEP goals and objectives that the Student would have made had the District timely met and revised the Student's IEP and BIP. Compensatory education may take the form of services provided by the District (in addition to those services already provided by the Student's IEP), reimbursement for private therapy services obtained by the Complainant, or otherwise as agreed upon by the parties. The compensatory education plan must be incorporated into the Student's IEP, but be clearly identified as compensatory education and be provided in addition to the services the team has determined necessary for a FAPE. Documentation sufficient for verification that such meeting was held, and proposed revisions to the Student's IEP and BIP, shall be provided to MDE's corrective action specialist by [redacted] Any compensatory services and/or reimbursement must be provided by within one year of the date of this decision.

3. By [redacted] the District's special education director shall contact MDE's corrective action specialist to discuss the District's training proposal and additional training needs around restrictive procedures and reviewing and revising IEPs, consistent with Minn. Stat. § 125A.0942 and 34 C.F.R. § 300.324(b). MDE and the District will then develop a training plan, to be completed by the District before [redacted] The District shall submit documentation of the completion of training, including training materials and a list of attendees, no later than [redacted]

4. The District shall develop a process to ensure that IEP team meetings are being held following the use of two restrictive procedures on two separate days within 30 calendar days, in accordance with Minn. Stat. § 125A.0942, subd. 2(c). Documentation sufficient for verification that such a process was developed shall be provided to MDE's corrective action specialist by [redacted]

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges that, during the [redacted] school year, the District failed to appropriately plan for and respond to the Student's behavior. Specifically, the Complainant alleges that the District failed to develop a behavioral intervention plan (BIP) or safety plan for the Student to appropriately address physically aggressive behavior, like the behavior that occurred on [redacted], and instead suspended the Student out-of-school.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.

2. The Student [redacted].

3. In [redacted], the Student's previous Minnesota school district completed a reevaluation of the Student, which determined that the Student continued to require special education and related services under the primary disability category of Autism Spectrum Disorder (ASD) and the secondary disability category of Developmental Cognitive Disability (DCD).

4. The [redacted] evaluation included a functional behavioral assessment (FBA) focused on target behaviors of physical and verbal aggression. The [redacted] evaluation report noted that the Student "has had numerous behavioral referrals related to physical aggression [redacted] and verbal threats while at [previous district]."

5. Following the [redacted] evaluation, the Student's individualized education program (IEP) team from his previous district reviewed and revised the Student's IEP (dated [redacted]) and developed a new BIP, labeled "Positive Behavior Support Plan" (dated [redacted]).

6. The Student's May [redacted] positive behavior support plan addressed target behaviors of "physical aggression (which can involve [redacted]) and verbal threats toward others (for example, I want to grab her hair, I want to [redacted] I want to make him/her be quiet)" and included the following information about antecedents and proactive strategies:

    - Large crowds/noisy settings
    - People invading [Student's] space
    - [redacted]
    - New people/activities

- People touching his things
- Upcoming changes in routine
- Loud noises/sensory input
- These behaviors occur in a variety of settings including the classroom, hallway, cafeteria, bus, community outings, and during transitions

Proactive Interventions:

- [One-to-one c]heck-in with staff
- Keep proximity between [Student] and others; at least an arm[']s length
- Access to sensory fidgets
- Access to noise cancelling headphones
- Functional Communication Training focused on asking for a break or a tool to help [Student] cope with sensory stimuli
- Predictable work/break schedule that incorporates separate spaces for each activity and the use of a timer
- Visual expectation sheet
- Point sheet
- Consistency between staff on expected behavior
- Shortened classes and delayed passing times
- Verbal reinforcement for on-task behavior

7. The Student's May [redacted] positive behavior support plan aimed to help the Student develop the following alternative/replacement skills using a behavior reward system:

    - [Student] will increase appropriate physical boundaries, learn to self-advocate, and learn self-regulation skills.
    - [Student] will decrease physical and verbal aggression toward staff and students when he becomes dysregulated due to sensory stimulation or work avoidance.

8. The Student's May [redacted] IEP also included the following information about the Student's need for paraprofessional support:

    > [Student] has a history of aggression towards other students. His past paperwork indicates that an adult was with him at all times with close proximity to [Student]. [Student] requires a high level of consistency and structure in his programming. His past programming included a high level of individualization and separation from others.
    >
    > Responsibilities of the paraprofessional/job coach include:
    >
    > - Reviewing the expectations before any activity or setting change.
    > - Providing verbal and visual positive reinforcement on set intervals.

- Providing structure through timed activities using a timer that [Student] can see, review of expectations, and consistent reinforcement.
- Providing redirection of behaviors.
- Providing opportunities for purposeful inclusion in group activities through explaining expectations, providing reinforcement, giving structure via the timer and visual lists, and providing proximity and redirection for safety and regulation.
- Providing sensory breaks and structured sensory activities for regulation.

During his altered schedule starting [redacted], he will be staffed by a [one-to-one] licensed staff and/or paraprofessional job coach at all times he is at school providing support as described above. During any community outing that [Student] participates in, he will have [two-to-one] (staff to student) supervision.

9. The Student's May [redacted] IEP contained five annual goals, including the following behavioral goal:

   In a classroom learning environment, [Student] will improve his self-regulation skills, moving from a level of engaging in maladaptive behaviors in response to bothersome sensory stimuli, to a level of engaging in adaptive behaviors in response to bothersome sensory stimuli, with gradual prompt fading, to be met by IEP term end date.

10. During summer [redacted], the Student enrolled in a new school district that placed him in a federal setting IV program[1] in the District.

11. On [redacted], the District held an intake meeting with the Student, the Complainant, the Student's IEP manager, a District board-certified behavior analyst, and other District staff to amend the Student's IEP.

12. At that intake meeting, the District provided an "agreement to amend" form and a prior written notice proposing to update the Student's IEP to reflect his change in school districts. The District proposed to continue with the Student's IEP goals and positive behavior support plan, adjust the Student's special education and related service minutes to fit the new program's schedule, and implement a special transportation plan. The Complainant signed indicating agreement with the District's proposal at that meeting. The group discussed convening the Student's IEP team in approximately six weeks to review the Student's progress and to further revise the Student's IEP, and an IEP team meeting was tentatively planned for [redacted].

[1] "Federal setting IV program" means that students in the program spend more than 50 percent of their school day in a public separate facility exclusively for students with disabilities.

13. On [redacted] (the first day of the [redacted] school year), the District documented the following behavioral incident on an incident report form:

> [Student] was upset w[ith] the volume of a peer. [redacted] Staff attempted redirection[;] however[, Student] did not respond and continued to target peer. Peer was removed, [Student] attempted to follow peer, Staff redirected [Student] to his room. [Staff] had peeled [Student's] fingers back to get [Student] to release [redacted]. [Student] complied but wanted to go back [and] quiet the [peer]. After [five] min[utes,] he agreed to be safe and went to his office to calm down with his headphones [and] wait for his lunch.

14. Staff documented Staff's "peeling of [Student's] hand" as a restrictive procedure (physical holding) that lasted approximately one minute. Staff indicated on the incident report form that the Student's parent was notified immediately following the use of the restrictive procedure.

15. Notes from the staff debriefing meeting held later that day added the following description of student and staff behavior during the incident:

"[Student] was agitated by the loud noise and being in a group of people that he did not know. Staff were unsure of students[']reactions since it was their first contact with the students."

16. The notes also indicated that, as a "follow-up action to prevent the need for future use of restrictive procedures: The peer will not be in the classroom until [Student] can accept his loud outburst."

17. On [redacted], Staff documented on an incident report form a second behavioral incident as follows:

> Without warning, [redacted] Staff directed [Student] to stop and return to his office to calm down as they tried to get his fingers off [redacted]. [Student] complied in 30 sec[onds]. After 10 [to] 15 min[utes,] re-introduced to math work on computer. [Student] complied then refused. [redacted] Staff] asked [Student] to return to his office and given the choice of [two] work options, [Student] said no

> and started to charge [Staff][;] they put him in unregistered seclusion[2] at 8:45 [a.m. to] 8:48 [a.m.] [Student] sat down when [Staff] directed him to do so and his door was opened. He was asked to wait while [Staff] discussed solutions. [Student] refused to stay when [one staff member] went into the hall. He [redacted] tried to bite [another staff member] as she tried to leave the classroom. Another unregistered seclusion started at 8:55 [a.m.] in the main classroom.[3] When [Student] started to calm [and] follow direction from [Staff,] the seclusion was ended at 9:05 [a.m.] [Student's parent] was called to help encourage [Student] to stay [and] make safe choices.

18. The [redacted] incident report form noted that the Student's parent was notified about the use of restrictive procedures (physical holding and seclusion). Staff also marked a box on the incident report form indicating that restrictive procedures had been used with the Student on two separate school days within 30 calendar days, noting that an IEP team meeting was "already set up for [redacted]" (22 calendar days later).

19. Notes from the staff debriefing meeting held later in the day on [redacted] described the following procedure used to help the Student return to his routine, as well as the follow-up action to prevent the need for future use of restrictive procedures:

> [Student] was allowed to walk to the fitness center to complete a stress reducing routine he had established with [occupational therapy specialist], returned to the classroom and completed a sorting task, before starting class work. Frequent walks around the building were used to keep [Student] calm.
>
> The peer will not be in the classroom until the peer feels safe and [there is] a new seating arrangement in the classroom.

20. On [redacted], the District provided the Complainant with notice of a team meeting, scheduled for [redacted], to review and revise the Student's IEP. The District reported that at the Complainant's request, the IEP team meeting was rescheduled to [redacted]

21. On [redacted], a third behavioral incident occurred in which the Student "charged at [another] student and attempted to [redacted]" while "Staff got between the students and pulled [Student's] hands off the other student[.]" Staff documented the intervention as a physical hold lasting one minute, and the incident report noted that the Student's parent was contacted immediately following the physical hold.

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[2] On the District's incident report forms, "unregistered seclusion" refers to the use of seclusion in a room that is not registered with the commissioner of MDE.

[3] An observational log used by District staff to record notes about this behavioral incident documented that, during the two uses of "unregistered seclusion," the Student "continued pushing door" and was "trying to get out of room."

22. Notes from the staff debriefing meeting held later that day indicate the following antecedent to the Student's behavior and identified the specific follow-up action:

    "Antecedent – a student from another class entered the classroom . . .

    A sign was put up on the door that it needs to be shut and locked when students start to come into school so that other students do not enter into the classroom."

23. On [redacted], the Student's [redacted][4] of District Staff, including the Student's IEP manager, special education teachers, related service providers, and paraprofessionals, met for an informal discussion about the Student's programming.

24. On [redacted], the Student's IEP team met to review and revise the Student's IEP for an annual review. The IEP team reviewed the Student's progress data, modified and added to the Student's positive behavior support plan, and discussed the Student's strengths, summarized as follows in meeting notes provided by the District:

> [Student] has a great sense of humor, he's happy, and that is generally his mood. He is not angry at all, is polite, and shows concern for others. Yesterday, he yelled at a peer in the classroom, and then a few minutes later was concerned that he hurt their feelings, so he apologized for yelling at the peer. He has a general concern, and if he gets into behaviors where he goes after a student, he is trying to help them. ([Complainant] also said it could be due to sensory issues with staff, student, or a stranger. His reactions that are inappropriate and aggressive stem from sensory needs not being met. He's becoming more aware of these needs over the years. It could be auditory, or people doing what is unexpected. Staff can remind him of his options in those situations, or act as a barrier between [Student] and the source of the trigger.)

25. In addition, on [redacted], the Student's [redacted] including his IEP manager, special education teachers, and related service providers, and paraprofessionals, met for an informal discussion about the Student's programming. Meeting notes provided by the District indicated that the [redacted] discussed "things that are going well," including a successful bowling field trip and the Student being "able to make a plan with staff" and "not asking to go home anymore," as well as issues including a behavior of "targeting [ ] and verbalizing thoughts, such as[,] "I saw [other student's] [sibling] and I thought about grabbing [ ]." The team discussed the following strategies to respond to the Student's behavior: "telling him to turn around, directing him to another location, [and] prompting him to complete a task."

[4] District staff reported that [redacted] were intended to "bring everybody within the school together to problem solve" and to have an informal conversation about "what kind of information do we need to help the Student."

26. The Student's [redacted] of District staff met again on [redacted] after receiving feedback and more information from the Complainant about the Student's current triggers.

27. To follow up from the [redacted] IEP team meeting, on [redacted], the District provided the Complainant with prior written notice proposing to revise the Student's IEP to include new transition goals and adjustments to the Student's special education and related service minutes and positive behavior support plan, including adding the following antecedent and proactive setting event strategies (among other changes):

    - Staff will maintain an arm[']s length distance from [Student.] In addition, other staff and students in the building will be informed to keep at least an arm[']s distance from [Student] when they see him in/around the building.
    - Staff will practice calming strategies, deep breathing, and explore other calming tools with [Student] throughout his day.
    - Reminder to staff that they should be sure that they have an exit when working with [Student] and not to put themselves or [Student] in a corner with no out.

28. The revised positive behavior support plan also included the following consequence interventions:

    [redacted]

    1. Staff will step between [Student] and his peers. If [Student] is making verbal threats, all peers will be removed from the environment.

    2. If [Student] is outside of the classroom, staff will prompt [Student] to walk back to the classroom.

    3. If [Student] is in the classroom, staff will prompt [Student] to go into his office. Staff will position themselves near the exit of the classroom. If he does not comply with [one] verbal cue immediately, staff will call for additional staff support.

    4. If [Student] engages in [redacted], staff will remove themselves from the classroom.

    5. Once [Student] enters his office, staff will offer a choice of preferred calming strategy for [Student] to engage in for at least [five] minutes. He may choose another activity or choose to have more time. Staff will prompt [Student] to let them know when he is ready. He will be required to complete a short non-preferred/cognitive task/next scheduled activity before he is given the option to leave his office.

29. In addition, the revised positive behavior support plan included the following "Crisis Intervention Plan":

> If [Student] escalates his behavior to the point he is in danger of hurting himself or others (i.e. physical aggression towards staff or peers), the following steps will be followed:
>
> 1. Staff will use the least restrictive procedures necessary to keep [Student] and others safe and will stop using those procedures once the threat of harm has passed. Staff should attempt to remain calm, approach slowly and quietly if possible, and limit the number of people responding. [Student's] staff (familiar) should be the one to communicate any directions.
>
> 2. [District] staff are trained in crisis intervention techniques. Crisis intervention techniques will be utilized throughout the reduction strategy process. Trained staff may utilize restrictive procedures if the staff believes there is imminent danger to the student or others (physical holding or the use of licensed seclusion room).
>
> 3. Once the threat of harm has passed, staff will give [Student] time to calm down – signs that he is calming include accepting staff prompts, ready to complete a task, following staff directions, removing eyes from targeted peer, not talking about the targeted peer, etc. Staff will allow [Student five to] 10 minutes to rest (sitting up only). Once he is calm, staff will give [Student two] choices of activities he can complete to move on with his schedule (i.e. "We can do reading or math"). Staff will present familiar mastered tasks before presenting new activities.
>
> 4. Law enforcement may be contacted for assistance if [Student] is endangering staff, students, or himself and [District] staff's attempts at de-escalating him have not been successful. The [redacted], Dean, social worker, or lead teacher will make the decision on contacting law enforcement.
>
> 5. All restrictive procedures will be documented on an [redacted] form, mailed home to the caregiver(s) and reported to the [redacted]. Caregivers will be notified by phone within 24 hours if a restrictive procedure is used. A staff debriefing meeting is also required and need to include all staff involved in the restrictive procedure.

30. District staff reported that, after receiving the [redacted] prior written notice, the Complainant called and requested that additional positively-framed language be added to the Student's positive behavior support plan. Because the Complainant did not object to any proposals in the [redacted] prior written notice, the District determined that the changes to the Student's IEP went into effect after 14 days, and District staff scheduled another IEP team meeting for

[redacted] to consider the Complainant's request for additional changes to the positive behavior support plan.

31. On [redacted], the District provided the Complainant with notice of a team meeting scheduled for [redacted] to review and revise the Student's IEP to consider the Complainant's request and to reflect the Student's attendance at a [redacted] one afternoon per week from [redacted] through [redacted].

32. To follow up from the [redacted] IEP team meeting, the District provided the Complainant prior written notice dated [redacted], proposing to adjust the Student's special education service minutes to accommodate the [redacted], as well as adding social work services to the Student's IEP "to help [Student] deal with strong feelings of [redacted]." In response to the Complainant's concerns, the District also added the following strategy to the Student's positive behavior support plan (ellipses in original):

    "Staff will redirect [Student] using phrasing stated in a positive manner. In the past [Student] has been triggered by staff who use the phrasing like 'You're not going to get that if you . . .' or 'I'm going to take that away if . . .'"

33. The District reported that the changes to the Student's IEP went into effect 14 days later, after no parental objection was received.

34. On [redacted], Staff documented the following behavioral incident involving the Student:

    > Student and staff opened lunchroom door and held it open for another staff to exit. Staff walked into lunchroom before [S]tudent. [redacted] Staff stood between [Student] and [ ] student, instructed him to leave lunchroom. Once in the hallway, staff used wrist triceps hold with another staff to transport [S]tudent back to class. Student was instructed to enter individual office. Staff brought [S]tudent his lunch which he ate in his office. He was allowed to stay in his office until he felt ready to return to the classroom. (emphasis in the original)

35. Other documentation of the incident maintained by the District indicated that, [redacted]

36. According to the District's incident report form, the Complainant was notified of Staff's use of a restrictive procedure (physical holding) that same day.

37. The District's communication log indicated that, after talking with the Complainant, the District and the Complainant agreed that because the Student received individual transportation and was regulated after the incident, the Student could remain at school and be transported home on the school van at the end of the school day.

38. According to a separate disciplinary incident report form, the Complainant was also notified during that phone call of the District's decision to suspend the Student out-of-school for two school days, with an anticipated return date of [redacted],[5] as a result of the [redacted] behavioral incident. The form indicated that the Student's team would meet on [redacted], prior to the Student returning to the program, and that the Complainant "will attend if possible."

39. The District provided the Complainant with a copy of the disciplinary incident report, which served as a notice of suspension, and a copy of the Pupil Fair Dismissal Act. The disciplinary incident report indicated that Staff discussed the incident with the Student in-person prior to imposing the suspension.

40. Also on [redacted], a staff member submitted an initial report for a safety or threat assessment to the District's social work team to request additional screening. In addition to describing the Student's [redacted] behavioral incident, the report provided the following description of the Student's behavior while discussing the incident with staff:

> When discussing the need to create a plan for [Student's] safety at school, [Student] made comments such as[,] "I could have murdered her[,]" while smiling. As the conversation continued, [Student] appeared to become dysregulated, and excited by the conversation . . . Today showed that more safety measures may be needed in order to support [Student] at school . . It made me feel he may attempt the same behavior in the future.

41. The following day, on [redacted], a group of staff, including several school social workers and school psychologists, completed an initial threat screening form, which stated, "Use this form to help determine the need for a full team threat assessment." The group determined that the situation required further data collection and a "substantive [safety] assessment will be completed."

42. In a phone interview with the complaint investigator, a District administrator reported that, while the Student's behavioral incident on [redacted] "superficially looked a lot like past incidents," District staff felt that the Student's behavior during his follow-up conversation with staff demonstrated a need for the District to gather additional data through a comprehensive safety assessment. The administrator noted that initially the District intended to limit the safety assessment interviews to District staff but after meeting with Staff for two hours on [redacted], the District team determined that the assessment should be expanded to include interviews with the Student's parents and outside providers and changes to the Student's programming, which the District felt necessitated additional days of out-of-school suspension.

[5] District schools were not in session on [redacted]
[redacted]

43. The administrator reported being concerned that if the Student returned to school prior to completion of the safety assessment and changes to the Student's programming, another behavioral incident would occur.

44. On [redacted], according to a communication log maintained by the District, an administrator contacted the Complainant "to inform her that [Student's] out-of-school suspension was increasing from [two] days to [six] days," with the following explanation:

    "The reason this decision was made was to allow time for the school-based team to conduct a safety/threat assessment because of the issue on [redacted] and that he could return to school on [redacted]

45. The communication log also noted the following:

> [Complainant] was noticeably upset from the conversation and verbally objected to [Student's] suspension being extended. She explained that the school should have a safety plan already established and that extending his suspension is excluding him from school. I explained that as the school administrator my primary job is to keep students and staff in the building safe and that the extension would stand. I offered a meeting at [School] for next week and said I'd reach out to [Staff] to get that set up.

46. The administrator also reported discussing the Student's out-of-school suspension with the District's superintendent and special education director.

47. During the complaint investigation and in her written complaint, the Complainant expressed that her primary concern was that the District imposed a consecutive suspension against the Student for the same incident, noting that the District should have completed any needed safety assessment during the original two-day out-of-school suspension. The Complaint stated:

> [E]xceptions are allowed in the case of "immediate and substantial danger," which isn't the case here, given that on the day of the incident, [District staff] did not ask me to come and get him from school and also told me she saw him participating appropriately with other classmates after the incident had happened.

48. The Complainant also reported that the [redacted] incident was different from the Student's other behavioral incidents at the District in that the trigger/antecedent was unknown and that the targeted student was someone that the Student had talked about previously with Staff.

49. On [redacted], the Complainant and District staff met to discuss the Student's out-of-school suspension. According to meeting notes provided by the District, the Complainant requested to shorten the Student's school day, focus on transition skills, and limit the Student's access to peers. The District agreed to hold a follow up IEP team meeting on [redacted].

50. As part of the safety assessment, District staff also interviewed the Complainant and the Student's personal care assistant, who both reported that the Student frequently spends time in the community and has never showed physical aggression towards someone in that setting, noting that the Student engages in activities like taking boat rides, shopping, eating in restaurants, and visiting museums, zoos, aquariums, and nature centers.

51. On [redacted], the Complainant and District staff met to continue planning for the Student's return to school. At that meeting, Staff shared results from the District's safety assessment, summarized in meeting notes provided by the District as follows:

> The determination of the assessment was that there was a concern that the incident could be repeated. [Staff] talked about how the data was consistent with what the school reports and parent reports demonstrate – [Student] requires a constantly structured day, and his times where he would have an incident were related to taking walking breaks in the halls, getting his lunch in the lunchroom, and transitioning into the building in the morning.

52. The meeting notes also documented discussions about scheduling the Student's altered school day, avoiding triggers and encounters with other students, planning community outings, and incorporating job skills into the Student's day. The notes indicated that the team determined that the Student's conduct on [redacted] was a manifestation of his disability.[6]

53. During interviews, District staff reported that the team discussed alternative educational services for the Student because his out-of-school suspension exceeded five consecutive school days, and the team determined that the Student would benefit from additional time added to a regular school day during [redacted] to allow for an extended community outing, in lieu of services in the home during the Student's out-of-school suspension. Staff indicated that the team discussed ensuring the Student received at least one hour of alternative educational services but reported that the District was willing to provide more time if needed to facilitate the community outing.

54. At the end of the [redacted] IEP team meeting, the District provided the Complainant with prior written notice proposing an altered school day, and the Complainant signed in agreement.

55. The District reported that, following the use of restrictive procedures with the Student in [redacted], District staff have participated in multiple professional development opportunities related to addressing students' behavioral needs, including a three-hour all-staff training from an expert in mental health and trauma-informed care. In addition, during the [redacted] school year, District staff (including paraprofessionals) have participated in regularly-scheduled professional learning communities, book studies, learning cohorts, and training "refresh sessions," focused on trauma-

[6] District staff reported that the Student's out-of-school suspension, which extended to six consecutive school days and was his first disciplinary removal during the [redacted] school year, did not constitute a disciplinary change in placement but agreed to conduct a manifestation determination at the Complainant's request.

informed instruction and compassionately understanding and addressing students' challenging behavior.

Conclusions

1. Federal regulations at 34 C.F.R. § 300.324(b) provide in relevant part that each school district must ensure that the IEP team:

    (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved; and

    (ii) Revises the IEP, as appropriate, to address:

    (A) Any lack of expected progress toward the annual goals described [in the IEP, pursuant to] § 300.320(a)(2), and in the general education curriculum, if appropriate;

    (B) The results of any reevaluation conducted under § 300.303;

    (C) Information about the child provided to, or by, the parents as described under § 300.305(a)(2);

    (D) The child's anticipated needs; or

    (E) Other matters.

    (2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP Team must consider the factors described in paragraph (a)(2) of this section.

2. Federal regulations at 34 C.F.R. § 300.324(a)(2) include behavior as a "special factor" that must be considered by the IEP team, stating:

    "The IEP [t]eam must – (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior."

3. Minnesota Rule 3525.0850 also provides the following guidance regarding behavioral interventions:

    This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate,

> individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

4. Regarding the use of restrictive procedures, Minnesota Statute § 125A.0942, subd. 2(c) requires the following:

> The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used.

5. Here, the Student's IEP team met periodically – in [redacted] – to review and revise the Student's IEP and to modify and add to the Student's positive behavior support plan, including adding more proactive strategies, positively-worded directives, consequence interventions, and a crisis intervention plan. However, after District staff used restrictive procedures in response to the Student's behavior on [redacted] (two separate school days within 30 calendar days), the Student's IEP team did not meet until [redacted]. While the record supports a conclusion that the Student's IEP team considered the information required by Minn. Stat. § 125A.0942, subd. 2(c) during the [redacted] IEP team meeting and modified the Student's IEP and positive behavior support plan as appropriate, the District's failure to hold an IEP team meeting within 10 calendar days of [redacted] violated Minn. Stat. § 125A.0942, subd. 2(c).

6. In addition, Minnesota Statutes § 125A.0942, subd. 3(a)(7) states:

> [B]efore using a room for seclusion, a school must:
>
> (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and
>
> (ii) register the room with the commissioner, who may view that room.

7. Here, the District acknowledged that on [redacted] Staff used rooms for seclusion of the Student that were not registered with the commissioner, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(7)(ii).

8. Regarding discipline procedures, federal regulations at 34 C.F.R. § 300.530 provide in relevant part:

> (a) *Case-by-case determination*. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
>
> (b) *General*. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).
>
> (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

9. In addition, Minnesota Statute § 121A.41, subd. 10, states the following regarding out-of-school suspension:

> "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension . . . The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.

10. Here, following the Student's behavioral incident on [redacted], the District initially suspended the Student out-of-school for two school days. On [redacted], before the Student returned to school, the District extended the Student's suspension from two to six school days, imposing a consecutive suspension against the Student for the same course of conduct. The evidence in the record – including the District's incident report forms, communication log, threat and safety assessment documents, meeting notes, and conversations with the Complainant and District staff – supports a conclusion that District administration reasonably believed that extending the Student's suspension was necessary because of the risk of "immediate and substantial danger to self or surrounding persons or property," as permitted by Minn. Stat. § 121A.41, subd. 10.

Decision

1. The District violated Minnesota Statute § 125A.0942, subd. 2(c), when, during [redacted], it failed to timely hold an IEP team meeting within 10 calendar days after District staff used restrictive procedures in response to the Student's behavior on two separate school days within 30 calendar days.

2. The District violated Minnesota Statute § 125A.0942, subd. 3(a)(7)(ii), when, during [redacted], it used rooms for seclusion of the Student that were not registered.

Corrective Action

In light of the extensive training on understanding and addressing students' behavioral needs received by District staff since [redacted], no additional corrective action is required to remediate the violations in this complaint. *See* 34 C.F.R. § 300.151(b).

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. As no additional corrective action is required, this complaint file is closed as of the date of this decision.

Sincerely,

Marikay Canaga Litzau, J.D.
Director of Compliance and Assistance
Minnesota Department of Education

MCL/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue(s). The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue 1

The Complainant alleges, during the [redacted] school year, the District failed to ensure the Student's individualized education program (IEP) was accessible to each general education teacher, special education teacher, and service provider who was responsible for its implementation.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school in the District during the time period covered by this complaint.
2. The Complainant [redacted].
3. [redacted]
4. The first day of the [redacted] school year in the District was [redacted]. The District was operating under a hybrid learning model, with the Student scheduled to attend school in person on Monday and Tuesday and through distance learning on Wednesday through Friday each week.
5. The Student began the [redacted] school year as a new student in the District.
6. The District reported the Student began the [redacted] school year receiving special education and related services under an IEP developed by the previous Minnesota school district the Student attended dated April [redacted] (April [redacted] IEP).
7. The Student's April [redacted] IEP had a behavior management goal, a goal related to following directions, a reading comprehension goal, and a math goal.

---

[1] [redacted]
[2] [redacted]

8. The Student's April [redacted] IEP described the Student's direct special education and related services as follows:

    - Specialized Instruction in Behavior Regulation: 45 minutes, five days a week;
    - Specialized Instruction in Mathematics: 45 minutes, five days a week;
    - Specialized Instruction in Reading: 22 minutes, five days a week;
    - Specialized Instruction in Self-Regulation: 30 minutes, two days a week;
    - Specialized Instruction in Written Language: 23 minutes, five days a week.

9. The Student's April [redacted] IEP's least restrictive environment explanation provides:

    > [Student's] Emotional Behavior Disorder enables [Student] to receive special education support in social skills and behavior management daily at school. [Student's] needs will be met in a [redacted] class every day. [Student] will also receive services in the resource setting for Math, Language Arts (reading and writing). [Student] will also receive Self-Regulation/work completion skills 30 minutes 2 times per week in [redacted].[3] Due to [Student's] support, [Student] will not participate in two [redacted] classes [redacted] and mainstream Math and English. [Student] is a Federal Setting II student.

10. The Student's April [redacted] IEP also included accommodations to address the Student's behavior, as well as a behavior intervention plan (BIP).

11. In its response, the District reported the District's building administrators and school deans received a copy of the Student's April [redacted] IEP on [redacted], and the Student's regular education teaching staff received a copy of the "accommodations and behavior plans" from the Student's case manager on [redacted]. District staff credibly and consistently reported being familiar with the contents of the April [redacted] IEP.

12. On [redacted], according to a notice of team meeting, the Student's IEP team, including the Student's father, the Student's case manager, the school site director, and a regular education teacher, met for an "intake meeting for [Student to] discuss goals/objectives and any changes that may be made" to the Student's April [redacted] IEP.

13. On [redacted], with a prior written notice, the District proposed an IEP (September [redacted] IEP). The Student's September [redacted] IEP went into effect on [redacted], following the lapse of the 14-day objection period.

14. The District provided an Agreement to Amend, dated [redacted], reflecting the site or setting of services was changed to the District.

---

[3] [redacted]

15. The Student's September [redacted] IEP was identical to the Student's April [redacted] IEP, with the exception of the direct special education and related services, which revised to:

    - Specialized Instruction in Behavior Regulation: 45 minutes, five days a week;
    - Specialized Instruction in Mathematics: 45 minutes, five days a week;
    - Specialized Instruction in Reading: 45 minutes, five days a week.

16. The Student's regular education teachers and District administrators credibly and consistently reported they were provided with copies of the Student's September [redacted] IEP from the Student's case manager once it went into effect. They also reported they were familiar with the contents of the September [redacted] IEP.

17. On [redacted], the District transitioned its learning model for all students to a full distance learning model.

18. On [redacted], the District modified its distance learning format [redacted].

19. On [redacted], the Student's IEP team, including the Complainant, the Student's case manager, the school site director, and a regular education teacher, met to review progress toward the Student's IEP goals and to develop a new IEP.

20. On [redacted], with a prior written notice, the District proposed an IEP (March [redacted] IEP). The Student's March [redacted] IEP went into effect on [redacted], following the lapse of the 14-day objection period.

21. The Student's March [redacted] IEP revised the Student's goals and increased the Student's direct special education and related services to the following:

    - Specialized Instruction in Behavior Regulation: 50 minutes, five days a week;
    - Specialized Instruction in Mathematics: 50 minutes, five days a week;
    - Specialized Instruction in Reading: 50 minutes, five days a week.

22. The Student's March [redacted] IEP revised the Student's least restrictive environment explanation to the following:

> [Student's] disability in the area of emotional behavioral disorder affects [Student's] ability to maintain [Student's] behavior, stay on task and focused during [Student's] classes. [Student] requires specialized services to meet [Student's] academic and behavioral needs.
>
> To address [Student's] math needs, which are not met in [Student's] general education classes, [Student] will receive 50 minutes of math instruction [five] times per week in a small group special education class instead of a general education math class.

To address [Student's] reading/language arts needs, which are not met in [Student's] general education classes, [Student] will receive 50 minutes of reading/language arts instruction [five] times per week in a small group special education class instead of a general education language arts class.

To address [Student's] transition/behavioral needs, which are not met in [Student's] general or special education classes, [Student] will have a special education elective class to receive 50 minutes of transition/behavioral service [five] times per week.

[Student] will be in the general education setting for all other programming and instruction.

23. The Student's March [redacted] IEP provided the following relevant program modifications, supports, and adaptations in general and special education:

Behavior:

- [Student's] case manager, administration, and support staff will be utilized first before calling on additional support.
- [Student] will be allowed wait time to process a difficult situation. (This can take upwards of 10-30 minutes to a day).
- Staff will process with [Student] when [Student] is in a calm state as to not upset [Student] further.
- Direct instruction on behavior strategies (self-regulation, conflict resolution, de-escalation, and positive peer/staff relationship skills) to use [versus] avoiding tasks.
- [Student] may have access to a fidget in the classroom to help keep him calm.
- Positive reinforcement works for [Student] (praise, mints, positive calls home).

24. The Student's March [redacted] IEP provided the following BIP:

1. Target behavior to be reduced or eliminated:

Hypothesis Behavior 1: When [Student] is hungry, tired, or is requested to engage in non-preferred activities or perceived academically challenging activities, [Student] will leave the classroom, silently refuse, or verbally refuse school work in order to avoid non-preferred activities.

Hypothesis Behavior 2: When [Student] is hungry, tired, or is arguing or engaging verbally with peers (and not addressed) [Student] will engage in a physical confrontation (hitting, kicking) with staff and/or peers as a means to gain peer attention.

2. Baseline data (frequency, intensity, duration).

Information not provided.

3. Behavior to be taught to replace the target behavior:

Behavior 1:

PREVENT (describe preventative strategies based on function of behavior)

- Building rapport with staff. [Student] is more likely to comply with directions from staff [Student] has connection to.
- Ensure [Student] understands expectations of the task and that steps are broken down.
- Work needs to be modified at [Student's] level.
- Provide choices within the directions rather than firm directives as to how things will go.
- Ensure that basic needs are met (food, sleep, etc.). These things play a large role in [Student's] ability to engage in prosocial behavior.
- [Student] will stay in [Student's] mainstream classes for instruction and be able to access an alternative space to work with an adult.

TEACH (Describe strategies for teaching and prompting replacement behaviors)

- [Student] needs problem-solving skills – what to do if [Student] doesn't understand something, accessing support in school
- Communication skills – self advocacy

Behavior 2:

PREVENT (Describe preventative strategies based on function of behavior)

- [Ensure that basic needs are met (food, sleep, etc.). These things play a large role in [Student's] ability to engage in prosocial behavior.
- Staff proximity to support prosocial communication with peers.
- Ensure [Student] is seated next to positive peer role models.

TEACH (Describe strategies for teaching and prompting replacement behaviors)

- Social skills – Peer interaction, making prosocial statements
- Problem-solving skills – self regulation strategies

4. Plan to encourage (reinforce) the use of replacement behavior:

Behavior 1:

REINFORCE (Describe function based reinforcement procedures for increasing behavior)

- [Student] responds well to positive praise, token economy system, positive phone calls home, mints, food/snacks, access to time with a preferred staff member.
- [Student] will be able to earn 2 mints per hour. 1 for following directions and 1 for completing work that is at [Student's] level.

Behavior 2:

REINFORCE (Describe function based reinforcement procedures for increasing behavior)

- [Student] will be able to access reinforcement as part of a reinforcement system designed for [Student]. [Student] will be able to earn access to motivators, such as food/snacks, free time, time with a preferred adult, etc.

5. Consequences for continued display of the target behavior: (if a restrictive procedure is used in an emergency situation indicate how the parent wants to be notified. Complete the Use of Restrictive Procedures: Physical Holding or Use of Restrictive Procedures: Seclusion form as appropriate)

Describe procedures for decreasing challenging behavior 1:

When [Student] refuses to complete a task, leaves the assigned area, remind [Student] of [Student's] reinforcement options. Staff will provide choices within the assigned task or offer an alternative space. Provide wait time for [Student] to respond. If [Student] continues to refuse [Student] will be given a choice of accessing [Student's] case manager or the student development center.

Describe procedures for decreasing challenging behavior 2:

- [Student] needs access to a space to cool down following an altercation with peers. [Student] needs an extended cool down time before processing behavior situation with an adult. This will cut down on repeated verbal and physical altercations.
- [Student] responds well to taking a break and being able to leave the situation with a trusted adult. If [Student] is able to collect [himself] and have time to process with emotions in a safe place. [sic]

6. How will the effectiveness of the plan be evaluated?

The plan will be evaluated at progress reporting times to ensure that it is being implemented with fidelity and interventions are effective.

25. The Student's regular education teachers and District administration credibly and consistently reported they were provided with copies of the Student's March [redacted] IEP from the Student's case manager, once it went into effect and were familiar with its contents.

Conclusions

1. Federal regulations at 34 C.F.R. § 300.323 provide:

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that –

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of –

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided to the child in accordance with the IEP.

2. While the District made the Student's September [redacted] IEP and March [redacted] IEP accessible to the Student's regular education teachers and administration once they went into effect during the [redacted] school year, the District did not provide copies of the Student's April [redacted] IEP to the Student's regular education teachers until approximately three or four days after the [redacted] school year began. This is in violation of 34 C.F.R. § 300.323(d).

Decision

The District violated 34 C.F.R. § 300.323(d) when it failed to make the Student's April [redacted] IEP accessible to the Student's regular education teachers responsible for its implementation beginning the first day of school, [redacted].

Corrective Action

Corrective action appears at the end of this decision.

Issues 2 and 3 have been combined for organizational purposes.

Issue 2

The Complainant alleges, during the [redacted] school year, the District improperly used restrictive procedures, namely seclusion, in lieu of developing and/or implementing an appropriate IEP or behavior intervention plan (BIP) and without following the statutory requirements regarding restrictive procedures.

Issue 3

The Complainant alleges the District failed to follow proper due process procedures following a behavioral incident on [redacted] resulting in the Student's removal from school.

Findings of Fact

1. On [redacted], the District transitioned to a hybrid learning model, with the Student attending school in person on [redacted] and via distance learning on [redacted] each week.

[redacted] ***School Year Behavioral Incidents***

2. District administrators reported there were approximately four to six behavioral incidents during the [redacted] school year where District staff would ask the Student to comply with a school rule and the Student would refuse and become escalated.

3. District administrators reported they would call the Student's mother to come pick the Student up early from school as a result of his behaviors. The District acknowledged it did not maintain behavioral or discipline records related to these incidents and therefore the District did not provide dates of these incidents. The District's special education staff reported the Student did not have any major behavioral incidents in the special education setting during the [redacted] school year, and would eventually comply with directives if given time and space to do so.

[redacted] ***Behavioral Incident***

4. In its response, the District provided a notice of suspension showing the Student was suspended for three days, beginning on [redacted]. The notice of suspension provided the following description of the Student's behavior:

> [redacted] was involved in an incident where [redacted] physically and verbally assaulted and threatened a staff member. As other staff members attempted to diffuse the situation, [Student] continually tried to insert [self] and refused to follow directions. [Student] eventually left the building peacefully on [Student's] own.

5. The District acknowledged it did not provide this notice of suspension to the Student or the Complainant within 48 hours of the Student's suspension.

6. The District acknowledged it did not conduct an informal administrative conference with the Student prior to the Student's suspension.

7. With the District implementing the hybrid model schedule at the time, the Student missed a partial day of in-person learning on [redacted] and two days of distance learning on [redacted] due to his suspension.

8. The District reported in its written response to this complaint that the [redacted] behavioral incident occurred when the Student was "asked by a dean at [District] to remove [Student's] hood." It further provided that, "[Student] refused to comply and swore at the dean. [Student] was then brought into the resource room to debrief and calm down."

9. District staff reported the Student was verbally escalated and used profanity during this behavioral incident. The District staff reported the Student was upset about how he perceived [redacted] was being treated by District staff after [redacted] also refused to remove his hood.

10. District staff credibly and consistently reported that he asked the Student and [redacted] if they wanted to take a break in the lunch room, but both students refused. District staff also reported telling the Student and [redacted] that if they did not comply with pulling the hoods down off of their heads, they would be suspended. At this point, [redacted] became verbally and physically escalated.

11. The Complainant reported the Student told her after the incident that District staff moved him into seclusion during this behavioral incident.

12. The District did not provide any documentation about the use of a restrictive procedures involving the Student as a result of this behavioral incident.

13. In its response, the District reported the Student was not placed into seclusion. Instead, the District reported that the Student walked into the resource room on his own at District staff's request while [redacted] was physically escalated, that the resource room was not locked during this incident, and that "the door remained open with [a] staff member present while [Student] was in the classroom."

14. During interviews, District staff reported the Student was verbally escalated while in the resource room and was using profanity, but was not physically aggressive. District staff reported asking the Student to calm down and to let the other District staff members handle the situation with [redacted], in an attempt to deescalate the situation. District staff reported no other students or staff were in the resource room at the time.

15. District staff also reported the Student attempted to leave the resource room, but District staff stood in the doorway with his hands and arms spread out in order to prevent the Student from leaving the resource room until the situation with [redacted] was resolved. District staff reported when the Student walked toward him to leave the room, District staff moved and kept his arms spread to block the Student, but did not make physical contact with the Student.

16. District staff reported the Student was in the resource room for approximately two to five minutes, with the Student remaining verbally escalated and attempting to leave the resource room until [redacted] was away from the area. District staff reported the Student then calmly walked out of the resource room to one of the outer doors of the building, once the Complainant arrived.

17. In response to this complaint, the District provided security footage from the hallway and the school's front door prior to, during, and following the [redacted] behavioral incident. However, the security footage of the hallway is obscured by a door and does not provide a view of the Student in the resource room.

18. The Student left school with the Complainant at approximately [redacted] after the Student called her. In the security footage of the front door, the Student can be seen leaving the school building and appears to be in a calm state.

19. On [redacted], the Student's case manager called the Complainant to schedule an IEP team meeting. The District sent a notice of team meeting to the Complainant, scheduling an IEP team meeting for [redacted] "to discuss [Student's] behavior and how it violated school's code of conduct."

20. On [redacted], the Student's IEP team, including the Complainant, two school deans, the District's site director, the District's special education director, and the Student's case manager, met for a manifestation determination meeting, where it was determined the Student's behavior was not a manifestation of the Student's disability and the conduct in question was not the direct result of the school's failure to implement the Student's IEP. The Student was not in attendance at this meeting.

21. During interviews, the District's special education director reported the Student's IEP team discussed the Student's disability, the Student's conduct during the behavioral incident, and the Student's IEP and BIP during the Student's manifestation determination meeting.

22. The District provided a manifestation determination form, which provided the following description of the incident:

> On [redacted] [Student] was on the third floor of [school] building and had [Student's] hood over [Student's] head [Student] was asked to take [Student's] hood down. [Student] was walking with another student at the time. When both were approached by the dean of students, the situation escalated. [Student] participated in aggressive behavior using profanity and harming school safety. [Student] refused and used profanity towards the staff member, when this occurred, [Student] was moved to the resource room so staff could deescalate [Student's] behavior. In the resource room [Student] was insubordinate, using an aggressive tone, towards staff and refused to follow directions given to [Student]. [sic]

23. Following the manifestation determination meeting on [redacted], the District provided the following notes summary of the meeting to the Complainant:

> [District's special education director] began the meeting by asking [school dean] to describe the behaviors that took place which led to suspension. [School dean] told [Student] that he told [Student] to remove [Student's] hood per school policy and [Student] became agitated. [sic]
>
> [Another school dean] said that [Student] began swearing and becoming irritated [Student] was being ushered into the resource room as another incident involving [redacted] was taking place. [School dean] had said that [Student] continued to use abusive language.
>
> [Complainant] started asking about what the rules are in the school, and why she was never provided with a student handbook. She claimed that her other child was injured during the incident and was asking why she wasn't contacted by administration.
>
> [Site director] said that the Handbook could be provided at any time upon request.
>
> [Complainant] said that she should have been given the handbook when her student enrolled. She claimed that she never knew about any expectations or guidelines. She began to ask [school dean] if he had ever read [Student's] IEP and if he knew anything about [Student].
>
> [School dean] said that he had in fact read [Student's] IEP and was following it, as he was trying to give [Student] a quiet space to calm down, but [Student] refused. [Complainant] did not believe [school dean].
>
> [School dean] said that the school has tried to work with her as a parent about that, [Complainant] has been difficult to work with, as she only listens to her children's side of things.
>
> [Complainant] claimed she is just now hearing about other situations and she was never made aware.
>
> [School dean] explained [Complainant] has been part of every situation, and [Complainant] has picked them up each time.
>
> [Complainant] explained that only certain staff actually care about her kids. She explained she had been out of work for six months in order to get [Student [redacted]] to school. [redacted]

> [Special education director] asked [Student's case manager] to explain if [Student's] disability was the reason for [Student's] behavior. [Student's case manager] explained that she has ways of dealing with [Student], and wasn't involved in the incident but doesn't believe that [Student's] disability affected the situation with [Student's] hood and subsequent reactions.
>
> [Complainant] asked if the IEP is taken seriously at which point [school deans and site director] all answered yes.
>
> [Special education director] proceeded to tell [Complainant] that we were recommending that [Student] go back to [Student's] home district.
>
> [Complainant] responded that "it doesn't matter," and also not to call her on Monday regarding [redacted] meeting.
>
> [redacted]
>
> This continued on for a while and [special education director] and [school dean] continued to tell her this meeting was about [Student].
>
> [School dean] said that he would see if we could do tomorrow, but would not make any promises.
>
> [Complainant] said something to the effect of "I'm unenrolling my kids, have a nice life," and then she hung up [the phone].[4]

24. On [redacted], the District provided a prior written notice to the Complainant, proposing the following:

> A manifestation determination meeting was held on [redacted]. The meeting was to determine if [Student's] behavior, which violated the school's

[4] As of the date of the District's response on [redacted] the District had not received a records request indicating the Complainant had enrolled the Student in another Minnesota school district.

> code of conduct, was caused by or had a substantial relationship to [Student's] disability, or was the direct result of the District's failure to implement the IEP.
>
> At the meeting, held on [redacted], the team determined that [Student's] behavior was not directly due to [Student's] disability and the IEP and [Student's] behavior plan was followed by the school. In addition, the behavior and safety concerns were in violation of school safety. Based on the determinations at the meeting, and that the incident was not directly due to [Student's] disability and the IEP and [Student's] behavior plan were followed by the school, [Student] will be referred to [Student's] home district of [Minnesota school district].

25. The prior written notice provided the following description of the other options considered and why those options were refused, "the team considered having [Student] remain at [District], however, the severity of the situation and school safety warranted [Student] being transferred."

26. During interviews, multiple District administrators clarified that the severity of the situation and school safety issues referred to in the prior written notice, pertained to concerns related to the Student's sibling, not the Student. The District did not provide any evidence that the Student would create an immediate and substantial danger to self or to surrounding persons or property or that it was in the process of initiating an expulsion of the Student

27. The District acknowledged the Student was asked not to return, in-person, to the District, but could participate in distance learning through the District through the end of the [redacted] school year.

28. The Complainant reports she was not informed the Student would receive his educational programming for the remainder of the [redacted] school year in distance learning, and instead understood the Student to be completely removed from all learning models in the District.

29. The Student's attendance records reflect that he participated in distance learning on [redacted] and that he did not participate in distance learning or any form of educational programming for the remainder of the [redacted] school year.

30. The last day of the [redacted] school year was [redacted]. [redacted]

31. In its response, the District acknowledged it "failed to maintain proper behavior referral and tracking documentation as part of protocols on the Safety and Support team," and that it "did not document when [Student] had behavior referrals and did not provide proper due process as it relates to behavior referrals, suspensions, and expulsions."

32. The District proposed the following corrective action, in pertinent part:

> 1. Within [five] calendar day of the date of this complaint decision: The District will notify, in writing, to the family a reinstatement of programming and enrollment for [Student].
>
> This item will be deemed complete when the District provides MDE with a copy of the letter.
>
> 2. Within [five] days of the date of this complaint decision: District special education director shall ensure that District staff contact [Complainant] to schedule an IEP team meeting to review and revise [Student's] IEP in accordance with [Student's] re-enrollment decision and to determine compensatory special education and related services necessary to remedy educational harm to [Student] for the missed education.
>
> This item will be deemed complete once the amended IEP and prior written notice/agreement to amend forms are submitted to MDE for approval.
>
> 3. Within 15 calendar days of the date of this complaint decision: the District shall develop and maintain documentation related to behavior plan tracking. Staff required to complete or maintain documentation will take part in the MDE facilitated training on the Pupil Fair Dismissal Act and training on how to complete behavior plan write ups . . . .
>
> This item will be deemed complete when the District provides MDE with the attendance sheet for the training and submitting the updated behavioral referral documentation and tracking process.
>
> 4. Within 60 calendar days of the date of this complaint decision: the District will submit to MDE's corrective action specialist, for approval, revised guidelines for behavioral write ups and suspension notices that reflect the PFDA (Minn. Stat. §§ 121A.41-575).
>
> This item will be deemed complete upon MDE's approval of the District suspension notices and tracking system.
>
> 5. [redacted]: All corrective action shall be completed within one calendar year from the date of this decision. The District shall provide copies of any and all documentation created for students with disabilities through July 1, 2022, including prior written notices, proposed IEPs, and discipline records.
>
> MDE's corrective action specialist will determine the need to receive ongoing documentation after [redacted].

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

3. On March 12, 2020, the Office of Special Education and Rehabilitation Services (OSERS) at the U.S. Department of Education released initial guidance concerning special education services during the COVID-19 pandemic:

> If a [District] closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an [District] would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the [District] must make every effort to provide special education and related services to the child in accordance with the child's [IEP] or, for students entitled to FAPE under Section 504 [of the Rehabilitation Act of 1973 (Section 504)], consistent with a plan developed to meet the requirements of Section 504. The [US Department of Education] understands there may be exceptional circumstances that could affect how a particular services is provided. In addition, an IEP [t]eam and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

4. The OSERS and the Office for Civil Rights (OCR) provided further guidance addressing the risk of COVID-19 on March 21, 2020. The OSERS provided further guidance addressing the risk of COVID-19:[5]

> School districts must provide a [FAPE] consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR [Office for Civil Rights] and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the

[5] Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020).

> provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.
>
> [The U.S. Department of Education] understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.
>
> It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

5. Laws of Minnesota 2021, 1st Special Session, chapter 13, article 5, section 1, effective July 1, 2021, state in relevant part:

> Subd. 1. Special education recovery. The commissioner of education, school districts, and charter schools must collaborate with families of students with disabilities as provided in this section to address the impact of disruptions to in-person instruction on students' access to a free appropriate public education related to the COVID-19 pandemic.
>
> Subd. 2. Special education services and supports. (a) A school district or charter school that serves one or more students with disabilities must invite the parents of a student with a disability to a meeting of each individualized education program (IEP) team as soon as practicable but no later than December 1, 2021, to determine whether special education services and supports are necessary to

address lack of progress on IEP goals or in the general education curriculum or loss of learning or skills due to disruptions related to the COVID-19 pandemic. The services and supports may include but are not limited to extended school year services, additional IEP services, compensatory services, or other appropriate services. This meeting may occur in an annual or other regularly scheduled IEP meeting. If the IEP team determines that the services and supports are necessary, the team shall determine what services and supports are appropriate for the student and when and how those services should be provided, in accordance with relevant guidance from the Minnesota Department of Education[6] and the United States Department of Education. The services and supports must be included in the IEP of the student.

6. Further, Laws of Minnesota 2021, 1st Special Session, Chapter 13, article 5, section 1, provide:

   Subd. 2(b): In determining whether a student is eligible for services and supports described in paragraph (a), and what services and supports are appropriate for the student, the IEP must consider, in conjunction with any other considerations advised by guidance from the Minnesota Department of Education[7] or the United States Department of Education:

   (1) Services and supports provided to the student before the disruptions to in-person instruction related to the COVID-19 pandemic;
   (2) The ability of the student to access services and supports;
   (3) The student's progress toward IEP goals, including the goals in the IEP in effect before disruptions to in-person instruction related to the COVID-19 pandemic, and progress in the general education curriculum;
   (4) The student's regression or lost skills resulting from disruptions to instruction;
   (5) Other significant influences on the student's ability to participate in and benefit from instruction related to the COVID-19 pandemic, including family loss, changed family circumstances, other trauma, and illness; and
   (6) The types of services and supports that would benefit the student and improve the student's ability to benefit from school, including academic supports, behavioral supports, mental health supports, related services, and other services and supports.

[6] Minnesota Department of Education Guidance, including, but not limited to: Guide to Addressing the Impact of the COVID-19 Pandemic on Students with Disabilities.
[7] Minnesota Department of Education Guidance, including but not limited to: Guide to Addressing the Impact of the COVID-19 Pandemic on Students with Disabilities.

7. A review of the record, including the Student's March [redacted] IEP, District staff interviews, and documentation and the notes from the Student's manifestation determination meeting, support a conclusion that the District followed the Student's BIP during the [redacted] behavioral incident, in conformity with the 34 C.F.R. § 300.17. Specifically, District staff offered the Student the opportunity to access an alternative space in the lunchroom when he began to escalate.

Restrictive Procedures

8. Minnesota Statutes § 125A.0941(b) define emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

9. Minnesota Statutes § 125A.0941(g) define seclusion as:

> Confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity or location where the child cannot participate in or observe the activity is not seclusion.

10. Minnesota Statutes § 125A.0942, subd. 3 provides:

> (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released; and

(iv) a brief record of the child's behavioral or physical status;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

11. Minnesota Statutes § 125A.0942, subd. 2(b) provide, "a school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or otherwise as indicated by the child's parent under paragraph (f)."

12. The Student's removal from the hallway to the resource room during the [redacted] behavior incident, constituted a seclusion used in an emergency, as defined under Minn. Stat. § 125A.0941(b) and (g) and as contemplated by the Student's BIP. Specifically, the Student was alone in the room, other than the District staff member who stood in the doorway for the purpose of preventing the Student

from leaving the resource room. Following the Student's seclusion, the District did not follow the required standards for restrictive procedures, as defined in and in violation of Minn. Stat. § 125A.0942.

Discipline

13. Federal regulations at 34 C.F.R. § 300.530 provide, in pertinent part:

> (a) *Case-by-case determination*. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of conduct.
>
> (b) *General*. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).
>
> (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

14. Minnesota Statutes § 121A.41, subd. 2 define dismissal as, "the denial of the current educational program to any pupil, including exclusion, expulsion, and suspension. It does not mean removal from class."

15. Minnesota Statutes § 121A.41, subd. 10 define suspension as:

> An action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability. Each suspension action may include a readmission plan. The readmission plan, shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. Consistent with section 125A.091, subd. 5, the readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of

readmission. The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 school days.

16. Minnesota Statutes § 121A.46 provide, in pertinent part:

> Subdivision 1. Informal administrative conference before suspension. The school administration shall not suspend a pupil from school without an informal administrative conference with the pupil. The informal administrative conference shall take place before the suspension, except where it appears that the pupil will create an immediate and substantial danger to self or to surrounding persons or property, in which case the conference shall take place as soon as practicable following the suspension.
>
> Subd. 2. Administrator notifies pupil of grounds for suspension. At the informal administrative conference, a school administrator shall notify the pupil of the grounds for the suspension, provide an explanation of the evidence the authorities have, and the pupil may present the pupil's version of the facts.
>
> Subd. 3. Written notice of grounds for suspension. A written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of sections 121A.40 to 121A.56, shall be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's parent or guardian by mail within 48 hours of the conference. The district shall make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following suspension. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to surrounding person or property, the written notice shall be served upon the pupil and the pupil's parent or guardian without 48 hours of the suspension. Service by mail is complete upon mailing.

17. Following the Student's behavioral incident on [redacted], the District suspended the Student for three school days, as allowed under 34 C.F.R. § 300.530(a) and (b). However, the District did not hold an informal administrative conference with the Student either before the suspension or as soon as practicable following the suspension and did not provide written notice of the suspension to the Student and Complainant at or before the suspension or by mail within 48 hours of the suspension. This is in violation of Minn. Stat. § 121A.46.

18. Following the end of the Student's three day suspension, the District required that the Student receive his educational services through distance learning, even though the District remained in a hybrid

learning model, for the remainder of the [redacted] school year. These actions by the District constituted an additional seven in-person school days of dismissal under Minn. Stat. § 121A.41, subd. 2, for the Student, based on his hybrid schedule. The District's additional dismissal of the Student amounted to a consecutive suspension of the Student for the same course of conduct, in violation of Minn. Stat. § 121A.41, subd. 10 and the related due process requirements. Specifically, although the District had concerns about the Student's sibling returning to school, the District did not provide any evidence the Student would create an immediate or substantial danger to self or to surrounding persons or property and that it was in the process of initiating an expulsion of the Student.

19. Finally, from [redacted], and based on limitations required by the Distance Learning Period, including the closure of Minnesota public school buildings and facilities for typical in-person instruction, the Student's dismissal from in-person instruction and requirement that the Student receive the remainder of services through distance learning, and given the Student's disability, the District did not provide special education and related services in conformity with the Student's March [redacted] IEP and BIP and in violation of 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08(b)(1).

Decision

1. The District violated Minn. Stat. § 125A.0942 when it failed to follow the standards for restrictive procedures following the Student's seclusion during the [redacted] behavioral incident.

2. The District violated Minn. Stat. § 121A.46 when it failed to hold an informal administrative conference with the Student either before or as soon as practicable following the suspension and when it failed to provide written notice of the suspension to Student and the Complainant within 48 hours of the suspension.

3. The District violated Minn. Stat. § 121A.41, subd. 10 when it imposed consecutive suspensions against the Student for the same course of conduct, without evidence that the Student would create an immediate and substantial danger to self or to surrounding persons or property or without initiating an expulsion against the Student.

4. The District violated 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08(b)(1) when it failed to provide special education and related services to the Student following the Student's behavioral incident on [redacted].

Corrective Action

The District's proposed corrective action is accepted, with the following revisions:

1. Within five calendar days of the date of this complaint decision, the District will notify the family, in writing, of the Student's reinstatement of educational programming and enrollment at the District.

   This item will be deemed complete when the District provides MDE with a copy of the letter.

2. Here, the Student did not receive all the special education and related services described in Student's April [redacted] IEP from [redacted]. Accordingly, by [redacted], the District will contact the Complainant to schedule a meeting of the Student's IEP team to review the Student's skills and progress and to make an individualized determination as to the compensatory services needed to make up for any loss in the Student's skills—including academic, functional, or behavioral skills—and any lack of expected progress in the general education curriculum or toward any of the Student's IEP annual goals, that resulted from the District's removal of the Student from his educational programming.

   The Student's IEP team shall specifically consider whether some compensatory services can be provided during summer [redacted], either by District Staff or from an outside provider, program, or agency, or when schools resume normal operations. Any compensatory services should be documented in the Student's IEP and described as compensatory services owed for special education instruction missed during the [redacted] school year, along with the frequency, location, and duration of the services, as outlined in 34 C.F.R. § 300.320(a)(7). The District will provide a copy of the Student's revised IEP or other documentation reflecting the parties' compensatory services agreement to MDE's corrective action specialist, Sara K. Wolf, once agreed upon by the Complainant.

   The agreed-upon compensatory services do not limit the District's ability or obligation, when schools resume normal operations, to provide the Student with additional services needed to address any loss of skills or lack of progress due to the impact of the emergency suspension of in-person education during the COVID-19 pandemic.

   If the District and the Complainant are unable to reach an agreement on compensatory services by [redacted], both parties may submit a proposal to MDE's corrective action specialist, Sara K. Wolf, and MDE will make a final determination.

3. The District shall develop and maintain a system to properly collect documentation related to behavior plan tracking. Within 30 calendar days of the date of this complaint decision, the District must submit to MDE's corrective action specialist, Sara K. Wolf, for approval, revised guidelines for properly documenting student behavioral incidents, the use of restrictive procedures, and disciplinary notices, consistent with Minn. Stat. §§ 121A.40-56. Further, as proposed by the District, the District must provide copies of any and all behavioral documentation, including but not limited to, disciplinary notices and restrictive procedure documentation, created for students with disabilities through [redacted]. This documentation is to be submitted throughout the [redacted] school year, specifically on the following dates: [redacted].

4. Within 30 calendar days of the date of this decision, the District's special education director must contact the MDE's corrective action specialist, Sara K. Wolf, to discuss a training plan for District staff, including general and special education administrators and teachers, pertaining to the standards for properly implementing restrictive procedures, the due process protections outlined under the PFDA and IDEA, and the District's obligation to provide services in conformity with students' IEPs.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sonia R. Smith, J.D.
Director of Assistance & Compliance
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113

SRS/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

[redacted]

Re: Special Education Complaint [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on each issue. The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

The issues have been combined for organizational purposes.

Issue 1

The Complainant alleges that during the [redacted] school year, the District failed to appropriate plan for, and respond to, the Student's behavior. Specifically, the Complainant alleges the District improperly used restrictive procedures, namely physical holding, in lieu of developing and/or implementing an appropriate behavior plan (BIP) and without following the statutory requirements regarding restrictive procedures.

Issue 2

The Complainant alleges that during the [redacted] school year, the District failed to provide special education and related services in conformity with the Student's individualized education program (IEP). Specifically, the Complainant alleges the District did not provide reading and writing instruction during the entire [redacted] school year, during periods of distance, hybrid, and in-person learning.

Issue 3

The Complainant alleges the District failed to schedule the Student's IEP team meeting in [redacted] at a mutually agreed upon time and place.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended third grade within the District during the time period covered by this complaint.

2. The Complainant is the [redacted].

3. Regarding restrictive procedures, the Complainant alleged the District did not provide sufficient training for its staff regarding its Restrictive Procedures Plan, did not follow the debriefing protocol listed in the plan because she was not provided sufficient information about the circumstances surrounding the use of restrictive procedures, and that the District's Restrictive Procedures Plan is out of date. She also alleged that District staff failed to provide the Student with positive behavioral interventions, resulting in excessive restrictive procedures being used on the Student.

4. The District's Restrictive Procedures Plan is dated September 2018 (2018 RPP).

5. The District's 2018 RPP notes that the District's oversight committee meets at the end of every trimester. During the [redacted] school year, the District reported the oversight committee met on [redacted]. The District acknowledged this is not in compliance with Minnesota Statute § 125A.0942, subdivision 1, which requires an oversight committee to undertake

quarterly review of the use of restrictive procedures. The District reported it will update the District's 2018 RPP to be in compliance with Minnesota statute and ensure quarterly oversight committee meetings occur.

6. The District's 2018 RPP notes that the District provides the following trainings to its staff on de-escalation techniques: [redacted]. The District acknowledged it no longer provides many of these de-escalation trainings to District staff and reported it will update the District's 2018 RPP to accurately reflect the de-escalation trainings provided.

7. District staff consistently reported being trained in CPI standards.

8. The District's 2018 RPP notes that, following the use of a physical hold or seclusion, "the staff person who implemented or oversaw the physical holding or seclusion shall conduct a post-use debriefing with *all involved team members and building administration or designated individual* within *24 hours* after the incident concludes." (Emphasis in original.)

9. In response to this complaint, the District provided 14 [redacted] Forms for its uses of restrictive procedures on the Student during the [redacted] school year. Each [redacted] Form described the incident, information about why a less restrictive measure failed, the time the restrictive procedure began and ended, and a brief record of the Student's behavioral and physical status.

10. The District also provided [redacted] Forms, detailing the Student's behavioral incidents during approximately 42 days throughout the [redacted] school year. Each [redacted] Form included space for District staff to describe the incident, including the behaviors observed, list an antecedent, and describe interventions used in response to the Student's behaviors, such as giving expectations verbally or non-verbally, using first-then statements, providing sensory items, or using a timer.

11. [redacted]

12. The first day of instruction for the Student's elementary school was [redacted] in a hybrid learning model, with the Student attending school through distance learning on Mondays, Tuesdays, and Wednesdays, and in person on Thursdays and Fridays each week.

---

[1] [redacted]

[2] [redacted]

13. The Student began the [redacted] school year with an IEP dated May [redacted] (May [redacted] IEP).

14. The Student's May [redacted] IEP provided the following present levels of academic achievement and functional performance statement regarding the Student's social, emotional, and behavioral functioning, in relevant part:

> [Student] has made great gains in his ability to process emotions after behavioral situations. He has been able to describe the zone he was in, what emotion he felt within the zone and why he felt the way that he did. [Student] is still learning techniques to help him prior to an escalation and what it means to self-regulate. [Student] has stated that many of the reasons that he demonstrates escalated behaviors is to avoid doing work. [Student's] team modifies his work to try to decrease his workload and prevent these situations from happening. . . . [Student] is most successful when he has frequent breaks and staff in close proximity. [Student] also responds well when shown a visual schedule with what he needs to accomplish in order to get to a preferred activity (recess, lunch, break, etc.). [Student] does not have behavior issues in the lunch room or at recess. He plays with his peers when outside. Others seem to enjoy [Student's] presence when [in] social situations.
>
> Staff often use a low, encouraging tone when redirecting [Student] within the immediate learning environment. When he [is] unmotivated, tired, bored, or embarrassed, [Student] will test his boundaries within the learning environment. When supporting [Student] during work opportunities, staff are most successful when they use close proximity, non-verbal guidance[.] [Student] is more likely to [break down] or [continue] off-task behavior when staff redirect without attempting to help him communicate. When he is unable to meet the behavior and work expectations in the general and special education settings, it can take anywhere from a few minutes to over an hour for him to return to his schedule. It is important to be patient and supportive, while clear about what his expectations are during his break period.

15. The Student's May [redacted] IEP included a reading goal; a written language goal; and a social, emotional, and behavioral goal.

16. The Student's May [redacted] IEP included the following special education and related services for in-person learning: 295 minutes, one time a day of paraprofessional support in the general education setting; five direct minutes, five times per day of access to the center-based classroom for staff support in self-regulation, process transitions/changes, to receive behavior instruction and support, and to utilize a calming space and his behavior management system; 30 minutes, one time a day for direct reading instruction; 30 minutes, one time a day of direct written language instruction; 15 minutes, five times per year of indirect occupational therapy services; 30 minutes, one time a week of direct social-emotional and behavioral support with the school psychologist; and 30 minutes, one time per day of direct social skills instruction.

17. The Student's May [redacted] IEP specified that the paraprofessional assisting the Student would "receive shared paraprofessional support while in the [general education] setting" and that "support will include assisting [Student] with calming and behavioral support, re-explanation of directions, and cues for work completion."

18. The Student's May [redacted] IEP included the following relevant accommodations and modifications:

> [Student] will have access to fidgets and flexible seating. Sensory breaks may be utilized and may include heavy work activities, vestibular input or weighted equipment. Sensory breaks are more so motor focused breaks due to regular sensory breaks not being successful with [Student]. [sic]
>
> Behavior: Advance notice of transitions and changes in schedule will be given; morning check in to prepare for the day; center-based staff will help the student identify a technique to help them calm down or refocus; use of visuals to assist in behavior regulation; will use a visual schedule; and access to and use of positive reinforcement behavior chart throughout the day.

19. On [redacted], the District proposed, via prior written notice, to revise the Student's May [redacted] IEP (proposed October [redacted] IEP) to clarify the special education and related services, accommodations and modifications, assistive technology, and least restrictive environment statements and their application to hybrid learning and distance learning.

20. On [redacted], the Complainant objected to the proposed October [redacted] IEP, noting the Student's accommodations and modifications should not be the same throughout the different learning models.

21. The same day, according to a [redacted] Form dated [redacted], the Student was placed into a physical hold for approximately one minute after the Student climbed on unstable furniture and tried to run away from District staff.

22. On [redacted], the Student's case manager sent a revised IEP (October [redacted] IEP) to the Complainant in the Student's backpack with the changes the Complainant requested.

23. The Student's October [redacted] IEP included special education and related services for the Student under three learning models: in-person, hybrid, and distance learning.

24. The Student's October [redacted] IEP included the same annual goals and special education and related services for in-person learning as the Student's May [redacted] IEP, and added 30 direct minutes, nine times per trimester with the school psychologist.

25. The Student's October [redacted] IEP included the following special education and related services for hybrid learning: 295 minutes, four times a week of paraprofessional support in the general education setting; 20 minutes, one time per day of access to the center-based classroom; 30 direct minutes, four times per week of reading instruction; 30 direct minutes, four times per week of social skills instruction; 30 direct minutes, four times per week of written language instruction; 15 direct minutes,

five times per year of indirect occupational therapy services; and 30 direct minutes, nine times per trimester with the school psychologist.

26. The Student's October [redacted] IEP included the following special education and related services for distance learning: 20 minutes, one time per day of access to the center-based classroom; 30 direct minutes, four times per week of social skills instruction; 30 direct minutes, four times per week of written language instruction; 30 direct minutes, four times per week of reading instruction;[3] 15 direct minutes, five times per year of indirect occupational therapy services; and 30 direct minutes, nine times per trimester with the school psychologist.

27. According to a Notice of Suspension, on [redacted], the Student was suspended for three school days, following a behavioral incident where the Student hit, bit, kicked, and punched District staff.

28. According to a Notice of Suspension, on [redacted], the Student was suspended for one school day, following a behavioral incident where the Student was escalated, ran around the school building, and repeatedly punched and kicked District staff.

29. On [redacted], the District implemented a distance learning model, with the Student attending school [redacted].

30. On [redacted], the District proposed, via prior written notice, to reevaluate the Student due to "social, emotional and/or behavioral concerns." The Complainant did not object within the 14-day objection period and the District began conducting a reevaluation of the Student on [redacted].

31. On [redacted], the District provided a progress report, indicating the Student made adequate progress on his three goals.

32. On [redacted], the Complainant emailed the Student's case manager, asking for verification that written language instruction had been provided to the Student and information about the specific skills being taught to the Student. Specifically, she wrote, "In looking through the classroom assignments, it looks like [Student] has a writing prompt each day, but I can't see any discernable writing skill instruction. What specific skills have you been working on this year?"

33. On [redacted], the Student's case manager responded,

> I have been focusing on writing using prompts to help [pique] student interests and generate excitement around writing. Using writing prompts is also used to work on [Student's] goal of editing. We will now dig deeper using [redacted]

[3] The Student's May [redacted] IEP lists written language twice and does not list reading instruction during distance learning; the District reported this is a typographical error.

> aligning it as closely as I can to the [third] grade curriculum and incorporate more specific writing skills into his daily work.

34. The Student's case manager, who provided the Student's direct services in reading and writing, is no longer employed with the District and was unavailable for an interview.

35. During interviews, District staff reported observing the Student's case manager providing writing instruction and prompts during distance learning, during which the Student would copy and hold what he wrote up to his computer camera. District staff reported expressing concern to the Student's case manager that this way of teaching would not produce tangible assessment results. She further reported she and a District literacy specialist mentored and provided feedback to him about his direct instruction, which he then implemented.

36. District staff also reported observing the Student's case manager providing reading and writing instruction in person during the Student's direct services for in-person and hybrid learning and reading instruction throughout the school year.

37. The Student's IEP team met on [redacted] to discuss a transition plan for the Student's return back to in-person learning. The Complainant reported she requested the District provide social stories for the Student in preparation for his return to in-person learning and for District staff stop using the behavior chart because she thought it increased his behaviors.

38. The Complainant reported she asked District staff during multiple meetings from [redacted] to the end of the [redacted] school year to stop using the Student's behavior chart because she felt it triggered and further escalated his behaviors. She further noted that, despite her requests, it was never removed from the Student's IEPs during the [redacted] school year.

39. During interviews, District staff recalled the Complainant noting she did not like the use of behavior chart during the Student's IEP team meetings in the winter and spring of [redacted] but that the Complainant did not request it be removed from his IEPs.

40. On [redacted], the District implemented an in-person learning model, with the Student attending school in person five days a week.

41. On [redacted], the Student's case manager emailed the Complainant the following:

> [Student] had a rough day. [District staff] had not marked some stars on his chart because he left the classroom without asking. When he saw the stars not there on his chart he got upset and ran around the school for 20+ minutes until [school psychologist] was able to get him to her room to talk. Other than that he was able to get back on schedule.

42. On [redacted], the Student's case manager emailed the Complainant [redacted] inviting them to an IEP team meeting on [redacted] to review the results of the Student's evaluation report. Specifically, the Student's case manager wrote, "it was brought to my attention that [Student's] evaluation report is due this Thursday. There was a mix up and the testing schedule was never sent to me. I am wondering if you would be able to meet for [Student's] IEP after school on Thursday at 4. I know it is short notice, and I am sorry."

43. In her complaint, the Complainant reported "we received [two] days' notice for his annual IEP meeting and reevaluation results. . . . The [District] has stated this is not a violation of prior written notice, despite the fact that the IEP was being rewritten based on the evaluation results."

44. According to a [redacted] Form dated [redacted], District staff placed the Student into multiple physical holds after the Student swung a stool at District staff, banged his head on a wall, and began running.

45. On [redacted], the Student's IEP team, including the Complainant [redacted], met to review the evaluation report, dated [redacted] ([redacted] evaluation report) and develop a new IEP.

46. The Student's [redacted] evaluation report included a functional behavioral assessment (FBA). The FBA listed "refusal" as the Student's target behavior, and provided tapping pencil, making noises, leaving area, climbing on objects, stating 'no,' and sitting at desk doing nothing as examples.

47. The FBA noted the Student's behaviors had the following educational impact:

> [Student's] behaviors were rated as being mild to moderate depending on the situation/trigger. [Student] appears to be [lacking] the skills to handle transitions or shift from one mindset or task to another, persist on challenging or boring tasks, maintain focus, consider the consequence of his actions, express his concerns in words, manage his emotional response to frustration, shift from original ideas, and seek attention in appropriate ways. [Student's] behavior may cause a lack of instructional time.

48. The Student's [redacted] evaluation report, including the FBA, did not include information regarding the use of restrictive procedures on the Student, including any medical or psychological limitations that would contraindicate their use.

49. According to a [redacted] Form dated [redacted], District staff placed the Student into multiple physical holds after the Student climbed on top of cabinets and bookshelves and attempted to punch and kick District staff.

50. The Student's IEP team met on [redacted] to discuss the Student's behavior and use of restrictive procedures. At this meeting, the Complainant requested the District complete a "lagging skills assessment" (ALSUP) of the Student. According to the District, District staff members attempted to discuss the Student's recent FBA and proposed IEP, but the Complainant declined given they had just been completed and was familiar with their contents. The District reported that, at the meeting, the Student's IEP team recommended the ALSUP be completed and that additional sensory breaks and a weighted sweatshirt be provided to the Student.

51. The District provided notes from the [redacted] IEP team meeting, which indicated the Complainant had "concerns with data sheet/star chart" and that she "feels it is triggering the behavior – [she is] suggesting a stressor inventory [to teach him] what we do impacts those around us."

52. According to a [redacted] Form and Notice of Suspension dated [redacted], the Student was placed into multiple physical holds and suspended the rest of the day following a behavioral incident where he was climbing, running around school, and being physically aggressive with District staff.

53. According to a [redacted] Form and Notice of Suspension dated [redacted], the Student was placed into multiple physical holds and suspended for a day and a half following a behavioral incident where the Student was running inside and outside of the school building and was physically aggressive to District staff and himself.

54. On [redacted], with a prior written notice, the District proposed an IEP (March [redacted] IEP). The March [redacted] IEP went into effect on [redacted], following the expiration of the 14-day objection period.

55. The Student's March [redacted] IEP revised the Student's reading; written language; and social, emotional, and behavioral goals.

56. The Student's March [redacted] IEP revised the Student's accommodations and modifications to include additional accommodations and to specify who would be providing the Student's behavior accommodations, as follows in relevant part:

> In-Person Learning:
>
> - Weighted equipment will be explored if student's needs are not met by general sensory strategies in the home environment.
> - [Student] will have access to fidgets and flexible seating. Sensory breaks may be utilized and may include heavy work activities, vestibular input or weighted equipment. Sensory breaks are more so motor focused breaks due to regular sensory breaks not being successful with [Student] provided by special education staff throughout the day. [sic]

Behavior:

- Classroom teacher, special education teacher, and paraprofessionals will provide advance notice of transitions and changes in schedule will be given;
- Special education teacher, and paraprofessionals will provide a morning check in to prepare for the day;
- Center-based staff will help student identify a technique to help them calm down or refocus throughout the day;
- Classroom teacher, special education teacher, and paraprofessionals will provide use of visuals to assist in behavior regulation throughout the day;
- [Student] will use a visual schedule provided by center-based staff.
- Classroom teacher, special education teacher, and paraprofessionals will provide access to and use of positive reinforcement behavior chart throughout the day.

57. The Student's March [redacted] IEP included a checkbox, marked "yes," noting the Student's behaviors interfere with the learning or others and the Student and that "the positive interventions that help address these behavior concerns can be found below in the [redacted] the IEP and Behavior Plan."

58. The Student's March [redacted] IEP also incorporated a behavior intervention plan (March [redacted] BIP). The March [redacted] BIP provided the following positive interventions to teach appropriate behaviors: teacher strategies to promote independent in learning, such as problem-solving skills, self-monitoring, self-management, and self-reinforcement; respond consistently across subject areas to the inappropriate behavior; use reinforcement to encourage appropriate behavior; make sure [Student] is capable of actually doing the homework before he leaves class, this eliminates excuses for incomplete work; structure activities on interactions that capitalize on [Student's] strengths or interests; encourage [Student] to engage in more positive self-talk.

59. The Student's March [redacted] BIP provided the following positive interventions to prevent behaviors: use visual supports (schedule, first-then, duration map, social stories, etc.); make sure [Student] has someone to whom he can go to talk about his problems; scheduled sensory breaks throughout his day (include heavy work tasks); minimizing transitions and provide sensory breaks/quiet locations to reset and regulate; structure academic success and break large or challenging tasks into small steps; maintain structure, stability, and predictability with consistent rules, routines, and expectations; monitor his academic tasks in order to accommodate or modify assignments in areas of difficulty; use an agreed-upon signal between teachers and [Student] that will indicate when he needs help without drawing the attention of his peers, one signal that has worked well for other student/teams is a pack of colored Post-It notes placed on the corner of the desk; teacher [Student] to monitor his frustration levels and follow a predetermined plan when he gets to a certain level of frustration; provide opportunities for movement and increased focus (e.g. standing desk/large motor break/quiet area/chunking tasks/work, etc.); avoiding engaging in arguments or power struggles – set expectations with visual supports.

60. The Student's March [redacted] BIP provided the following positive interventions to respond to the Student's behaviors: it may be helpful for [Student] to access the academic support room to complete academic tasks during independent work time, and also serve as a less stressful "down time" during his school day; when assigning work tasks, provide verbal and written directions, check-in to see if [Student] is engaged in the task, give him space but remain close enough to offer help if he appears anxious or shut down; briefly check in with [Student] at the start and end of the class period to establish rapport and a relationship he trusts; provide frequent encouragement and praise; refrain from lecturing about inappropriate behavior or engaging in a power struggle, instead give prompts and visual cues about what to do instead; differential reinforcement is a general instruction strategy used to reinforce desired behavior and reduce challenging or problematic behaviors; a student receives positive attention when exhibiting appropriate behaviors, staff should have a pleasant facial expression, an upbeat and positive tone of voice, face the student, and praise the specific appropriate behavior both verbally and visually; offer [Student] specific praise when he shows appropriate replacement behaviors to help increase and maintain positive replacement behaviors throughout the school environment; when a student is engaged in inappropriate or undesired behaviors, refrain from attending to these behaviors (this is not the same as ignoring the student), when interacting with students limit verbal interactions (redirect using nonverbal cues with visual supports, no eye contact, body is slightly turned away, neutral facial expression, if speaking is necessary use a neutral tone, and pair explanations of rules and expectations with visual reminders.

61. The Student's March [redacted] BIP provided the following positive behavioral reinforcement strategies: provide breaks during the school day to practice strategies, limit fatigue, and reduce stress; provide [Student] with a menu of positive reinforcement including but not limited to healthy snacks, extra breaks, positive reports home, computer time, behavior chart, etc.; provide opportunities for [Student] to make choices throughout this school day, how and where he can complete academic tasks can be manipulated, this will allow him to have more control over his activities and choices.

62. The District acknowledged it did not attach a copy of the March [redacted] BIP to the March [redacted] IEP and prior written notice on [redacted].

63. The Student's IEP team met on [redacted] to discuss the Student's behavior, use of restrictive procedures, and review the completed ALSUP. The ALSUP noted the Student has difficulty in the following areas: shifting from preferred to non-preferred tasks and from reading in the special education room; transitioning to [redacted], from mainstream classes to sensory break to the special education room, from recess to math, from snack and talking to adults socially to being given an expectation to follow a schedule, from number search puzzle game to an academic tasks, and from the first sensory break to first academic class; shifting mindset when working with one staff member to working with another and from home events once in school; completing writing tasks when it involves his own thoughts; handwriting versus dictating, and when reading texts that when challenging words.

64. District staff reported much of what was found in the ALSUP was already reported within the Student's [redacted] evaluation report and March [redacted] IEP, and thus, did not feel as though the Student's March [redacted] IEP, that had just been proposed the prior day, needed to be revised to reflect the results of the ALSUP.

65. The District was closed from [redacted] for spring break, designated holidays, and a staff planning day.

66. According to a [redacted] Form dated [redacted], the Student was placed into multiple physical holds after he became upset ran from District staff, pushed and climbed onto furniture, and was physically aggressive to District staff.

67. According to a [redacted] Form dated [redacted], the Student was placed into multiple physical holds after he ran from District staff, climbed onto shelving, and was physically aggressive to District staff.

68. According to a [redacted] Form dated [redacted], the Student was placed into multiple physical holds after the Student ran from District staff, climbed on and over staircases, attempted to elope from the building, and was physically aggressive to District staff and himself.

69. The Student's IEP team met on [redacted] to discuss the Student's behavior and the use of restrictive procedures. According to District staff notes from the meeting, the Student's IEP team discussed the Student's triggers, including testing, and additional strategies to use with the Student when he becomes escalated, such as the [redacted] room, social stories, and the zones of regulation.

70. According to a [redacted] Form dated [redacted], the Student was placed into a physical hold after the Student was physically aggressive with District staff.

71. According to a [redacted] Form dated [redacted], the Student was placed into a physical hold after the Student began climbing on a counter and cupboards inside a classroom.

72. During interviews, District staff reported consulting with the Student's outside therapist to develop positive behavioral strategies to use with the Student during approximately the end of [redacted] or beginning of [redacted].

73. According to a [redacted] Form dated [redacted], the Student was placed into multiple physical holds after he began climbing on unstable cupboards and shelving.

74. According to a [redacted] Form dated [redacted], the Student was placed into a physical hold and seclusion after the Student was physically aggressive with District staff.

75. The District acknowledged the Student was placed into seclusion by not being allowed to leave his work space, which is not a registered seclusion room with MDE and may have contained a desk and chair.

76. On [redacted], the Student's case manager emailed the Complainant the following:

> This is a late email and I am sorry but there was a miscommunication. Last Friday [redacted] we did a supine hold with [Student] twice. Our main para[professional] that worked with him was gone, and we had one of the other [paraprofessionals substitute] in. [Student] was testing his limits with the [paraprofessional] and started climbing. He was asked to stop climbing, but

> continued so we went into supine. After he calmed down from the first one he started head banging after about [five] minutes and we had to go into another supine. Yesterday and today, we had to do a transport with [Student] because he left his space and would not return when directed.

77. The District reported, and the corresponding [redacted] Form reflects, the Student ran out of his workspace and was transported back into it to avoid work on [redacted]. The District reported the Student did not resist more than minimally during this transport.

78. The Complainant emailed the Student's case manager on [redacted], writing, "We do need to talk because this week [Student] has been saying if he's dead he doesn't need to go to school anymore."

79. According to a [redacted] Form dated [redacted], the Student was placed into multiple physical holds following a behavioral incident. Specifically, the District's [redacted] Form described the incident as follows:

> [Student] was making threats to leave the building and run onto a busy street nearby. Due to a safety plan in place, for suicidal comments with a plan, staff transported [Student] to his "safe space" for him to de-escalate. Once in his safe space, the transport was released [and] a staff member attempted to [do] calming strategies with him, (history of banging his head, can't be left alone), but they were found to be ineffective. [Student] began charging, pushing, hitting, and kicking the staff repeatedly and was not accepting of the redirections and coping strategies being told to him verbally and nonverbally. Staff called for assistance as he was continuing the unsafe behavior noted above and initiated a supine hold on a mat.

80. The Student's IEP team met on [redacted] to discuss a safety plan for the Student due to his suicidal ideation and related plan to run into a street and get hit by a car. According to the Complainant, the discussions at this meeting revolved around creating a plan to block the Student's elopement from the building.

81. The Complainant reported that while she requested data pertaining to the Student's behaviors at this IEP team meeting, the District did not provide or review data regarding the Student's behaviors or the use of restrictive procedures during this meeting. She reported the District instead provided data to her approximately one week following the meeting.

82. In response to this complaint the District provided a copy of the Student's safety plan dated [redacted], which included steps for District staff to block building exits, transport the Student back to his classroom to prevent him from going outside, and calling the police and the Complainant if he does go outside. It also included multiple examples of the Student's warning signs and triggers; strategies to deescalate the Student, including providing breaks, changing the subject, offering positive reinforcement rewards, and using validating statements; and examples of strategies to avoid using with the Student, including verbal engagement, lecturing, and power struggles.

83. On [redacted], the Student was scheduled to, but ultimately did not, attend a field trip off school grounds with his general education peers due to his behaviors.

84. According to a [redacted] Report dated [redacted], the Student was placed into multiple physical holds after the Student was physically aggressive with District staff.

85. The Student had excused absences for the last five days of the school year, from [redacted].

86. The Complainant reported she decided to keep the Student home the last week of school, from J[redacted], because the Student was repeatedly expressing suicidal ideation. She reported she informed District staff the Student could "earn" those days off in school the prior week, as an incentive for positive behavior.

87. The Complainant emailed the Student's case manager on [redacted], asking if he has received training in restitution or collaborative proactive solutions, to which the Student's case manager indicated he had not.

88. The District provided documentation that the Student's case manager, who is no longer with the District, was certified in CPI during the [redacted] school year. District staff, during interviews, reported also being certified in CPI during the [redacted] school year.

89. The Student's IEP team met on [redacted], to discuss the Complainant's concerns, the Student's behavior and academic progress, and the District's use of restrictive procedures. According to District staff notes from the meeting, the Student's IEP team discussed possible strategies to utilize next school year when the Student begins to escalate, including a body sock, wall push-ups, a crash mat, and a punching bag. The Student's IEP team also reviewed behavioral data compiled by the District, which included information on the days of the week the Student's behavior occurred, the length of time the Student exhibited behaviors, and the antecedents to, locations, and time of day of the Student's behaviors.

90. On [redacted], the District provided a progress report for the Student, which indicated the Student made adequate progress on all of goals.

91. On [redacted], the Complainant emailed a letter to District staff, outlining concerns she had regarding the Student's education during the [redacted] school year. Most of the concerns she specified in her letter are part of the present complaint, including failure to schedule the [redacted] IEP team meeting at a mutually agreed upon time and place, the use of restrictive procedures on the Student, and the Student's reading and writing instruction during the [redacted] school year.

92. The Complainant met with the District's special education director, the school principal, and the Student's county case worker on [redacted], to discuss the Complainant's concerns and to prepare for the [redacted] school year. Specifically, the participants discussed updating the Student's March [redacted] IEP, consulting with an outside behavior specialist, and developing a transition plan for the Student to return to school in the fall.

93. The Student's IEP team, including the Complainant, two assistant principals, and the Student's new case manager, met on [redacted] to further discuss a transition plan for the Student to return to school in the fall.

94. On [redacted], the District, via prior written notice, proposed an IEP (July [redacted] IEP). The Complainant provided written consent on [redacted].

95. The Student's July [redacted] IEP included the following revision to the present levels of academic achievement and functional performance statement:

> At the end of the [redacted] school year, [Student] struggled during his time in school and subsequently was unable to participate successfully in the school environment, leaving [Student] with very negative [feelings] toward school and saying he wasn't going to return to school in the future. School staff . . . conferenced with [Complainant] on [redacted], to offer a plan to return [Student] in a positive manner to the school setting and for [Student] to build a relationship with [Student's new case manager], as she would be providing reading and writing service during the upcoming school year. Several options were discussed and the team determined that we would try to have [Student] come to [school] and spend a flexible amount of time participating in non-stressful activities in the school psychologist's classroom. This room was selected as it is a safe space for [Student]. During this conference, the dates of [redacted] were set, with the ability to be flexible on times based on [Student's] tolerance to the setting. Additional dates will be added to meet a total of 12 [one] hour sessions (720 minutes) to be met by the end of [redacted].
>
> The conversation also included a discussion of using an alternative reading curriculum during the [redacted] school year. If the times were successful and non-stressful for [Student], [Complainant] indicated that she thought [Student] could tolerate up to 10 minutes per session to assess [Student's] reading skills for placement in the alternative reading curriculum. These sessions would begin after the first week of sessions with [Student] and will be discontinued if [Student] demonstrates resistance to the task until the adults can meet and determine a new plan.

96. The Student's July [redacted] IEP revised the Student's special education and related services to include:

- Reading and Written Language Instruction for 60 direct minutes from [redacted]: [Student] will be receiving instruction through an alternative reading/writing curriculum during the [redacted] school year. [Three] hours (or 180 minutes) of time will be used to assess [Student] to determine his placement within the curriculum to begin

instruction in the fall [redacted]. Dates and times will be set by provider and parent, and will be flexible to accommodate [Student's] ability to attend.

- Social Skills Instruction for 60 direct minutes from [redacted]: [Nine] hours of additional service in the area of Social, Emotional and Behavioral Functioning to reintroduce [Student] back into the school setting in a positive manner and to build relationships with unfamiliar staff that he will work with during the school year. Service minutes, not number of sessions, will be tracked in case [Student] is unable to sustain 60 minute sessions. Dates and times will be set by provider and parent, and will be flexible to accommodate [Student's] ability to attend.

97. The Student's July [redacted] IEP had the Student's March [redacted] BIP attached to it. No revisions were made to the Student's March [redacted] BIP.

98. The District reported that, during the summer of [redacted] it contracted with an outside behavior consultant to observe the Student, conduct an FBA, and provide recommendations for a revised BIP.

99. The Complainant reported the Student participated in transition activities with his new case manager during the summer of [redacted], prior to the start of the [redacted] school year.

100. District staff credibly and consistently reported, and the [redacted] forms provided by the District show, that District staff used multiple positive behavioral supports with the Student when he had escalated behavior during the [redacted] school year, including using social stories, duration maps, and visual schedules, using a timer; reminding him of expectations; using a menu of positive reinforcement items, using a break-out space, offering sensory items, offering choices, processing with District staff, playing calming music, and offering food or drinks.

101. District staff credibly and consistently reported the restrictive procedures were used with the Student only during emergencies when Student was injuring himself or others. Specifically, District staff reported the Student was put into physical holds to prevent him from further physically attacking District staff or banging his head against a wall. District staff reported, when they observed the Student becoming escalated, they would first attempt offering a sensory break, chunking his assignments, providing a fidget, or telling a joke. If the Student continued to escalate and began to hit his head against a wall, District staff would attempt to place a mat or their hand between his head and the wall. District staff reported that when these options failed, they would put the Student into a physical hold.

102. District staff credibly and consistently reported holding staff debriefing meetings following each use of restrictive procedures on the Student during the [redacted] school year. District staff also credibly and consistently reported contacting the Complainant following the use of restrictive procedures, with the exception of the physical hold on [redacted].

103. The District acknowledged it did not hold an IEP team meeting within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days In its response, the District proposed to provide training to District staff at the school the Student attended during the [redacted] school year in regard to this meeting requirement.

104. During interviews, District staff reported they did not review any known medical or psychological limitations that contraindicate the use of a restrictive procedure, considered whether to prohibit that restrictive procedure, or document any prohibition at any point during the [redacted] school year.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

3. On March 12, 2020, the Office of Special Education and Rehabilitation Services (OSERS) at the U.S. Department of Education released initial guidance concerning special education services during the COVID-19 pandemic:

> If a [District] closes its schools to slow or stop the spread of COVID-19, and does not provide any educational services to the general student population, then an [District] would not be required to provide services to students with disabilities during that same period of time. Once school resumes, the [District] must make every effort to provide special education and related services to the child in accordance with the child's [IEP] or, for students entitled to FAPE under Section 504 [of the Rehabilitation Act of 1973 (Section 504)], consistent with a plan developed to meet the requirements of Section 504. The [U.S. Department of Education] understands there may be exceptional circumstances that could affect how a particular services is provided. In addition, an IEP [t]eam and, as appropriate to an individual student with a disability, the personnel responsible for ensuring FAPE to a student for the purposes of Section 504, would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.

4. The OSERS and the Office for Civil Rights (OCR) provided further guidance addressing the risk of COVID-19 on March 21, 2020. The OSERS provided further guidance addressing the risk of COVID-19:[4]

> School districts must provide a [FAPE] consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR [Office for Civil Rights] and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.
>
> [The U.S. Department of Education] understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.
>
> It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 guidance) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

[4] Supplemental Fact Sheet: Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities (March 21, 2020).

5. Federal regulations at 34 C.F.R. § 300.324(a)(2)(i) provide:

> In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

6. Minnesota Rules 3525.0850 provides:

> This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized education program as well as develop skills to enable them to function as independently as possible in their communities.

7. While the District acknowledged that District staff did not provide direct writing instruction in a way that would elicit assessment results during a portion of the distance learning period, a review of the record, including District staff interviews, the District's response, and correspondence, supports a conclusion that the District provided reading and writing instruction to the Student as required by the IEPs in effect during the [redacted] school year and in conformity with 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08(b)(1).

8. Further, a review of the record, including District staff interviews, correspondence between District staff and the Complainant, [redacted] Forms, and [redacted] Forms, support a conclusion that the District provided positive behavioral interventions, including using social stories, duration maps, visual schedules, using a timer, reminding him of expectations both verbally and non-verbally, providing a menu of positive reinforcement items, using a break-out space, offering sensory items, offering choices, processing with District staff, playing calming music, and offering food or drinks, to the Student during the [redacted] school year, as required by the IEPs in effect during the [redacted] school year and in conformity with 34 C.F.R. §§ 300.300.17 and 300.324(a)(2)(i), Minn. Stat. § 125A.08(b)(1), and Minn. R.3525.0850.

9. Minnesota Statutes § 125A.0942, subd. 1 requires, in relevant part:

> (a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:
>
> (1) lists the restrictive procedures the school intends to use;
>
> . . .

> (3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4.
>
> (4) describes how the school will monitor and review the use of restrictive procedures, including:
>
> (i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and
>
> (ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures.

10. Here, the District acknowledged its 2018 RPP does not describe how the school will monitor and review the use of restrictive procedures by convening an oversight committee to undertake a quarterly review of the use of restrictive procedures in violation of Minn. Stat. § 125A.0942, subd. 1(a)(4)(ii).

11. Additionally, while the District's 2018 RPP described how the school will provide training on de-escalation techniques outlining training it no longer uses, it does include information about the CPI training it provides to its staff, as required by Minn. Stat. § 125A.0941, subd. 1(a).

12. Minnesota Statutes § 125A.0941(c) define physical holding as:

> A physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service or procedure; or
>
> (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

13. Minnesota Statutes § 125A.0941(g) define seclusion as:

> Confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

14. Minnesota Statutes § 125A.0941(b) define emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

15. A review of the record, including District staff reports, correspondence between the Complainant and District staff, [redacted] Forms, and [redacted] Forms, supports a conclusion that District staff utilized physical holding and seclusion on the Student during emergencies, as defined in Minn. Stat. § 125A.0941(b).

16. Minnesota Statutes § 125A.0942, subd. 3(a) provides:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released; and

(iv) a brief record of the child's behavioral and physical status.

17. A review of the record, including District staff reports and [redacted] Forms, supports a conclusion that the District documented each use of a restrictive procedure on the Student, as required by Minn. Stat. § 125A.0942, subd. 3(a). Specifically, on the [redacted] Forms, District staff described the incident, information about why a less restrictive measure failed, the time the restrictive procedure began and ended, and a brief record of the Student's behavioral and physical status.

18. Minnesota Statutes § 125A.0942, subd. 3(a) further requires: Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

19. The District acknowledged it secluded the Student in a room that was not free from objects that the Student may use to injure himself or others and is not a registered seclusion room with MDE, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(7).

20. Minnesota Statutes § 125A.0942, subd. 2(b) requires:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

21. Here, the District acknowledged it did not make reasonable efforts to notify the same day or provide notice within two days by written or electronic means to the Complainant regarding the use of restrictive procedures on the Student on [redacted], in violation of Minn. Stat. § 125A.0942, subd. 2(b).

22. Minnesota Statutes § 125A.0942, subd. 2(c) requires:

> The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review the use of restrictive procedures at a child's annual individualized education program meeting when the child's individualized education program provides for using restrictive procedures in an emergency.

23. Here, the District acknowledged it did not hold an IEP team meeting within ten calendar days after District staff used restrictive procedures on the Student on two separate days within 30 calendar days during the spring of [redacted], in violation of Minn. Stat. § 125A.0942, subd. 2(c).

24. While the District did hold meetings on [redacted], following the use of restrictive procedures on two separate days within 30 calendar days, it did not review the Student's FBA, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, or modify the Student's March [redacted] IEP during the [redacted] IEP team meeting. This is in violation of Minn. Stat. § 125A.0942, subd. 2(c).

25. Minnesota Statutes § 125A.0942, subd. 2(d) provides:

> If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on

> ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

26. The record, including the District's response and District staff interviews, support a conclusion that the District consulted with other professionals working with the child, including the Student's outside therapist in approximately the end of April or beginning of May and the Student's county case worker in June, and an expert in behavior analysis after the end of the [redacted] school year, following the use of restrictive procedures on the Student on ten or more school days in the [redacted] school year, as required by Minn. Stat. § 125A.0942, subd. 2(d).

27. Minnesota Statutes § 125A.0942, subd. 2(e) requires:

> At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

28. The District acknowledged the Student's IEP team did not review any known medical or psychological limitations that contraindicate the use of a restrictive procedure or considered whether to prohibit that restrictive procedure and document any prohibition in the Student's IEP or BIP at any time during the [redacted] school year, in violation of Minn. Stat. § 125A.0942, subd. 2(e).

29. Federal regulations at 34 C.F.R. § 300.322(a) provide:

> Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including
>
> (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
>
> (2) Scheduling the meeting at a mutually agreed on time and place.

30. Given that the Complainant and the Student's father attended and participated in the [redacted] IEP team meeting, despite receiving two days notice, the District notified the parents of the meeting early enough to ensure they would have an opportunity to attend and scheduled the meeting at a mutually agreed on time and place, as required by 34 C.F.R. § 300.322(a).

31. Federal regulations at 34 C.F.R. § 300.503(a) provide:

> *Notice*. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency –
>
> (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
>
> (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

32. Minnesota Rule 3525.3600 provides:

> When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal or a request, it must be served on the parent within 14 calendar days of the date the request was made.
>
> . . .
>
> The district must provide the parents with a copy of the proposed individual education program plan as described in part 3525.2810, subpart 1, item A, whenever it proposes to initiate or change the content of the IEP.

33. Here, the District did not attach a copy of the Student's March [redacted] BIP to the March [redacted] IEP and prior written notice, in violation of Minn. R. 3525.3600.

Decision

1. The District violated Minn. Stat. § 125A.0942, subd. 1(a)(4)(ii) when its 2018 RPP did not describe how the school will monitor and review the use of restrictive procedures including convening an oversight committee to undertake a quarterly review of the use of restrictive procedures.

2. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(7) when it secluded the Student in a room that was not free from objects that the Student may use to injury himself or others and was not a registered seclusion room with MDE.

3. The District violated Minn. Stat. § 125A.0942, subd. 2(b) when it failed to it make reasonable efforts to notify the Complainant the same day or provide notice within two days by written or electronic means regarding the use of restrictive procedures on the Student on [redacted].

4. The District violated Minn. Stat. § 125A.0942, subd. 2(c) when it failed to hold IEP team meetings within 10 calendar days after District staff used restrictive procedures on the Student on two separate days within 30 calendar days during the spring of [redacted].

5. The District violated Minn. Stat. § 125A.0942, subd. 2(c) when it failed to review the Student's FBA, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, or modify the Student's March [redacted] IEP during the [redacted] IEP team meeting.

6. The District violated Minn. Stat. § 125A.0942, subd. 2(e) when it failed to review any known medical or psychological limitations that contraindicate the use of a restrictive procedure or considered whether to prohibit that restrictive procedure and document any prohibition in the Student's IEP or BIP at any time during the [redacted] school year.

7. The District violated Minn. R. 3525.3600 when it did not attach a copy of the March [redacted] BIP to the Student's March [redacted] IEP and prior written notice.

Corrective Action

1. Within 14 calendar days of the date of this decision, the District must provide MDE with a copy of its revised RPP with proper revisions pertaining to quarterly oversight committee reviews and de-escalation training in accordance with Minn. Stat. § 125A.0941, subd.1. Further, the District must provide its agenda and meeting notes from its first quarterly meeting of the [redacted] school year and its schedule for the remaining meetings of the [redacted] school year. The District must submit its revised RPP and schedule and agendas to MDE's corrective action specialist, Sara K. Wolf at sara.k.wolf@state.mn.us.

2. The District's proposed corrective action to train its staff regarding the requirement to have an IEP team meeting for a student within 10 calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days is accepted.

3. Within 14 calendar days of the date of this decision, the District must contact MDE corrective action specialist, Sara K. Wolf, at sara.k.wolf@state.mn.us to discuss a training plan about the statutory standards regulating the use of restrictive procedures and prior written notice. Specifically, the District's training plan should address the District's duty to use seclusion rooms that are free from objects that students may use to injure themselves or others; to register seclusion rooms with MDE or no longer use the room as a room for seclusion; to make reasonable efforts to notify the Complainant the same day or provide notice within two days by written or electronic means after each use of a restrictive procedure; to review FBAs, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, modify students' IEPs, and review any known medical or psychological limitations that contraindicate the use of a restrictive procedure or considered whether to prohibit that restrictive procedure and document any prohibition in students' IEP or BIP at these meetings; and to attach copies of BIPs that are incorporated into student IEPs to prior written notices.

4. The District shall schedule an IEP team meeting to occur within 14 calendar days of the date of this decision. The District shall conduct the IEP team meeting in accordance with Minnesota Statutes § 125A.0942, subd. 2(c) and (e), and shall specifically review the Student's FBA, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, or modify the Student's July [redacted] IEP and BIP. Additionally, the Student's IEP team must review any known medical or psychological limitations that contraindicate the use of a restrictive procedure or considered whether to prohibit that restrictive procedure and document any prohibition in the Student's July [redacted] IEP and BIP.

   Following this review, the Student's IEP team must determine whether to conduct another FBA and/or review and revise the Student's IEP and BIP to address the Student's increased behavioral needs during the [redacted] school year. The District must submit a copy of the team meeting notes and any revised IEPs and BIPs that result from this meeting 5 school days after going into effect.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sonia R. Smith, J.D.
Director of Assistance & Compliance
Minnesota Department of Education
1500 Highway 36 West
Roseville, MN 55113

SRS/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

Re.: Complaint Decision File [redacted] C on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint.[1] An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

[1] [redacted]

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted] as amended [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for, and respond to, the Student's behaviors during the last calendar year. Specifically, the Complainant alleges the District failed to review and revise the Student's individualized education program (IEP) to address his anticipated needs, including work avoidance, physical and verbal aggression, and elopement.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school in the District at the beginning of the time period covered by this complaint.

2. The Complainant is a mental health therapist, [redacted] who formerly provided school-based mental health services in the District.

3. [redacted]

4. The Student's special education teachers from the [redacted] school year, including his case manager, were unavailable for interviews, as they are no longer employed in the District.

5. In her complaint, the Complainant reported the Student's behaviors escalated during the time period covered by this complaint and that she recommended a higher level of therapeutic care, as a result. She further reported her recommendations and the Student's escalating behaviors were ignored by the District and the Student was in an inappropriate placement. Specifically, in her complaint, the Complainant reported:

> The delay in putting [Student] in a setting three or higher has impacted him by having him fall behind academically and socially. He is able to do a lot of grade level work, but his sensory integration issues indicate that a normal sized classroom would be overwhelming and overstimulating, to the point where he

> will feel unsafe. [Student] is not able to remain regulated in this setting, and avoids this setting, communicating clearly that it doesn't feel safe or ok. [Student] has a hard time communicating when he experiences sensory overload which has led to self-harm behaviors and eloping on several occasions as well as lashing out at staff and students verbally and physically.

6. The Student's last evaluation report was conducted by the District dated [redacted] (March [redacted] evaluation report), and noted that he qualified for services under the category of Autism Spectrum Disorder (ASD). The Student's March [redacted] evaluation report did not contain a functional behavioral assessment (FBA).

7. The Student's IEP in effect at the beginning of the time period covered by this complaint, or [redacted], was dated [redacted] (March [redacted] IEP).

8. The Student's March [redacted] IEP includes a social skills goal, a speech goal, an expressive and social communication skills goal, and a gross motor goal.

9. The Student's March [redacted] IEP describes the following direct special education and related services:

   - Specialized Instruction: Social Skills – 10 minutes, five times a week;
   - Speech/Language: Language Instruction – 20 minutes, three times per four-week cycle;
   - Developmental Adapted Physical Education – 20 minutes, two times a week;
   - Speech/Language: Articulation – 5 minutes, nine times per four-week cycle.

10. The Student's March [redacted] IEP provides the following least restrictive environment explanation:

> The use of supplementary aids, program modifications, and supports only would not be sufficient for [Student] to meet his annual goals and objectives. Along with instruction in the general curriculum, [Student] needs direct specialized instruction in a small group setting to work on social emotional skills in order to progress toward meeting his annual goals and objectives. [Student] will receive 30 minutes per day of direct individualized social skills instruction in a small group special education setting.[2] [Student] will receive 20 minutes of direct speech and language instruction with a speech/language pathologist 7 times per month to work on language skills. When receiving these services, [Student] will miss part of his reading instruction with his non-disabled peers.

[2] The amount of daily social skills instruction listed in the Student's March [redacted] IEP varied between the service grid and the least restrictive environment explanation.

11. The Student's March [redacted] IEP provides the following program modifications, supports, and adaptations in general and special education:

> A paraprofessional will be available to provide redirection and intervention for behavior within the general education setting. The paraprofessional will provide [Student] with prompts, strategies, and supports to help him implement the social-emotional management skills and participation skills he is being taught in his small group sessions while he is in his general education classroom. The paraprofessional will also provide redirection, intervention, and de-escalation for behavior such as hitting, wandering the classroom, throwing objects, yelling or leaving the classroom when upset or frustrated.
>
> When applying the district discipline policy, [Student's] disability will be considered. The school administrator will make final disciplinary decisions in consultation with the case manager.
>
> Individual and group positive and structured reinforcements will be used. Positive reinforcement may include a daily reward chart with smiley faces to bring home, earning extra choice time, or time with a preferred activity and social stories to teach and reinforce specific skills and feelings. [Student] will be given positive praise and reinforcements for on task behavior and completion of non-preferred work tasks.
>
> In physical education, [Student] can have access to lighter or larger objects as designated by the activity in order to help him be more successful in the class. The adapted physical education teacher will provide these modifications and adaptations in consulting with the general physical education teacher in weekly meetings. The general physical education teacher will implement the adaptations or modifications as discussed.
>
> [Student] will be seated near a model peer at his table or desk or independent work times. For whole group learning on the carpet, [Student] will be seated in a space that allows him to move between the rug and his table or desk space with limited distraction to others. [Student] will have the option to sit at the rug, or at his table or desk spot during whole group learning. He can listen and participate from both spaces.
>
> Staff working with [Student] will provide both verbal and visual warnings (i.e. visual timer) to [Student] about how much time is left for an activity (i.e. 5 minutes, 3 minutes, 2 minutes) and what the expectation is when the timer goes off (i.e. we will put the iPad away and sit at the rug).

> Staff working with [Student] will provide and refer to a visual schedule to help [Student] see what his day will include and when each part of his day is done. Staff will also use the language and/or a visual for "first, then" to help [Student] understand what he needs to do first (non-preferred activity), and what he can do after it is done (preferred activity). [Student] will have access to a visual that shows emotions and options for self-regulation (i.e. zones chart with calming tools).

12. On [redacted], the Student eloped from the building. The District's communication log noted that District staff helped him return to the building safely.

13. On [redacted], the District provided a progress report for the Student, indicating he made adequate progress on his goals.

14. On [redacted], the Student exhibited physical aggression toward another student. The District's communication log noted District staff responded by reading a social story to the Student and practiced expressing anger and using replacement words.

15. The [redacted] school year in the District ended on [redacted].

16. The [redacted] school year in the District began on [redacted].

17. On [redacted], according to the District's communication log, the Student's case manager spoke to the Student's mother, reporting that the Student was very sleepy at school and sleeping up to [redacted]. She also reported the Student was getting agitated in the classroom because he was so tired, was threatening to leave school and go home, and hit his teacher twice that day.

18. According to the District's communication log, the Student eloped from school three times on [redacted], one time on [redacted], and two times on [redacted]. In the entry from [redacted] District staff wrote, in part, "[Student] ran away twice from school today. He shared he is tired and angry because he is not getting enough sleep" and that District staff agreed to start a group email about the Student's behaviors with his teachers and his parent in response.

19. On [redacted], the Student's case manager spoke with his mother, reporting that he had been throwing his and other students' books in the trash at school and opining that "he seem[ed] very overwhelmed and tired and angry."

20. On [redacted], according to District documentation, the Student had a behavioral incident, during which the Student was placed into two physical holds lasting 30 seconds each and seclusion in a special education break room, called [redacted] at the school for approximately 35 minutes. The District provided two documents titled, "Use of Restrictive Procedures: Physical Holding" and "Use of Restrictive Procedures: Seclusion." The Use of Restrictive Procedures: Seclusion document provided the following information, in relevant part:

> Was the room well, lit well ventilated, adequately heated and clean? Yes.

Did the room contain objects that a student may use to injure themselves or others? Yes

Brief description of the student's behavior and physical status during seclusion: [Student] was screaming that he was going to kill staff repeatedly. He was cursing the f and b word and kicking and punching the door.

Was seclusion the least intrusive intervention to effectively respond to the emergency? Yes.

Explain why a less restrictive intervention failed or was determined to be inappropriate or impractical: [Student] refused to take a calming break in the break room or engage in body regulation strategies. He would not stop hurting staff and they could not get him into a restrictive hold that kept them safe. They would move away and he continued to come at them with kicks, punches and furniture.

Did the seclusion end when the threat of harm ended and staff determined that the student could safely return to the classroom or activity: Yes

Explain: Once [Student] moved away from the door and stopped making threats, stopped kicking and punching, staff entered the room and stayed with [Student] and engaged in therapeutic rapport.

Did the staff directly observe the child during the seclusion: Yes

Explain: Staff were on both sides of the room, which has windows.

10:05 – 10:13 [a.m.]: [Student] was in the room with the door shut. He was screaming threats, punching and kicking the door. He began throwing furniture and door was opened to clear the room.

10:13 – 10:17 [a.m.]: The room was open and staff cleared the room. [Student] was throwing chairs and desks at staff.

10:17 – 10:25 [a.m.] Staff shut the door because [Student] was kicking and punching staff and they were unable to safely get him into a [physical] hold. The door was shut. Staff could see [Student] from both sides of the room. He was screaming, punching the door and kicking the door.

10:25 [a.m.]: Staff opened the door to see if they could come in. They offered him water or a bathroom break. He began kicking and punching staff.

10:26 – 10:28 [a.m.]: Staff shut the door. They could observe him from both sides of the room through windows.

> 10:29 – 10:31 [a.m.] [Student] was in the room screaming[,] kicking[,] and punching the walls and the door. Staff observed on both sides of the room through windows.
>
> 10:32 – 10:34 [a.m.]: [Student] was in the room screaming[,] kicking[,] and punching the walls and the door. Staff observed on both sides of the room through windows.
>
> 10:34 – 10:37 [a.m.]: [Student] was in the room screaming[,] kicking[,] and punching the walls and the door. Staff observed on both sides of the room through windows.
>
> 10:37 – 10:40 [a.m.]: [Student] was in the room screaming[,] kicking[,] and punching the walls and the door. Staff observed on both sides of the room through windows.

21. The Use of Restrictive Procedures: Seclusion form noted the Student's mother was notified the same day at 10:25 a.m.

22. The District's communication log provides the following description of the incident:

> 10:20 a.m.: [Student] has been banging his head against a glass wall for over 40 minutes. He began kicking the glass wall. Staff was afraid it would break. He refused to walk to the break room. Staff had to help walk him down. He was kicking and punching staff on the way to the break room. He continuing kicking and punching staff at the break room. The[y] moved away and he chased them. Staff performed a child control, hug from behind type of hold, to help stop him from striking staff. This made him thrash and kick harder. Staff released him. He began kicking and punching harder. Staff attempted one more child control hug and he became aggressive again. Staff put him in the break room and shut the door. He screamed and cried and threatened to kill staff and kicked and punch[ed] the door repeatedly. Staff opened the door once [he] threw a chair and cleared the room of all furniture, during which he threw chairs and books at staff and kicked and punched and threatened to kill staff. The principal would like [Student's mother] to come pick up [Student] for the remainder of the day. [Student's mother] arranged for [redacted] to pick him up.
>
> 11:13 a.m.: [redacted] arrived at 10:55 [a.m.] [Student] left with her. After we spoke, [Student] was in the room alone for around 35 minutes. Staff talked to him through the window and held a calming visual to show him to sit down and stop kicking and punching. He did stop around 10:40 [a.m.] We immediately opened the door and offered comforting words, a drink of water and a blanket. He rested until the [redacted] came to pick him up at 10:50 [a.m.] [Student's mother] said she and [his father] would talk with him.

23. On [redacted], the Student's case manager and the school social worker called the Student's mother. During the call, the school social worker offered school-based mental health services with the Complainant for the Student, which his mother accepted.

24. On [redacted], the District provided a progress report for the Student, indicating he made adequate progress on all of his goals.

25. According to the District's communication log, on [redacted], the Student had a behavioral incident, where he kicked and threatened violence against a staff member and eloped from school.

26. According to the District's communication log, the Student was suspended, out-of-school, on [redacted].

27. On [redacted], according to the District's communication log, the Student's case manager called his mother to schedule a meeting on [redacted], to develop a plan to conduct an FBA of the Student.

28. On [redacted], according to the District's communication log, the Student's case manager and the Complainant called the Student's mother to speak about a behavioral incident from the day before, as follows, in relevant part:

> We shared the incident that happened yesterday with [Student] getting angry in the classroom about losing youtube privileges; kicking and punching his chromebook; throwing a chair at a student; barricading the class in the classroom; sitting in his locker and repeatedly banging his head against the back of the locker; kicking and punching and threatening to kill staff; resisting being walked down with a [redacted] aggression escalation towards staff including kicking, biting, and punching staff; threatening to kill staff while swinging a mop handle and repeatedly stating we were going to kill him and not wanting mom to see it. We shared that we were concerned about [Student] banging his head and hurting himself and also concerned about how to keep [Student] safe from injuring himself at school. [Complainant] recommended that mom bring [Student] to urgent care to get checked for a concussion. Mom said she would do that today. [Complainant] shared this looked like a trauma response. She hadn't been told about any trauma responses by mom during their intake session. [Complainant] asked if mom could remember any traumas that [Student] had experienced in the past.

29. The District did not provide any documentation regarding its use of a physical hold on the Student on [redacted], as described in the District's communication log.

30. During the phone call on [redacted], according to the District's communication log, t[redacted] shared details of two traumatic events that had occurred to the Student in the past, and based on this information and the Student's behavior, the Complainant diagnosed the Student with post-traumatic stress disorder (PTSD).

31. On [redacted], the Student's case manager spoke with his mother, reporting that "[Student's] team at [school] was working on and implementing a plan to keep [Student] safe at school and that was our top priority." They also discussed the Student's mother's request, at the Student's doctor's advice, that the District call an ambulance if he begins hitting his head. The Student's case manager responded that the District was concerned that calling an ambulance might trigger a trauma response in him and that the Student's mother should talk to the school principal.

32. On [redacted], the Student's case manager called his mother to review a safety plan (November [redacted] safety plan) the District developed, as follows:

    Support/Safety Plan for [Student]:

    - [Student's] needs that arise from his autism and trauma in order to help [Student] maintain feeling safe and demonstrate safe behavior:
    - Begin each day in [special education [redacted]] [redacted] 7:30-9:30 [a.m.]
    - Soft landing of breakfast, sleep option, coloring, quiet time
    - Rewards and activities that include but are not limited to favorite snacks; Daniel Tiger and Monster Jam coloring pages printed off the printer; preferred graphic novel books; plan paper and markers for drawing his feelings and telling what happened and stories
    - Quiet space
    - Headphones
    - Dim lighting
    - Increased personal space that others respect and stay out of
    - Less movement of others in his proximity
    - Few verbal directives
    - As few as possible verbal directives when he is in the red zone
    - Calming visual when he is escalated
    - Few/no transitions between rooms or between activities when he is attached to a space or activity
    - Coloring on demand
    - On-demand naps
    - Space and as much time as needed to be alone when he begins to escalate
    - Blockers to be used when he becomes physical towards others or himself
    - Mini-trampoline time as needed
    - [Student] is working toward earning a Nintendo Switch at home with mom for not banging his head
    - [Student] earns a prize from mom each Friday for having a safe week
    - Mom gives him 2 gummies before school: relaxing gummies: Kids Stress relief; relaxing and calming mood Garden of Life

Tentative Plan A:

- [redacted]
  - [Student] begins each day in [redacted], eats breakfast and completes a visual Zones Check
  - We encourage a morning nap. If not tired, choose activity from above list
- [redacted]
  - Zones Check
  - Green Zone and took a rest: ready to go to class and be safe
  - Blue Zone: Rest, sleep, snack, or other preferred activity
  - Yellow or Red Zone: Space and quiet and alone time
  - If [Student] is unable to sleep in the morning he should **not** go back into the classroom until he is able to rest
  - If [Student] naps in the morning and is in the Green Zone, he may join class with supports for his needs in place. Staff should be available to give him his reward breaks for safe behavior in the classroom.

33. The District did not provide prior written notice to the Student's mother regarding the Student's November [redacted] safety plan nor did the District review or revise the Student's IEP.

34. On [redacted], the District, by prior written notice, proposed to conduct an FBA of the Student. The Student's mother signed written consent the same day.

35. The same day, the Student's mother gave written consent for an [redacted] to observe and provide recommendations to the Student's IEP team regarding his behavior.

36. On [redacted], according to the District's communication log, the Student's case manager and his mother spoke about the Student's November [redacted] safety plan. His case manager reported, "He is loving his dark quiet room working with one adult at school. After he wakes up, he is able to engage in math, reading, writing and stays focused on his work until the end of the day."

37. On [redacted], according to a notice of team meeting, the Student's IEP team met to "review progress toward meeting the goals on [Student's] current [IEP], and develop a new IEP; review the results of the FBA and share the positive behavior support plan; to discuss if [Student] qualifies for recovery services related to the COVID-19 pandemic." According to team meeting notes, the Student's IEP team discussed his social skills and behaviors and reviewed the results of the FBA and the November [redacted] safety plan.

38. On [redacted], the District proposed, by prior written notice, an IEP dated [redacted] (December [redacted] IEP) for the Student. The Student's mother did not object within the 14-day objection period, and it went into effect on [redacted].

39. The Student's December [redacted] IEP provides the following information about his present levels of functional performance and academic achievement, in relevant part:

> Immediately after the crisis incident [redacted], the team created and implemented a safety plan to help [Student] stay safe and successful at school. Since [redacted], [Student] has been self-selecting to work exclusively in the special education setting. The safety plan includes access to sensory breaks; a dimly-lit, quiet low activity work space; choice of work location; use of a "ready" or "not ready" visual to indicate that he was ready to be safe and calm and work in the general education setting; scheduled morning rest time; ownership over academic work; and a work-folder system commonly used for students on the spectrum in order to provide structure, predictability and manageable work tasks as well as many elements that help [Student] meet his needs and feel successful at school. The implementation of naps upon arrival was decided after much data was collected and with team collaboration.
>
> Since the implementation of the safety plan, [Student] has been sleeping on average [redacted] hours a day in the [redacted]. He works for an average of 100 minutes a day. He has not had another crisis situation.
>
> . . .
>
> [Student] has not only been refusing to re-enter or engage in academic instruction in his general education classroom but also has been refusing to engage in academics in a small group. He will, however, engage in grade-level math, reading and writing when supported [one-on-one] by an adult in a room by himself that is quiet and dark. He will work for up to [redacted] hours at a time in this manner. He can sustain focus on academics in this context and when he has ownership over the types of learning materials he is able to use. [Student] is currently only willing to participate in whole group lunch and recess.

40. The Student's December [redacted] IEP includes a social skills goal, a speech goal, a reading and listening comprehension goal, a gross motor goal, and a math goal.

41. The Student's December [redacted] IEP describes the following direct special education and related services:

- Specialized Instruction: Social Skills – 30 minutes, five times a week;
- Behavior Management: Scheduled Breaks – 40 minutes, five times a week;
- Specialized Instruction: Reading – 45 minutes, five times a week;
- Specialized Instruction: Mathematics – 45 minutes, 5 times a week;
- Speech/Language: Articulation – 5 minutes, 9 times per four-week cycle;
- Developmental Adapted Physical Education: 20 minutes, two times a week;
- Sensory Regulation: 30 minutes, five times a week.

42. The Student's December [redacted] IEP provides the following least restrictive environment explanation:

> The use of supplementary aids, program modifications, and supports only would not be sufficient for [Student] to meet his annual goals and objectives. Along with instruction in the general curriculum, [Student] needs direct specialized instruction in a small group setting to work on social emotional skills in order to progress toward meeting his annual goals and objectives. [Student] will receive 30 minutes per day of direct individualized social skills instruction in a small group special education setting. [Student] will miss part of his core instruction with his general education peers when receiving these services. [Student] will receive 45 minutes a day of reading instruction in a small group and 45 minutes of math instruction in a small group. [Student] will receive 40 minutes a day of scheduled breaks and 20 minutes a day of sensory regulation[3] to help him decrease his stimulation. [Student] will receive 5 minutes of direct speech and language instruction with a speech/language pathologist 9 times per month to work on language skills. [Student] will receive 20 minutes of [developmental adapted physical education] twice a week and 1 hour of school-based mental health sessions once per week. When receiving these services, [Student] will miss his reading instruction with his non-disabled peers.

43. The Student's December [redacted] IEP provides the following program modifications, supports, and adaptations in general and special education:

- One-on-one support from an adult
- Ownership over schedule
- Ownership over learning materials
- Extra snacks
- Contact with peers when he tells us he is ready and can be safe
- Choice of work locations
- Access to a dimly-lit, quiet break space to regulate his sensory needs
- Positive reinforcements based on his interests
- Decreasing sensory stimulation low light, low noise, low movement in his learning environment
- Few transitions
- Functionally equivalent and appropriate replacement behaviors are taught, modeled, cued, and reinforced

[3] The amount of daily sensory regulation listed in the Student's December [redacted] IEP varied between the service grid and the least restrictive environment explanation.

- Social Stories tailored to [Student's] needs as they arise
- Teach a body-regulation program (i.e., Zones of Regulation)
- Teaching break procedures
- Teaching self-regulations skills
- Scheduled breaks
- Unscheduled breaks
- Including taking rests when [Student] tells us he is tired or is emotionally or physically dysregulated
- Reading his special interests books of his choosing
- Visiting the media center
- Quiet alone time in a dark room (sensory break)
- Geometric shape building
- Monster trucks
- End of the day learning activities that he choose[s] (i.e. trucks, animals, learning videos about tractors, animal documentaries)
- Educational T.V. such as Magic School Bus, Wild Kratts as a reward for work completion
- Popsicle stick building or tools, trucks, or animals
- A paraprofessional will be available to provide support and intervention for behavior and work completion within the general and special education setting. The paraprofessional will provide [Student] with prompts, strategies, and supports to help him implement the social-emotional management skills and participation skills he is being taught in his small group sessions while he [is] completing work and in a room with peers. The paraprofessional will also provide redirection, intervention, and de-escalation for behavior such as striking or grabbing, verbally threatening, self-injuring, throwing objects, yelling or leaving the classroom or building when emotionally or physically dysregulated.
- When applying the district discipline policy, [Student's] disability will be considered. The school administrator will make the final disciplinary decisions in consultation with the case manager.
- Individual positive and structured reinforcements will be used. Positive reinforcement may include a daily reward chart, laminated reward cards, choosing end-of-day learning activities based on his special interests, free-hand drawing, earning extra choice time, or time with a preferred activity and social stories to teach and reinforce specific skills or feelings. [Student] will be given positive praise and reinforcements for on task behavior and completion of non-preferred work tasks.

- Use of a work folder and work box system used with students with autism to provide predictability, structure and teach independence.
- [Student] will be seated near a model peer at his table or desk or independent work times. For whole group learning on the carpet, [Student] will be seated in a space that allows him to move between the rug and his table or desk space with limited distraction to others. [Student] will have the option to sit at the rug, or at his table or desk spot during whole group learning. He can listen and participate from both spaces.
- Staff working with [Student] will provide both verbal and visual warnings (i.e. visual timer) to [Student] about how much time is left for an activity (i.e. 5 minutes, 3 minutes, 2 minutes) and what the expectation is when the timer goes off (i.e. we will put the iPad away and sit at the rug).
- Staff working with [Student] will provide and refer to a visual schedule to help [Student] see what his day will include and when each part of his day is done. Staff will also use the language and/or a visual for "first, then" to help [Student] understand what he needs to do first (non-preferred activity), and what he can do after it is done (preferred activity). [Student] will have access to a visual that shows emotions and options for self-regulation (i.e. zones chart with calming tools).

44. The District was on winter break from [redacted].

45. On [redacted], a behavior specialist [redacted] observed the Student and provided recommendations to the District for responding to his behaviors, such as "have silent calming routine available at all learning activities" and "add a movement break at [redacted] [a.m.] with gym class to extend his waking time in the morning."

46. [redacted]

47. The District provided an IEP for the Student, dated [redacted] (January [redacted] IEP), which provided the same goals, direct special education and related services, and least restrictive environment explanation as the Student's December [redacted] IEP, but removed the following program modifications, supports, and adaptations in general and special education:

- One-on-one support from an adult
- Extra snacks
- Positive reinforcements based on his interests
- Functionally equivalent and appropriate replacement behaviors are taught, modeled, cued and reinforced
- Teach a body-regulation program (i.e. Zones of Regulation)

- Teaching break procedures
- Teaching self-regulation skills
- Monster trucks
- End of day learning activities that he choose[s] (i.e. trucks, animals, learning videos about tractors, animal documentaries)
- Educational T.V. such as Magic School Bus, Wild Kratts as a reward for work completion
- A paraprofessional will be available to provide support and intervention for behavior and work completion within the general and special education setting. The paraprofessional will provide [Student] with prompts, strategies, and supports to help him implement the social-emotional management skills and participation skills he is being taught in his small group sessions while he [is] completing work and in a room with peers. The paraprofessional will also provide redirection, intervention, and de-escalation for behavior such as striking or grabbing, verbally threatening, self-injuring, throwing objects, yelling or leaving the classroom or building when emotionally or physically dysregulated.
- When applying the district discipline policy, [Student's] disability will be considered. The school administrator will make the final disciplinary decisions in consultation with the case manager.
- Individual positive and structured reinforcements will be used. Positive reinforcement may include a daily reward chart, laminated reward cards, choosing end-of-day learning activities based on his special interests, free-hand drawing, earning extra choice time, or time with a preferred activity and social stories to teach and reinforce specific skills or feelings. [Student] will be given positive praise and reinforcements for on task behavior and completion of non-preferred work tasks.
  Use of a work folder and work box system used with students with autism to provide predictability, structure and teach independence.

48. The Student's January [redacted] IEP added the following program modifications, supports, and adaptations in general and special education:

- A paraprofessional will be available to provide support for work completion in reading, math and writing within the general and small group special education setting.
- The paraprofessional will provide [Student] will prompts, strategies and support to help him implement the social-emotional management skills and participation skills he is being taught in his small group sessions while he completes work and in a room with peers.
- A paraprofessional will provide support during transitions from one space to another and from one staff to another.

- A paraprofessional will support [Student] during scheduled, unscheduled sensory and body and emotional regulation breaks.
- The paraprofessional will also provide redirection, intervention, and de-escalation for behaviors such as striking or grabbing, verbally threatening, self-injuring, throwing objects, yelling or leaving the classroom/building when emotionally or physically dysregulated.
- The paraprofessional will support [Student's] emotional regulation during general education recess and lunch.

49. The District did not provide a prior written notice with the Student's January [redacted] IEP. Further, the District did not provide any documentation that the January [redacted] IEP was sent to the Student's parent.

50. On [redacted], according to meeting notes, District staff members met to discuss "what [were they] doing to increase [Student's] time in the general education setting with peers, [were they] using suggestions from [redacted] observation, and [were they] using interventions described in the IEP/PBSP [positive behavior support plan]?" The District team noted the Student had recently transitioned from spending 100 percent of his day alone in a special education room with support staff to spending 90 percent of his day in a special education room with for small group instruction, general education lunch, recess, and physical education.

51. On [redacted] the Student's parents met with a District's special education lead teacher and the Complainant to discuss his transition to day treatment.

52. On [redacted], the Student began day treatment at a facility located in another Minnesota school district.

Conclusions

1. School districts must make available to each eligible student a free and appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03 (stating "every district must provide special instruction and services, either within the district or in another district, for all children with a disability . . . 'special instruction and services' in the state Education Code means [FAPE] provided to an eligible child with disabilities").

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The Student's needs and the special education instruction and services to be provided must be agreed upon through the development of the [IEP]."

3. Federal regulations at 34 C.F.R. § 300.324(b) provides:

> (1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team –
>
> (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
>
> (ii) Revises the IEP, as appropriate, to address –
>
> (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
>
> (B) The results of any reevaluation conducted under § 300.303;
>
> (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
>
> (D) The child's anticipated needs; or
>
> (E) Other matters
>
> (2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

4. Federal regulations at 34 C.F.R. § 300.324(a)(2)(i) requires IEP teams to, "in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior."

5. Federal regulations at 34 C.F.R. § 300.320(a)(4) and (5) require each eligible students' IEP to include:

> (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –
>
> (i) To advance appropriately toward attaining the annual goals;
>
> (ii) To be involved in and make progress in the general education curriculum in accordance with (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
>
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;

(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section.

6. Federal regulations at 34 C.F.R. § 300.116 provides:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that –

(a) The placement decision –

(1) Is made by a group of persons, including the parents, and other persons, knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) Is made in conformity with the LRE provisions of this subpart, including §§ 300.114 through 300.118;

(b) The child's placement –

(1) Is determined at least annually;

(2) Is based on the child's IEP; and

(3) Is as close as possible to the child's home;

(c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;

(d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and

(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

7. Federal regulations at 34 C.F.R. § 300.327 states: "Consistent with § 300.501(c), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child."

8. Federal regulations at 34 C.F.R. § 300.501 provide, in relevant part:

(b) Parent participation in meetings.

(1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to –

(i) The identification, evaluation, and educational placement of the child; and

(ii) The provision of FAPE to the child.

(2) Each public agency must provide notice consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.

(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

9. Federal regulations at 34 C.F.R. § 300.503(a) provide:

Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency –

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

10. Minnesota Rules 3525.3600 provide:

> When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

11. Here, following the Student's behavioral incident on [redacted], and to address his behavioral needs, the District proposed to conduct an FBA and held an IEP team meeting on [redacted], to review the results of the FBA and to review and revise the Student's IEP.

12. However, the District also created the Student's November [redacted] safety plan, which changed the Student's educational placement from primarily in the general education setting in [redacted] and the beginning of the [redacted] school year to one-on-one instruction in the special education setting. Although the District later held the [redacted] IEP team meeting, it did not timely hold an IEP team meeting to review and revise the Student's IEP to address the Student's anticipated behavioral needs during the [redacted] school year or ensure the Student's parent was a member of the group that made decisions on the educational placement of the Student in November [redacted]. This is in violation of §§ 300.324(b), 300.116, 300.327, and 300.501.

13. The District also did not provide prior written notice before it implemented the Student's November [redacted] safety plan or his January [redacted] IEP, in violation of 34 C.F.R. § 300.503(a) and Minn. R. 3525.3600.

14. Minnesota Statutes § 125A.0941(b) define "emergency" as:

> "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

15. Minnesota Statutes § 125A.0941(c) define "physical holding," as:

> Physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:

(1) helps a child respond or complete a task;

(2) assists a child without restricting the child's movement;

(3) is needed to administer an authorized health-related service or procedure; or

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

16. Minnesota Statutes § 125A.0941(g) provides:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

17. Minnesota Statutes § 125A.0942, subd. 3(a)(5) requires:

> Each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding or seclusion began and the time the child was released; and
>
> (iv) a brief record of the child's behavioral and physical status.

18. Minnesota Statutes § 125A.0942, subd. 3(a)(6) requires:

> (6) The room used for seclusion must:
>
> (i) be at least six feet by five feet;
>
> (ii) be well lit, well ventilated, adequately heated, and clean;
>
> (iii) have a window that allows staff to directly observe a child in seclusion;
>
> (iv) have tamperproof fixtures, electrical fixtures located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

19. Here, District staff placed the Student into a physical hold, as defined by Minn. Stat. § 125A.0941(c), when District staff used physical intervention to hold him immobile or limit his movement, where body contact was the only source of physical restraint, and where immobilization was used to effectively gain control of the Student in order to protect him or others from physical injury, during emergencies on [redacted]. However, the District did not document the physical hold on [redacted], in violation of Minn. Stat. § 125A.0942, subd. 3(a)(5).

20. During the Student's [redacted] behavioral incident, District staff placed the Student into seclusion when they confined the child alone in a room and barred his egress, as defined by Minn. Stat. § 125A.0941(g). Although the District documented this use of seclusion, it failed to ensure the room was free from objects that the Student could use to injure himself or others at the beginning of the seclusion, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(6).

21. Minnesota Statutes § 125A.0942, subd. 2 requires, in pertinent part:

(c) The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program meeting when the child's individualized education program provides for using restrictive procedures in an emergency.

(d) If the individualized education program team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing

evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

(e) At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicates the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

22. Here, after the Student was placed into physical holds and seclusion on two separate school days within 30 calendar days on [redacted], the District proposed an FBA on [redacted], and held an IEP team meeting on [redacted]. However, an IEP team meeting to conduct or review an FBA, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, modify the individualized education program or behavior intervention plan as appropriate, consider whether the existing interventions and supports were ineffective in reducing the use of restrictive procedures, and review any known medical or psychological limitations that contraindicate the use of a restrictive procedure and consider whether to prohibit that restrictive procedure, was not held within 10 calendar days of the two physical holds, in violation of Minn. Stat. § 125A.0942, subd. 2(c).

Decision

1. The District violated 34 C.F.R. 34 C.F.R. §§ 300.324(b), 300.116, 300.327, and 300.501 when it did not timely review and revise the Student's IEP, as appropriate, to address the Student's anticipated behavioral needs or ensure the Student's parent was a member of the group that made decisions on the educational placement of the Student during the [redacted] school year.

2. The District violated 34 C.F.R. § 300.503(a) and Minnesota Rule 3525.3600 when it did not provide prior written notice before implementing the Student's November [redacted] safety plan and January [redacted] IEP.

3. The District violated Minnesota Statutes § 125A.0942, subd. 3(a)(5) when it did not document the physical hold used on the Student on [redacted].

4. The District violated Minnesota Statutes § 125A.0942, subd. 3(a)(6) when it did not ensure the room was free from objects that the Student could use to injure himself or others during the entirety of the seclusion on [redacted].

5. The District violated Minnesota Statutes. § 125A.0942, subd. 2(c) when it failed to hold a meeting of the Student's IEP team within ten calendar days after District staff used restrictive procedures on the Student on two separate school days within 30 calendar days in [redacted].

Corrective Action

1. By [redacted], the District's special education director must contact MDE's corrective action specialist, Sara K. Wolf, to schedule MDE training of District staff. Specific areas of special education due process that will be covered in the training include: restrictive procedures, in accordance with Minn. Stat. §§ 125A.0941 and 125A.0942 and the obligation to timely provide prior written notice, in accordance with 34 C.F.R. § 300.503(a) and Minn. R. 3525.3600.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sonia R. Smith, J.D.
Director of Assistance & Compliance
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SRS/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

Re: Special Education Complaint [redacted] C on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted] and an amended issue letter dated [redacted]. The District provided a written response to the complaint on [redacted], and also on [redacted], responding to the amended issue letter. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for and respond to the behavior of the Student during the [redacted] school year. Specifically, the Complainant alleges the District improperly used shortened school days, even when the Student was not attending day treatment programming, and improperly used physical holding and/or seclusion, in lieu of developing and implementing an appropriate individualized education program (IEP) with a behavioral intervention plan (BIP) and other supplementary aids and services to support the Student.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.

2. The Complainant reported they moved into the District [redacted] and the Student enrolled into the District on [redacted].

3. The District's communication log notes that the District requested the Student's education records from his previous Minnesota school district on [redacted] and on [redacted], the District received the records. The records included a December [redacted] IEP developed by the Student's previous Minnesota school district and a December [redacted] initial special education evaluation. The December [redacted] evaluation determined that the Student met the criteria for special education and related services under the category of developmental delay (DD). The Student's evaluation did not contain a functional behavioral assessment (FBA).

5. During the [redacted] school year, the Student was enrolled in a public preschool program in the previous Minnesota school district.

6. The Student's December [redacted] IEP contained the following information about the Student's sensory needs:

> In pre-school and Kindergarten, students are learning how to interact with others, follow direction, attend a learning task, and develop their fine motor skills in order to learn how to write, draw, and manipulate classroom materials and tools. [Student] has difficulties in these areas because his body is not ready for learning. In addition to social-emotional and emotional regulation instruction in his classroom, [Student] could benefit from sensory-related strategies and adaptations to his classroom environment to help increase his participation, following direction, and focus for learning. He benefits from a

predictable, consistent, and structured routine so that he can prepare and organize his body to familiar input. He benefits from designated 'safe' or visual spaces to know where his body needs to be or where he can calm if overstimulated. He benefits from both scheduled movement breaks and movement incorporated into his daily classroom learning lessons as well as flexible seating/attending options, while his team continues to explore appropriate strategies to improve his ability to participate and follow direction for learning at school.

7. The Student's December [redacted] IEP contained annual goals aiming for the Student to improve his participation (sensory processing) and social emotional skills as follows (emphasis in original):

    - Sensory processing:

    During Teacher-directed group activities, [Student] will increase his participation, FROM needing close adult support and frequent reminders to attend, follow group norms, complete all steps and respond to questions and prompts, TO doing so with visual support & verbal reminders per task/lesson for 75% of opportunities for 4 school days as measured by special education staff by [redacted].

    - Social emotional skills:

    During a classroom social activity, [Student] will increase his peer interactions, FROM greeting, playing next to classmates and taking turns with adult support TO playing cooperatively with 1-2 classmates, working with others for a group project/activity, sharing/taking turns with materials and during games one time each per school day with visual and verbal support as needed for 4 school days as measured by school staff by [redacted].

    Throughout the school day, [Student] will increase his ability to manage activity transitions FROM requiring close teacher support including hand-over-hand guidance to move between activities and settings, TO following these 5 steps with visual support as needed: (1) respond with 'Okay' (or similar) when teacher tells him of an upcoming transition, 2) stop what he is doing when teacher gives whole class direction to transition, 3) clean up materials (or take other steps) to finish activity, 4) physically move to next activity or setting, and 5) begin next task for 75% of all opportunities for 4 school days as measured by school staff by [redacted].

8. To enable the Student to make progress towards the annual goals, the Student's December [redacted] IEP provided for the following special education and related services:

    - 15 minutes per week special education indirect service minutes as follows:
      The [previous Minnesota school district] special education service providers who support [Student] will team regularly with kindergarten staff, [Student's]

family, and [redacted] personnel to share information, play and discuss strategies and report progress for the purpose of developing a meaningful and coordinated educational experience for [Student].

- 60 minutes per day of special education direct service minutes in the area of social-emotional learning as follows:

  Special education staff will provide [Student] with 60 minutes of direct instruction per day in the areas of social emotional development, adaptive skills, communication and academics. This service will include the following:

  - support in his general education setting to target his IEP goals and their expression in the kindergarten classroom, with his classmates and within age-level activities.
  - brief sensory and movement breaks (of approximately 10 minutes, typically no more than 2 per school day, and if possible during non-instructional times) to foster age appropriate self-regulation and emotional expression/communication.

  [I]instructional strategies used by special education staff may include: direct teaching, modeling, role playing, positive reinforcement/affirmation, structured opportunities for practice, adult proximity, short single step verbal directions, and first-then statements.

  [Name omitted] the mental health professional who works with [Student] at [redacted] also recommends another social interaction strategy-'narration' to benefit [Student]. This strategy entails verbally and objectively describing (or narrating) the actions of a child, adult playmate and peer during a play scenario. During interactive or cooperative play, the strategy assists children with perspective-taking and interpretation of others' actions. When playing with a classmate, use of this strategy on a somewhat frequent basis will foster [Student's] interaction skills and possibly regulation and expression of emotions. Information about this technique can be obtained from [the mental health professional] and/or [the day treatment program].

9. The Student's December [redacted] IEP also provided for the following assistive technology:

   As needed, [Student] will be provided the following visual supports as part of his special education programming in his kindergarten class:

   - a picture schedule of the class' daily activities pair[ed] with a picture of a staff person or peer that [Student] will interact with and can use a resource
   - pictorial representations of directions and steps (i.e. for multi-step tasks) especially when specific directions or the activity itself is unfamiliar.

- pictures of calming choices, seating preferences in groups, emotions
- first-then board
- visual or sand timer

10. The Student's December [redacted] IEP also provided for the following supplementary services: a mid-morning snack time, one to two sensory breaks per school day, priority seating, task analysis (segmenting activities into small more manageable steps), and the following regulation supports:

    A predictable, consistent and structured daily schedule

    Task/reward routine to help him prepare and organize his body to familiar input

    Both scheduled movement breaks as well as frequent movement opportunities incorporated into his school day

    Flexible seating/attending options

    Opportunities to move or stand during seated group learning

    Access to noise reducing environments/materials

    Heavy input-inducing activities such as jumping, wall/chair push-ups, stacking chairs, carrying/wearing backpack, use of a compression vest, and opportunities for whole-body movement to help him calm and organize his body.

    Access to comfort or fidget items to assist with transitions and during longer non-preferred activities

11. The Student's December [redacted] IEP further provided for the Student to receive paraprofessional services "for redirection and intervention for behavior including observation and monitoring."

12. The Student's December [redacted] IEP also provided for the Student to receive a shortened school day to allow his participation in services at a [redacted] program. The Student would be served in the special education environment for less than 21% of his school day, and spend the remainder of the school day with general education peers. The least restrictive environment (LRE) explanation in the Student's December [redacted] IEP provided the following additional information about the Student's special education and related services:

    Given [Student's] educational goals, the IEP team (which includes [Complainant]) recommends that he receive direct special education support during routine Kindergarten activities with one to two sensory and movement breaks per day outside of the large group setting. This 'resource model' provides [Student] with the opportunity to learn from and interact with typically developing same-age peers during common school experiences while still receiving support for his special educational needs. 'Pull-out' services (into the special education setting) are not recommended as [Student's] school day is already abbreviated to accommodate his participation in the [redacted] program, and may result in further loss of instruction time with peers. This

placement is considered the least restrictive for [Student] for the [redacted] school year.

13. The Student's December [redacted] IEP did not include the use of restrictive procedures or a behavioral intervention plan (BIP).

14. The Complainant reported that, when enrolled in the Student's previous Minnesota school district, the Student would remain in school for full school days when his day treatment program was not in session or he did not otherwise attend the day treatment program on a given day.

15. The [redacted] school year began on [redacted]. The Student was a kindergartener and his December [redacted] IEP was in place.

16. The Complainant reported in her complaint:

> [District] Elementary School is now stating that [Student's] IEP is designated as a "half-day" IEP and are only allowing him to attend school between the hours of 9:30am-11:30am, whether or not he attends [redacted]. If his [redacted] program is closed or he misses his transportation vehicle, they are requiring me to come and pick him up stating that he cannot stay the full-day for kindergarten. This has happened on two occasions, and the school says they do not have the staff to accommodate him staying the full day. I have attempted to push back stating that he is currently enrolled in a full-day kindergarten program, and they need to have a plan in place in case his [redacted] program is closed (for MEA break, future holidays, etc.). This was the response from the school:
>
> "He requires a high level of support when he is in the building right now, so in communication with our District office, we are going to continue to have him on an altered school day for his half day programming even when [redacted] program] is closed. Parents have been made aware that his schooling is only until 11:30am at [District elementary school] while this IEP is in effect."
>
> My child deserves to be in kindergarten for the full-day on days he is not attending [redacted], and the school needs to create a plan to have the correct supports in place to make this a successful educational setting for him in coordination with his IEP. I am willing to revise the current IEP to add an additional statement including this information under the "Altered School Day" section, but have not received a response back from the school.

17. When interviewed, District staff reported that from the start of the [redacted] school year the Student would remain in his general education kindergarten class for approximately 15 minutes per day. He would leave as soon as an undesired activity was introduced and go to the special education setting.

18. In its response to the complaint, the District reported the following occurred on [redacted]:

> [redacted] needed to go into low ratio staffing so student was not able to attend [redacted]. This was communicated to [District elementary school] less than 24 hours in advance. Parent expected that [Student] would just stay at school for the full day, but he stayed at school until 11:30 and [District staff] drove [Student] home.

19. On [redacted], the District provided the Complainant with a prior written notice and a proposed revised IEP ([redacted] proposed IEP). The District did not hold an IEP team meeting or otherwise consult with the Complainant prior to sending her the proposal.

20. The [redacted] proposed IEP indicated that the Student would be served with his special education peers for 60-100% of his school day, carried over the goals from the Student's December [redacted] IEP, added 10 minute movement breaks twice a day, and added child specific paraprofessional support for 150 minutes per day. The altered school day section was revised to: "[Student's] school day has been shortened to allow for his participation in the mental health services at [redacted] program]. He will leave school to attend programming at around 11:30 each day."

21. The Complainant objected to the [redacted] proposed IEP and stated, "I do not believe [Student] needs level 3 setting and would like to discuss [Student's] plan to stay in kindergarten all day."

22. On [redacted], the Student's IEP team met to discuss the Complainant's objections to the [redacted] proposed IEP.

23. Two of the Student's mental health providers from the [redacted] program attended the [redacted] IEP team meeting. At the meeting, the Complainant and mental health providers advocated for the Student to attend school for full school days after being discharged from [redacted].

24. Following the [redacted] meeting, one of the mental health providers emailed District staff which provided in relevant part:

> Like [mental health provider name redacted] and myself stated in the meeting previously, we believe [Student] deserves to be at school for the full-day to showcase his skills and continue to build the important relationships with both staff and peers. Without the chance to remain at school for the full-school day, [Student] is not given the opportunity to a free appropriate public education that he deserves, and the opportunity to learn at the same rate of his peers. He will continue to fall behind in academics if he is not given the chance to work on the age-appropriate learning opportunities in the school setting (i.e. kindergarten classroom and/or separate special education classroom).

25. On [redacted], the District proposed a revised IEP (November [redacted] IEP) via prior written notice which provided in relevant part:

> [Student's] IEP services have been updated to reflect a 1:1 paraprofessional for the duration of time that he is in the building. This was not a service that was provided on his past IEP. [Student] requires increased adult support when he is in the building due to elopement concerns and to support his regulation for appropriate participation in school activities.
>
> [Student's previous school district] IEP services for 15 minutes of indirect Social/Emotional skills instruction 1x/week have been updated to 30 minutes of social/regulation skills instruction to occur daily. This increased services time is necessary in order to appropriately address his IEP goals for emotional/behavioral regulation and to support his regulation needed for appropriate classroom participation in his Kindergarten class.
>
> [Student's] [District] IEP is proposing to add 30 minutes of math support to his IEP to occur daily. As [Student] is on an altered school day, the math instruction would be providing him direct instruction on math concepts that are typically taught at a time outside of when he is in the building on his altered schedule.
>
> The team is proposing to add 25 daily minutes to support his overall academic participation and 30 minutes daily to support his regulation skills. [Student] requires altered instruction in order to engage in grade level curriculum that is completed on an independent basis (independent writing activities, reading tasks with adults, kindergarten skills assessments, etc). This may include taking his Kindergarten work into a different environment that would allow for him to incorporate more movement based activities while completing the task or to work on the academic task in a less stimulating environment that allows him to maintain better regulation for the task. He also requires assistance in working through frustration and managing his emotions in appropriate ways.
>
> The [District] IEP does not reflect an altered discipline policy as it was written in his [previous school district] IEP. As [Student] is receiving special education services, the IEP team will always be involved in determining regulation supports and behavioral/disciplinary actions for [Student]. All other modifications/accommodations are adopted without changes.
>
> [Student's] instructional setting has been updated from a setting 1 [less than 21% of the school day in the special education environment without general education peers] on his [previous school district] IEP to a setting 3 [60% to 100% of the school day in the special education environment without general education peers] on the proposed [District] IEP. This change reflects the increased need for adult support during his day. [Student's] [previous school

> district] IEP provided a majority of his services through an indirect service model. However, the [District] is proposing to support his participation and special education goals through direct services, as [Student's] ability to engage and participate in activities with his kindergarten class is highly dependent on his regulation level. As the proposed IEP would have [Student] in the building for 4 hours a day, receiving supports outside of his mainstream classroom for 144 minutes or more of his school day would quantify his federal setting level as a setting 3.
>
> Changes to [Student's] altered school day are proposed due to the upcoming discontinuation of [redacted] programming and [Student's] success during the 2.5 hours he is currently attending. The IEP team is proposing an incremental increase in the amount of time that [Student] is in the building from his current 2.5 hours daily to 4 hours daily. Further increases in his length of time will be determined on data collection surrounding [Student's] tolerance and response to his initial increase in time.

26. The November [redacted] IEP went into effect following a 14-day lapse in time.

27. The Student's November [redacted] IEP stated the following regarding the Student's shortened school day:

> Currently, [Student's] school day has been shortened to allow for his participation in the mental health services at [redacted] program]. He leaves school to attend programming around 11:30 am each day. It has been determined [Student] will be discharged from programing at [redacted]. [Student's] day will continue to be increased from 2.5 hours to 4 hours, with [Student] leaving at 1:00. This increase of time will allow [Student] to access more academics, and social engagement with peers. The continuation of the altered day is in place to do [Student's] ability to stay ability to stay regulated [sic] while being asked to do academic tasks he does not want to do or is worried about making a mistake on. [Student's] behaviors have decreased within the 2.5 hour day, so the team feels a slow transition is supportive of adding more expectations. The school team will collect data on [Student's] ability to access and complete academic instruction/tasks in the general education classroom, in combination with special education supports (resource room and staff) to further increase his time at school. This will be considered at the end of [redacted].

28. The Student's November [redacted] IEP also included a BIP that included the following preventative strategies to address the Student's physical aggression, elopement, property destruction, environmental disruption, and emotional/behavioral breakdown behaviors:

    a. Consistent routines and schedules
    b. Use of visuals, pictures, and schedules

c. Opportunities for movement built into this school day.
d. Reward systems/token economies
e. Availability for him to have a choice
f. Predictability and consistency in responses/outcomes (when you do this, then this happens. . . i.e. when you complete your work, then you get a lego break. . . when you kick, then we need to take a break)
g. First/then statements and expectations
h. Proximity (having an adult near him to support and work through things immediately when they arise is helpful)
i. Access to additional snacks
j. Having the ability to take a break in a different space/leave the environment
k. Access to comfort objects (he sometimes brings stuffed animals from home but also likes stuffed animals in the resource room)
l. Use of timers (visual or digital) to show duration and assist transitions
m. Providing praise and positive reinforcement when engaging in expected behavior

29. The BIP included the following information about how alternative/replacement skills would be taught:

> [Student] has been provided with a 1:1 paraprofessional to support him during his school day. This will allow him to have adult assistance, guidance, and encouragement during activities to help maintain and/or regain attention and appropriate regulation.
>
> When dysregulated, Staff have found that providing him a safe space, close adult proximity, and time have been the most successful ways to help him calm down. When in these states of dysregulation, trained staff may model tools/strategies/expectations to help teach [Student] what is expected.
>
> When Student is starting to calm down, providing him with calming options and modeling the use of strategies is helpful for him to be able to mimic. He also benefits from reminders that he is safe, that adults are here to help and support him when he is struggling, and then affirming that he is still cared for by adults even when and after he shows big emotions.
>
> Individual or small group instruction for academic skills.
>
> Individual or small group for emotional and/or behavioral regulation.
>
> Periods of short academic/work time paired with a short break with preferred activity.
>
> Frequent feedback/check-ins during work times
>
> Small group learning environment with high level adult support

Direct instruction by special education staff in the special education classroom

30. The BIP included the following information regarding restrictive procedures:

> As a last resort, if [Student] is demonstrating behavior that is unsafe to himself or other people, restrictive procedures may be utilized. Staff that are trained in [redacted] may use 1 or 2 person restrictive procedures to ensure safety and monitor the situation. Special education staff or administration will contact parents directly on the day that a restrictive procedure is utilized and all necessary paperwork will be completed.

31. On [redacted], the Student's provider at his [redacted] program wrote to District staff:

> I am hoping you are all able to accommodate a longer day especially with an advance notice to help support his learning needs. Ultimately the goal is to transition [Student] out of [redacted] programming and into full days at school. I am hopeful that we can make a more defined plan to support the transition.
>
> . . .
>
> Currently we are holding his discharge date and looking closer to early [redacted]. I do not feel comfortable discharging him without knowing the plan on how to help him achieve full days. Additionally it sounds like the family is no longer planning to take a vacation, so he should be at school the rest of the month. I will review the proposed IEP more tomorrow morning and send a follow-up email regarding thoughts.

32. On [redacted], District staff wrote to the Complainant and the Student's mental health providers:

> Right now, we are still proposing an altered school day with [Student] leaving school at 1:00 while we continue to support [Student's] frustration with academic requirements. We are looking for [Student] to be able to tolerate more tasks with less escalation. All tasks will continue to be delivered by a combination of the general education classroom and the resource classroom. We do not have a preference where [Student] needs to be to show this. [Student] will continue to have 1:1 adult support for the entire time he is at school.
>
> Today [Student] became dysregulated in phy ed. because the peer he was working with was doing push-ups wrong. Staff tried to support and redirect, but [Student] was too upset to return to class, even when they moved on to a fun activity. [Student] was asked to take a break and he crawled under some of the mats that hang on the wall. When staff tried to support him, he began to kick

and punch the mats. Eventually [Student] removed himself from the gym and began to wonder [sic] the building. He went to his general education classroom and hid in one of the stations in the room. [General education teacher] tried to work with him and support his frustration regarding the peer in phy. ed. [Student] did not accept her support and left the room to wonder [sic] and tip over chairs in the common space. [The Student's case manager] followed him and gave him options. [Student] continued to walk and say, "he wasn't doing the right push-ups." Eventually, [case manager] escorted him to the [redacted] to help him calm down. While in the [redacted] with [case manager] and another staff member, [Student] began throwing things at staff. A weighted blanket and pillow. The weighted blanket was taken out of the room, but the pillow remained. [Student] started to throw the pillow at the wall and when staff again tried to support him, he began throwing the pillow at staff, punching staff members' feet, and kicking them with his flat feet in the legs. He also tried to remove a staff members' shoe so he could throw it. This behavior started at 10:35 and continued until 11:30. The higher magnitude behaviors lasted approximately 20 minutes. During that time staff asked [Student] what he needed, he asked for some water. [The District DD specialist] brought him a partial class of water. [Student] was angry it was not full. Staff currently supporting [Student] left the [redacted] and [District DD specialist] was [Student's] main support. She was able to get him to calm down. He drank his water, had a snack, and read 2 books with her. Once that was finished, he was able to transition to math instruction in the special education classroom. He was in a group with another peer and had some success for the 15 minutes he was there.

This situation is part of why the school district is taking the transition slowly. In a highly preferred activity [Student] became dysregulated and could not get past the peer had not done push-ups the way he believed they should be done. We are working to introduce concepts that trigger [Student's] frustration, if he perceives the task will be challenging, he becomes upset, angry and is unable to be redirected. During a time when [Student] has become upset, and escalated it is taking a rotation of 3 to 4 adults to support him through the dysregulation and return him to a task. After an escalated situation staff remain cautious of what to expect from [Student] because he can and has returned to a highly escalated state.

. . .

We look forward to working with you and want to look towards a full day for [Student] once the data supports it.

33. The Student was discharged from [redacted].

34. When interviewed, District staff reported that they sometimes used seclusion in the [redacted] with the Student and used a transport procedure to transition the Student to the [redacted] when he demonstrated behaviors that could lead to the Student or others being hurt. Specifically, staff described that they would start a transport procedure if the Student was eloping and non-physical attempts to get him to the [redacted] or other safe space were ineffective. Sometimes the Student would be throwing things or aggressing towards staff.

35. Staff described the transport procedure as a two-person procedure and indicated it did not restrict the Student's ability to break out of the transport and that it did not immobilize the Student's joints. The two staff members described that they would hold the Student's arms and legs and carry him, stating that it "looks like the Student is sitting in a chair." Staff indicated that the Student's hands are free during the transport and he might pull at staff hair or shirt, continuing to aggress toward staff during the process. However, they indicated the Student usually would not struggle, and if needed they would set him down and not continue the transport.

36. District staff reported that they did not consider the transport procedure a physical hold, and that they did not use physical holds with the Student, as it would be contraindicated to use with the Student due to past trauma. Staff further reported they are trained in the 12 skills and knowledge areas required prior to using a restrictive procedures.

37. District staff reported that they did seclude the Student in the [redacted] or special education classroom and that the Student was frequently taken to the [redacted]. They described the [redacted] as a sensory space connected to the special education classroom with cushioned walls and contained plush items, such as blankets, pillows, and a bean bag chair. The District staff further reported they would, at least for a portion of the time, usually stay in the [redacted] with the Student to prevent the Student from leaving.

37. In response to this complaint, the District acknowledged that the [redacted] is not a registered seclusion room.

38. Following staff interviews, the District provided documentation entitled Use of Restrictive Procedures: Physical Holding (Physical Holding form) on five separate school days [redacted]. All of the Physical Holding forms include a description of the incident that led to the physical holding or seclusion; why a less restrictive measure failed or was determined by staff to be inappropriate or impractical; the time the physical holding or seclusion began and the time the child was released; and a brief record of the child's behavioral and physical status.

39. On [redacted], staff completed a Physical Holding form that provided (in relevant summary):

    a. Staff used a two-person child transportation and block of egress, for a total of 23 minutes.

    b. The Physical Holding form included the following relevant description of events:

        > [Student] became frustrated during an academic task, staff tried to support him through this, but he was angry and ran out of the classroom. He ran to the [redacted]

> [redacted] outside of the classroom, was tipping chairs and running around the [redacted]. Staff tried to direct [Student] to the resource room and blocked his path from running. When they got closer to him he kicked and punched them.
>
> . . .
>
> Staff initially blocked [Student's] aggression towards them, however, a two-person child transport was used to get him to the [redacted]. Once in the [redacted], staff released [Student], who tried to kick and hit them to get out of the room. Staff blocked egress from the room and told [Student] he could leave when he had a calm body.
>
> . . .
>
> Once [Student] could work through his frustration and began processing with staff, he was offered a glass of water and told what was next on his schedule when he was ready. He did not return to the general education classroom, he spent the rest of his time at school in their resource room until it was time to go to [redacted] program].

c. Staff notified the Complainant by phone on [redacted].

40. On [redacted], staff completed a Physical Holding form that provided (in relevant summary):

a. Staff used a two-person child transportation and block of egress, for a total of 35 minutes.

b. The Physical Holding form included the following relevant description of events:

> The class moved on with another activity, staff tried to redirect [Student] to the new activity, but he was stuck on the fact his partner had done push-ups wrong. [Student] ran to the climbing wall mats, pulled one away from the wall, and hid underneath it, he also tried to climb the wall. Staff tried to direct [Student] to the resource room he ran down the hallway to his general education classroom, where his teacher comforted him and directed him to work with special education staff. [Student] ran to the [redacted] and tipped over chairs. When staff tried to intervene and direct him to the [redacted], he kicked them.
>
> . . .
>
> Staff initially blocked [Student's] aggression towards them, however, a two-person child transport was used to get him to the [redacted]. Once in the [redacted], staff released [Student] who continued to be aggressive towards staff while in the [redacted] trying to leave. Staff blocked egress from the room and told [Student] he could leave when he had a calm body. A change in staff was made and the new staff member was able to calm [Student].

. . .

He did not return to the general education classroom, he spent the rest of his time at school in their resource room (a different room than the [redacted]) until it was time to go to [redacted].

c. Staff notified the Complainant by phone on [redacted].

41. On [redacted], staff completed a Physical Holding form that provided (in relevant summary):

a. Staff used a two-person child transportation for a total of 30 minutes.

b. The Physical Holding form included the following relevant description of events:

[Student] was in [redacted], one of his non-preferred specialist classes. He was not listening to adults, throwing items, and running away from staff. He was transitioned starting with a two-person child transport, but that broke down, the staff let go and [Student] began trying to kick staff. Staff again tried the two-person transportation, but again transportation broke down so staff lifted [Student's] legs and arms, one on each side to get him to the [redacted] where he punched/kicked walls, yelled at staff while making demands, and stomped on staff's feet.

. . .

Staff initially blocked [Student's] aggression towards them, however, a two-person transport was used to get him to the [redacted]. Once in the [redacted], staff released Student, who continued to be aggressive towards staff while in the [redacted] trying to leave. Staff blocked egress from the room and told [Student] he could leave when he had a calm body. A change in staff was made and the new staff member was able to calm [Student].

. . .

Once in the [redacted], [Student] calmed down quickly and sat with staff looking through books. [Student] went to the [redacted] willingly and stayed there the rest of the school day, which is 1:00.

c. Staff notified the Complainant by phone on [redacted].

42. On [redacted], staff completed a Physical Holding form that provided (in relevant summary):

a. Staff used a two-person child transportation and blocking egress for a total of 55 minutes.

b. The Physical Holding form included the following relevant description of events:

> [Student] was upset in the [redacted] at the end of [redacted] because another student took his place in line. He was unable to follow directions from his general education teacher to follow his class back to the classroom. He began running around and yelling in the [redacted]. Special education staff worked with [Student] to help him through his frustration he began running around and yelling again. There are several classrooms that border the library.
>
> . . .
>
> A two-person child transport was used to get him to the [redacted]. Once in the [redacted], staff released [Student], who was very mad and trying to climb up onto teachers, yelling and banging the walls. Egress was blocked and staff continued to try to calm [Student]. He was unable to make it through his math class, but did reset so he could go to recess.
>
> . . .
>
> After 15 minutes of trying to get [Student] to go to the [redacted], staff decided a transport was necessary because he was very disruptive to all of the classes around the library. Staff wanted to get [Student] a less disruptive and private space for him to work through his big feelings. Once in the [redacted], staff was able to release the hold, but blocked egress from the area because he continued to be extremely aggressive.

c. Staff notified the Complainant by phone on [redacted].

43. On [redacted], staff completed a Physical Holding form that provided (in relevant summary):

a. Staff blocked egress for 15 minutes.

b. The Physical Holding form included the following relevant description of events:

> [Student] transitioned into the [redacted] where he continued to repeat that he wanted Legos and attempted to jump on staff. [Student] rolled around on the mats and was running around the [redacted] in an out-of-control fashion but did not appear angry or physically aggressive toward staff. Due to the unsafe nature of how he was moving his body, staff remained in the [redacted] with [Student] but used body positioning to contain him to the [redacted] until he was in a more regulated state.
>
> 11:15-12:00 [Student] then wanted to transition into math time which had already finished and then re-escalated and continued to jump on the mats on the wall and roll around on the floor but staff only needed to sit near the door but not physically block the door as he did not try to run out.
>
> . . .

Student was restricted egress from the [redacted], no physical restraint was used.

c. Staff notified the Complainant by phone on [redacted].

44. The District further provided documentation entitled Use of Restrictive Procedures: Seclusion (Seclusion form) for one incident that occurred during a class field trip to the [redacted]:

a. On [redacted], staff completed a Seclusion form that provided (in relevant summary):

Staff used seclusion, in a [redacted] classroom, for a total of 10 minutes.

b. The Seclusion form included the following relevant description of events:

[Student] demonstrated escalated behavior when at the [redacted] for a field trip with his kindergarten class. He was mad that he did not get called on by the [redacted] and then did not want to move on to the next activity in the rotation. He had started to roll around on the floor in the middle of where the [redacted] was presenting. When prompted to have him move towards the back of the room or to sit up so that he was giving others appropriate space, [Student] started pacing around the back of the room with his arms crossed.

. . .

The rest of the class left the nature classroom and [Student] was kept in the classroom by the staff member blocking the door.

. . .

The classroom had some [redacted] [Student] grabbed and was attempting to whip staff with them.

[Student] was kicking at staff and headbutted one of the staff members in the room. A 3rd staff member arrived and [Student] was demanding water. The current staff was waiting for support before they were able to leave the room to get [Student] some water.

c. Staff notified the Complainant by phone on [redacted].

45. The Complainant reported in a [redacted] email to the investigator that she had "never seen these forms before. I have received a few of these phone calls, not all, however they failed to mention anything about physical holds or seclusion rooms. I am not okay with that especially given the history

and feelings of being discriminated against."[1] The Complainant further reported that "the [redacted] I was shown is not a seclusion room."

46. The Complainant provided the following examples of how the behavioral incidents were described to her:

a. On [redacted], the Complainant received the following information:

> Behaviors: 1. Verbally Inappropriate (Swearing, screaming, sexual, blurting), 2. Out of Place (Wandering within or outside of Classroom), 3. Physical Aggression, 4. Noncompliance (Repeated refusal to follow directions), 5. Off-task (Not attending to assigned task or activities)
>
> Summary of Behavior: [Student] got upset at [redacted] today (10:30) because another student took his place in line. He ran away from teachers and refused to follow his class where they were supposed to go. He couldn't move on from what upset him. He was yelling and began to run from teachers again. He was brought to the [redacted] where he was mad and trying to climb up onto teachers, yelling, and banging on the walls. He did not make it to his math group with me, but was able to join his class out at recess at 12. Out at recess, [Student] was chasing kids and they were telling him to stop. He continued to and another student pushed [Student]. He did not retaliate. [District administrator] is following up with the other student involved. We don't think [Student] was trying to antagonize other kids by chasing them, but he is trying to play with them and doesn't know exactly how to go about it.

b. On [redacted], the Complainant received the following information:

> I wanted to quick connect with you about [Student's] day today. This morning he transitioned into school well but definitely seemed more tired than usual. He was able to participate in most activities and overall did okay with his morning routine. This afternoon he transitioned over to the field trip at the [redacted] and his group started in the nature building for educational time with the [redacted] staff. It was reported that [Student] had been laying on the floor during the activity and when it was prompted that he sit up so that he was not in others' space, he became frustrated and stood up and began pacing around the room. At this point I received a phone call from the staff that were with him on the field trip as it seemed like he was starting to get dysregulated. I drove over to meet the class at the [redacted] and at the time that I walked into the building, [Student's] class was starting to transition to outside activities.

[1] Any potential discrimination claims have not been addressed in this complaint due to lack of jurisdiction. The Complainant is hereby advised of her right to file a complaint with the U.S. Department of Education, Office for Civil Rights (OCR), or the Minnesota Department of Human Rights (MDHR).

> [Student] was still in the classroom with a staff member and his arms were crossed and he was yelling as he was attempting to push the staff member. When I asked what was going on [Student] continued to yell and ran throughout the room. When I used a more stern voice to tell him to stop, he instead plugged both ears with his thumbs and looked out the window. We gave him some space to try and have him calm down but he continued to escalate. He then got up and ran towards another staff person, did a cartwheel across the room and then attempted to kick the staff. He then did this a few more times. When I intervened, [Student] then charged towards me with his head towards my stomach. I again sternly told him to stop and sit down. He yelled that he was not going to sit down and continued to charge towards myself and another staff member, attempting to kick and swat at our arms. When I blocked [Student] from leaving the classroom because of his level of dysregulation, he grabbed onto my hair with both hands and attempted to pull. When I placed my hands on top of his to remove his hands from my hair, he then attempted to pinch the top portion of my hand. I told [Student] that I was there to help him but that treating staff this way was not going to get him what he wanted. After a period of pacing around the classroom and attempting to pick up items in the room to throw, I had him sit down in a chair. He attempted to grab at my hair again and so I placed my hands on top of his to stop and at that time he threw his head forward, hitting me in the mouth. I let him know that when his body was safe we could put on his shoes and go to the water fountain. He then yelled that he was not going to do anything until he had some water. Once another staff person had arrived to help transport [Student] home, I was able to get a glass of water to bring it to the room where [Student] was located. I told him that he needed to put his boots on and he could have the glass of water. He initially continued to lay on the floor and stated that he was not going to put his boots on, but eventually stood up and put them on and then had his glass of water. We waited a few more minutes to make sure that he was calm and safe to transport home but we did need to leave the field trip about 30 minutes early. For the duration of the time that they were at the [redacted], he was only present with his group for about 20 minutes due to his level of dysregulation.
>
> I just wanted to fill you in on how the fieldtrip went as I know that you had received a phone call from [school administrator] that we were having to bring [Student] home earlier than originally planned. Let me know if you have any questions- Have a great evening!

47. By email to the investigator dated [redacted], the District reported: "We are aware three [sic] restrictive procedures happened within a 30-day window and a formal IEP team meeting was not held. We will be reviewing our Restrictive Procedures with each site to increase compliance."

48. The District reported the District oversight committee for restrictive procedures meets monthly and has [redacted] trained staff who share updates and best practices.

49. Since the filing of the complaint, the District and Complainant have engaged in facilitated team meetings to attempt to resolve the Complainant's concerns. They reached an agreement through this process and the District was planning to propose the developed IEP to the Complainant.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about the events that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

3. In addition, Minnesota Statutes § 125A.08(b)(1) require that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

4. Federal regulations at 34 C.F.R. § 300.323(a) provide: "At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320."

5. The Comments to the Federal Register, 71 Fed. Reg. 46682, provide in relevant part:

> [It] is clear that at the beginning of each school year, each [school district] . . . must have an IEP in effect for each child with a disability in the [school district's] jurisdiction. Therefore, [school districts] need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year.

6. Regarding the District's responsibilities when a child moves to a new school district before the next school year begins (during the summer), the Comments to the Federal Register (71 Fed. Reg. 46682) further provide in relevant part:

> This is a matter to be decided by each individual new [school district]. However, if a child's IEP from the previous public agency was developed (or reviewed and revised) at or after the end of a school year for implementation during the next school year, the new [school district] could decide to adopt and implement that IEP, unless the new public agency determines that an evaluation is needed.

Otherwise, the newly designated IEP Team could develop, adopt, and implement a new IEP for the child that meets the applicable requirements in 300.320 through 300.324.

7. Federal regulations at 34 C.F.R. § 300.303 provide:

> (a) ***General***. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 –
>
> (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
>
> (2) If the child's parent or teacher requests a reevaluation.
>
> (b) ***Limitation***. A reevaluation conducted under paragraph (a) of this section –
>
> (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
>
> (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

8. Minnesota Statutes § 125A.08(d) provides:

> A school district may conduct a functional behavioral assessment as defined in Minnesota Rules, part 3525.0210, subpart 22, as a stand-alone evaluation without conducting a comprehensive evaluation of the student in accordance with prior written notice provisions in section 125A.091, subdivision 3a. A parent or guardian may request that a school district conduct a comprehensive evaluation of the parent's or guardian's student.

9. Minnesota Rules, part 3525.0210, subp. 22 provide the following definition:

> **Functional Behavioral assessment or FBA.** "Functional behavioral assessment" or "FBA" means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns.

10. Federal regulations at 34 C.F.R. § 300.320(a)(4) provide:

> (a) ***General***. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include –
>
> (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child –
>
> (i) To advance appropriately toward attaining the annual goals;
>
> (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
>
> (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

11. Regarding the requirement to review and revise IEPs, federal regulations at 34 C.F.R. § 300.324 provide, in relevant part:

> (a) ***Development of IEP –***
>
> (1) ***General***. In developing each child's IEP, the IEP Team must consider –
>
> (i) The strengths of the child;
>
> (ii) The concerns of the parents for enhancing the education of their child;
>
> (iii) The results of the initial or most recent evaluation of the child; and
>
> (iv) The academic, developmental, and functional needs of the child.
>
> (2) ***Consideration of special factors***. The IEP Team must –
>
> (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies, to address the behavior;
>
> . . .
>
> (b)(1) ***General***. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team –

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address –

(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under § 300.303;

(C) Information about the child provided to, or by, the parents, as described under 34 C.F.R. § 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) ***Consideration of special factors***. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

12. Minnesota Rules 3525.0850 provide:

> This policy is intended to encourage the use of positive approaches to behavior interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behavior and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized education program as well as develop skills to enable them to function as independently as possible in their communities.

13. Federal regulations at 34 C.F.R. § 300.501(b) provide in relevant part:

> Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to—
>
> (i) The identification, evaluation, and educational placement of the child; and
>
> (ii) The provision of FAPE to the child.

14. Federal regulations at 34 C.F.R. § 300.323(d) provide, in relevant part:

> Accessibility of child's IEP to teachers and others. Each public agency must ensure that—

> (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
>
> (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—
>
> (i) His or her specific responsibilities related to implementing the child's IEP; and
>
> (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

15. The Comments to the Federal Regulations for 34 C.F.R. § 300.323(d) at 71 Fed. Reg. 46681 provide:

> "The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed."

16. Federal regulations at 34 C.F.R. § 300.116 provide, in pertinent part:

> In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—
>
> (a) The placement decision—
>
> (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
>
> (2) Is made in conformity with the LRE provisions of this subpart, including §§300.114 through 300.118;
>
> . . .
>
> (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
>
> (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

17. Regarding Individuals with Disabilities Education Act's (IDEA) requirement that IEP teams consider the use of positive behavioral supports and other strategies for students whose behavior impedes their learning or that of others, OSERS noted in the 2016 Dear Colleague Letter:

> Research shows that school-wide, small group, and individual behavioral supports that use proactive and preventative approaches, address the

underlying cause of behavior, and reinforce positive behaviors are associated with increases in academic engagement, academic achievement, and fewer suspensions and dropouts. In short, children are more likely to achieve when they are directly taught predictable and contextually relevant school and classroom routines and expectations, acknowledged clearly and consistently for displaying positive academic and social behavior, consistently prompted and corrected when behavior does not meet expectations, and treated by others with respect.

However, when a child with a disability experiences behavioral challenges, including those that result in suspensions or other exclusionary disciplinary measures, appropriate behavioral supports may be necessary to ensure that the child receives FAPE. In the same way that an IEP Team would consider a child's language and communication needs, and include appropriate assistive technology devices or services in the child's IEP (34 C.F.R. § 300.324(a)(2)(iv) and (v)) to ensure that the child receives a meaningful educational benefit, so too must the IEP Team consider and, when determined necessary for ensuring FAPE, include or revise behavioral supports in the IEP of a child with a disability exhibiting behavior that impedes his or her learning or that of others. 34 C.F.R. §§ 300.320(a)(4) and 300.324(a)(2)(i).

Therefore, as part of the development, review and, as appropriate, revision of the IEP, IEP Teams should determine whether behavioral supports should be provided in any of the three areas: (1) special education and related services, (2) supplementary aids and services, and (3) program modifications or supports for school personnel. 34 C.F.R. § 300.320(a)(4).

. . .

Behavioral supports provided as part of a child's special education and related services may be necessary to ensure that the child's IEP is designed to enable the child to advance appropriately toward attaining the annual goals specified in the IEP, to be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities. 34 C.F.R. §§ 300.320(a)(4)(i) and (ii). Interventions and supports that could assist a child with a disability to benefit from special education may include instruction and reinforcement of school expectations, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, or social skills instruction.

18. Regarding the requirement to create and implement a BIP for a child with a disability whose behavior impedes his or her learning or that of others, OSERS noted in Questions and Answers on Discipline Procedures (June 2009): in relevant part:

Question E-2: Under what circumstances must an IEP Team use FBAs and BIPs?

Answer: An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a BIP that will reduce or eliminate the misbehavior.

For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, or for a child with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child.

19. Regarding potential circumstances that may indicate potential denials of FAPE or of placement in the least restrictive environment, OSERS, in the 2016 Dear Colleague Letter, opined:

> It is incumbent upon IEP Teams to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV); 1414(d)(3)(B)(i) and 1414 (d)(3)(C). A failure to implement these procedural requirements or provide needed behavioral supports to a child with a disability could result in the child not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE and/or a denial of placement in the [least restrictive environment] (i.e., an unduly restrictive placement).
>
> A determination of whether there is a denial of FAPE is a fact-based determination, to be made on a case-by-case basis. Factors to consider include: whether the public agency has failed to follow the procedures IDEA requires when developing, reviewing, and revising the child's IEP, or has failed to consider and/or provide a child with a disability with necessary behavioral supports when the child's behavior impedes his or her learning or that of others; or whether the child's IEP is reasonably calculated to provide a meaningful educational benefit in the absence of behavioral supports.
>
> Circumstances that may indicate either a procedural or substantive failure in the development, review, or revision of the IEP include, but are not limited to, the following:
>
> - The IEP Team did not consider the inclusion of positive behavioral interventions and supports in response to behavior that impedes the child's learning or other of others;

- School officials failed to schedule an IEP Team meeting to review the IEP to address behavioral concerns after a reasonable parental request;
- The IEP Team failed to discuss the parent's concerns about the child's behavior, and its effects on the child's learning, during an IEP Team meeting;
- There are no behavioral supports in the child's IEP, even when the IEP Team determines they are necessary for the child;
- The behavioral supports in the IEP are inappropriate for the child (e.g., the frequency, scope or duration of the behavioral supports is insufficient to prevent behaviors that impede the learning of the child or others; or consistent application of the child's behavioral supports has not accomplished positive changes in behavior, but instead resulted in behavior that continues to impede, or further impedes, learning for the child or others);
- The behavioral supports in the child's IEP are appropriate, but are not implemented or not being properly implemented (e.g., teachers are not trained in classroom management responses or de-escalation techniques or those techniques are not being consistently implemented); or
- School personnel have implemented behavioral supports not included in the IEP that are not appropriate for the child.

20. During the time period covered by this complaint, the District failed to develop, review and, as appropriate, revise the Student's IEP to determine the Student's behavioral needs that were resulting in the Student receiving services in a more restrictive setting than outlined in his IEP and the continued use of restrictive procedures in violation of 34 C.F.R. §§ 300.17, 300.320(a)(4), 300.323(a), 300.323(d), and 300.324(b).

    a. The District did not have an IEP in place at the beginning of the [redacted] school year, as required by 34 C.F.R. § 300.323(a), resulting in the Student not receiving services in the least restrictive environment from the beginning of the [redacted], as outlined in his December [redacted] IEP school year and 34 C.F.R. §§ 300.17 and 300.320(a)(4). The Student enrolled into the District at the end of summer [redacted], and Student's records did not include an IEP from his previous school district that was developed, reviewed, or revised at or after the end of the [redacted] school year for implementation during the [redacted] school year. Further, there was no evidence that the newly designated IEP team developed, adopted and implemented a new IEP for the Student for close to two months as required by 34 C.F.R. § 300.324(b), despite District staff being unable to support the Student in the least restrictive environment.

    b. The District interpreted the Student's December [redacted] IEP provision to require a shortened school day when the Student was not attending the [redacted] program; however, the Student's previous Minnesota school district allowed the Student to stay for full school days when not in [redacted]. These varying interpretations illustrate that the District did not ensure the District staff

understood their specific responsibilities for implementing the Student's December [redacted] IEP as required by 34 C.F.R. § 300.323(d).

21. Minnesota Statute § 125A.0941(f) provides:

"'Restrictive procedures' means the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child."

22. Minnesota Statute § 125A.0942, subd. 5(a) provides that staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

23. Minnesota Statute § 125A.0941(b) provides:

'Emergency' means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury or other individual; or an emergency incident has already occurred and no threat of physical injury still exists.

24. Minnesota Statutes § 125A.0941(c) provides in relevant part:

> "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> 1) helps a child respond or complete a task;
>
> 2) assists a child without restricting the child's movement;
>
> 3) is needed to administer an authorized health-related service or procedure;
>
> 4) is needed to physically escort a child when the child does not resist or the child's resistant is minimal.

25. Minnesota Statutes § 125A.0941(g) define "seclusion" as:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing a door or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

26. Minnesota Statute § 125A.0942, subd. 3(a) provides in relevant part:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

> (iii) the time the physical holding or seclusion began and the time the child was released; and
>
> (iv) a brief record of the child's behavioral and physical status.

27. Given the transport procedures described by the District used physical interventions to hold the Student immobile or limit his movement, using body contact as the only source of physical restraint, and the Student resisted more than minimally, the transport procedures constituted physical holding under Minn. Stat. § 125A.0941(c).

28. Minnesota Statutes § 125A.0942, subd. 2(b) provide in relevant part:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

29. Minnesota Statutes § 125A.0942, subd. 2(f) provide in relevant part:

> An [IEP] team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The [IEP] or [BIP] shall indicate how the parent wants to be notified when a restrictive procedure is used.

30. The restrictive procedures forms did provide that the District notified the Complainant by phone on the same day a restrictive procedure was used on the Student, and while the Complainant confirmed that staff would inform her about the Student's behavior, the notifications failed to inform the Complainant that staff used either physical holding or seclusion, in violation of Minn. Stat. § 125A.0942, subd. 2(b).

31. Minnesota Statutes § 125A.0942, subd. 2 provides, in relevant part:

> (c) The district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of the parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program meeting when the child's

> individualized education program provides for using restrictive procedures in an emergency.
>
> . . .
>
> (e) At the individualized education program meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

32. The District acknowledged that it did not hold IEP team meetings to address restrictive procedure use within ten calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days, or when a pattern of use emerged and the Student's December [redacted] IEP did not provide for using restrictive procedures in an emergency, in violation of Minn. Stat. § 125A.0942, subd. 2(c).

33. Further, although both District staff and the Complainant believed there were medical or psychological limitations that contraindicated the use of restrictive procedures with the Student, there were no IEP team reviews of contraindications, considerations to prohibit restrictive procedures, and documentation of any prohibition in the IEP or BIP, in violation of Minn. Stat. § 125A.0942, subd. 2(e).

34. Minnesota Statutes § 125A.0942, subd. 3(a)(6) and (7) provides that:

> (6) The room used for seclusion must:
>
> (i) be at least six feet by five feet;
>
> (ii) be well lit, well ventilated, adequately heated, and clean;
>
> (iii) have a window that allows staff to directly observe a child in seclusion;
>
> (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;
>
> (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and
>
> (vi) not contain objects that a child may use to injure the child or others; and
>
> (7) before using a room for seclusion, a school must:
>
> (i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

35. The District acknowledged it used seclusion as an intervention to address the Student's behavior, and although District staff may have remained in the room with the Student, the purpose of the District staff was to prevent the Student from leaving the room, as described in Minn. Stat. § 125A.0941(g).

36. The District did not register the room(s) that it used to seclude the Student and failed to ensure the room did not contain objects that the Student may use to injure himself or others in violation of Minn. Stat. § 125A.0942, subd. 3(a)(6) and (7). For example, the restrictive procedures forms included information about a weighted blanket and pillow in the [redacted] when used as a seclusion room for the Student, and the [redacted] classroom contained [redacted] that the Student threw while being secluded.

37. During the time period covered by this complaint, the District failed to ensure the Complainant was afforded the opportunity to meaningful participate in IEP team meetings with respect to the educational placement of the Student and the provision of FAPE to the Student, in violation of 34 C.F.R. § 300.501(b) and was not given the opportunity to address her concerns for enhancing the education of the Student in violation of 34 C.F.R. § 300.324(a).

    a. Although the District proposed an IEP in [redacted], the District did not afford the Complainant an opportunity to participate in the IEP process and the determinations related to the provisions of the Student's educational placement and FAPE as required by 34 C.F.R. § 300.501(b).

    b. The District's failure to recognize the need for IEP team meetings following the use of restrictive procedures on two separate school days within 30 calendar days interfered with the Complainants ability to address her concerns about the use of restrictive procedures as addressed in 34 C.F.R. § 300.324, including, but not limited to, providing information pertaining to any known medical or psychological limitations that contraindicate the use of restrictive procedures as outlined in Minn. Stat. § 125A.0942, subd. 2(e).

Decision

1. The District violated 34 C.F.R. §§ 300.17, 300.320(a)(4), 300.323(a), 300.323(d), and 300.324(b) when it failed to timely develop, review and, as appropriate, revise the Student's IEP to address his anticipated behavioral needs that were resulting in the Student receiving services in a more restrictive setting than outlined in his IEP and the continued use of restrictive procedures.

2. The District violated Minn. Stat. § 125A.0942, subd. 2(b), when it failed to properly notify the Complainant when a physical hold or seclusion was used on the Student.

3. The District violated Minn. Stat. § 125A.0942, subd. 2(c) when it failed to hold IEP team meetings within ten calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days, or when a pattern of use emerged and the Student's December [redacted] IEP did not provide for using restrictive procedures in an emergency.

4. The District violated Minn. Stat. § 125A.0942, subd. 2(e) when it failed to review any known medical or psychological limitations that contraindicate the use of a restrictive procedures, consider whether to prohibit that restrictive procedures, and document any prohibition in the Student's IEP or BIP.

5. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(6) and (7), when it failed to ensure the room(s) where the Student was secluded did not contain objects that the Student may use to injure himself or others and used room(s) that were not registered seclusion rooms.

6. The District violated 34 C.F.R. §§ 300.324(a) and 300.501(b), when it failed to provide the Complainant the opportunity to meaningfully participate in IEP team meetings with respect to the educational placement and the provision of FAPE to the Student and was not given the opportunity to address her concerns for enhancing the education of the Student.

Corrective Action

1. Within **14 calendar days** of the date of this complaint decision, the District's special education director must contact MDE's corrective action specialist, Sara K. Wolf, at sara.k.wolf@state.mn.us or 651-582-8602, to coordinate the trainings to be provided by MDE staff, in collaboration with District staff, to be given to the staff at the Student's school he attended during the [redacted] school year, and to be provided as soon as practicable, but no later than [redacted]. The trainings will cover the following:

   a. Special education due process requirements including:

      i. Ensuring each child has an IEP in effect at the beginning of each school year (34 C.F.R. § 300.323(a)).
      ii. Ensuring that each IEP includes statements consistent with 34 C.F.R. § 300.320(a)(4).
      iii. Reviewing and revising IEPs to address students' anticipated needs (34 C.F.R. § 300.324(b)).
      iv. Ensuring special education and related services are provided in conformity with student IEPs (34 C.F.R. § 300.17).
      v. Ensuring all staff understand their specific responsibilities for implementing IEPs (34 C.F.R. § 300.323(d)).
      vi. Ensuring parents are provided the opportunity to meaningfully participate in IEP team meetings with respect to the educational placement and the provision of FAPE to their child (34 C.F.R. § 300.501(b)).
      vii. Ensuring a process to address the concerns of parents for enhancing the education of their children (34 C.F.R. § 300.324(a)).

   b. All of the standards for use of restrictive procedures outlined in Minn. Stat. § 125A.0942.

2. Within **14 calendar days** of the date of this decision, the District must contact the Complainant to schedule an IEP team meeting to:

   a. Determine whether the Student is in need of a comprehensive reevaluation, including a functional behavioral analysis. If the IEP team determines the Student is not in need of a comprehensive

reevaluation, the District must conduct a stand-alone functional behavioral analysis, unless one has already been completed this school year;

b. Review the Student's behavioral data and consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the Student's IEP or BIP, as appropriate to ensure the IEP is consistent with this decision;

c. Review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicates the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the Student's IEP or BIP;

d. Consider additional positive behavioral interventions and supports to enable the Student to advance appropriately toward attaining his annual goals, to be involved in and make progress in the general education curriculum, and participate in extracurricular and other nonacademic activities may include instruction and reinforcement of school expectations, violence prevention programs, anger management groups, counseling for mental health issues, life skills training, social skills instruction, and whether there are any changes to the classroom or program practices that would assist in addressing the Student's behaviors;

e. Discuss the Complainant's concerns about the Student's behavior, and its effects on the Student's learning;

f. Discuss the provision of compensatory services for the Student as the result of the District's delay in appropriately addressing the Student's behavioral needs.

3. Compensatory services seek to make up for any loss in the Student's skills, including academic, functional, or behavioral skills, and any lack of expected progress in the general education curriculum or toward the Student's IEP annual goals that resulted from the District's violations. Compensatory services are in addition to the special education and related services necessary to provide the Student with a FAPE as outlined in the Student's current IEP and may be provided in many different ways, including but not limited to additional special education and related services, small group or individual tutoring, reimbursement to parents for outside tutoring or programs, (when agreed to by the school district), or additional academic or enrichment services necessary to compensate for the Student's loss of skills or lack of progress.

4. The District and Complaint should work together to reach an agreement on the compensatory services appropriate for the Student.

   a. When the Complainant and the District reach an agreement regarding the revisions of the IEP pertaining to the Student's behavioral needs:

      i. The District shall amend the Student's IEP to include the anticipated frequency, location, and duration of the services, including compensatory services, in accordance with 34 C.F.R. § 300.320(a)(7).

ii. The District shall submit a copy of the Student's revised IEP and any other requested documentation to MDE's corrective action specialist, Sara K. Wolf, to demonstrate completion of this corrective action.

iii. If the District or Complainant believe the Student is not timely accessing the compensatory services agreed upon, the Complainant and/or the District are expected to contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

b. If the IEP team is unable to reach an agreement on compensatory services:

i. By [redacted], the Complainant and/or the District may contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

c. MDE will enforce the provision of this corrective action for one year of the date of this decision. If the compensatory services agreed to in the IEP are not provided, the Complainant may seek resolution through MDE's alternative dispute resolution processes, including filing a new complaint with MDE.

5. Consistent with other IEP team meetings, the District and the Complainant, either the Complainant or the District may request a facilitated team meeting or mediation from MDE by contacting mde.adrservices@state.mn.us or 651-582-8518.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Officer.*

Via encrypted email

[redacted]

[redacted]

Re: Special Education Complaint [redacted] on behalf of [redacted] from [redacted]

Dear [redacted] and [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for and respond to the behavior of the Student during the [redacted] school year. Specifically, the Complainant alleges the District improperly used discipline, early release from school, and seclusion, in lieu of developing and implementing an appropriate individualized education program (IEP) with a behavioral intervention plan (BIP) and other supplementary aids and services to support the Student.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.

2. The Complainant is the [redacted].

3. The Student's most recent reevaluation was completed in [redacted].

4. The Student's [redacted] evaluation report documented the team's determination that the Student continued to be eligible for special education and related services under the category of emotional or behavioral disorders (EBD) and specific learning disability (SLD). The Student's [redacted] evaluation report included the following background information:

> He has been in a special education program since 2nd grade. During that time he has decreased the amount of time that he has had to spend in seclusions and/or holds. This school year, he has used the [redacted] on 12 occasions. He continues to be both physically and verbally aggressive. When he does have a behavior issue, it is extreme. He will use the "f" word a lot, he will threaten both staff and peers, sometimes threatening to harm staff members' families. He has used the "N" word to a [B]lack staff member. He tries to get the other students to join him in his rant. [Student] has scared other students in the room with his behaviors of yelling at staff and trying to control what staff do and say. [Student] is able to make appropriate choices but chooses to make the wrong choice to see if staff will follow through with the expectations that have been set up. He does not like to be held accountable for the negative choices that he makes. He has had bus issues also. In 4th grade, [Student] did a lot of mainstreaming, so staff knows that he can hold things together when he wants. He is academically behind, so mainstreaming him in any core subject would be difficult for him. This year he made good gains in his LD [learning disability] class, reading a third grade reading level. When he wants to put the effort in, [Student] is able to make big gains on both academics and behaviors.

5. A functional behavior assessment (FBA) was completed as part of the [redacted] evaluation, that included the following relevant information:

> [Student] does not like to be told "no" or be held accountable for negative decisions that he makes. He has blow ups about once every three months. These blow ups are big and can last a long time. He has made threats to kill staff and their families, he has threatened his peers, he sears at anyone including the principal when they are trying to work with him, he hits and kicks, the bus has had to call mom to come get him, etc.
>
> . . .
>
> This school year, [Student] has had to use the [redacted] 11 times because he is too out of control to be in the special education classroom. Of these 11, he has been sent home on 4 occasions because of comments he has made both racial and threatening.

6. At the start of the [redacted] school year, the Student began the 6th grade at the District middle school. He transitioned from a District [redacted]) where he attended during the [redacted] school year.

7. From [redacted], the Student had one special education case manager and classroom teacher, and during the remainder of the [redacted] school year, the Student had a different special education case manager and classroom teacher.

8. The Student's IEP in effect at the start of the [redacted] school year was dated [redacted]. The Student's May [redacted] IEP contained the following annual goals aiming for the Student to increase his emotion regulation skills, reading fluency, and social skills.

> Goal #1:
>
> Present Level(s) of Academic Achievement and Functional Performance:
>
> [Student] can maintain his emotions on most days. On his off days, [Student] struggles to make the appropriate choices for himself to be successful at school. Once he has made the negative choice, he has to complete the entire cycle of the escalation continuum. This may take 30 min or as long as 2 hours. [Student] has left school without doing the tension reduction part of the intervention. Sometimes he will do it when he returns to school. [Student's] escalations can be both verbal and physical and they are extreme.
>
> Measureable Annual Goal:
>
> [Student] will communicate anger/frustration/disapproval using verbal means, from using tantrums/meltdowns to communicate anger/frustration/

disapproval an average of at least 50% of the time, using modeling and skill building, as measured by teacher written observation and incidence reports.

Goal #2:

. . .

Measureable Annual Goal:

[Student] will increase his reading fluency and decoding skills from an emergent level to a more independent level using direct and small group instruction.

Goal #3:

Present Level(s) of Academic Achievement and Functional Performance:

[Student] has had 25 write-ups this school year. This is an increase from last year. He struggled more with taking responsibility for the choices he made . . . [Student] struggles with authority. He needs to know exact boundaries and classrooms need to be highly structured. He will question things, sometimes because he doesn't understand but more often, to be challenging and/or engage staff in a power struggle. [Student] has been able to breathe through smaller issues. He will take time at his desk and do deep breathing. He also likes to do physical things like pushups, when he is feeling like he might blow.

Measurable Annual Goal:

When disagreeing with the direction, [Student] will follow the direction given by any school staff, including bus drivers, that is in charge at that assigned time, without becoming argumentative and/or disrespectful in 8 out of 10 situations.

9. To enable the Student to make progress toward those goals, the Student's May [redacted] IEP provided for the following direct special education and related services:

Instruction or Service Provided	**Number of Minutes per Session**	**Anticipated Frequency of Sessions**
Special Education: [EBD]: Behavior	365	5 times per week

10. The Student's May [redacted] IEP included the following relevant accommodations, modifications, and supports to address the Student's behavior:

2. Special education teacher will provide a daily point sheet for [Student] to use to help with monitoring behaviors.

3. A paraprofessional is available within the special education classroom to assist [Student] with attention to task, work completion, modeling of appropriate behaviors and behavioral redirection.

4. If [Student] is in danger of harming himself or others, Crisis Prevention Intervention (CPI) techniques will be used to provide care, welfare, safety, and security for all.

5. School staff will implement the attached individualized [BIP].

6. School staff will positively reinforce [Student] for on-task behavior.

7. Children's Therapeutic Services and Supports (CTSS) mental health skills training services are being provided by the contracted mental health agency. Please refer to the student's Individual Treatment Program (ITP) for description of services. Additional mental health skills training sessions may be provided when the student is unable to function in the general education or special education environment. Crisis assistance skills training will be provided in a crisis situation.

8. Teachers and staff will provide [Student] breaks and opportunities for movement on a regularly scheduled basis and [Student] is able to take self-directed breaks within the classroom when he is feeling anxious/frustrated and/or needs a mental break.

9. Teachers/staff will give up to two minutes for [Student] to process a directive after restating (verbally or visually) the directives two times.

11. The Student's May [redacted] IEP included the following least restrictive environment (LRE) explanation, and did not mention the need for a shortened school day:

> [Student] is in the Setting III (60% to 100% of the school-day in the special education environment without general education peers) self-contained EBD classroom. Due to his explosive and unpredictable behaviors, [Student] is not participating in any regular education classes at this time. He will receive all academics in this setting, along with groups/individuals with a counseling specialist. When he can show staff that he can handle the stressors of a regular school day, [Student] will have the ability to transition back into the general education classroom.

12. The Student's May [redacted] IEP also included a behavior intervention plan:

    1) Target behavior to be reduced or eliminated (as identified by the FBA [functional behavior assessment]):

[Student] struggles with managing his behavior. [Student] shuts down and refuses to complete school tasks or follow directives when he is denied a request. [Student] does not respond to verbal redirection and refuses to take breaks within the classroom. [Student] wanders around the classroom and can become physically and verbally aggressive toward staff when staff attempt to intervene.

2) Baseline data (frequency, intensity, duration):

[Student's] behavioral episodes are of high intensity and can last for several hours. This behavior occurs about once every 2-3 months.

3) Behavior to be taught to replace the target behavior:

To comply with academic and behavioral directives and manage emotions when frustrated/anxious

Teacher provided instruction in social skills

Teacher modeling of appropriate behavior

When teacher directed or self-directed, [Student] will take an appropriate break in a designated area of the classroom.

4) Plan to encourage (reinforce) the use of replacement behavior:

Provide [Student] with positive verbal praise for good choices and on-task behavior.

Provide scheduled breaks within the classroom

Provide schedule movement break outside of the classroom

Teach [Student] alternative behavior

Model expected behavior

Offer [Student] options for calming strategies

5) Consequences for continued display of the target behavior: (if a restrictive procedure is used in an emergency situation indicate how the parent wants to be notified. Complete the Use of Restrictive Procedures: Physical Holding or Use of Restrictive Procedures: Seclusion form as appropriate.)

a) [Student] will be reminded of the classroom expectations (visual rules and schedules) and given up to two minutes to process when given a directive.

b) After time to process, staff will check in with [Student] and give verbal and/or visual cues to self-regulation, “First This, Then This”, and/or “Make a Choice—this or this” and if he does not choose either, he is directed to take a break at this desk.

c) If [Student’s] behavior continues to escalate, and he does not choose to take a break, staff will direct him to take a break in the take a break area.

d) If [Student] becomes aggressive, either verbal or physical, he will be directed to the quiet room and choose a tool to calm down.

e) [Student] will stay in the [redacted] until he is calm. [Student] will receive praise for utilizing a strategy and calming down.

f) If [Student] is in danger of harming himself or others, CPI strategies will be used to keep all safe.

g) If [Student] does not calm—parents will be called to pick him up from school.

6) How will the effectiveness of this plan be evaluated?

Effectiveness will be evaluated by behavior charting, discipline incidents, and observation by school staff including bus driver.

13. The first day of school for the [redacted] school year was [redacted].

14. In response to this complaint, the District provided notices of suspensions, attendance records, manifestation determination forms, IEP team meeting notices, and staff emails. The District also provided Use of Restrictive Procedures: Physical Holding (physical holding forms) and Use of Restrictive Procedures: Seclusion (seclusion forms). Each physical holding form and seclusion form included a description of the incident that led to the physical holding or seclusion; why a less restrictive measure failed or was determined by staff to be inappropriate or impractical; the time the physical holding or seclusion began and the time the child was released; and a brief record of the child's behavioral and physical status. The District provided training dates showing that all staff who used physical holds and seclusion with the Student received restrictive procedure training in the last year

15. During [redacted], District staff reported the Student demonstrated minimal behavioral challenges, and the Student experienced a “honeymoon period” of behavior at the new school.

16. However, during [redacted], the Student received three out-of-school suspensions: [redacted] for insulting a teacher, refusing to leave the classroom, and eloping off campus on [redacted] for swearing, name calling and insubordination on [redacted]; and [redacted] for refusing to following directions and verbal abuse towards staff for behavior occurring on [redacted].

17. The Student's parent was called to pick-up the Student from school early on three days in [redacted].

18. During [redacted], the Student received six out-of-school suspensions: [redacted] for threatening to fight a teacher on [redacted]; and, October [redacted], for slapping a teacher on [redacted].

19. The Student's parent was called to pick-up the Student from school early on one day in [redacted]: [redacted].

20. During [redacted], the Student received out-of-school suspensions on eight days: [redacted] for swearing, throwing a desk at staff, kicking a hole in the wall, threatening staff, and eloping on [redacted]; and [redacted], for vulgar language, refusing direction, and pushing staff on [redacted].

21. The Student's parent was not called to pick-up the Student from school early in [redacted].

22. The end of the first term of the [redacted] school year was [redacted]. The Student's grades were two Cs, one D+, one NP (59% or lower) and one U (unsatisfactory/failing grade of 59% or lower).[1]

23. Following the Student's 13th day of out-of-school suspension, and four days of being picked up from school early, on [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and May [redacted] BIP.

24. The Student's IEP team determined his conduct on [redacted] (swearing, throwing desk at staff, kicking hole in the wall, threatening staff, and eloping) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP. The Student's IEP team reviewed the Student's May [redacted] BIP and did not discuss the how the Student would continue to receive educational services so as to enable him to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his IEP, while suspended.

25. By prior written notice on [redacted], the District proposed revising the Student's May [redacted] IEP and BIP. That same day, the Complainant objected to the proposed changes and requested a meeting with appropriate members of the IEP team. The District reported regarding the proposed IEP:

> [B]ecause the proposed IEPs were rejected by the Parent, they were not finalized and kept in the District's computer system. The District will provide training to special education teachers for next year so that they understand that the District must retain a copy of any proposed IEP even if the Parent objects to them.

[1] The District reported regarding the meaning of grading system: "A 'U' is the equivalent of a failing grade of 59% or lower. A 'NP' is a grade of 59% or lower in a course that does not offer individual grades."

26. On [redacted], the Student's IEP team met to discuss the Complainant's objection to the [redacted] proposed IEP and BIP and to conduct another manifestation determination given the Student had received an additional four days of out-of-school suspension. At this meeting, the team determined the Student's conduct on [redacted] (vulgar language, refusing direction, and pushing staff) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

27. By prior written notice on [redacted], the District revised the [redacted] proposal. The prior written notice stated:

> [redacted]: The Team considered [Student's] BIP and after discussion agreed to add processing time and verbal/visual schedules and rules when redirecting [Student] when he is frustrated, rejecting only verbal prompts. The Team agreed to add these same accommodations for classroom support at this time. The Team discussed an altered shortened day when [Student] would leave at [redacted] and add back classes in increments of one hour each quarter as behavior and compliance improved, moving to a Level IV [separate special education school] self-contained program, and/or dropping the IEP entirely. All these were rejected at this time as [redacted], [Student] will begin taking a noon medication at school and the Team agreed to see how this medication change impacts his school day before deciding on one of the above options. The Team agreed to revisit these options if [Student] is suspended again this school year.
>
> [redacted]: The Team discussed [Student's] BIP as written on [redacted] and agreed to keep it as written, rejecting any additional changes. The Team discussed [Student's] reading goal, sharing his progress with [Complainant], rejecting any changes to his goal or objectives at this time. The Team addressed the work he is missing when suspended. [Student's special education teacher] will create a folder of material to send home with [Student] when he is sent home. [Complainant] was informed that he can access [redacted] [District's online learning platform] at any time to complete work. The Team discussed the progress in getting therapeutic services provided during school. [Complainant] submitted [Student's assessment] to [school-based mental health program] and it was received. They are seeking approval to begin therapeutic support for [Student] at school. [School principal] restated the options for [Student] presented on [redacted] to [Complainant] and the Team; shorten his day to half days, move to a Level IV [separate special education school] self-contained program, or decline IEP services. At this time, [Complainant] declined these options.

28. On [redacted], the Complainant signed consent to the [redacted] prior written notice, which proposed no changes to the Student's May [redacted] IEP and May [redacted] BIP.

29. District staff reported that the Student had access to his school work while suspended, via [redacted], the District's online learning platform, as determined at the [redacted] IEP team meeting, and the Student was provided materials to work on at home. However, the Student's special education teacher reported [redacted] was geared towards high school students and therefore it did not offer what the Student needed to continue to make progress in the sixth grade general education curriculum.

30. The Student's special education teachers reported when interviewed that the Student did not complete any school work when at home during suspensions throughout the [redacted] school year.

31. During [redacted], the Student received one out-of-school suspension: [redacted], for eloping and climbing over railings on [redacted].

32. The Student's parent was called to pick-up the Student from school early on three days in [redacted].

33. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and May [redacted] BIP. The Student's IEP team determined his conduct on [redacted] (eloping and climbing over railings) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

34. By prior written notice on [redacted], the District revised the Student's BIP baseline data to reflect the following:

> Baseline data (frequency, intensity, duration):
>
> [Student's] behavioral episodes are of high intensity and can last for several hours. This is the baseline data for the following behaviors: Refusals—daily, wanders around the classroom/school—daily, becomes physically and/or verbally aggressive—2-3 times per week, shuts down—daily.

35. The December [redacted] BIP went into effect following 14-calendar days. There were no additional revisions made to the Student's May [redacted] IEP or May [redacted] BIP.

36. In [redacted], the Student began working with a therapist in the school-based mental health program. District staff reported that this is separate from the Student's IEP, however, the Student's May [redacted] IEP referenced the Student having an ITP regarding his mental health services.

37. During [redacted], the Student received one out-of-school suspension for five school days: [redacted] for punching a peer on [redacted].

38. The Student's parent was called to pick-up the Student from school early on five days in J[redacted].

39. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on

[redacted] (punching a peer) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

40. The second term of the [redacted] school year ended [redacted]. The Student's grades were one B, one NP (59% or lower and three Us (unsatisfactory/failing grade or 59% or lower).

41. By prior written notice on [redacted], the District proposed to amend the Student's IEP to reflect an accommodation for him to get his medications from the nurse at 11:30 a.m. each school day. The amendments proposed to add the Student's medications to the accommodations section of his IEP and also his BIP.

42. The District also reported of the [redacted] proposal: "There was a proposal on [redacted], which proposed a level IV setting." Specifically, the [redacted] prior written notice stated regarding other options considered and why those options were refused:

> The Team reviewed [Student's] IEP/BIP and agreed to the Manifestation Determination conclusion. The Team then discussed the following options in order of preference: 1. Reducing [Student's] school day by shortening his day to a 8:30-12:30 length and providing him a special education bus home at 12:30, Parent rejected. 2. Changing his setting from a setting III to a setting IV by moving him into the self-contained EBD program at [a different separate special education school], Parent rejected, and 3. Parent(s) declining special education support services for [Student] and he returns to mainstream classes without special education support, Parent rejected. [Complainant] refused all options offered but the district stands ready to make any of these option changes if she were to change her mind.

43. On [redacted], the Complainant objected to the [redacted] proposed IEP and requested a conciliation conference.

44. During [redacted], the Student received one out-of-school suspension for five school days: [redacted] for shoving and threatening staff on [redacted].

45. The Student's parent was called to pick-up the Student from school early on three days in [redacted].

46. On [redacted], the Student's IEP team met to conduct a manifestation determination of the Student's conduct on [redacted] (shoving and threatening staff) and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on [redacted] was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

47. On [redacted], the Student's IEP team met for a conciliation conference to discuss the Complainant's [redacted] objection to the proposed [redacted] IEP.

48. On [redacted], at [redacted] a.m., the [redacted] texted the Complainant: "[Student] is threatening to hit staff, climbing over desks, and threatening to throw chairs at staff. We are trying to avoid a suspension today. Would you be willing to pick him up?" The Complainant replied, "Yes on my way—sorry was in a meeting."

49. Following the early pick-up on [redacted], the Complainant wrote the [redacted] regarding the Student's behavior:

> I was able to chat with [Student's case manager]. We had a great chat. I was able to find out what the issue was—she stated [Student] was to work on math, but he didn't want to do it. She then told him if he didn't, his computer and fun day would be taken away!!!! Bingo, right there, it is a threat in his eyes now his anxiety hits and we are in a power struggle situation. I told her very kindly this is the thing I need to know and this is good information especially working on IEP goals—I told [Student's case manager]—yes, you have a class to run, but communication is huge. We have to avoid negativity, especially when something hasn't happened yet, and then we throw out you can't get or take away something. I would suggest that in that moment of [Student] not wanting to do something is engage him—hey buddy, give me 5 and will take a walk once you're done—just a suggestion. Sorry for the long email. I'm just here to help support on both ends!

50. Following the conciliation conference, on [redacted], the District proposed revisions the Student's IEP. However, the District reported in its response to the complaint: "The District does not have a copy of the IEP proposed [redacted] as the Parent objected to it so it was not finalized in the system and was written over when the next IEP was developed."

51. On [redacted] District staff reported using a physical hold (transport hold) on the Student for 15 seconds in response to the Student touching and using physical aggression toward staff.

52. District staff reported that at one of the meetings in [redacted], the Complainant requested a stand-alone FBA. She later requested further testing and staff worked to develop a reevaluation plan.

53. The Complainant objected to the [redacted] proposed IEP on [redacted], and requested a conciliation conference.

54. During [redacted], the Student received 11 school days of out-of-school suspensions: [redacted] for swearing at and insulting staff and students, pushing desks, and not following directions on [redacted]; and, on [redacted], [redacted] for swinging at and threatening to kill staff on [redacted].

55. The Student's parent was called to pick-up the Student from school early on four days in [redacted] 023.

56. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on [redacted] (threatening and aggressing toward staff) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

57. Despite holding a manifestation determination meeting for the Student's [redacted] conduct, the District reported the Student was not suspended on [redacted], but rather he was picked up early by a parent. The District completed a manifestation determination form on [redacted], which provided the following regarding the Student's conduct and the staff response:

> On [redacted], [Student was escalated in the classroom. [Student] began to make dark jokes about orphanages with another student, (including saying things about [redacted]) this was very inappropriate with the nature of the students in our classroom. [Student] continued to escalate by walking around the room and not following redirections. [Student] was given the direction to get off of a desk, given time to process the direction, and would not comply with the redirection. [Student] was climbing on multiple pieces of furniture, including a cabinet and study carol. [Sic]. [Student] continually told staff to "shut the fuck up." [Student] attempted to move a staff member's elbow, by grabbing the elbow. [Student] got into the teacher's personal space multiple times and screamed "I am going to punch you." The teacher felt threatened by this. [Student] also walked into a staff member's personal space and requested the staff member get away from him. [Student] continued to not follow redirections or make choices out of the choices that were given to him (Go for a walk, go take a break in his area, use deep breathing strategies, and use the [redacted]). After time, [Student] went to the [redacted] and shut the door behind himself. [Student] was in the [redacted] for about 2 minutes when he left and entered the science room, where other students who were not escalated were working. [Student] was not visibly deescalated. [Student] was escalating the other students in the science room by his words and actions. [Student] was searing and talking very loudly to these students, this did not help [Student] to deescalate more. [Student] was then redirected to leave the science room by the teacher. [Student] was given time to process this. The directive was given again by another staff member. This staff member was talking with another student and [Student] came up to the staff member got in her face. His body was touching hers and his nose was very close to touching her nose. [Student] was asked to please leave her personal space. [Student] grabbed the staff member's wrist. At this time, the staff member felt threatened and asked for help to escort him out of the science room. [Student] was escorted out of the science room and across in to the [redacted], where he could attempt to calm down. [Student] left the [redacted] and left the classroom. [Student] went to his locker and grabbed his backpack, hat, and coat. As

> [Student] was walking by the teacher he yelled "I hope you die, I hope you jump off a bridge and kill yourself."

58. On [redacted], the Student's IEP team met to discuss the Complainant's request for an FBA.

59. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on [redacted] (swearing at and insulting staff and students, pushing desks, and not following directions) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

60. The third term of the [redacted] school year ended [redacted]. The Student's grades were four B's, one A, and one U (unsatisfactory/failing grade of 59% or lower).

61. On [redacted], the District used two restrictive procedures on the Student; a physical hold for one minute in response to the Student swinging to hit staff resulting in being transported to seclusion for eight minutes.

62. Although the [redacted] physical hold, and the [redacted] physical hold and seclusion occurred within 30 calendar days, the District did not hold a meeting related to restrictive procedure use.

63. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on [redacted] (attempting to hit staff and threatening to kill paraprofessional) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

64. On [redacted], the District proposed a reevaluation plan, including an FBA, via prior written notice. The reevaluation plan went into effect following 14-days on [redacted], and staff noted on the prior written notice that the evaluation was due on [redacted], and thus the evaluation was not completed during the [redacted] school year.

65. On [redacted], at 11:18 a.m., the [redacted] wrote the Complainant: "I'm hearing that [Student] is struggling today and may have gotten into a physical altercation. What are your thoughts on picking him up for the day?" The Complainant responded, "I'm here."

66. During [redacted], the Student was suspended out-of-school for seven school days: [redacted] for backing a teacher against a desk, touching and threatening a teacher and shoving staff on [redacted].

67. The Student's parent was called to pick-up the Student from school early on two days in [redacted].

68. On [redacted], the [redacted] emailed the Complainant: "After learning more, it looks like [Student] was picking at the other student and that caused the other student to throw

something at him. Then [Student] ran out of the room after the other student. I have to request that you pick him up." The Complainant responded, "Ok."

69. On [redacted] the District used two restrictive procedures on the Student: a physical hold for two minutes, in response to the Student touching, threatening, and shoving staff, resulting in being transported to seclusion for 16 minutes.

70. On [redacted], the Complainant reported the Student had a court date due to his behavior at school on [redacted], for a criminal charge of [redacted].

71. On [redacted], the Student's IEP team met to conduct a manifestation determination and review the Student's May [redacted] IEP and December [redacted] BIP. The Student's IEP team determined his conduct on [redacted] (touching, threatening, and shoving staff) was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP.

72. On [redacted], the Complainant requested homebased services via a note from the Student's medical provider, stating: "It is my medical/psychiatric opinion that it would be beneficial for [Student] to do e-learning for the rest of the school year. I have been informed by his parent that he is uncomfortable going to school at this point due to his increased anxiety."

73. In the District's response to the complaint, the District wrote that it "promptly acted on the Complainant's request and has been providing the Student with homebased services from a teacher since [redacted]."

74. On [redacted], the Student's IEP team met to revise the Student's May [redacted] IEP and December [redacted] BIP to reflect the Student's move to homebased services and develop an IEP for the [redacted] school year.

75. The District provided the following letter from the school-based mental health provider to the Complainant dated [redacted]:

> This letter is to inform you that [Student's] file has now been closed. A letter was mailed to you previously, informing you that services would be discontinued if an updated Diagnostic Assessment was not received by today's date. As of today, an updated Diagnostic Assessment has not been received.
>
> If you choose to seek mental health services in the future, a new referral will be needed. When considering [Student]; and wanting the best outcomes for him; it is imperative to have regular communication with anyone involved in his care. Follow-through on coping skills worksheets, and responses to texts and phone calls helps to show [Student] a consistent level of expectation, support and guidance. In turn, this can lead to decreased anxiety and further improvement. [Student's] behavior frequently led to him being suspended, which led to limited access to the intended support of CTSS. [Student] receiving services outside of

the school system may be the most beneficial to eliminate the potential disruptions in services that result from suspensions.

76. Although an individual treatment plan (ITP) was referenced in the Student's May and December [redacted] IEPs and the May [redacted] IEP, the District reported.

> The Student did not have an individual treatment plan (ITP) for the past school year. Those services were provided by an outside agency, not the District. The Student needed a diagnostic assessment in order to qualify for such services, and he did not complete the diagnostic assessment. Thus, no ITP was in effect for the past school year.

77. The Student's [redacted] progress report indicated the Student made inadequate progress on two of his three goals. For goal #1, the progress report stated: "During 4th term, [Student] has been in school for about 10 days. During these 10 days [Student] exhibited that he was able to self-regulate 10% of the time. To be able to self-regulate, [Student] would need to choose it on his own and not be prompted."

78. Also on [redacted], the District proposed a revised IEP reflecting the Student's move to homebased services for the [redacted] school year. The Complainant did not respond to this proposal and the [redacted] IEP it went into effect following 14 calendar days, on [redacted], after the [redacted] school year ended.

79. The Student's [redacted] IEP contained revised annual goals aiming for the Student to increase his emotion regulation skills, reading fluency, and ability to separate himself from a stressful situation or event. The Student's [redacted] IEP included the following special education and related services to assist the Student in working toward these goals:

Instruction or Service Provided	**Number of Minutes per Session**	**Anticipated Frequency of Sessions**	**Location**	**Anticipated duration**	**Start date**
Special Education: [SLD]: Behavior	365	5 times per week	Special education classroom	11 months	[redacted]
Special Education: [EBD]: Behavior	60	5 times per week	Home	1 month	[redacted]

80. The Student's [redacted] IEP did not make changes to the Student's accommodations, modifications and supports and did include a BIP revised to provide that "Staff will send [Student] to the Health Office daily at 11:30 so he can receive his medication(s)." There were no further revisions in the [redacted] BIP.

81. The Student's [redacted] IEP included the following least restrictive environment statement:

> Due to a medical note received by the district from [Student's] psychiatrist [name redacted], he will be receiving home-based services for the remainder of the [redacted] school year. Starting in the fall, he will receive 365 minutes of special education services in the Setting III (60% to 100% of the school-day in

> the special education environment without general education peers) self-contained EBD classroom.

82. When interviewed, District staff reported that, during the spring of [redacted] they tried in-school suspension once as an alternative to out-of-school suspension, but the Student kept leaving the in-school suspension room and was not successful. District staff did not report further alternatives to suspension or modification of the District's school discipline policy for the Student.

83. The Complainant reported she was told that they were modifying their school discipline policy for the Student, because for a typical student with the same behavior, they would recommend expulsion.

84. District staff reported the Student was not successful in homebased services at the end of the [redacted] school year. Specifically, they reported the Student was only participating approximately 10 minutes per day due to his behaviors.

85. The last day of the [redacted] school year was [redacted].

86. The Student's final report card showed the Student achieved the following grades for the [redacted] school year: two As, four Cs, two Ds, and one NP (59% or lower).

87. The Student was present for school 87 out of the 172 possible school days during the [redacted] school year. The Student was absent 85 school days. Of the 85 school days the Student was absent, 46 were due to out-of-school suspensions. Further, the Student's parent was asked to pick-up the Student early from school on 21 school days.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about the issues that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

3. Federal regulations at 34 C.F.R. § 300.101(a) provide regarding a FAPE (emphasis added): "A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, *including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d)*."

4. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that:

> [A]ll students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through

> the development of an [IEP]. . . The [IEP] team must consider positive behavioral interventions, strategies, and supports that address behavior needs for children.

5. The Student did not receive mental health skills training or counseling services as outlined in his IEPs in effect during the [redacted] school year in violation of 34 C.F.R. § 300.17.

6. Further, the District switched the Student to receive homebased services on [redacted]; however, the Student's [redacted] IEP did not go into effect until [redacted]. Therefore, the District failed to provide services in conformity with the Student's May [redacted] IEP from [redacted], in violation of 34 C.F.R. § 300.17.

7. Minnesota statutes at § 125A.091, subdivision 7, provide:

> A parent must have an opportunity to request a meeting with appropriate members of the individualized education program team or meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 3a. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's request for a conciliation conference. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.

8. The Complainant objected to the District's [redacted] proposed IEP on [redacted] and requested a conciliation conference. However, a conciliation was not held, in violation of Minn. Stat. § 125A.091, subd. 7.

Restrictive Procedures

9. Minnesota Statute § 125A.0941(f) provides:

> "'Restrictive procedures' means the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child."

10. Minnesota Statute § 125A.0942, subd. 5(a) provides that staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

> (1) positive behavioral interventions;
>
> (2) communicative intent of behaviors;
>
> (3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

11. Minnesota Statute § 125A.0941(b) provides:

> 'Emergency' means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury or other individual; or an emergency incident has already occurred and no threat of physical injury still exists.

12. Minnesota Statutes § 125A.0941(c) provides in relevant part:

> "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> 1) helps a child respond or complete a task;
>
> 2) assists a child without restricting the child's movement;
>
> 3) is needed to administer an authorized health-related service or procedure;

4) is needed to physically escort a child when the child does not resist or the child's resistant is minimal.

13. Minnesota Statutes § 125A.0941(g) define "seclusion" as:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing a door or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

14. Minnesota Statute § 125A.0942, subd. 3(a) provides in relevant part:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding or seclusion began and the time the child was released; and
>
> (iv) a brief record of the child's behavioral and physical status.

15. Minnesota Statutes § 125A.0942, subd. 2(f) provide in relevant part:

> An [IEP] team may plan for using restrictive procedures and may include these procedures in a child's individualized education program or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this

section. The [IEP] or [BIP] shall indicate how the parent wants to be notified when a restrictive procedure is used.

16. Minnesota Statutes § 125A.0942, subd. 2 provides, in relevant part:

> (a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.
>
> . . .
>
> (c) The district must hold a meeting of the [IEP] team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the [IEP] or [BIP] as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's [IEP or [BIP] does not provide for using restrictive procedures in an emergency; or at the request of the parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual [IEP] meeting when the child's individualized education program provides for using restrictive procedures in an emergency.
>
> . . .
>
> (e) At the [IEP] meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan.

17. Minnesota Statutes § 125A.0942, subd. 3(a)(6) and (7) provides that:

> (6) The room used for seclusion must:
>
> (i) be at least six feet by five feet;
>
> (ii) be well lit, well ventilated, adequately heated, and clean;
>
> (iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

18. Minnesota Statutes § 125A.0942, subd. 2 provide:

> Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.

19. The record, including the District's restrictive procedure documentation and District staff reports, support a conclusion that District staff implemented physical holding and seclusion during emergencies where immediate intervention was needed to protect the Student or other individual from physical injury, such as hitting staff, as defined in Minn. Stat. § 125A.091(b). Further, the documentation provided by the District was consistent with the documentation requirements found in Minn. Stat. § 125A.092, subd. 3(a)(5).

20. The record supports a conclusion that the District staff who used restrictive procedures on the Student were licensed special education teachers, licensed educational professionals, and paraprofessionals who completed the required training program, as required by Minn. Stat. § 125A.0942, subds. 2(a) and (5).

21. However, although the Student's IEP met multiple times throughout the [redacted] school year, the District did not hold an IEP team meeting to conduct or review a FBA; review data; consider developing additional or revised positive behavioral interventions and supports; consider actions to reduce the use of restrictive procedures; modify the Student's IEP or BIP, as appropriate; or review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicates the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the IEP or BIP, within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days, on [redacted], and [redacted], in violation of Minn. Stat. § 125A.0942, subd. 2(c).

Discipline

22. Federal regulations at 34 C.F.R. § 300.324(b)(1) provide that each school district must ensure that the IEP team:

> (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
>
> (ii) Revises the IEP, as appropriate, to address:
>
> (A) Any lack of expected progress toward the annual goals described [in the IEP, pursuant to] § 300.320(a)(2), and in the general education curriculum, if appropriate;
>
> (B) The results of any reevaluation conducted under § 300.303;
>
> (C) Information about the child provided to, or by, the parents as described under § 300.305(a)(2);
>
> (D) The child's anticipated needs; or
>
> (E) Other matters.
>
> (2) *Consideration of special factors*. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

23. Federal regulations at 34 C.F.R. § 300.324(a)(2) include the following special factor that must be considered by the IEP team:

> "(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior[.]"

24. Regarding discipline procedures for students with disabilities, federal regulations at 34 C.F.R. § 300.530 provide in relevant part:

> (a) *Case-by-case determination*. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
>
> (b) *General*. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for

additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

(c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

(d) *Services.*

(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must -

(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.

(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the

general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) *Manifestation determination*. (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the [school district], the parent, and relevant members of the child's IEP Team (as determined by the parent and the [district]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the [district's] failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the [district], the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

. . .

(f) *Determination that behavior was a manifestation*. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must -

(1) Either -

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

25. Minnesota Statutes § 121A.41, subd. 10, defines “suspension” as follows:

> "Suspension" means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days . . . This definition does not apply to dismissal from school for one school day or less, except as provided in federal law for a student with a disability.

26. Regarding suspensions for students with disabilities, Minnesota Statutes § 121A.43 also provides in relevant part:

> (a) Consistent with federal law governing days of removal and section 121A.46, school personnel may suspend a child with a disability. When a child with a disability has been suspended for more than five consecutive school days or ten cumulative school days in the same school year, and that suspension does not involve a recommendation for expulsion or exclusion or other change of placement under federal law, relevant members of the child's individualized education program team, including at least one of the child's teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child's individualized education program. That meeting must occur as soon as possible, but no more than ten days after the sixth consecutive day of suspension or the tenth cumulative day of suspension has elapsed.
>
> (b) A dismissal for one school day or less is a day or a partial day of suspension if the child with a disability does not receive regular or special education instruction during that dismissal period. The notice requirements under section 121A.46 do not apply to a dismissal of one day or less.

27. The U.S. Department of Education provided the following clarification in its comments on 34 C.F.R. § 300.530(e) at 71 Fed. Reg. 46720 (Aug. 14, 2006):

> When the behavior is related to the child’s disability, proper development of the child’s IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior, consistent with § 300.324(a)(2)(i) and (a)(3)(i). When the behavior is determined to be a manifestation of a child’s disability but has not previously been addressed in the child’s IEP, the IEP Team must review and revise the child’s IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child’s IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate under the Act and Section 504, even if the behavior is a

manifestation of the child's disability. A change in placement that is appropriate and consistent with the child's needs may be implemented subject to the parent's procedural safeguards regarding prior notice (§ 300.503), mediation (§ 300.506), due process (§§ 300.507 through 300.517) and pendency (§ 300.518).

28. Minnesota Statutes § 125A.08(d) states:

> A school district may conduct a functional behavior assessment as defined in Minnesota Rules, part 3525.0210, subpart 22, as a stand-alone evaluation without conducting a comprehensive evaluation of the student in accordance with prior written notice provisions in section 125A.091, subdivision 3a. A parent or guardian may request that a school district conduct a comprehensive evaluation of the parent's or guardian's student.

29. Federal regulations at 34 C.F.R. § 300.536 define "change in placement" as follows:

> (a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—
>
> (1) The removal is for more than 10 consecutive school days; or
>
> (2) The child has been subjected to a series of removals that constitute a pattern—
>
> (i) Because the series of removals total more than 10 school days in a school year;
>
> (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
>
> (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

30. The U.S. Department of Education stated in its comments on 34 C.F.R. § 300.530(b) at 71 Fed. Reg. 46715 (Aug. 14, 2006):

"Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in § 300.536."

31. Regarding services during disciplinary removals, the U.S. Department of Education stated in its comments on 34 C.F.R. § 300.530(d) at 71 Fed. Reg. 46717 (Aug. 14, 2006):

> School personnel may remove a child with a disability from his or her current placement to an interim alternative educational setting, another setting, or suspension for up to 10 school days in the same school year without providing educational services. Beginning, however, on the eleventh cumulative day in a school year that child with a disability is removed from the child's current placement and for any subsequent removals, educational services must be provided to the extent required in § 300.530(d) while the removal continues.

32. Further, the U.S. Department of Education stated in its comments on 34 C.F.R. § 300.530(b) at 71 Fed. Reg. 46715 (Aug. 14, 2006):

> [D]iscipline must not be used as a means of disconnecting a child with a disability from education. Section 300.530(d) clarifies, in general, that the child must continue to receive educational services so that the child can continue to participate in the general curriculum (although in another setting), and progress toward meeting the goals in the child's IEP.

33. Regarding the need for behavioral supports for students with disabilities, the U.S. Department of Education, Office of Special Education and Rehabilitative Services, provided the following guidance in its *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's [Individuals with Disabilities Education Act] Discipline Provisions* (July 19, 2022) (hereafter *Questions and Answers: Discipline Provisions*) (internal footnotes omitted):

> Frequent use of short-term disciplinary removals or informal removals of children with disabilities may indicate that the child's IEP does not appropriately address their behavioral needs, which may result in a denial of FAPE. School staff should be aware of, and gauge the need for and effectiveness of, behavioral interventions when implementing exclusionary disciplinary measures that continually or significantly interfere with a child's instruction and participation in school activities (e.g., a pattern of office referrals, repeatedly sending a child out of school on "administrative leave" or regularly requiring a child to leave the school early and miss instructional time). Some of the factors that may be considered when considering the use of short-term removals include: (1) the circumstances that led to the child's removal; (2) whether the child was being provided services in accordance with the IEP; (3) whether the behavior can be addressed through minor changes to classroom or program practices (e.g., adjusting the time the child transitions to lunch in the cafeteria); and (4) whether the IEP Team should be reconvened to address possible changes to the IEP. In situations where the child's behavior and the resulting removals impede the child's learning or that of others, LEAs must review and revise the child's IEP to ensure that appropriate behavioral supports and

> services are in place to address the behavior that is resulting in such disciplinary removals. Further, the LEA must take the steps necessary to ensure that the child's IEP, including any positive behavioral interventions, supports, and other strategies, are consistently implemented. 34 C.F.R. §§ 300.323 and 300.324(a)(2).
>
> . . .
>
> [T]he failure of the IEP Team to consider and provide for needed behavioral supports through the IEP process may result in a child not receiving a meaningful educational benefit or FAPE. In addition, an LEA's failure to make behavioral supports available throughout a continuum of alternative placements, including in a regular education setting, could result in an inappropriately restrictive placement and constitute a denial of placement in the least restrictive environment.
>
> The failure of the IEP Team to consider and provide for needed behavioral supports could also lead to behavior that is inconsistent with the school's code of student conduct. To the extent a child's behavior, including its impact and consequences (e.g., violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures), impede the child's learning or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. If the child's IEP already includes behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the child's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of children with disabilities and ensure FAPE are appropriately implemented so as to avoid an overreliance on, or misuse of, exclusionary discipline in response to a child's behavior.

34. Regarding calculating the 10 school days of suspension, the *Questions and Answers: Discipline Provisions* document provides (internal footnotes omitted):

> The calculation of the 10 school days of suspension addressed in 34 C.F.R. § 300.530 could include exclusions that take place outside of IDEA's discipline provisions which occur because of a child's behavior. Actions that result in denials of access to, and significant changes in, a child's educational program could all be considered as part of the 10 days of suspension and also could constitute an improper change in placement. These actions could include when a school administrator unilaterally informs a parent that their child with a disability may only remain in school for shortened school days because of behavioral issues or when a child with a disability is not allowed by the teacher

> to attend an elective course because of behavioral concerns. These types of actions are generally considered disciplinary removals unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate with nondisabled children to the extent they would have in their current placement. Further, the immediate removal of a child with a disability to a more restrictive setting for more than 10 days in response to disability-related behavior also could constitute an improper disciplinary removal or an improper change of placement if not specifically authorized under, and implemented consistent with, IDEA requirements. For example, school personnel must consider whether prior notice and a copy of the procedural safeguards must be provided to the parent of a child with a disability consistent with the requirements under 34 C.F.R. §§ 300.503 and 300.504 or whether the removal would require that a timely manifestation determination review occur under 34 C.F.R. § 300.530(e). (See Section F for additional information on manifestation determination reviews). SEAs should examine these practices in conjunction with their duty to monitor LEAs' compliance with the discipline provisions and the IEP, placement, and the least restrictive environment requirements of IDEA. 34 C.F.R. §§ 300.149 and 300.600. In addition, LEAs should ensure that they have in effect policies, procedures, and programs that are consistent with the applicable State policies and procedures and any State-imposed requirements that are not required under IDEA, 20 U.S.C. § 1407(a); 34 C.F.R. § 300.201.

35. Regarding shortened school days, the *Questions and Answers: Discipline Provisions* document provides (internal footnotes omitted):

> IDEA's implementing regulations define school day as any day, including a partial day, that children attend school for instructional purposes. Additionally, school day has the same meaning for all children in school, including both those with and without disabilities. 34 C.F.R. § 300.11(c). In the discipline context, administratively shortened school days occur when a child's school day is reduced solely by school personnel, rather than the child's IEP Team or placement team, in response to the child's behavior. In general, the use of informal removals to address a child's behavior, if implemented repeatedly throughout the school year, could constitute a disciplinary removal from the current placement. Therefore, the discipline procedures in 34 C.F.R. §§ 300.530 through 300.536 would generally apply unless all three of the following factors are met: (1) the child is afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the child continues to receive the services specified on the child's IEP; and (3) the child continues to participate

> with nondisabled children to the extent they would have in their current placement. 71 Fed. Reg. 46715 (Aug. 14, 2006).
>
> In general, a school day for a child with a disability should not be longer or shorter than a school day for children without disabilities. However, if a child's IEP Team determines a child needs a longer or shorter school day in order to receive FAPE, then appropriate modifications should be incorporated into the IEP by the child's IEP Team to ensure that the child continues to receive FAPE. These modifications must be based on the unique needs of the child, such as when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily and a shortened school day is warranted. This determination would be made by the child's IEP and placement teams that may include, when appropriate, the child's medical provider or other treatment specialists. In addition, a practice of shortening a child's school day as a disciplinary measure could be considered a denial of FAPE if the child's IEP Team does not also consider other options such as additional or different services and supports that could enable a child to remain in school for the full school day.

36. Regarding interim alternative educational settings, the *Questions and Answers: Discipline Provisions* document provides (internal footnotes omitted):

> IDEA does not define an IAES. However, OSEP's data documentation file for discipline data collected under IDEA Section 618 defines an IAES as:
>
> an appropriate setting determined by the child's IEP Team or a hearing officer in which the child is placed for no more than 45 school days. This setting enables the child to continue to receive educational services so as to enable them to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in the IEP. As appropriate, the setting includes a [FBA], and behavioral intervention services and modifications to address the behavior violation so that it does not recur.
>
> . . .
>
> There are several circumstances under which a child may be placed in an IAES [Interim Alternative Education Setting]: When a removal is a change of placement as defined in 34 C.F.R. § 300.536, services are provided in an IAES following the tenth day of the removal. This situation may occur after a child with a disability has been removed from their current placement for 10 school days in the same school year. During any subsequent days of removal, the public agency must provide services and may do so in an IAES. 34 C.F.R. § 300.530(b).

37. Regarding potential circumstances that may indicate potential denials of FAPE or of placement in the least restrictive environment, OSERS, in a 2016 Dear Colleague Letter, opined:

> It is incumbent upon IEP Teams to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV); 1414(d)(3)(B)(i) and 1414 (d)(3)(C). A failure to implement these procedural requirements or provide needed behavioral supports to a child with a disability could result in the child not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE and/or a denial of placement in the [least restrictive environment] (i.e., an unduly restrictive placement).
>
> A determination of whether there is a denial of FAPE is a fact-based determination, to be made on a case-by-case basis. Factors to consider include: whether the public agency has failed to follow the procedures IDEA requires when developing, reviewing, and revising the child's IEP, or has failed to consider and/or provide a child with a disability with necessary behavioral supports when the child's behavior impedes his or her learning or that of others; or whether the child's IEP is reasonably calculated to provide a meaningful educational benefit in the absence of behavioral supports.
>
> Circumstances that may indicate either a procedural or substantive failure in the development, review, or revision of the IEP include, but are not limited to, the following:
>
> - The IEP Team did not consider the inclusion of positive behavioral interventions and supports in response to behavior that impedes the child's learning or other of others;
> - School officials failed to schedule an IEP Team meeting to review the IEP to address behavioral concerns after a reasonable parental request;
> - The IEP Team failed to discuss the parent's concerns about the child's behavior, and its effects on the child's learning, during an IEP Team meeting;
> - There are no behavioral supports in the child's IEP, even when the IEP Team determines they are necessary for the child;
> - The behavioral supports in the IEP are inappropriate for the child (e.g., the frequency, scope or duration of the behavioral supports is insufficient to prevent behaviors that impede the learning of the child or others; or consistent application of the child's behavioral supports has not accomplished positive changes in behavior, but instead resulted in behavior that continues to impede, or further impedes, learning for the child or others);

- The behavioral supports in the child's IEP are appropriate, but are not implemented or not being properly implemented (e.g., teachers are not trained in classroom management responses or de-escalation techniques or those techniques are not being consistently implemented); or
- School personnel have implemented behavioral supports not included in the IEP that are not appropriate for the child.

38. Here, the Student was prohibited from attending school, removed from his current placement, and did not receive his current regular or special education instruction on approximately 46 full school days and 21 partial school days during the [redacted] school year. Those days all constituted disciplinary removals under 34 C.F.R. § 300.530 and days or partial days of suspension under Minn. Stat. §§ 121A.41, subd. 10, or 121A.43(b).

39. The District determined that each of the Student's removals exceeding 10 cumulative school days during the [redacted] school year constituted a disciplinary change of placement under 34 C.F.R. § 300.536(a); therefore, any subsequent disciplinary removals required the District, the parent, and relevant members of the Student's IEP team to review all relevant information in the Student's file, including the Student's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct was a manifestation of the Student's disability under 34 C.F.R. § 300.530(e).

40. The District held the first manifestation determination meetings on [redacted]. Thereafter, the District held manifestation determination meetings following conduct that the Student received an out-of-school suspension, with manifestation meetings also held on [redacted] At each manifestation determination meeting, the Student's IEP team determined that the Student's conduct was caused by, or had a direct and substantial relationship to, the Student's disability and the conduct was not a result of the District's failure to implement his IEP as outlined in 34 C.F.R. § 300.530(e).

41. However, given the District did not consider that when it called the parent to pick-up the Student early from school a disciplinary removal (partial day of removal), the District did not hold manifestation determination meetings following each partial day of removal, even though such is considered a change in placement and in violation of 34 C.F.R. § 300.530(e). Specifically, (1) the Student was not afforded the opportunity to continue to appropriately participate in the general curriculum; (2) the Student did not continue to receive the services specified on the May [redacted] IEP and BIPs; and (3) the Student did not continue to participate with nondisabled children to the extent they would have in their current placement.

42. In addition, after [redacted], when the Student had been removed from his current placement for 10 school days (including partial day removals) in the same school year, on the 11th cumulative day, the District did not provide educational services to enable the Student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP during subsequent days of removal, in violation of 34 C.F.R. § 300.530(b)(2). Instead, it was not until after the Student's [redacted] suspension, that the Student's IEP team discussed educational services for the Student. Specifically, the District provided the Student access to an online

learning platform geared towards high school students, [redacted], and the Student's special education teacher sent work home for the Student. However, the [redacted] online platform was not appropriate for the Student and the District did not provide any further special education and related services.

43. Further, the District did not ensure that the Student's IEP team either conducted an FBA or reviewed the Student's current BIP, and modified it as necessary to address the behavior, at the manifestation determination meetings, in violation of 34 C.F.R. §§ 300.324(a)(2) and 300.530(f)(1). Specifically, the proposed revisions to the Student's IEP or BIP during the [redacted] school year did not include additional positive behavioral interventions and supports, or other strategies, to address the Student's behaviors, but rather updated the Student's baseline data to reflect that his behaviors were occurring more frequently. Because the District did not preserve the [redacted] and [redacted] IEP proposals, the record for these consisted of information provided in prior written notices. It was not until [redacted] that the District proposed a reevaluation, including an FBA (requested by the Complainant) of the Student.

44. During the [redacted] school year, the District failed to provide the Student a FAPE, in violation of 34 C.F.R. § 300.101 and Minn. Stat. § 125A.03. Specifically, as evidenced by the Student's lack of progress on his annual goals, poor grades, and lack of attendance, the Student suffered educational harm as a result of the following District actions: its failure to provide appropriate special education and related services during the Student's 36 days of disciplinary removals after [redacted]; its failure to identify the District's 21 requests for early pick-ups (Student's partial days) as disciplinary removals; its failure to provide mental health skills training or counseling specialist services identified in the Student's IEP; its failure to conduct or review the Student's functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, modify the Student's IEP or BIP as appropriate, or review any known medical or psychological limitations, including any medical information the Complainant provides voluntarily, that contraindicates the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the IEP or BIP; and its failure to conduct an FBA or review the Student's current BIP, and modify it, as necessary, or consider the use of additional positive behavioral interventions and supports, and other strategies, to address the Student's behavior at the manifestation determination meetings. *See Board of Educ. Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 206-07 (1982) (formulating a two-part test to analyze whether a FAPE was provided in cases under the [IDEA], specifically that the "court must determine: (1) whether the school district has complied with the procedures required by IDEA; and (2) whether the IEP developed pursuant to IDEA was 'reasonably calculated to enable the child to receive some educational benefits'"); *Endrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 1001 (2017) (holding that "[IDEA] requires an educational program reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances"); and *Neosho R-V Sch. Dist. v. Clark*, 315 F.3d 1022 (8th Cir. 2003) (finding that the school district failed to provide a free appropriate public education when it did not attempt to formulate a behavior management plan to address the student's significant behavior problems until close to the end of the school year).

Decision

1. The District violated 34 C.F.R. § 300.17, when it failed to provide the Student mental health skills training and counseling services as described in his IEPs in effect during the [redacted] school year, and when it failed to provide the Student with special education and related services in accordance with his May [redacted] IEP from [redacted].

2. The District violated Minn. Stat. § 125A.091, subd. 7, when it failed to hold a conciliation conference following the Complainant's [redacted] request.

3. The District violated Minn. Stat. § 125A.0942, subd. 2(c), when it failed to hold an IEP team meeting to conduct or review a FBA; review data; consider developing additional or revised positive behavioral interventions and supports; consider actions to reduce the use of restrictive procedures; modify the Student's IEP or BIP, as appropriate; or review any known medical or psychological limitations, including any medical information the parent provides voluntarily that contraindicates the use of a restrictive procedure; consider whether to prohibit that restrictive procedure; and document any prohibition in the IEP or BIP within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days.

4. The District violated 34 C.F.R. § 300.530(e), when it failed to hold manifestation determination meetings following the partial day discipline removals.

5. The District violated 34 C.F.R. § 300.530(b)(2), when it failed to provide special education and related services during suspensions subsequent to [redacted], that enabled the Student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP.

6. The District violated 34 C.F.R. §§ 300.324(a)(2) and 300.530(f), when it failed to either conduct an FBA or review the Student's current BIP, and modify it, as necessary, or consider the use of additional positive behavioral interventions and supports, and other strategies, to address the Student's behavior at the manifestation determination meetings.

7. The District violated 34 C.F.R. § 300.101 and Minn. Stat. § 125A.03, when it failed to provide the Student FAPE during the [redacted] school year.

Corrective Action

1. Within 14 calendar days of the date of this decision, the District must contact MDE corrective action specialist Sara K. Wolf at sara.k.wolf@state.mn.us, to coordinate training to be provided by MDE staff, in collaboration with the special education director, to the special education staff and the administrative team at the District. The training will cover discipline, restrictive procedures and special education due process requirements including:

   a. the requirements of holding conciliation conferences (Minn. Stat. § 125A.091, subd. 7);

b. the requirement to either conduct an FBA or review a student's current BIP, and modify it as necessary, to consider the use of additional positive behavioral interventions and supports, and other strategies, to address a student's behaviors (34 C.F.R. §§ 300.324(a)(2) and 300.530(f));

c. an overview of school discipline law, including the obligation to hold manifestation determination meetings when partial day removals contribute to the change in placement, the obligation to provide special education and related services to enable the Student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP (34 C.F.R. §§ 300.530(e) and 300.530(b)(2)); and

d. the use of restrictive procedures; specifically, the obligation to hold an IEP team meeting to conduct or review an FBA; review data; consider developing additional or revised positive behavioral interventions and supports; consider actions to reduce the use of restrictive procedures; modify the Student's IEP or BIP, as appropriate; or review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicates the use of a restrictive procedure; consider whether to prohibit that restrictive procedure; and document any prohibition in the IEP or BIP within 10 calendar days after District staff used restrictive procedures on two separate school days within 30 calendar days (Minn. Stat. § 125A.0942, subd. 2(c)).

Training must be provided as soon as practicable but no later than [redacted].

2. Following the completion of the Student's reevaluation, the District must contact the Complainant to schedule an IEP team meeting within 14 calendar days. When scheduling the IEP team meeting, given that the Student requires mental health and counseling specialist services, the Complainant or the District may invite any individuals who have knowledge or special expertise regarding the Student, including Student's therapists and other health care professionals, in order to determine appropriate and necessary services in a standardized written plan, as described in Minn. Stat. § 125A.027.

3. At the scheduled IEP team meeting, the Student's IEP team must develop an IEP that meets the requirements stated in 34 C.F.R. § 300.324 and Minn. Stat. § 125A.08. The Student's IEP team, when developing the Student's new IEP, must:

a. address any lack of expected progress toward the Student's annual goals in his May [redacted] IEP and in the general education curriculum (34 C.F.R. § 300.324);

b. address the results of the reevaluation (34 C.F.R. § 300.324);

c. address information about the Student provided by the Complainant and the Student's other parent, such as their concerns about the Student's behavior and attendance and its effects on the Student's learning (34 C.F.R. § 300.324);

d. consider additional positive behavioral interventions and supports to address the Student's behavior (34 C.F.R. § 300.324);

e. consider the provision of additional related services, including, but not limited to, psychological services, occupational therapy, recreation, including therapeutic recreation, counseling services, and

f. parent counseling and training to assist the Student in benefitting from special education (34 C.F.R. § 300.34); and

g. determine an appropriate educational placement for the Student (34 C.F.R. §§ 300.114, and 300.116).

4. Once there is an agreed-upon IEP, the IEP team must reconvene within 14 days to determine appropriate compensatory services for the Student. Compensatory services seek to make up for any loss in the Student's skills, including academic, functional, or behavioral skills, and lack of expected progress in the general education curriculum or toward the Student's IEP annual goals that resulted as a result of the District's delay in addressing the Student's behavioral needs and providing an appropriate education during the [redacted] school year.

5. Compensatory services seek to make up for any loss in the Student's skills, including academic, functional, or behavioral skills, and any lack of expected progress in the general education curriculum or toward the Student's IEP annual goals that resulted from the District's violations. Compensatory services are in addition to the special education and related services necessary to provide the Student with a FAPE as outlined in the Student's current IEP and may be provided in many different ways, including but not limited to additional special education and related services, small group or individual tutoring, reimbursement to parents for outside tutoring or programs, (when agreed to by the school district), or additional academic or enrichment services necessary to compensate for the Student's loss of skills or lack of progress.

6. The District and Complainant should work together to reach an agreement on the compensatory services appropriate for the Student.

   a. When the Complainant and District reach an agreement regarding the revisions of the IEP pertaining to the Student's behavioral needs and the delay in providing an appropriate education to the Student resulting in frequent suspensions, and on compensatory services:

      i. The District shall amend the Student's IEP to include the anticipated frequency, location, and duration of the services, including compensatory services, in accordance with 34 C.F.R. § 300.320(a)(7).

      ii. The District shall submit a copy of the Student's revised IEP and any other requested documentation to MDE's corrective action specialist, Sara K. Wolf, to demonstrate completion of this corrective action.

iii. If either the District, or the Complainant believe the Student is not timely accessing the compensatory services agreed upon, the Complainant and/or the District are expected to contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

b. If the IEP team is unable to reach an agreement on compensatory services:

i. By [redacted], the Complainant and/or the District may contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

c. MDE will enforce the provision of this corrective action for one year of the date of this decision. If the compensatory services agreed to in the IEP are not provided, the Complainant may seek resolution through MDE's alternative dispute resolution processes, including filing a new complaint with MDE.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

DEPARTMENT OF EDUCATION

Via encrypted email

[redacted]

[redacted]

Re: Special Education Complaint [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately respond to and address the behavior of the Student during the [redacted] school year. Specifically, the District improperly used seclusion and classroom removals, instead of developing and implementing an appropriate behavior intervention plan (BIP).

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by this complaint.

2. The Complainant is the [redacted].

3. In the Student's [redacted] initial evaluation, he was found eligible under [redacted] the Individuals with Disabilities Education Act (IDEA), [redacted].

4. The Student's most recent evaluation, completed in [redacted], documented the team's determination that the Student continued to be eligible for special education and related services, and met the initial eligibility criteria for the category of autism spectrum disorder (ASD). [redacted] The Student's [redacted] evaluation report identified educational needs in the area of social/emotional learning.

5. The Student's individualized education program (IEP) in effect at the start of the [redacted] school year was dated [redacted]. The Student's April [redacted] IEP contained one annual goal aiming for the Student to increase his social/emotional skills. To enable the Student to make progress toward his goal, the Student's April [redacted] IEP provided for the following direct special education and related services:

Instruction or Service Provided	**Number of Minutes per Session**	**Anticipated Frequency of Sessions**
Specialized Instruction: Early Childhood Special Education	20	2 times per week

6. The Student's April [redacted] IEP included the following accommodations, modifications, and supports: headphones, visual support and social stories, and emotional regulation tools and strategies. The emotional regulation tools and strategies included identifying basic emotions, practicing calming exercises, and having a "safe place" in the classroom to go to calm himself when excited, upset, and/or feeling out of control.

7. The Student's April [redacted] IEP indicated that the Student would spend 20% of his school day or less in the special education environment, away from the general education classroom.

8. During the [redacted] school year, the Student was in kindergarten.

9. Prior to the first day of school, the Student's mother emailed the Student's kindergarten teacher asking general questions and providing an information sheet about the Student's needs. In relevant part, she wrote:

> I have attached an info sheet that will help you get to know [Student] a bit better. He's such a sweet and wonderful kid, and, like all kids, sometimes he has big emotions or unmet needs that he just doesn't know how to identify or voice. Our hope is that this year, we can work together with his teacher to help him identify those areas where his needs are unmet and help him use the strategies and tools that are available to work through that in appropriate ways.

10. In the complaint, the Complainant reported that the District was using seclusion with the Student, but the District denied doing so. Specifically, the Complainant reported, "The school has repeatedly admitted to taking the child to a room and having a teacher block egress, which is explicitly in this definition [of seclusion]. When I point that out, they ignore me, or scoff at me, or tell me it isn't really seclusion."

11. The first day of school for the [redacted] school year was [redacted].

12. On [redacted], the Student's mother sent an email with questions, and ideas for additional behavioral supports:

> From our conversation with our family therapist yesterday, here are some things that she suggested might be helpful:
>
> 1) Build in times that [Student] can have control throughout the day. I know you tried this by using first/then yesterday, and she said that if that's working, you can continue that. Her concern was that those 5 minutes of time are reliant on his behavior. She was thinking more of giving him 5-10 minutes each day at set times that he can look forward to (maybe once before lunch and once right at the end of the day), that aren't contingent on his behavior at all. These are just times that he looks forward to, to help him get through the day.
> 2) He's mentioned a lot that he wants to come home before it's time to come home. I'm wondering if you've noticed this happening at a specific time of day? Or if he's even articulating that to you? That might give us a clue to what's going on.
> 3) We are working at home on making after school times special so he has something to look forward to at the end of the day.
> 4) Is he rushing through his paperwork during assignments? Does it feel to you like he might need more of an intellectual challenge with his work? Is there a way that he can potentially help other kiddos that are struggling during

that time as a teacher's helper? Or maybe we could give him some more challenging work during that time that he also enjoys?

5) Are there points in the day that he can help you with things around the classroom? Giving him various times that he has responsibilities and a feeling of ownership may be helpful.
6) She did suggest that an FBA [functional behavioral assessment] could be very helpful in addressing the behaviors, but to note that the behaviors may change quickly when we address them as they aren't looking at the "why" behind the behaviors. I think we saw that yesterday when he was more obedient but also more aggressive towards other kids.
7) How can we help him look forward to school so his day doesn't feel so stressful? She recommended we ask if it would be considered to put him in the same classroom as [two other students]? He feels safe with them, and it may be that everything is so new to him and he just doesn't have a person that feels safe. [Student] immediately latched on to [three students] at school. I know he's getting to know [a fourth student], and we've been trying to encourage that relationship. He also knows and likes [a fifth student] from pre-k, but I know he struggles with the language barrier. But because he didn't have an immediate attachment to them like he did the other three, she's wondering if it's just too much all at once for him without someone familiar.
8) Our goals should be to help identify his needs, not to get him to behave like everyone else. Obviously, when we identify and meet his needs, his behaviors will improve, but by focusing on the behaviors, we're not actually helping him succeed.
9) She recommended that having a para available to him, or having the option to have adjusted times at school, or set breaks throughout the day may also be helpful.
10) She recommended that I try to set up a meeting with you . . . to try to talk a bit more through this in person, looking both at what worked/didn't work last year, and how we might move forward this year. Is that something that would be doable?
11) My biggest concern is that, in the past, [Student's] behavior has not improved over time. It has only gotten worse. That's not to say that this will be the case this year, but it is a concern I have. I don't want these behaviors he's having to become ingrained or hard-wired for him as a way to feel safe and exist at school.

13. District staff reported that the Student's behaviors consisted of work/task refusal; making loud noises and screaming; disrupting the work of others; crumpling up his own work and hiding it in different places; difficulty with transitions; not following directions and doing what was asked by adults; writing on walls and furniture; and taking chairs from other students.

14. While the Student displayed some aggression toward other students, District staff reported he would not strike out at them, but rather pull at them when walking by or bop them on the head.

15. District staff reported that the Student's behaviors did not escalate to the point of requiring a restrictive procedure, such as a physical hold or seclusion, at any time during the [redacted] school year. However, District staff also reported that there were times when the Student's disruptive behavior would escalate, and he would refuse to leave the general education classroom. At this point, the Student's kindergarten teacher would remove the Student's classmates and the Student's special education teacher or the special education paraprofessionals would work with the Student to calm and quiet his behavior.

16. The Student's IEP team met on [redacted] to review and revise his IEP. At the meeting, the team discussed whether a functional behavioral assessment (FBA) or reevaluation would be appropriate, but determined instead to first increase the Student's special education services to 20 minutes five times per week, and to add two scheduled 15 minutes break per day, and monitor the Student's behavior.

17. At the [redacted] meeting, the Student's mother reported asking District staff about "resets." In her notes, she wrote: "Only if he's a danger to himself or others. A quiet room, used when we can't get him to calm down, let him get energy out, sit down and talk about what happened before coming back to the classroom."

18. The District proposed a revised IEP via prior written notice on [redacted], and the Student's mother consented on [redacted].

19. The Student's October [redacted] IEP provided for the following direct special education and related services:

Instruction or Service Provided	**Number of Minutes per Session**	**Anticipated Frequency of Sessions**
Specialized Instruction: Early Childhood Special Education	20	2 times per week
Specialized Instruction: Emotional Regulation	30	3 times per week
Specialized Instruction: Behavior Regulation	30	2 times per week
Specialized Instruction: Early Childhood Special Education	15	5 times per week

20. District staff reported that the first row of direct special and related services minutes listed in the chart above should have been removed, as those were minutes in the Student's April [redacted] IEP. The remainder of the special education minutes were the minutes in place beginning in [redacted].

21. The Student's October [redacted] IEP added the following accommodations, modifications, and supports: scheduled breaks before math instruction and at the end of the day (in the special education classroom); use of fidgets and drawing; and use of special jobs/tasks.

22. The Student's October [redacted] IEP continued to state that the Student would spend 20% of his school day or less in the special education environment, away from the general education classroom.

23. The Student's kindergarten teacher reported trying many different strategies to support the Student in her classroom including: headphones; a visual Velcro chart; choices for most things; a safe spot; first this, then this chart; using a timer and giving time warnings; making him the head of the line; a choice board; scheduled breaks; praise for all positive behaviors; fidgets; drawing in class; and giving him jobs to do in the classroom. The Student's classroom teacher also reported reaching out to an ASD teacher in the District who came and worked with her for two hours on strategies that might better support the Student.

24. The Student also used a favored stuffed animal cat to calm himself, used his safe spot under a table in his kindergarten classroom, and would sometimes lay on the floor and roll around. The Student's kindergarten teacher expressed that anything he needed to do to regulate she supported and allowed in the classroom.

25. The Student's kindergarten classroom also had a shared special education paraprofessional who worked with the Student and two other special education students in the kindergarten class. The Student's kindergarten teacher reported a paraprofessional was not assigned to her room for the whole school day.

26. The Student's kindergarten teacher reported that initially, the Student did not need to leave the classroom very frequently, but the Student's off-task, distracting behaviors increased until the Student was being removed from the kindergarten classroom to the [redacted] room nearly twice a day. Then, the Student's kindergarten teacher and classroom paraprofessionals began offering the Student time to work outside of the classroom in the Student's special education room or another available space. This also increased in frequency from not every day, to once or twice a day.

27. Beginning in [redacted], the Student's special education teacher and paraprofessional began taking handwritten notes regarding the Student's off task behavior and the use of "resets" with the Student. Specifically:

    a. On [redacted], the Student's special education teacher noted the Student was refusing to complete work, crawling on floor, under table and yelling. After a three-minute reset, the Student returned to class.

b. On [redacted], the Student's special education teacher noted the Student pushed a peer in class, went to the [redacted] room and ran around screaming talking about wanting to be crazy. The Student sat for three minutes and was taken to lunch.

c. On [redacted], the Student's special education teacher noted the Student refused to participate or complete work and left the room. He was taken to the [redacted] room. The Student ran from staff and tried to "go home." The Student was in the [redacted] room from 10:29 through 10:34 a.m., and then completed work and returned to class.

d. On [redacted], a shared paraprofessional documented the Student had a reset from 9:38 to 9:49 a.m., and another reset from 9:50 to 10:11 a.m.

e. On [redacted], a shared paraprofessional documented the Student had a reset from 9:42 through 10:08 a.m. for crawling under tables and putting chairs on top of tables, and documented another five-minute reset later in the day.

f. On [redacted], a shared paraprofessional documented the Student was off task from 9:33 to 9:43 a.m., and reset in the [redacted] room where he completed work. The staff member also documented a reset from 10:13 to 10:40 a.m. During the reset the Student calmed down and was able to complete work.

28. Beginning in [redacted], the Student's kindergarten teacher reported to the Student's mother via email the Student's on-task versus off-task behavior. For example:

a. On [redacted], the Student's kindergarten teacher reported, "He was on task 87% of the time and 23% [sic] of off-task/out of the room for a reset."

b. On [redacted], the Student's kindergarten teacher reported, "Today he was on task for 31% and off task for 69%. He was removed two times for resets and completed work at those times as well."

c. On [redacted], the Student's kindergarten teacher reported, "Today he has been on task for 15 minutes, off task 60 minutes, out of room for resets and doing work 40 minutes and 20 minutes at group with [special education teacher]."

d. On [redacted], the Student's kindergarten teacher reported, "Today was 45% on task and 75% [sic] off task and or out of room."

29. The Student's IEP team met on [redacted] to review and revise his IEP.

30. At the [redacted] meeting, the team discussed how they were using "resets" to address the Student's behavior, as reported to the Complainant and the Student's mother by District staff.

28. District staff reported that, in general, a reset is used when a student is dysregulated in the classroom and needs time to calm their body. District staff informed they would verbally request the dysregulated student to go to the [redacted] room (located outside of the classroom), and to walk with staff, side-by-side,

either hand-holding or with a guiding hand on the student's back or shoulder. District staff also reported that when a student needs an intervention to protect themselves or others from physical injury, staff are trained to call for another staff member for assistance.

31. The [redacted] room was a medium sized, bare room without sensory items, toys, books, or posters. The room had two cement block walls, and two bare sheetrock walls and was located [redacted]. When asking the Student to "sit" in the [redacted] room, staff clarified that they would sit on the floor of the room, next to the wall, as there was no furniture. Staff reported the [redacted] room was meant to have minimal distractions to encourage students to calm so they could return to their classrooms as quickly as possible. When viewed by the MDE investigator, there was writing, including crude drawings, on the walls.

32. The District provided a document entitled "[redacted] Space Plan," that indicated the space was used only with students who had qualified for special education and related services, and who had a written behavior plan in place.

33. District staff reported they did not use the [redacted] room for seclusion. The elementary school did have a registered seclusion room on site, [redacted]. The reset room was [redacted].

34. District staff reported that with the Student, when they asked him to go to the [redacted] room he would walk with staff and he did not resist if staff would hold his hand or place a guiding hand on his back or shoulder.

35. Further, District staff reported that once the Student entered the [redacted] room, he would sometimes run around and staff would let him know he would need to sit down when he was ready. Staff reported they would sit in the [redacted] room while he calmed and they would talk about what happened or what he needed in order calm. Staff would also provide visual support (a timer) for two to three minutes to help the Student calm. Once the timer was done, staff reported they would give the Student choices, such as doing a worksheet in the [redacted] room, or going to the special education resource room to play with Legos, before returning to his kindergarten class. Generally, the whole [redacted] process took approximately three to five minutes, and then they would return to his classroom. District staff also reported that they never needed to limit the Student's movement in order to protect him or others from physical injury while he was in the [redacted] room.

36. District staff consistently and credibly reported that during the [redacted] school year, they did not leave the Student alone in the [redacted] room, nor did they shut the door or otherwise prevent him from leaving. Instead, staff reported the Student would usually stay in the [redacted] room with them, however, on at least one occasion, according to a handwritten behavioral note dated [redacted], the Student did leave the [redacted] room.

37. At the [redacted] IEP team meeting, the District's notes provided:

    1) Parents stated that [Student] refuses to come to school because of not wanting to do work and not liking resets. Staff explained resets and how

they are used. It was explained that he should be allowed to self-talk during this time.

2) Parents stated that they have seen changes in his behavior at home and an increase in him not wanting to come to school. He is now completely refusing to go to school or class. He has done some online learning while at home and seems to like it.
3) Behaviors in school have decreased with the use of resets, however, his refusal has continued. Staff explained that he is allowed to bring work down to complete in [case manager's] room.
4) It was decided that he would begin his day having breakfast in [case manager's room] and time with Legos and then return to his classroom for math. The team agreed that we would try to give him more breaks during the day to break up large chunks. [Student] seems to like [case manager's] room because it is dark and quiet. He also enjoys working with a peer buddy.
5) At family's request no [redacted] room will be used for any kind of break or reset with [Student].
6) He will instead be allowed to have a "calming break" where he can use his stuffed animal and take a walk. He will choose a stuffed animal from [case manager's room] and will be allowed to have this in class and on breaks.
7) Staff will utilize a first then board and visuals for packing up at the end of the day.
8) OT [occupational therapy] will be asked to do an observation for sensory needs.
9) Parents stated that [Student] reported staff scaring him and leaving him alone in a room so the decision was made to not allow a [redacted] room to be used as a part of his plan and that general training will be reviewed with all educational assistants.[1]
10) [Student] will choose a "safe place" in [in kindergarten classroom] and will remain in the space at least the remainder of that day. [Student] selected the writing table for this currently. . .
11) The team agreed that we want to try these things for the next 7 school days prior to break. After looking for trends, and best times for breaks, the team will meet in January to make changes on the IEP paperwork.

38. After the [redacted] IEP team meeting, District staff reported they no longer used the [redacted] room with the Student, but if he was dysregulated to the point of distracting others in the classroom, they would ask him to go to the special education case manager's room, or another available room, to

[1] During the complaint investigation, the Complainant also reported that the Student drew a picture of himself alone in a room with a closed door and a staff member holding a timer outside the room.

calm himself and work. The special education case manager reported the Student seemed to prefer working in her room, as it was quieter than the general education classroom and less overwhelming for the Student. However, the special education case manager had other students working in her room, so if the Student was dysregulated in her room, they would often take a break or work in another available room or the hallway.

39. Via email and letter on [redacted], the Complainant and the Student's mother requested an independent education evaluation (IEE).

40. In an email dated [redacted], to the Complainant, Student's mother, the Student's kindergarten teacher and special education teacher, the principal wrote, in relevant part:

> I want to clarify some terms. The term reset is like saying take a break or time out or brain break and is not associated with a formal behavior response to support a student. The terms restrictive procedure or seclusion are clearly defined by the state. Your child does need to reset/take a break/take a time out/take a brain break etc. . . and so the school will have him "reset" while he is at school. What the staff will not do is use restrictive procedures or seclusion with your child. As parents you requested that he reset in [the special education classroom] vs the room [redacted]. We will do our best to accommodate this, but at times we can't limit the spaces we use to support your child. He might reset in the classroom. He might reset in the hallway. He might reset anywhere in the building. I believe what you are concerned about as parents is that seclusion and restrictive procedures are not to be used with your child and this we can of course follow. Again I am guessing that nearly all if not all of the time [the special education room] will be used for resets, but it is important to make the distinction between resets and restrictive procedures and seclusion as they are not in the same category of responses of student behavior.

41. On [redacted], the special education supervisor, the Complainant, and the Student's mother discussed the IEE request over the phone. The District reported the parties agreed that the District would conduct a stand-alone FBA of the Student, instead of an IEE.

42. Via prior written notice dated [redacted], the District proposed an evaluation plan for the stand-alone FBA:

> On [redacted], the parents of [Student] requested in writing an Independent Education Evaluation (IEE) to be completed and paid for by the District. Per a phone conversation on [redacted], the district and the parent agreed to have the district complete a functional behavioral assessment. At this time, the district is proposing to complete a stand-alone functional behavioral assessment as requested and agreed upon per phone conversation.

43. The Complainant and Student's mother consented to the proposed evaluation plan on [redacted].

44. Also via prior written notice on [redacted], the District proposed revisions to the Student's IEP, including that the [redacted] room would not be used for the Student. Specifically, the accommodations, modifications, and supports section read in relevant part (emphasis in original):

> What: Scheduled breaks
>
> When: before math instruction and at the end of the day ADDED [redacted] —and the beginning of the day before class begins
>
> Where: in the special education classroom—Added 1/6/23 BUT **NOT in [redacted] ROOM] or in the backroom [NEXT TO [redacted] ROOM].**
>
> Who: provided by the special education teacher, or educational assistant
>
> ADDED [redacted]
>
> What: Movement breaks with choices for activities
>
> When: As needed throughout the day when precursor behaviors are exhibited.
>
> Where: Special education and/or other places within the school building BUT **NOT in [redacted] ROOM] or the backroom [next to [redacted] room].**

45. The Complainant and the Student's mother also consented to the January [redacted] IEP via email on [redacted].

46. The Student's January [redacted] IEP continued to include the following accommodations, modifications, and supports: headphones; visual support and social stories; emotional regulation tools and strategies; scheduled breaks before math instruction and at the end of the day; use of fidgets and drawing; and use of special jobs/tasks.

47. The Student's January [redacted] IEP included the same direct special education minutes of 30 minutes direct behavior regulation instruction five days per week, with time for scheduled breaks up to 15 minutes five days per week.

48. The Student's January [redacted] IEP also stated that the Student would spend 20% of his school day or less in the special education environment, away from the general education classroom.

49. The District completed the FBA and issued the FBA report dated [redacted], 28 school days after receiving parental consent. In summary, the FBA stated:

> [Student] is an intelligent and creative child. He enjoys building and drawing. He is more successful socially, emotionally, and behaviorally at home. At school he is more successful behaviorally during small social skills group interactive activities, videos, snack, playtime, recess, lunch, and story time. However, he demonstrates frequent inappropriate verbalizations, social antics, noncompliance/refusal, physical aggression and property destruction that are

> impacting his process in the general education classroom. His behaviors are impacted by his diagnoses of ASD and hyperkinesis, communication and social skill difficulties, lack of motivation for whole group instruction and adult directed tasks/activities, self-determination, cognitive and behavioral rigidity, difficulty regulating his internal status, sensory processing differences, his mental/emotional health needs. His target behaviors can be triggered by a variety of antecedents, but the most common are transitions, task demands, especially whole group instruction and worksheets, directions and redirections/corrective feedback from adults, the removal of a preferred activity or needing to stop a preferred activity, and the denial of a request. A lack of structure, change in routine or expectation, presence and interactions of others, and lack of active engagement can also precede target behaviors. The primary functions of his behaviors appear to be gaining access to preferred activities. At times, his behaviors also appear internally driven and related to his sensory processing differences or other areas of dysregulation. Occasionally, he may be seeking adult attention/help or peer attention through his target behaviors.

50. District staff reported that, from the start of the [redacted] school year, the Student gradually began spending more time outside of his kindergarten classroom, and more time in the special education classroom. By the end of [redacted], staff reported the Student was spending at least half of his school day outside of his kindergarten classroom, due to his behavior and need for breaks. In addition, the [redacted] FBA report stated:

> Data collected over the course of 8 days between [redacted] indicated that [Student] was on-task an average of 92.5 minutes per day and off-task engaging in noncompliance/refusal behaviors an average of 187.5 minutes per day out of a possible 280 instructional minutes (snack time and play times were not included in the minutes). Refusal minutes ranged from 100-270. On-task minutes ranged from 10-180.

51. On [redacted], the Student's IEP team met to review the FBA and develop a BIP. The District's meeting notes provided:

> [School psychologist] began by sharing information from the [FBA].
>
> Parents were surprised by the frequency of the behaviors at school, as they do not see the same intensity of behaviors at home. They wondered if the intensity of his behaviors were similar to those seen in September and October or if there was a change.
>
> Teacher shared that work avoidance has always been a concern.
>
> Parents are concerned about [Student's] anxiety related to school. They do not feel that the behaviors will decrease unless he feels that school is a safe place.

Parents shared that all behavior meets a need and the focus of the behavior support plan must be to meet those needs, while ensuring his emotional and physical safety.

The team drafted components of the [BIP]. [Special education supervisor] typed notes for the draft [BIP].

. . .

Parents suggested we change language around task demands, give choices, make things into a game.

Parents are concerned about STAR tickets. Feels he does not really seem connected to them or know the purpose.

Mom is concerned about staff using threatening language or threatening to withhold a reward based on behaviors that are meeting a need rather than purposeful or manipulative.

Parents do not want to try a task sheet/behavior point sheet.

At home, he has a chore chart, he does it for a while and then it is not effective. His motivation changes.

Team discussed using a reinforcement menu including preferred activities. Team discussed continuing the use of the first then visual, visual schedule, and transition object. They are all helpful.

Team discussed what steps to take when refusal and noncompliance behaviors continue or escalate, as reset breaks are not an option.

Teachers and staff indicated that it is important that we do not inadvertently reinforce maladaptive behaviors such as task avoidance by giving breaks that can be perceived as fun or game play.

Parents indicated concerns regarding negative consequences. They do not want safe behaviors that are meeting a self-regulation need to be punished. His needs should be met so that he can then rejoin the group. Unsafe behaviors need to be addressed, but in a way that ensures safety for all.

Staff suggested giving a choice of two self-regulating activities and then having an expectation to complete a portion of the activity or expectation that was missed.

Meeting was adjourned due to time and the need to continue to develop additional strategies within the behavior support plan. The team agreed to set a

continuation meeting date and to invite the district behavior analyst to consult with the team on the behavior support plan.

52. In an email on [redacted], the Student's mother reported they would begin bringing the Student at lunch time:

> I did want to follow up with what we talked to [Student's] therapist about this afternoon—she recommended that we reduce the amount of hours that he's at school while we work on getting the [BIP] and modifications/accommodations in place. She recommended, as I believe we stated in the meeting, that the goal for him right now should be to enjoy being at school and maintain his natural love of learning. Both yesterday and today, with [Student] at school for shorter days, he has come home and said his days were "awesome!" and "great!"
>
> Because of this, we are going to start bringing him (at his request) at lunch time. If I'm correct, this means we would need to get him there by 10:50 am so he can get his stuff put away and then head to lunch with the class. We've articulated to him that his means that he cannot go to [case manager's] room when he gets to school, and that he would be going straight to the lunch room with class after he puts his stuff away. He said that he would like to try this. While [Complainant] and I were originally thinking of reducing the day to less hours, his therapist recommended we follow his lead on this as, at least right now, he's articulating a desire to both be at school and be at home (which is an improvement on his previous opinion just a few weeks ago of never wanting to go to school again).
>
> Please let me know if you have any questions. If not, we will plan on bringing him at 10:50 a.m. tomorrow. We are happy to update his IEP if needed, or we can just give this a few weeks to see how it goes before we move forward.

53. The Student's mother brought the Student to school at lunch time on [redacted], as outlined in her [redacted] email.

54. On [redacted], after the Student's mother emailed District staff that, [redacted], they would be out of town [redacted], and the Student would not be in school.

55. On [redacted], the Student's mother emailed District staff the following:

> I'm writing to let you know that [Complainant] and I will not be attending tomorrow's meeting as we have made the very difficult decision to pull [Student] for the remainder of the school year. We have appreciated everything you have done to this point to try to accommodate him, but the unfortunate reality is that he's just not in a healthy space. It's much more important to us that he feels safe, mentally healthy, and retains his love for learning; and because of that, we have decided not to push the issue any further this year. We

> do have hopes that with more maturity, time, and distance, he will be able to rejoin his peers at [District elementary school] in a way that allows him to be successful in the classroom.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about the issue that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

3. In addition, Minnesota Statutes § 125A.08(b)(1) require that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

4. Minnesota Statutes § 125A.0941(g) defines seclusion as:

> Confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

5. Minnesota Statutes § 125A.0941(b) defines emergency as:

> A situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

6. The record, including District staff interviews and documentation provided by both parties, supports a conclusion that when the Student was dysregulated and staff asked him to go to the [redacted] room (prior to [redacted]), he did not resist any staff touch while walking to the room and he was not alone in the [redacted] room. Further, the door was not shut and the Student was not otherwise prevented from leaving the [redacted] room. Accordingly, the District did not use the [redacted] room for seclusion during the time period covered by the complaint, as the District did not confine the Student alone in the room with egress barred, as defined by Minn. Stat. § 125A.0941(g).

7. Federal regulations at 34 C.F.R. § 300.324(b) provide:

> (1) *General*. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team –
>
> (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
>
> (ii) Revises the IEP, as appropriate, to address –
>
> (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
>
> (B) The results of any reevaluation conducted after § 300.303;
>
> (C) Information about the child provided to, or by, the parents, as described in § 300.305(a)(2);
>
> (D) The child's anticipated needs; or
>
> (E) Other matters.

8. Federal regulations at 34 C.F.R. § 300.324(a)(2) provide, in pertinent part:

> *Consideration of* special *factors*. The IEP Team must –
>
> (i) In the case of a child whose behavior impedes the child's learning or that others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

9. Regarding potential circumstances that may indicate potential denials of FAPE or of placement in the least restrictive environment, the Office of Special Education and Rehabilitative Services (OSERS), in a 2016 Dear Colleague Letter, opined:

> It is incumbent upon IEP Teams to implement IDEA's procedural and substantive requirements to ensure that children with disabilities receive the behavioral supports they need to enable them to advance appropriately toward attaining the annual goals specified in their IEPs and to be involved in and make progress in the general education curriculum. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV); 1414(d)(3)(B)(i) and 1414 (d)(3)(C). A failure to implement these procedural requirements or provide needed behavioral supports to a child with a disability could result in the child not receiving a meaningful educational benefit, and therefore constitute a denial of FAPE and/or a denial of placement in the [least restrictive environment] (i.e., an unduly restrictive placement).
>
> A determination of whether there is a denial of FAPE is a fact-based determination, to be made on a case-by-case basis. Factors to consider include:

whether the public agency has failed to follow the procedures IDEA requires when developing, reviewing, and revising the child's IEP, or has failed to consider and/or provide a child with a disability with necessary behavioral supports when the child's behavior impedes his or her learning or that of others; or whether the child's IEP is reasonably calculated to provide a meaningful educational benefit in the absence of behavioral supports.

Circumstances that may indicate either a procedural or substantive failure in the development, review, or revision of the IEP include, but are not limited to, the following:

- The IEP Team did not consider the inclusion of positive behavioral interventions and supports in response to behavior that impedes the child's learning or other of others;
- School officials failed to schedule an IEP Team meeting to review the IEP to address behavioral concerns after a reasonable parental request;
- The IEP Team failed to discuss the parent's concerns about the child's behavior, and its effects on the child's learning, during an IEP Team meeting;
- There are no behavioral supports in the child's IEP, even when the IEP Team determines they are necessary for the child;
- The behavioral supports in the IEP are inappropriate for the child (e.g., the frequency, scope or duration of the behavioral supports is insufficient to prevent behaviors that impede the learning of the child or others; or consistent application of the child's behavioral supports has not accomplished positive changes in behavior, but instead resulted in behavior that continues to impede, or further impedes, learning for the child or others);
- The behavioral supports in the child's IEP are appropriate, but are not implemented or not being properly implemented (e.g., teachers are not trained in classroom management responses or de-escalation techniques or those techniques are not being consistently implemented); or
- School personnel have implemented behavioral supports not included in the IEP that are not appropriate for the child.

10. Minnesota rules at 3525.1400 provide regarding facilities, equipment, and materials:

Classrooms and other facilities in which pupils receive instruction, related services, and supplementary aids and services shall: be essentially equivalent to the regular education program; provide an atmosphere that is conducive to learning; and meet the pupils' special physical, sensory, and emotional needs.

The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and supplementary aids and services.

11. Here, the record supports a conclusion that, during the time period covered by this complaint, the Student's IEP team met to review and revise his IEP to address his behavior that was impeding his learning and that of others in [redacted]023, consistent with 34 C.F.R. § 300.324(a)(2) and (b). The IEP team further agreed to conduct a stand-alone FBA in [redacted], and in [redacted], began further revisions to the Student's January [redacted] IEP, considering the completed FBA.

12. These IEP team meetings showed the team's consideration and inclusion of additional positive behavioral interventions and supports in response to the Student's behaviors, were scheduled following the Complainant and Student's mother's request in order to discuss concerns brought to the District's attention, and the District provided the supports listed in the Student's April [redacted], October [redacted], and January [redacted] IEPs, to address his behaviors, including: offering headphones; using a visual Velcro chart; offering choices; providing the Student a safe spot in his kindergarten classroom; using a first this, then this chart; scheduled breaks in the special education class room (case manager's office); fidgets; drawing in class; and giving him jobs to do when the Student was in his kindergarten classroom.

13. Further, in [redacted], the Student's IEP team agreed to add additional positive behavioral supports to the Student's April [redacted] IEP, consistent with the Student's therapist's recommendations shared by the Student's mother (such as the use of fidgets, drawing, and use of special jobs/tasks). The team also agreed to increase the Student's special education and related services and scheduled two breaks for the Student in his special education classroom.

14. However, from [redacted], the District regularly and increasingly used the [redacted] room in response to the Student's disruptive behavior, and while the Student was in the bare, unfurnished, [redacted] room he did not have access to his peers, nor did he have access to the behavioral supports specifically provided for in his IEPs, in violation of 34 C.F.R. § 300.17 and Minn. R. 3525.1400. Specifically, the [redacted] room was not essentially equivalent to the regular education classroom (no furniture or even a chair for the Student and staff to sit on), did not provide an atmosphere that was conducive to learning (bare sheetrock walls, no educational materials, crude drawings displayed on the walls), did not meet the Student's special physical, sensory, and emotional needs, nor did it have the special equipment and instructional materials to provide instruction, related services, or supplementary aides and services which were included in the Student's IEPs, such as headphones, the use of fidgets and drawing, and special jobs and/tasks.

Decision

The District violated 34 C.F.R. § 300.17 and Minn. R. 3525.1400, when it failed to provide the Student with the behavioral supports in conformity with his IEPs and removed the Student from his kindergarten classroom to a room that was not conducive to learning or supportive of the Student's physical, sensory, and emotional needs, from [redacted]

Corrective Action

1. Within 14 calendar days of the date of this decision, the District must contact MDE corrective action specialist Sara K. Wolf at sara.k.wolf@state.mn.us or 651-582-8602, to coordinate training to be provided by MDE staff, in collaboration with the special education director, to the special education teachers and paraprofessionals and the administrative team at the Student's school. The training will cover special education due process requirements including:

   a. The obligation to provide behavioral supports in conformity with student IEPs (34 C.F.R. § 300.17); and

   b. The obligation to ensure all classrooms and other facilities in which students receive instruction, related services, and supplementary aids and services are essentially equivalent to the regular education program; provide an atmosphere that is conducive to learning; and meet the students' special physical, sensory, and emotional needs (Minn. R. 3525.1400).

   • Training must be provided as soon as practicable, but no later than [redacted].

2. Prior to [redacted], the District must reconfigure, clean, and otherwise ensure the [redacted] room is essentially equivalent to the regular education program, provides an atmosphere that is conducive to learning; and is able to meet the needs of students' special physical, sensory, and emotional needs. The [redacted] room must have the necessary special equipment and instructional materials to provide instruction, related services, and supplementary aids and services. In [redacted], MDE will visit the school to view the [redacted] to ensure compliance.

2. Within 30 calendar days of the date of this decision, the District will invite the Complainant to an IEP team meeting to determine whether compensatory services are necessary as the result of the District's failure to provide behavioral supports in conformity with the Student's IEPs and using a room that was not conducive to learning or supportive of the Student's physical, sensory, and emotional needs, from [redacted].

3. Compensatory services seek to make up for any loss in the Student's skills, including academic, functional, or behavioral skills, and any lack of expected progress in the general education curriculum or toward the Student's IEP annual goals that resulted from the District's violations. Compensatory services are in addition to the special education and related services necessary to provide the Student with a FAPE as outlined in the Student's current IEP and may be provided in many different ways, including but not limited to additional special education and related services, small group or individual tutoring, reimbursement to parents for outside tutoring or programs, (when agreed to by the school district), or additional academic or enrichment services necessary to compensate for the Student's loss of skills or lack of progress.

4. The District and Complainant should work together to reach an agreement on compensatory services appropriate for the Student.

   a. When the Complainant and the District reach an agreement regarding the revisions of the IEP pertaining to the Student's behavioral needs, and on compensatory services:

i. The District shall amend the Student's IEP to include the anticipated frequency, location, and duration of the services, including compensatory services, in accordance with 34 C.F.R. § 300.320(a)(7).

ii. The District shall submit a copy of the Student's revised IEP and any other requested documentation to MDE's corrective action specialist, Sara K. Wolf, to demonstrate completion of this corrective action.

iii. If the District or Complainant believe the Student is not timely accessing the compensatory services agreed upon, the Complainant and/or the District are expected to contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

b. If the IEP team is unable to reach an agreement on compensatory services:

i. By [redacted], the Complainant and/or the District may contact MDE corrective action specialist, Sara K. Wolf for assistance and to determine next steps.

c. MDE will enforce the provision of this corrective action for one year of the date of this decision. If the compensatory services agreed to in the IEP are not provided, the Complainant may seek resolution through MDE's alternative dispute resolution processes, including filing a new complaint with MDE.

d. If the Complainant indicates he does not want to convene an IEP team meeting, the District is not obligated to do so, and this portion of the corrective action would be deemed completed.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55013

SVW/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Official.*

Via encrypted email

[redacted]

[redacted]

Re: Special Education Complaint [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for and respond to the behavior of the Student during the past calendar year. Specifically, the Complainant alleges the District improperly used school removals, including suspension, and restrictive procedures, including seclusion and physical holding, without following proper procedures and in lieu of developing and/or implementing an appropriate behavioral intervention plan (BIP).

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended an elementary school within the District during the time period covered by the complaint.

2. The Complainant is the [redacted]

3. The District reports:

> The District denies the allegation that the District has failed to appropriately plan for and respond to the behavior of [Student] and asserts that we have appropriately implemented [Student]'s IEP [individualized education program] and Positive Behavior Support Plan (PBSP). The District has held numerous meetings to address [Student]'s education needs, programming and supports during the [redacted] and [redacted] school years.
>
> The District has made changes to [Student's] schedule and his environment at School. While the District had not made specific changes to the Positive Behavior Support Plan, the ways staff interacted with [Student], provided an individualized space within the program, and provided additional opportunities for breaks was modified and tailored to [Student].

4. In its initial response, the District reported:

> The District acknowledges that school removals/exclusions (including suspension, restrictive procedures – seclusion and physical holding) were implemented without following proper procedures. The District denies that these were implemented in lieu of developing and implementing an appropriate behavioral intervention plan during the [redacted] and [redacted] school years.

The District's restrictive procedures plan

5. During the course of this investigation, the District's special education director (Director) reported that the District did not have a restrictive procedures plan in place during the [redacted] school year, and did not intend to use restrictive procedures during the [redacted] school year. The Director further reported that the expectation that was conveyed to District staff, during the [redacted] school year, was that they could not use seclusions or physical holds and needed to be "totally hands off" with students.

6. In its initial response, the District provided a copy of a restrictive procedures plan (RPP), which the Director reported was developed during the summer of [redacted] ([redacted] RPP). The District's [redacted] RPP provides that the District intends to use physical holding, including the following types oh holds "Safety Care – One Person Stability Hold" and "Safety Care – Two Person Stability Hold." Regarding seclusion, the District's RPP provides "The [District] does not have registered rooms for seclusion and will not implement seclusion."

7. The District's [redacted] RPP further describes how the school will implement positive behavior interventions and supports, provides links to mental health services, and describes how the District will provide training on de-escalation techniques and monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversite committee.

8. The District's [redacted] RPP further documents that the District has five [redacted] trainers employed within the District, and states that "a record of staff trained in [redacted] will be kept in the special education office and may be viewed upon request. It includes the staffs' position, hours of trainings, and their training date."

9. The District has not registered any seclusion rooms with MDE, and the District reports that there are no seclusions rooms at the Student's elementary school (School).

The Student's [redacted] Evaluation Report

10. The District completed an initial special education evaluation of the Student in [redacted], during the Student's first grade year. The Student's [redacted] evaluation report documented the team's determination that the Student met the initial eligibility criteria for the category of specific learning disability. The Student's [redacted] evaluation report identified the following educational needs:

    "[Student] needs small group instruction for reading and written language.

    [Student] needs social skills instruction and behavioral support."

11. The Student's [redacted] evaluation report further documents that the Student's IQ was found to be in the average range, and academic testing yielded "scores that were in the low range for reading comprehension and very low range for reading fluency… [Student's] [math] scores were in the average range and indicated that math is a much stronger area for him." The Student's evaluation report further documents that, on behavior assessments, the Student received clinically significant scores on behavior ratings at school, with regard to aggression, hyperactivity, and depression.

12. The Student's [redacted] evaluation report further included a functional behavior assessment addressing the targeted behaviors of aggression and hyperactivity, which documents:

> In his school setting, [Student] struggles with aggression in the forms of hitting, pushing, throwing things, or kicking objects. This behavior is exhibited in his general education classroom and after school… program but not in his home setting. In school and at home, [Student] has had outbursts of yelling and stomping his feet. In addition he will display noncompliance in the school setting in the form of arguing or talking back to his teacher in response to transition [sic] away from preferred activities…
>
> The hypothesized function of [Student's] behavior is to escape or avoid non-preferred tasks or to exert control over his surroundings or others' behavior. When called out or expected to take responsibility for his actions, he is now able to often acknowledge what happened, but may try to justify or argue his actions. Strategies attempted with [Student] in his classroom include allowing him to use the calming corner or alternative setting like the Dean of Student's office to take breaks when his anger escalates. Wobble chairs have been used for seating and preferential seating to put [Student] near peers that he [is] more likely to have positive interactions with as well as having closer proximity to adult support as needed. Token economies with lots of positive praise and opportunities to earn incentives in the form of preferred activities or small treats have been used with [Student] since kindergarten and as well as visits with the school social worker.

13. The Student's [redacted] evaluation report documents that the Student was not receiving any mental health services at that time, but the Complainant was interested in starting those services. The Student was also receiving "one-on-one school social work services" weekly at his school.

The [redacted] school year

14. The Student was in second grade during the [redacted] school year.

15. During interviews, District staff described the Student as a smart, sweet student with high conversation skills and strong relationships with staff. They also described his significant dysregulation and high intensity behaviors that "would develop over simple things for him," like his coat not going into his backpack the right way, a peer looking at him, or a muffin not opening as he expected. These behaviors included verbal and physical aggression towards peers and staff, and physically destroying items in this classroom and using them as weapons. District staff further reported that the frequency and intensity of these behaviors increased throughout the course of the [redacted] school year.

16. The District reports:

> During the [redacted] school year, [Student] started receiving special education services through a Federal Setting I, was increased to a Federal Setting II mid-year and then was moved to the Federal Setting III program in late winter due to the increase in his behavior and decrease in his ability to regulate his emotions.[1]

17. Regarding the [redacted] school year, the Complainant reports:

> [Student] mentioned that he was put in the [redacted] and my son said the door was held shut from the outside so he cannot get out... We clarified with [the District's special education director] that it is not a registered seclusion room. Additionally, there was paperwork that indicated the potential of a door being shut in behavioral documentation from [redacted] and [redacted].
>
> It was made aware to me during the [redacted] meeting with the school special education team that they are not trained in any crisis management procedures and they had used a physical hold on my son when he was in an instructional level [one]... I requested a report and never received one.

18. The Student's IEP in effect at the start of the time period covered by this complaint was dated [redacted]. The Student's May [redacted] IEP contained annual goals aiming for the Student to increase his reading skills, written language skills, and self-control skills. To enable the Student to make progress toward those goals, the Student's May 2022 IEP provided for the following direct special education and related services:

Instruction or Service Provided	Number of Minutes per Session	Anticipated Frequency of Sessions
Reading	30	5 times per week
Written Language	20	5 times per week
Emotional or Behavioral	60	5 times per week

[1] "Federal Setting" refers to the amount of time a student spends with nondisabled peers. Here Federal Setting I means that the Student was outside of the regular education classroom, and not interacting with nondisabled peers, less than 21 percent of the school day. Federal Setting II means that the Student spends between 21 percent and 60 percent of the school day outside of regular education classroom. Federal Setting III means that the Student is in a special education setting more than 60 percent of the school day. Here, the Federal Setting III classroom is a separate special education classroom designed to meet the needs of students with emotional behavioral disorders (EBD), located within the Student's elementary school.

19. The Student's May [redacted] IEP further indicates that the Student spent most of his day with general education peers, and provides for the Student to receive the following relevant accommodations:

> Classroom assignments and/or tasks can be modified/broken down into smaller chunks in order to gain compliance and reduce frustration for [Student].
>
> School staff will positively reinforce [Student] for on-task and desired behavior.
>
> School staff will implement the attached individualized Positive Behavior Support Plan.
>
> Staff will provide verbal prompts, stated in a positive manner including the desired behavior, to redirect [Student's] behavior.
>
> [Student] will be allowed to return to the special education classroom when upset or needing to calm down.
>
> [Student] will be offered reasonable choices in order to minimize arguments and defiance. (Do you want stand at your desk or sit on a chair? Do you want to work at the back table or at your desk?)
>
> [Student] will be directed to return to the special education classroom when [Student's] behavior significantly disrupts the learning of others within the mainstream classroom, as determined by the classroom teacher.
>
> [Student] will be allowed "movement breaks" and/or allowed to stand at his desk area instead of sit on a chair. He can also have the opportunity to sit on a wiggle chair/stool to allow movement.
>
> [Student] will have a daily behavior chart that is connected to a positive behavior reward program.
>
> [Student] will have access to the school social worker throughout the school day/week.
>
> [Student] will have paraprofessional support during independent reading and written language work times in the classroom in order to support his academic and behavioral needs. [Student] will also have paraprofessional support at selected times throughout the school day (as determined by his IEP team.) to support to his social, emotional and behavioral needs.
>
> [Student] will have preferential seating and selective partnering/pairing.
>
> [Student] will have delayed problem solving with staff (allow [Student] calm down time before talking about the situation and/or problem solving with staff).

20. The Student's May [redacted] IEP further includes a positive behavior support plan dated [redacted]. The Student's May [redacted] PBSP documents that the "hypothesized function of [Student's] behavior is to escape or avoid non-preferred tasks or to exert control over his surroundings or others' behavior," and further provides the following strategies, replacement skills, and interventions.

> Antecedent & Setting Event Strategies:
>
> Setting events that may impact [Student's] behavior include seeing [redacted] again after a period where [redacted] was away. The amount of sleep that [Student] gets the previous night may also impact his behavior in school. Things that [Student] finds motivating include positive verbal praise, plusses on his chart, small treats like life savers, breaks or shortened assignments, and having opportunities to play games at the teacher table. In his home setting, [Student] likes getting ice cream as a reward for a good week of school as well as other fun activities as incentives. Stickers, little toys, and [redacted] tickets are also motivating for [Student]...
>
> 1. Alternate/Replacement skill(s) to be taught:
>
> [Student] will increase self-control skills from his current level of needing multiple adult supports throughout the school day to demonstrating self-control skills at least 80% of the time by the end of this annual IEP.
>
> 2. How will the alternate/replacement skill(s) be taught:
>
> The EBD Teacher and the School Social Worker will teach alternate/replacement skills during service times with staff.
>
> 3. How will the alternate/replacement skill(s) be practiced:
>
> The skills will be taught during service times in the resource room and/or school social workers office.
>
> 4. How will the alternate/replacement skill(s) be reinforced:
>
> The skills will be reinforced with verbal praise and a "yes" or points on his daily point sheet that is connected to a positive behavior reward system.
>
> Consequence Interventions:
>
> * redirection of behavior
> * documentation on his daily behavior chart
> * encouraged to take a safe break in the location he is at
> * directed to take a safe break in the safe room
> * support from the Dean of Students, Principal and/or School Liaison Officer
> * parent contact.

21. The District reports:

> During the [redacted] school year, a restrictive procedure – physical hold – was performed on [Student] on [redacted]. The restrictive procedure form and notification was made by the case manager.

22. In its initial response, the District provided a copy of a form entitled "Use of Restrictive Procedures: Physical Holding," dated [redacted]. This form documents a behavioral incident that began at check-out time at the end of the school day, and escalated to the Student hitting and kicking staff and trying to bite them. The form further describes that two holds occurred, stating: "the first was a hug from behind holding his arms down. [Student] was yelling at teacher, trying to get out of it, trying to head butt, bite and spit. Children's Control Position Higher level Hold. During this he was stomping teacher's feet, kicking shins, screaming, calling names, and threatening teacher."[2]

23. The form further provides that the "teacher let [Student] go after he said that teacher was hurting him and he was pulling his hand free from teacher. He continued to hit and kick teacher after teacher let go," and the Student calmed when a District administrator arrived. The form further documents that the Complainant was notified by phone and then they "continued to discuss it in person" when she arrived to pick up the Student.

24. District records further document that, following the physical hold, the District held a staff debriefing meeting, and concluded that the team will develop a different check-out process for the Student, and would be discussing the need for increased social skills instruction and revising the Student's positive behavior support plan.

25. District staff report that the individual who conducted this physical hold had received training in the use of restrictive procedures, via [redacted], in a previous position at a different Minnesota school district. District staff further reported, that in December [redacted], this individual had not received any training in the use of restrictive procedures that was specific to the District.

26. The Students IEP team met on [redacted]. The notice of team meeting indicates that the purpose of this meeting is "to discuss [Student's] increase in physical and verbal dysregulation displayed in the general education setting and the special education setting. The team will discuss changing [Student's] federal setting to a setting [three] to better fit his emotional and academic needs."

27. Following the [redacted] IEP team meeting, the District provided the Complainant with prior written notice dated [redacted], and a revised IEP dated [redacted] (January [redacted] IEP). The prior written notice provides:

> The District proposes to implement the enclosed interim [IEP] to provide [Student] with special education services as was discussed at the IEP Team meeting held on [redacted] The team is proposing to provide special

[2] This incident was similarly described in the Student's behavior log.

> education services to [Student] within the level three program. This interim placement would allow the team to collect data, assist in providing support for [Student], and help the team determine a more consistent plan for [Student's] educational needs…
>
> The team is proposing a change in placement due to [Student's] escalated physical and verbal behaviors. His current needs would be better supported in a resource room level three setting… The team will-reconvene at his annual IEP meeting on or by [redacted] to determine if the resource room level three setting is the best fit for [Student].

28. The Student's January [redacted] IEP provides the following information regarding the Student's present levels of performance, specifically with regard to his behaviors:

> Within the resource room [Student] has had 25 incidents of being physically or verbally aggressive by swearing, throwing objects, pushing over chairs, and kicking walls/objects. He has been physically aggressive 3 times toward other students and 2 times toward adults. He has received 4 write ups due to being either physically or verbally aggressive within the classroom. Behaviors not documented include refusing to work, saying negative remarks about the work, and ignoring. This is a behavior occurs up to 6-7 times every couple hours. Over the past month [Student's] physical and verbal aggression has been increasing therefore the team met and determined [Student] needs more resource time than he receives now.

29. The Student's January [redacted] IEP provided for him to receive 350 minutes of emotional or behavioral support daily, and provided the following description of his least restrictive environment:

> [Student] requires specialized instruction due to: his significant social, emotional and behavioral needs… Since [Student] will be a part of a setting III Emotional Behavior Disorder (EBD) classroom, he will receive his reading, writing and math instruction in the resource room while he works on gaining positive social skills. [Student's] social skills teaching and practice will be embedded within his school day. [Student] will have lunch and recess in the lunchroom and on the playground where he will have opportunities to interact with his non-disabled peers. He will not be a part of his CORE curriculum in his mainstreamed classroom until his behaviors are more regulated (he demonstrates consistent compliance, task/work completion and positive interactions with others). As [Student] demonstrates progress, additional mainstreamed classroom time will be added one class at a time in order for him to build on the success he has made.

30. The Student's January [redacted] IEP does not include any changes to the Student's accommodations or his positive behavior support plan.

31. The Complainant signed the parental consent/objection form on [redacted], indicating that she agreed with the proposed [redacted] IEP. District records indicate that the District received the consent/objection form on [redacted].

32. During interviews, District staff reported that the Student's classroom, between [redacted] and [redacted], consisted of two adjoining classrooms, referred to as the [redacted] and the [redacted] connected by a door. One of these classrooms included a smaller space, referred to as the [redacted] or at times, the [redacted][3] Regarding this room, the Director reported that the room measured seven feet, six inches long, and five feet, eight inches wide. The Director further reported:

> It does not meet the seclusion room standards because it was not intended as a seclusion room. Previously, there was not a door on the space. The door was added due to students wanting to have privacy when they were dysregulated. Staff were told on numerous occasions that it was NOT a seclusion room, did NOT meet the standards for a seclusion room, and could NOT be used as one. (emphasis in original)

33. During interviews, District staff reported that the [redacted] was used, voluntarily, by students during periods of intense escalation, when they were feeling stronger emotions or needed a break from the rest of the classroom. This space often included a beanbag and fidgets for student use. District staff reported that the Student was often encouraged to use that space if he needed a place to "let off aggression," while keeping others safe. District staff further reported that the Student generally had adults with him in the space, but not always - they would typically offer the Student the choice to have someone sit with him, to have the door open or closed, lights on or off, if he wanted a fidget to use, etcetera.

34. The Student's behavior logs from [redacted], and [redacted], indicate that the Student demonstrated escalated behaviors on both of those days and spent time in the [redacted]. For example, logs from [redacted] document that the Student "pace[d] the [redacted]," "play[ed] with the door," and "[stuck] his tounge out at staff through the window." Logs from [redacted], similarly indicate that the Student was "guided to the [redacted]" "remain[ed] in the [redacted] punching and kicking the wall," and "start[ed] kicking the door." The logs do not indicate whether the Student was alone in the [redacted] or whether the Student's egress was barred.

[3] District records refer to this room both as the [redacted] and the [redacted] and District staff report that these terms are used interchangeably for the same space. For the purposes of this complaint, this space will be referred to as the [redacted]

35. In its initial response, the District reported:

> During the [redacted] school year, a restrictive procedure - physical holding was performed on [Student]. The staff who performed the physical hold had not been trained by the District, the physical hold was inappropriate for the situation and [Student] was in a prone position. This incident was investigated by the District and the MN Department of Human Services due to this incident taking place on a [redacted] within the [redacted].[4]

36. The Student's behavior log from [redacted] also indicates that the Student demonstrated escalated behaviors and spent time in the [redacted]. Notes indicate that the Student "[threw] his shoe at the window," "spit on the window," and "hung" on the door handle, and that a staff member entered the room, but do not indicate whether the Student was alone in the [redacted] or whether the Student's egress was barred.

37. District records further indicate that, as a result of the [redacted] incident, the Student received two days of out of school suspension. In its initial response, the District acknowledged that "the District is not able to verify that the Pupil Fair Dismissal Act and accompanying Notice of Suspension was issued."

38. The District further acknowledged, "According to the attendance records, [Student] was also dismissed from school without indicating it was a suspension." The District's response further indicated that the Student left school early on [redacted] at "parent request," due to escalated behaviors and phone calls to the Complainant. The Student also left school early on [redacted].

39. District records indicate that, on [redacted], the Student's [redacted][5] emailed District staff, recommending a short-term plan to allow the Student to say "no thank you" to any academic work or activity that he would like to not have to do, to avoid the potential of the Student escalating during the day, and allowing the Student to choose to work to get access to preferred activities, as a potential replacement behavior for escaping academic or non-preferred activities. During interviews, the Director reported that District staff did trial this approach, but did not see a significant impact on the Student's regulation and behavior, indicating that the Student would say "no thank you" and would still escalate.

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[4] District staff report that the childcare incident, which occurred on [redacted], was also reported to MDE's Student Maltreatment Program and local police. This incident is not included in this complaint and is addressed through other agencies and programs.

[5] This individual's email signature indicates that she is a [redacted]. District staff report that she regularly accompanied the Complainant to the Student's IEP team meetings and was involved in making decisions regarding the Student's educational program.

40. The Student's IEP team met on [redacted]. Emails between the parties indicate that District staff requested an IEP team meeting due to "the nature of [Student's] struggles at school… to develop a plan that supports [Student]." Notes from this meeting indicate that the team discussed a recent increase in the Student's behaviors, and concerns that the Student's behaviors are affecting his academic progress, as well as an agreement to conduct a reevaluation of the Student.

41. Regarding this meeting, the Complainant reported that she raised concerns that the Student had recently been secluded at this meeting, and District staff clarified that the [redacted] was not a registered seclusion room.

42. In its initial response, the District reported:

> The District investigated allegations of seclusion made in the spring of [redacted][6]… The District met with the staff involved and the staff in the program [Student] participated in to ensure they understood they were not to close and hold the door of the [redacted] within the classroom. The District emphasized that there are no seclusion rooms registered in the District and no seclusions were allowed at any time.

43. During the course of this investigation, the Director reported that the Complainant raised allegations of that seclusion was used one or more times during [redacted], but the Complainant was unable to provide specific information regarding the dates seclusion was used or names of involved staff. The Director further reported that she did conduct an investigation and made several inquiries among staff, but could not confirm whether seclusion had or had not occurred during [redacted], but believed it was possible that it had.

44. Emails between the parties indicate that the District made changes to the Student's schedule in [redacted], including having the Student stay inside for recess "due to repeated unsafe behaviors," and having the Student switch into the other half of the adjoining classroom space and work primarily with a different special education teacher, who they believed would be a better fit, personality-wise, for both the Student and the Complainant.

45. On [redacted], the District proposed a reevaluation for the Student, stating:

> In Student's initial evaluation, the team identified different behaviors than what [Student] is demonstrating now. During a meeting with the Team, it was also identified that a deeper look into [Student's] social development should also be a part of the evaluation. The team would like to include assessment tools that are more typically used in an evaluation for the category of Autism Spectrum Disorder and early social skill development.

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[6] The District's original response indicated "The District found that the seclusion occurred," which the Director indicated was a typographical error, as she was not able to establish whether the Student had, in fact, been secluded.

46. The evaluation plan further documented that the evaluation was needed to provide the IEP team with updated information to "appropriately develop an IEP, determine his social skills, and have a more specific functional Behavioral Assessment to better identify the functions of his behavior."

47. The Complainant signed the parental consent/objection form on [redacted], indicating that she agreed to the District's proposed evaluation plan. District records indicate that the District received the consent/objection form on [redacted].

48. The [redacted] school year ended on [redacted].[7]

The [redacted] school year

49. The [redacted] school year started on [redacted]. During the [redacted] school year, the Student is in third grade.

50. The District completed the reevaluation of the Student on [redacted].[8] The Student's [redacted] evaluation report documents the team's determination that the Student met the initial eligibility criteria for the category of emotional or behavioral disorder. The Student's [redacted] evaluation report identified the following educational needs:

    - [Student] needs to increase his positive peer interactions (using kind words and keeping hands/feet to self).
    - [Student] needs to use his words to express his strong feelings/emotions so staff can support him during these moments.
    - [Student] needs to increase his ability to have self-control/use calming strategies when he has strong emotions. [Student] needs to increase his ability to follow directions. [Student] needs to increase his ability to "get teacher's attention" by raising his hand and waiting his tum to be called on (rather than blurting).

51. The Student's [redacted] evaluation report further documents that, on behavior assessments, the Student received clinically significant scores on behavior ratings at home and at school, with regard to hyperactivity, aggression, depression, attention problems, atypicality, and withdrawal scales, indicating that, across settings, "[Student] demonstrates difficulty functioning relative to same-age peers and would benefit from social, emotional, and behavior supports in his learning environment.

52. The Student's [redacted] evaluation report further documents that the Student's teacher "reported that [Student's] behavior improves with one on one or with staff proximity. He wants to please others and is proud when he does well."

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[7] Based on the District calendar, the District was in session for 20 school days between [redacted].
[8] Based on the District calendar, the District was in session for eight school days between [redacted].

53. The Student's [redacted] evaluation report includes a functional behavior assessment (FBA), which addresses behaviors seen at home, school, and in his before/afterschool child care program, including the following target behaviors: "internalizing concerns … behaviors which are often associated with internalized issues such as stress, anxiety or depression," "externalizing concerns… acting out behaviors which are often associated with anger management difficulties and/or poor impulse control," as well as social withdrawal, passive aggression, somatic issues, disruption, delinquency, active aggression, and defiance.

54. The Student's [redacted] evaluation report also documents that the Student has been receiving mental health services, through the District, since [redacted], and has been diagnosed with post-traumatic stress disorder, and based upon mental health screening, may also display characteristics attention deficit hyperactivity disorder and oppositional defiant disorder.

55. The Student's IEP team met on [redacted]. Notes from the [redacted] IEP meeting document that the IEP team discussed the Student's behaviors, and strategies to address them, in depth. This included a discussion about peer relationships at school, the Student's behavior goals, and the use of the point sheets in the Student's classroom.

56. Following the [redacted] IEP meeting, the District provided the Complainant with prior written notice dated [redacted] and a proposed IEP dated [redacted]. The [redacted] prior written notice provides:

> The District proposes to continue providing special education services to [Student] as described in the enclosed Individualized Education Program (IEP) plan as was discussed at the IEP Team Meeting held on [redacted] Changes made in this new IEP include: updating his goals and objectives based on current data, moving his primary disability from Specific Learning Disabilities to Emotional Behavioral Disorders… The changes listed above were made for the following reasons: updated based on the [redacted] evaluation report] and current classroom data… The Team considered adding additional goals, but decided to prioritize [Student's] needs and focus on the most important areas (reading and self-control).

57. The Complainant signed the parental consent/objection form on [redacted], indicating that she agreed to the District's proposed [redacted] IEP. District records indicate that the District received the consent/objection form on [redacted].

58. The Student's September [redacted] IEP continues to provide for the Student to receive special education and related services as part of a setting III emotional behavior disorder classroom, receiving 370 minutes of Emotional or Behavioral services daily. The Student's September [redacted] IEP also includes updated present levels of performance, revised goals, and revisions to his accommodations.

59. The Student's September [redacted] IEP further includes a new positive behavior support plan dated [redacted], which includes the following replacement skills to be taught to the Student: "[Student] will increase self-control skills from leaving the classroom learning environment an average of 9 times per month due to leaving the classroom learning environment no more than an average of 5 times per month by the end of this annual IEP."

60. The Student's behavior log indicates that, on [redacted], the Student demonstrated escalated behavior and was "guided" to the [redacted]. The log further documents "District staff took over – talking [with Student]. [Student] kicking [Staff], reminded if he is not going to have a safe body the door needs to be shut. Continued kicking[.] Door was shut." The log further documents that the Student threw hits boots at the ceiling, peeled paint off the wall, threw his boots at the door, hit the walls with his books, and "sat and started peeling wall" for the next 40 minutes. The log then documents that the Student "came out" and "staff talked with him… commented it looks like you have a calm body, are you ready to move on with your schedule." The log does not clearly indicate whether the Student was alone in the [redacted] or whether the Student's egress was barred.

61. During interviews, District staff reported, consistently and credibly, that the Student was not secluded during the [redacted] behavior incident. The District staff member who was present with the Student reported that his role was to help the Student de-escalate, which he typically did from within the [redacted], being silly or engaging the Student in a discussion. He further reported that he could not think of any times that he held the door shut or blocked the door from opening, or took any other action to block the Student's egress from the room.

62. During interviews, District staff reported, consistently and credibly, that they never carried the Student or physically forced him to move into the [redacted], indicating "he's not a Student that would allow that at all." Instead, District staff reported that they often took his hand to walk with him into the [redacted] or walked behind the Student to gently encourage him to move with physical proximity. Several staff described using "the penguin shuffle" to walk behind the Student, with arms outstretched, to guide the Student from one space to another. District staff further reported, consistently and credibly, that the Student was generally responsive to these efforts and willing to move towards the [redacted], and never resisted more than minimally.

63. The Complainant reports:

> My son has been suspended on two separate occasions; [redacted] for [two] days with a re-entry of [redacted] and [redacted] for [two and a half] days with a re-entry of [redacted] Following the last suspension the school brought up movement to a[n] instructional level 4 or half-days with a partial hospitalization program. He is in the third grade and I brought up at the [redacted] meeting about the changes to the law on suspension starting the [redacted] school year. Suspension was discussed the previous year at the [redacted] meeting for previous suspensions that year and my concerns on Increases in behavioral episodes to be sent home. It was agreed by the team to no longer use suspensions as a form of discipline.

64. On [redacted], the District provided the Complainant with a letter, which stated:

> This letter is to notify you of an incident that occurred at [School] in which [Student] was involved. [Student] had a confrontation with another student at his small group table. [Student] became angry after earning a negative for not following directions. This anger resulted in [Student] becoming physical toward the [other] student, staff and property. I have assigned [Student] 2 days of out of school suspension. There will be a reentry meeting on Friday [redacted] at 7:30 am.

65. The Student's IEP team met on [redacted]. District records indicate that this meeting was both a re-entry meeting following the suspension as well as a "wrap-around meeting" with outside resources to "have a conversation about [Student's] current support, his level of needs, and what other options are available to support him." District records indicate that this meeting was attended by the Student's outside mental health staff, as well as the Complainant and her advocate.

66. Notes from the [redacted] IEP team meeting indicate that the IEP team discussed the current supports in place for the Student including Setting III behavior supports, the PBSP, school-based therapy twice weekly, school social work services once a week, and a county mental health worker. The team further reviewed data regarding the Student's behaviors, including what is going well, common triggers, interventions and supports that are helpful, and current calming strategies and concerns.[9]

67. The team further "brainstorm[ed] additional options to support the Student," including increased therapeutic supports, shortened days, day treatment options, and the Student's need for trauma-informed interventions and breaks.

68. Following the [redacted] IEP team meeting, the District provided the Complainant prior written notice dated [redacted]. The [redacted] prior written notice provides:[10]

> Changes made in this new IEP include: Increase the special education services for [Student] from a Setting 3 at [School] to a Setting 4 at [redacted]… [Student] has demonstrated behaviors and actions which impact his ability to participate in instruction (social/emotional and academic) and impacts his safety at school. [Student] is in need of a higher level of special education services to support his behavior and emotional regulation, make progress on his IEP goals, and support his academic instruction.

[9] These logs indicate that the Student had 13 "elevated behavior moments" during the 17 school days he was at school in [redacted], and 22 elevated behavior moments during the 19 school days in [redacted].

[10] The prior written notice references a meeting on [redacted]. This appears to be a typographical error regarding the meeting on [redacted].

69. The [redacted] prior written notice further provides:

> The Team considered reducing the amount of direct services (modified school day) provided to [Student], but determined that [Complainant] was not able to support a reduction to [Student's] day with her work responsibilities. The Team agreed this would not support parent and it would not address [Student's] identified needs.
>
> The Team considered waiting to propose a Setting 4 placement, but the district has provided many interventions, accommodations and modifications to his programming during the [redacted] school year and during the fall [redacted] school year.
>
> - increased special education services throughout the [redacted] school year with the increase in behaviors within the general education and special education setting.
> - facilitated referrals to the school based mental health services
> - completed an evaluation [redacted]
> - collaborated with parent and wrote/implemented a new IEP and Positive Behavior Support Plan (PBSP) based on new evaluation in [redacted]
> - altered [Student's] participation in large group activities based on his requests and staff recognized needs:
>
> - not going to morning recess prior to school due to noise ([Student] request)
> - eating lunch in the classroom with staff due to noise ([Student] request)
> - seated next to the teacher whom he wants to be in close proximity to due to staff noticing he is seeking the teacher for support (staff)
> - working individually with a staff member due to noise, peer interactions, demeanor ([Student] request and staff)
> - provided activities that are preferred throughout his day
> - provided quiet areas within and outside the classroom to support regulation
>
> The Team considered working with school based mental health providers and the county to seek a therapeutic placement, but the family was not supportive of the therapeutic placement options available. The family is concerned with the behaviors and actions of other students at the placement options and the level of the services at the placement options.

> The Team considered adding more mental health supports at [school], but he is currently seeing the school based mental health therapist two days per week and that is the maximum he is able to do through school based mental health. The therapist offered to support the family outside of school through family therapy.

70. The Complainant signed the parental consent/objection form on [redacted], indicating that she objected to the District's proposal to a setting four placement and requesting a conciliation conference. She provided the following additional information: "This was sent today, [redacted] The increase to setting [four] … was discussed at the [redacted] re-entry meeting. District records indicate that the District received the consent/objection form on [redacted]."

71. On [redacted], District staff responded to an email from the Student's [redacted] providing details regarding the Student's reading instruction and behavioral program. The email indicates that District staff have added "a built-in reinforcement time" for the Student in connection with journaling, which is an "unpreferred activity" for the Student, and describing the classroom behavior program as follows:

> Students in my classroom use the BoysTown social skills program so students earn points for demonstrating the expected social skills that are taught, role played and practiced through planned teaching. [Student] was introduced to many last year… Students earn many additional bonus points throughout the day for displaying positive behaviors such as manners, kindness, tolerating their peers, minding their own behavior, using calming strategies, having a calm voice, etc. We try to recognize many positives with the kids ... especially trying to note areas that they have been struggling with… Students earn a negative/sad face for not displaying the expected behaviors. For [Student], we give many reminders, model the expected behavior and name the expected behavior, before he earns a sad face. For example, he blurts and talks over others frequently. I remind him by saying, "[Student], it sounds like you are trying to get my attention. Remember, you need to raise your hand, have a calm body and wait to be called on" I will also say something like, "'I notice that XXX is looking at me, sitting with a calm body, has his hand raised and is waiting for me to call on him". Then if [Student] demonstrates the skills rather than blurting I immediately reinforce that by calling on him, naming the skill and reinforcing that with positive points.
>
> Staff know that [Student] is having a difficult time managing his strong emotions. For this reason, he does not immediately earn a sad face for many of the unexpected behaviors. However, if he throws materials, has physical aggression or uses significant inappropriate language then he will earn a sad face. BoysTown has students then practice the expected behavior/skill to earn "half back" (they earn half the negative points earned back). There are different ways to do this (follow the given direction, pick up what was thrown, apologize,

role play, problem solve, etc.). This is all with staff support, modeling, practicing, [and] cuing. All of these conversations take place once the student is regulated and can be paused if the student starts to get dysregulated again. This part of the model can take the most time because it is when we are reconnecting with the student and ensuring they are regulated before re-engaging with the class.

During our check out time we track data on how many negatives were earned and how many positives were earned. Boys Town uses 4 praise interactions for every one correction behavior. Staff do our best to make sure this is followed each day; that is why you will see many additional positive behaviors noted on [Student's] behavior chart…

The social skills instruction through Boys Town is embedded throughout our entire day in my setting III classroom. All staff model or prompt students to use their specific self-control skills, taking a break, etc. Specifically with [Student], we model, offer and prompt for him to take a break in a quiet spot away from the peer or activity that is triggering, use of his preferred activities that help him calm, allow him to be seated next to me because in the classroom I seem to be his person that he seeks out for comfort/support.

Additional supports for [Student] are:

- Seeing [school social worker] one time per week: they work on identifying feelings, sharing feelings with adults and peers appropriately, cues/clues for face/body and situations.
- He sees school based [mental health] two times per week.

72. District behavior logs indicate that a behavior incident occurred on [redacted]. The Student's behavior log documents this incident as follows,

    10:18 … [Student] walked to [redacted] on his own. [District staff] followed.

    10:20 still in [redacted]; slammed door shut, has a bean bag sequence bag – pulling it apart. 10:26 throwing bean bag hard against window repeatedly.

    10:35 – [Principal] said "Oops [Student] you dropped your light – it fell out of his pocket – cont[inued] to hit window.

73. During the course of this investigation, the Director reported that the principal called her after this incident, reporting that he had held the door shut, and stating "It was on and off. I do not recall how long he was in there. My estimate would be 20 minutes in the [redacted]. It should be in the documentation notes." The Director further reported that, because these details were not in the Students behavior log, asked the principal to write an addendum to the notes.

74. The school principal's addendum provides additional information regarding the incident, stating that, at 10:18 am, he walked behind the Student into the [redacted], and the Student "immediately turned around and became extremely aggressive by hitting me with a weighted sequence bag. I exited the room and the door slammed shut behind me. I turned and grabbed the door handle due to his aggression." The log further documents:

> 10:20: [Student] was throwing the weighted sequence bag at the walls and ceiling in the safe room. He then sat on the floor and tried ripping apart the bag. During this time the door was not being held.
>
> 10:30: I opened the door to talk to [Student]. I pointed out that his lighted key chain fell to the floor… [Student] became aggressive toward me by throwing, hitting, and kicking. I exited the room and held the door due to his aggression. [District staff] arrived shortly after I exited the safe room.
>
> 10:35: [District staff] took the lead. He entered the [redacted]. I stayed outside the [redacted] to monitor.

75. During the course of this investigation, the Director further reported that other District staff were not able to provide additional information regarding this incident. Due to the limited documentation in the Student's behavior log regarding this incident, which was confirmed to have included one or more seclusions, the Director indicated that it was possible that other behavioral incidents, which were documented similarly in the Student's behavior log, also included the use of seclusion.

76. District records indicate that, on [redacted], the District provided the Complainant with a letter, which stated:

> This letter is to notify you of an incident that occurred at [School] in which [Student] was involved. [Student] was upset that [District Staff] wasn't able to help him right away. [Student] declined to use the [redacted] to calm down, and began to be physical toward staff and then destroyed the room. [School Resource Officer] was called to help with safety. I have assigned [Student] [two and a half] days of out of school suspension. [Student] may return to school on Monday [redacted]

77. On [redacted], the District's special education director emailed the Complainant offering a conciliation conference to "discuss the [Complainant's] objection to the [proposed setting four placement], hear your thoughts and concerns, and then develop a plan to move forward." The special education director also suggested bringing in a mediator to facilitate the meeting. The Complainant replied to the Director's email on [redacted], proposing a date for the conciliation meeting but declining a mediator.

78. The Student's IEP team met on [redacted] for a conciliation conference. Notes from this meeting indicate that the IEP team discussed recent behavior incidents, including potential triggers to his behaviors, and ideas to address the behaviors. District records also indicate the IEP team discussed changes to his schedule, including the recent changes to add a "scheduled reinforcement/calming time" for the Student, and have him eat breakfast and having morning recess in the classroom to "start his morning out in a calm environment instead of cafeteria and outside."

79. The District reports:

> During the conciliation meeting, allegations of additional restrictive procedures were made by the Complainant. The District investigated the allegations of additional physical holds; however, were not able to come to a conclusion.
>
> At the [redacted] meeting, another allegation was made of [Student] being secluded in the [redacted] This allegation was confirmed to have occurred on [redacted] The District then removed the door of the [redacted] to ensure another seclusion was not possible.

80. The Complainant further reports:

> At our conciliation meeting on [redacted] it was brought up again as the behavioral documentation from [redacted] mentioned that the door was held shut by… the dean of students and was reiterated by [Student]. … My son again mentioned that [District staff] had picked him up and carried him to the [redacted] during one of the behavioral incidents on [redacted].

81. On [redacted], the District staff emailed the Complainant, stating "I want to share with you some changes we made within our classroom spaces with the hope that it will minimize triggers for [Student]," as follows:

- Designated work space in the purple classroom free from distractions
- Rotations for reading and math will happen in the gray room so there is less noise/movement in his work area
- Options to join classroom for morning meeting, recess, whole group, and snack as well as alternatives when he is not accessing lesson
- His reading instruction for "read with [Staff]" and "word work" will be in his space with staff rather than in the large group setting

82. The District reports:

> The District contracted with a consultant… to observe [Student] and provide the District with recommendations for programming. After the consultants observed, it was determined that the programming in place for [Student] was not meeting his needs and it was recommended that a new program be implemented. The District set a meeting for [redacted] with [Complainant] to introduce the consultants and recommend/propose the opportunity to start in a new classroom in a different building. The District wanted to ensure [Student] was provided a fresh start in a classroom setting that did not resemble the original classroom. The new classroom was set up with the input and support of the consultants.
>
> At the [redacted] meeting, [Complainant] agreed to the new classroom setting to begin on [redacted]

83. The District reports that the Student moved into his new classroom on [redacted], the first day after winter break. This new classroom, located at another District elementary school, is still considered a Level three EBD classroom, but staff described it as significantly different, as the program is being "guided by outside consultants" and is focused on "extreme dysregulation," and was designed specifically to meet the needs of the Student and one other special education student. District staff reported that this program has two students and three staff, and is focused primarily on teaching coping strategies and increasing emotional regulation. District staff further document that the Student appears to be doing well in this program.

84. Regarding corrective action, the District reports:

> The District has been responsive and supportive in problem solving programming for [Student] as evidenced by the meetings and attachments. The District has initiated multiple meetings to address [Student]'s needs, [Complainant's] concerns, and programming. The District initiated the Dispute Resolution Process (Mediated IEP Meeting) with a main goal of supporting [Student] and [Complainant], developing an appropriate IEP and PBSP, offering appropriate services in a setting that would support [Student], partnering with outside agencies for family support.
>
> The IEP team will continue to meet to problem solve goals and services to address skills and instruction in order for [Student] to be successful and make educational progress. The District has contracted with [outside consultant] to provide consultation services to the District in developing and proposing the appropriate programming and an IEP and PBSP.
>
> The District is making systematic changes to address the restrictive procedures and the non-exclusionary discipline interventions and programming needs. The

District is reviewing the policies and procedures for restrictive procedures and non-exclusionary discipline. The District is also seeking recommendations from the contracted consultants to build on our programs to best meet the needs of all students.

85. The District further proposed the following corrective action:

Use of School Removals
The District recognizes that it inappropriately implemented school removals that violated Non-exclusionary Discipline requirements and implemented school removals that did not have appropriate notification. The District is developing clear processes and procedures to support students who may not be regulated or displaying behaviors that cannot be resolved through typical interventions. The District is also developing and expanding programming for students to ensure the District is addressing student needs appropriately and targeting the appropriate needs/interventions.

Use of Restrictive Procedures
The District recognizes that it implemented restrictive procedures (seclusion) that were not appropriate as the District does not have any seclusion rooms that are registered. The room that [Student] was secluded in had a door with a window. The staff held the door closed when [Student] was dysregulated. The District has removed the door so that it is not able to occur again or even be an option.

Appropriately Responding to Behavior
The District has actively been collaborating with outside consultants. With the support and guidance of the consultants, the District is opening a new classroom that will focus on regulation and then build in academic skill. The classroom that [Student] has been in is a "traditional EBD classroom" which focuses on extinction or modification of behavior. The classroom that the District is opening and hopeful of having [Student] be a part of beginning [redacted] will support him in regulation of his emotions, modeling regulation and academic instruction in ways that continue to support his regulation abilities. Although the District appropriately responded to [Student] implementing the tools and skills it knew and had available, it recognizes that there is opportunity for growth and learning to best meet the needs of students. The District has contracted with the consultants to support the new classroom with implementation of the programming throughout the month of January and intermittently throughout the school year.

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted] pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about the issues that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

3. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

4. Regarding restrictive procedures plans, Minnesota Statute § 125A.0942, subdivision 1(a), provides:[11]

> (a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:
>
> (1) lists the restrictive procedures the school intends to use;
>
> (2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;
>
> (3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4;
>
> (4) describes how the school will monitor and review the use of restrictive procedures, including:
>
> (i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and
>
> (ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used

[11] Minn. Stat. § 125A.0942, subd. 1(a) was revised during the 2023 legislative session. The information underlined in the conclusion represents the language effective July 1, 2023.

> schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met; and
>
> (5) includes a written description and documentation of the training staff completed under subdivision 5.

5. Here, during the [redacted] school year, the District did not intend to use restrictive procedures and therefore did not have a RPP in place when restrictive procedures, specifically physical holding, was used by a District staff member in [redacted]. During the [redacted] school year the District did have a RPP, which describes that the District did intend to use physical holding, specifically, Safety Care holds; how the school will implement a range of positive behavior strategies and provide links to mental health services; describes how the school will provide training on de-escalation techniques; and describes how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee. The [redacted] RPP describes that the District "does not have registered rooms for seclusion and will not implement seclusion" even though the staff used the [redacted] for seclusion. However, given the special education director's numerous attempts to inform District staff that the school did not use seclusion, that the [redacted] may not be used as seclusion, that it did not have a registered room seclusion room, and thereafter ultimately removed the door from the safe room, supports the conclusion that the District did not intend to use seclusion, consistent with Minn. Stat. § 125A.0942, subd. 1(a).

6. Regarding the use of restrictive procedures, Minnesota Statute § 125A.0941(f) defines restrictive procedures to mean "the use of physical holding or seclusion in an emergency" and mandates that restrictive procedures "not be used to punish or otherwise discipline a child."

7. Minnesota Statute § 125A.0941(b) defines "emergency" as:

> a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury still exists.

8. Minnesota Statute § 125A.0941(c) defines physical holding as follows:

> "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service or procedure; or
>
> (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

9. Minnesota Statute § 125A.0941(g) defines seclusion as follows:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

10. Minnesota Statute § 125A.0942, subd. 3(a), provides:[12]

> Physical holding or seclusion. (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

[12] Minn. Stat. § 125A.0942, subd. 3(a) was revised during the 2023 legislative session. The information underlined in the conclusion represents the language effective July 1, 2023.

(4) staff directly observes the child while physical holding or seclusion is being used;

(5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released;

(iv) a brief record of the child's behavioral and physical status; and

(v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window tha tallows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

11. Minnesota Statute § 125A.0942, subd. 2(b) provides, in pertinent part:

> (b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

12. The record, including behavior logs and interviews with District staff, support a conclusion that on [redacted], District staff confined the Student in the [redacted], alone, and barred egress by holding the door shut. This incident meets the definition of seclusion under Minn. Stat. § 125A.0941(g). Further, the District was unable to provide specific information about other incidents involving the use of the [redacted] with the Student during the spring [redacted], but acknowledged that these incidents may also meet the definition of seclusion under Minn. Stat. § 125A.0941(g). The District also used a physical hold with the Student on [redacted], where the Student resisted more than minimally, meeting the definition of physical holding under Minn. Stat. § 125A.0941(c).

13. Here, the District violated Minn. Stat. §§ 125A.0942, subd. 2(b), and subd. 3(a)(5), (6), and (7) by using seclusion with the Student on at least one day [redacted] during the time period covered by this complaint when the Student had escalated to the point of hitting and kicking District staff (an emergency). However, after the incident(s), the District did not notify the Complainant, nor did District staff document a description of the incident that led to the seclusion, why a less restrictive measure failed, the time the seclusion began or ended, or a brief record of the Student's behavioral and physical status, nor did the District conduct post-use debriefing meetings. Further, the District failed to ensure the [redacted] was the proper dimensions and that the room did not contain objects that a child may use to injure the child or others, or otherwise ensure that seclusion occurred in a registered room.

14. The District also failed to meet the requirements found in Minn. Stat. § 125A.0942, subd. 3(a) when it physical held the Student on [redacted].

15. Regarding the out of school suspensions that occurred during the [redacted] school year covered by the complaint, 34 C.F.R. § 300.530 provides:

> (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
>
> (b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).

16. Minnesota Statute § 121A.41, subd. 10 defines suspension to include "an action by the school administration . . . prohibiting a pupil from attending school for a period of no more than ten school days."

17. Minnesota Statutes § 121A.43(b) provides that "a dismissal for one school day or less is a day or a partial day of suspension if the child with a disability does not receive regular or special education instruction during that dismissal period. The notice requirements under section 121A.46 do not apply to a dismissal of one day or less."

18. Minnesota Statutes § 121A.46 requires a written notice containing the grounds for suspension, a brief statement of the facts, a description of the testimony, a readmission plan, and a copy of sections 121A.40 to 121A.56 (the Pupil Fair Dismissal Act), to be personally served upon the pupil at or before the time the suspension is to take effect, and upon the pupil's parent or guardian by mail within 48 hours of the conference. Further, the district must make reasonable efforts to notify the parents of the suspension by telephone as soon as possible following the suspension. In the event a pupil is suspended without an informal administrative conference on the grounds that the pupil will create an immediate and substantial danger to surrounding persons or property, the written notice shall be served upon the pupil and the pupil's parent or guardian within 48 hours of the suspension. Service by mail is complete upon mailing.

19. Here, during the [redacted] school year, the District suspended the Student on [redacted] (for two school days) and did not provide the Student with the notice or a copy of the Pupil Fair Dismissal Act, in violation of Minn. Stat. §§ 121A.43 and 121A.46.

20. Regarding the out of school suspensions that occurred during the [redacted] school year covered by the complaint, Minnesota Statute § 121A.425 provides:[13]

> Subdivision 1.Disciplinary dismissals prohibited. (a) A pupil enrolled in the following is not subject to dismissals under this chapter:
>
> (1) a preschool or prekindergarten program, including an early childhood family education, school readiness, school readiness plus, voluntary prekindergarten, Head Start, or other school-based preschool or prekindergarten program; or
>
> (2) kindergarten through grade 3.
>
> (b) This provision does not apply to a dismissal from school for less than one school day, except as provided under chapter 125A and federal law for a student receiving special education services.

[13] Minn. Stat. § 121A.425 was enacted during the 2023 legislative session and became effective July 1, 2023.

(c) Notwithstanding this subdivision, expulsions and exclusions may be used only after resources outlined in subdivision 2 have been exhausted, and only in circumstances where there is an ongoing serious safety threat to the child or others.

Subd. 2.Nonexclusionary discipline. For purposes of this section, nonexclusionary discipline must include at least one of the following:

(1) collaborating with the pupil's family or guardian, child mental health consultant or provider, education specialist, or other community-based support;

(2) creating a plan, written with the parent or guardian, that details the action and support needed for the pupil to fully participate in the current educational program, including a preschool or prekindergarten program; or

(3) providing a referral for needed support services, including parenting education, home visits, other supportive education interventions, or, where appropriate, an evaluation to determine if the pupil is eligible for special education services or section 504 services.

21. The District acknowledged that in [redacted], it inappropriately dismissed (using out of school suspension) the Student, a third grader, in violation of Minn. Stat. § 121A.425, subd 1.

22. Federal regulations at 34 C.F.R. § 300.324(a) provide:

(a) *Development of IEP* -

(1) *General*. In developing each child's IEP, the IEP Team must consider -

(i) The strengths of the child;

(ii) The concerns of the parents for enhancing the education of their child;

(iii) The results of the initial or most recent evaluation of the child; and

(iv) The academic, developmental, and functional needs of the child.

(2) Consideration of special factors. The IEP Team must—

(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

23. Regarding reviewing and revising the Student's IEP to appropriately respond to his increasing behaviors, federal regulations at 34 C.F.R. § 300.324(b) provide that each school district must ensure that the IEP team:

> (1)(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved; and
>
> (ii) Revises the IEP, as appropriate, to address:
>
> (A) Any lack of expected progress toward the annual goals described [in the IEP, pursuant to] § 300.320(a)(2), and in the general education curriculum, if appropriate;
>
> (B) The results of any reevaluation conducted under § 300.303;
>
> (C) Information about the child provided to, or by, the parents as described under § 300.305(a)(2);
>
> (D) The child's anticipated needs; or
>
> (E) Other matters.
>
> (2) *Consideration of special factors*. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

24. Federal regulation at 34 C.F.R. § 300.324(a)(2)(i) requires the Student's IEP team to:

> In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

25. Regarding positive behavior interventions, Minnesota Rules at 3525.0850 provide:

> This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

26. Here, the record, including proposed IEPs, prior written notices, IEP team meeting notes, other due process records, conversations with the Complainant and interviews with District staff, support a conclusion that, during the time period covered by this Complaint, the Students IEP team met several times to review and revise the Student's IEP, in accordance with 34 C.F.R. § 300.324. Specifically, the

Student's IEP team met in [redacted], to respond to and plan for the Student's increasing behaviors, including the discussion of positive behavior interventions and supports, and other strategies, to meet the Student's needs and allow him to continue to benefit from his educational program. The Student had a positive behavior support plan in place and his classroom used a recognized program which included positive approaches to behavioral interventions, and the Student's IEP team staff regularly made changes to his educational program, including adding breaks, removing triggers, allowing additional choices, pre-teaching calming strategies, and providing a range of calming techniques and tools. Further, the District conducted a reevaluation of the Student, including an FBA, during this time period, engaged outside consultants to assist with providing appropriate services to the Student, and designed a program to better met his needs.

Decision

1. The District violated Minn. Stat. § 125A.0942, subd. 2(b), and subd. 3(a)(5), (6), and (7) when it used seclusion on [redacted], and potentially other days, and Minn. Stat. § 125A.0942, subd 3(a) when it used physical holding on [redacted], without following the proper standards for restrictive procedures.
2. The District violated Minn. Stat. §§ 121A.43 and 121A.46 when it failed to provide the Student with proper written notice and a copy of the Pupil Fair Dismissal Act during the [redacted] school year and 121A.425 when it dismissed (using out of school suspension) the Student, a third grader, in [redacted].

Corrective Action

The District's proposed corrective action is accepted. In addition to the actions proposed by the District, the District must also complete the following items:

1. Within 14 calendar days of the date of this decision, the District must contact MDE corrective action specialist Sara K. Wolf at sara.k.wolf@state.mn.us, to discuss the District's training needs, in collaboration with the special education director, to the special education teachers, paraprofessionals, and any staff who may be involved in the use of a restrictive procedures or disciplinary dismissals at the District. Training will cover:
   - Legal standards and requirements related to the use of restrictive procedures, including the definition of seclusion, restrictive procedure documentation requirements and the requirements for conducting a debriefing meeting following the use of a physical hold (Minn. Stat. §§ 125A.0941 and 125A.0942)
   - non-exclusionary discipline requirements (Minn. Stat. § 121.425).
2. Training must be provided as soon as practicable, but no later than [redacted].
3. If the District intends to continue the use of seclusion within any of its schools, the District shall revise the District's RPP to accurately list the restrictive procedures the District intends to use at each school within the District. Further, the District shall ensure that seclusion is used only within rooms that meet

the statutory requirements for seclusion rooms, as provided by Minn. Stat. § 125A.0942, subd. 3(a)(6), and properly registered with the commissioner of education under Minn. Stat. § 125A.0942, subd. 3(a)(7). By [redacted], the District shall submit to MDE in writing, attention corrective action specialist, the District's revised RPP. Once approved, the District will publish the revised RPP on its website within 14 calendar days. In lieu of revising its RPP, the District may, by [redacted], provide a written assurance that the District has discontinued the use of seclusion and provided training to Staff regarding alternative strategies to address Student behaviors.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

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Via encrypted email

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted] one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted] The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges that, during [redacted], the District did not respond to the Student's behavior in conformity with the Student's individualized education program (IEP) and/or behavioral intervention plan (BIP) during incidents that resulted in injuries to the Student.

Findings of Fact

1. The Student is eligible for, and in need of, special education and related services. The Student attended kindergarten in a federal setting IV program, meaning a special school for students with disabilities, in the District from the start of the [redacted] school year through [redacted].

2. The Complainant is the [redacted].

3. In her written complaint, the Complainant reported that the Student came home from the District program with bumps, bruises, and scratches, and the Complainant did not know how the Student got them. The Complainant also reported that, on [redacted], the Student came home from school with swollen fingers.[1]

4. The Student's most recent evaluation was completed by his previous Minnesota school district in [redacted]. The Student's [redacted] evaluation report contained the following information from the Complainant:

> [Student] is now able to say a greater number of words. He can walk with the family without them needing to take him by the hand, he will no longer run away . . . [Student] gets along very well with his family. He enjoys playing with his [sibling] and father, although it can get rough. With [Complainant] he is much more loving. Because [Student] does not talk much, it is difficult for him to defend himself or to communicate that something was done to him. This really worries [Complainant] . . . Two of the biggest obstacles for [Student] in developing social relationships is his speech and his approach to learning.

5. The Student's [redacted] evaluation report did not include a functional behavioral assessment (FBA).

6. Prior to the start of the [redacted] school year, the Student's IEP team met to discuss the Student's transportation. [redacted]

[1] This matter is also under review by MDE's Student Maltreatment Team.

7. On [redacted] the District provided prior written notice proposing to amend the Student's IEP to reduce the Student's special education services to 390 minutes per day, and his paraprofessional support to 160 minutes per day, based on the Student's shortened school day. The other parts of the Student's previous IEP, which was dated [redacted], stayed the same. The Student's parent signed in agreement with the proposal on [redacted].

8. The Student's amended September [redacted] IEP contained five annual goals aiming for the Student to improve his communication skills, fine motor skills, gross motor skills, self-regulation skills, and number and literacy skills. To enable the Student to make progress toward those annual goals, the Student's September [redacted] IEP provided for the following direct special education and related services:

Description of Services	**Direct Service Minutes per Session**	**Frequency of Sessions**
Autism Spectrum Disorder	390 minutes	5 times per week
Speech/Language: Expressive/Receptive Language	15 minutes	7 times per month
Occupational Therapy	20 minutes	1 time per week

9. The Student's September [redacted] IEP included 160 minutes of "1:1 Paraprofessional" support each day. In addition to support related to personal care tasks, eating, and communication, the Student's September [redacted] IEP also listed the following paraprofessional support:

    - Implement the sensory program and redirect/cue with the use of verbal, physical, visual prompts to help him remain in a ready state to learn in the school setting.

    - Providing [Student] the structure, consistency, and appropriate cues for following teacher directions, attending, imitating, communicating, transitioning and remaining within a setting without having a behavioral episode where he would need to be removed.

    - To observe and redirect [Student's] behavior using positive reinforcement strategies.

    - Monitor and redirect [Student] in the school setting such as the playground, bathroom, arrival, and dismissal where he could be vulnerable to harm if not supervised.

    - Removing [Student] from situations where he may not be appropriate (tantrums, biting, pinching, kicking and excessive roughness) with other students or staff due to sensory implications.

10. The Student's September [redacted] IEP provided for assistive technology, including a low-tech augmentative communication device and sensory tools such as a "weighted lap pad or blanket, tactile fidgets, and therapeutic putty." The Student's September [redacted] IEP also provide for "sensory breaks and opportunities for movement on a regularly scheduled basis."

11. The Least Restrictive Environment (LRE) Explanation in the Student's September [redacted] IEP provided additional information about the Student's special education and related services:

> [Student] requires assistance from adults to stay with a group and participate in school activities, learning, and daily tasks. He struggles when overstimulated and is easily distracted by things that interest him. He will elope from the classroom, school, or other areas. He needs constant supervision while at school . . . In the classroom [Student] struggles to control his emotions and regulate his behaviors in an appropriate manner. His behaviors can be disruptive to the learning of others in the classroom. Sometimes those behaviors may pose a safety concern for [Student] and his same-age peers; thus, [Student] requires specialized instruction in a smaller setting that can provide a high level of support. [Student] qualifies for a setting-4 educational facility.

12. The District reported that the Student's IEP did not include a behavioral intervention plan (BIP), and one was not developed due to the short time the Student attended the setting IV program in the District.

13. The District's [redacted] school year began on [redacted]. Staff reported that there were four other students in the Student's program, along with a special education teacher (the Student's case manager), two to three paraprofessionals, and related services personnel.

14. The schedule for the Student's classroom included at least three scheduled opportunities for movement each day, including physical education class, a movement break (15 minutes), and two recess periods (30 minutes each). Staff reported that, due to travel time and the Student's altered school day, [redacted].

15. District staff also reported using sensory supports with the Student including a swing, weighted vest, weighted blanket, putty, sensory bins, a water table, and "squishy" animal toys. District staff also reported using a visual schedule in both physical education class and the regular classroom, noting that the Student was beginning to adapt to the routine. The Student's speech language pathologist reported that the Student was beginning to use a "paper flip book" as a low-tech augmentative communication device.

16. District staff also noted that the District had built a wall in the Student's classroom to create two separate spaces and had installed dimmer switches so that the lights could be dimmed, to support the Student's sensory needs.

17. All seven District staff interviewed during this complaint investigation consistently and credibly reported that physical holding was never used with the Student, even during periods of behavioral escalation. Staff consistently reported that the Student did not like physical contact, such as guiding the Student with a hand lightly on his shoulder. Staff therefore gave the Student space and used other strategies when he was escalated.

18. District staff also consistently and credibly reported that the Student had continual paraprofessional support at school, and that paraprofessionals "switched out" so that at least one District staff person was always near the Student.

19. One District staff member reported that, early in the [redacted] school year, staff supporting the Student discussed how to respond to the Student's behavior. Staff reported that the Student had behaviors that could have required a physical hold, but staff determined that the Student's small size, his quickness, and his agility made physical holding inappropriate for the Student.

20. Staff consistently reported that, when the Student was escalated (screaming, hitting, kicking, biting or trying to elope), they first encouraged the Student to move to a different space. Staff reported that they did not use any sort of physical contact and would instead sit on the ground near the Student until he was calm and ready to walk on his own. Staff reported that the Student would often "flail his body" and staff did their best to block his kicking and hitting while keeping him safe. Staff reported that the Student's movements were often unpredictable.

21. Staff reported that if the Student was not willing to leave an area, staff removed any peers from the classroom or area to keep everyone safe. Staff reported that other students typically responded to the Student's loud behavior by covering their ears, verbalizing, or moving away.

22. Staff then stayed with the Student. Staff stated, "In general, [Student] just needed time and space to decompress and de-escalate." Staff reported that the Student usually calmed within 5-10 minutes. Staff reported using "first then" statements, visuals, or offering preferred toys to help calm the Student.

23. Staff reported that the Student at times climbed into a low windowsill and jumped down a few feet onto nearby cushions. Staff reported trying to keep Student safe when climbing and noted that he had good motor ability. Staff tried to prevent climbing by limiting the objects in the Student's area that could be climbed.

24. The District reported that, when the Student was escalated on [redacted], the Student was placed in a registered seclusion room by the Student's case manager. District staff consistently and credibly reported that they did not observe any other instance of seclusion. Staff reported that the Student sometimes liked to be in smaller sensory or quiet room (not a seclusion room), and staff were always in the room with the Student.

25. The District reported that program staff, including the Student's case manager, received [redacted] de-escalation training in [redacted], prior to the start of the [redacted] school year.

26. At the time of the complaint investigation, the Student's case manager was no longer employed by the District. The District's special education director had talked about the [redacted] seclusion with the Student's case manager. The special education director reported that the case manager observed the Student while he was in seclusion, provided verbal reminders, and opened the door whenever the Student was calm but closed the door and started seclusion again if the Student's behavior escalated. The seclusion form provided by the District indicated that between 10:26 and 11:18 a.m., the Student was in seclusion four times between three and nine minutes, or a total of about 22 minutes.

27. The District's written response reported that during this incident, the Student was "throwing crayons at another student and hitting another student in his back and when told to leave the room started swinging at others." The seclusion form said that staff first "tried calming cube – refused by Student as he kept trying to run out to other students." The form stated that the Student was "excited and agitated – swinging [at] others" during the seclusion.

28. The form checked "No" next to "Parents notified." The District's special education director reported that this was the only time he could recall when parents were not notified of the use of a restrictive procedure and was not sure why the Student's case manager failed to notify the Student's parents.

29. The form also did not describe the post-use debriefing discussion between District staff, although the District's special education director reported discussing the incident with the Student's case manager.

30. District staff reported they now use a different form to document staff debriefing discussions. The District also reminded all program staff to notify parents whenever a restrictive procedure is used. District staff were also reminded that, beginning next school year, seclusion must never be used for students from birth through third grade.

31. On [redacted], the Student's IEP team met to review the Student's progress and discuss additional support for the Student. On [redacted], the District provided prior written notice proposing updates to the Student's IEP, including an increase in paraprofessional support minutes. The Student stopped attending school in the District prior to the end of the 14 day period to object.

32. In the District's written response, the District explained that, on [redacted], the Student was in his classroom with a District administrator and two paraprofessionals. The Student's "classroom door was briefly opened . . . and the Student suddenly ran toward the door." District staff closed the door "to prevent him from exiting the classroom and potentially eloping from the building." The District noted that the Student's classroom door is close to an exterior door, with busy roads nearby. The District reported that staff "did not see the Student reach for the door," and the door briefly closed on the Student's fingers. The District reported getting help for the Student and arranging for the Student's parents to be contacted.

33. The Complainant reported picking the Student up from school on [redacted]. The Complainant then stopped sending the Student to school in the District. The Student is no longer enrolled in the District.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

3. Here, the record supports a conclusion that, when the Student was escalated, District staff provided the Student with paraprofessional support, redirection, visuals, movement breaks, and sensory tools, in line with his IEP and 34 C.F.R. § 300.17 and Minn. Stat. § 125A.08(b)(1). During the [redacted] incident, the Student was receiving paraprofessional support and supervision by at least three staff members, in line with his IEP.

4. Regarding the use of seclusion on [redacted], trained staff are currently permitted to use seclusion in an emergency. Minn. Stat. § 125A.0942, subd. 3(a) (2023). An emergency is "a situation where immediate intervention is needed to protect a child or other individual from physical injury." Minn. Stat. § 125A.0941(b). The definition of seclusion from Minn. Stat. § 125A.0941(g) is:

> (g) "**Seclusion**" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

5. Schools must notify the student's parents on the same day seclusion is used, or if same-day notice is not possible, staff must send notice within two days. Minn. Stat. § 125A.0942, subd. 2(b). Staff must also hold a staff debriefing and document a brief description of that debriefing. Minn. Stat. § 125A.0942, subd. 3(a)(5).

6. On [redacted], the Student was placed in seclusion by a trained and licensed District staff member to respond to an emergency, following Minn. Stat. § 125A.0942, subd. 2(a) and subd. 3(a)(1)-(4).

7. However, after the use of seclusion, District staff did not notify the Student's parents, in violation of Minn. Stat. § 125A.0942, subd. 2(b). District staff also did not document a description of the post-use debriefing, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(5).

8. Regarding the use of seclusion beginning next school year, Minnesota Statute § 125A.0942, subd. 4(11) (2023), prohibits "the use of seclusion on children from birth through grade 3 by September 1, 2024."

Decision

While District staff were permitted to use seclusion in an emergency on [redacted], the District violated Minn. Stat. § 125A.0942, subd. 2(b) and subd. 3(a)(5) when District staff did not notify the Student's parents of the seclusion and did not document a description of the post-use debriefing.

Corrective Action

The District has completed corrective action steps to ensure that parents will be notified and staff will document their post-use debriefing following the use of restrictive procedures in the future, as required by 34 C.F.R. § 300.151(b), and no further corrective action is needed.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. As no further corrective action is needed, this complaint file is now closed.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

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Via encrypted email

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student A) and also on behalf of all students who attended [redacted] (School) in [redacted] (District), and were scheduled to receive special education and related services and/or supplementary aids and services in a special education classroom that was closed on [redacted] (Students).

The Complainant stated the Students, including Student A, are children with disabilities who attended school in the District during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted] one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issues from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.

- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issues. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue 1

The Complainant alleges the District failed to provide special education and related services and/or supplementary aids and services to Student A during an incident in [redacted], which resulted in a physical hold and seclusion of Student A. Additionally, the Complainant alleges the District did not provide proper due process following the physical hold and seclusion of Student A when it did not attempt to notify Student A's parents/guardians on the same day.

Findings of Fact

1. Student A has been found eligible for, and in need of, special education and related services under Minnesota law in the categories of Emotional or Behavioral Disorders (EBD) and Other Health Disabilities (OHD). Student A attended the second grade within the District during the time period covered by this complaint.

2. The Complainant is [redacted].

3. Regarding the [redacted] incident, the Complainant reported in relevant part:

> During the [redacted] school year, [redacted] school staff place[d] [Student A] in a restrictive hold and the procedures needed to be followed with notifications were not followed. Staff did not notify parents of the hold [on the] same day and only provided details of the hold in write up format when parents requested as the parents have known they are able to be provided the details. It did not appear at the time any plan was followed as far as the IEP [individualized education program] or the behavior plan that is in place for my daughter. Notification of this hold came through on [redacted] by the case manager who was not present for the hold 2 days prior. During this incident, in addition to the hold, my daughter was placed in a room where staff closed the door and told her that she was not able to leave.

4. Student A's individualized education program (IEP) in effect during the time period covered by this complaint was dated [redacted], and included annual goals aiming to increase her reading, functional, and social/emotional skills. To help her reach her annual goals, Student A's [redacted] IEP included the following direct special education and related services:

> [Center-based] program: 100 minutes, 52 times per term[1] in the special education classroom;[2]
>
> Functional skills: 20 minutes, 20 times per term[3] in the special education classroom;
>
> Reading: 30 minutes, 44 times per term[4] in the special education classroom;
>
> Social skills: 20 minutes, 44 times per term in the special education classroom; and
>
> Social work: 20 minutes, 20 times per term in the social worker's office.

5. Student A's [redacted] IEP described the following relevant adaptations in general and special education:

> [Student A] will receive educational assistance [EA] support[5] in each of her general education classes to assist with behavior management due to her social skill deficits and frustration. The EA will provide assistance by restating directions that were not presented in a logical/sequential manner, helping her cope with stressful situations/handle her emotions, checking for understanding, provide reminders if there is a change in her schedule. [Student A] will have shared EA support during her scheduled, active sensory breaks. She will have two scheduled breaks daily. The EA will be responsible for implementing and monitoring the use/effectiveness of these breaks. [Student A] will have shared EA support during lunch and recess. The EA will be responsible for monitoring her social interactions, providing feedback/redirection and reinforcing the social skills she is working on.
>
> SENSORY
> [Student A] will have access to sensory tools and strategies throughout her day at school to help with calming and focus to help with self-regulation. These include but are not limited to: pressure vest, oral motor input (i.e., gum, mints, sour items, chewy), alternative seating (she likes the Hokki stool), transition fidgets, fidgets, movement breaks, (i.e. walk in the hall, sensory path), breaks in

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[1] During interviews, District staff reported 52 times a term equated to five times a week.
[2] During interviews, District staff reported the Student's 100 minutes of daily "center-based program" services did not include direct specialized instruction, but were used to estimate the amount of time Student A spent working on general education assignments in the special education classroom or [redacted] with [redacted].
[3] During interviews, District staff reported 20 times a term equated to two times a week.
[4] During interviews, District staff reported 44 times a term equated to four times a week.
[5] The District uses the term "educational assistant" or "educational assistance" to refer to a paraprofessional and the services they provide to students.

the sensory room, etc. Proactive breaks will be utilized before difficult tasks or increased sitting with academic tasks.

CLASSROOM
- Preferential seating near instruction
- duration maps
- visuals of behavior expectations
- verbal and nonverbal reinforcement during non preferred tasks
- give forced choice whenever possible (ex. would you like to do A or B first?)
- advanced warning of changes to allow review of behavior expectations
- access to calming spaces
- access to resource room for supported academic task completion and breaks
- proactive sensory breaks that include movement, heavy work, and then calming
- scheduled breaks
- check in/check out with special education staff

ASSISTIVE TECH[NOLOGY]
- oral motor input
- Hokki stool or scoop chair
- compression vest
- visuals of calming options, schedules, identifying emotions

Positive Behavior Intervention Plan [(BIP)]

Behaviors –
* Behavior #1 Truancy: This behavior occurs when [Student A] leaves environment or presence of others without requesting or having permission to leave.

Setting Events –
* Transitioning to class
* Peer is too loud
* Being in trouble
* Loss of privileges

Antecedents –
* Denial/Delay – When [Student A] is denied a request, she will often growl, yell, or become upset.
* Instructions/Task Demands: When she is not regulated, any instruction or task demand is rejected by [Student A]. If she is regulated, she is able to complete tasks with visual directions and the materials laid out for her to view and given at least 30 seconds to process.

* Lack of structure: When [Student A] does not know the expectations or routine, she appears to want to create and join in the chaos. It can be difficult to reign her back in from these environments.
* Transitioning/Change of Routine or Expectations: Changes in [Student A's] schedule can create difficulty with following and transitioning to those activities.
* Lack of active engagement/reduced attention: If [Student A] perceives she is not getting enough of the staff attention she will often increase behavior, usually unexpected behavior.

Functions –
* Behavior #1 Truancy: When [Student A] engages in truancy behaviors her staff attempt to redirect her and offer support and assistance to engage in the academic task or give forced choice. The hypothesized functions of [Student A's] truancy behaviors include avoiding non-preferred academic tasks and gaining attention from staff (mostly negative attention).

Alternative Replacement Behaviors –
* Instead of engaging in problematic behaviors to gain peer and staff attention: [Student A] needs to follow directions by: Looking at the person, saying o.k., and doing it right away. [Student A] will have training in social skills to learn ways to have flexible thinking and how to interact and disagree with adults and peers appropriately.
* Instead of engaging in problematic behaviors to avoid non-preferred tasks/peers: [Student A] needs to use her words to ask for help. [Student A] may utilize a break card or ask for a sensory break.

Antecedent Interventions –

These are strategies that are meant to prevent the occurrence of the target problem behavior. They are modifications/accommodations that staff make for the student and do not require any teaching.

- Environmental:
* Preferential seating near the area of instruction.
* access to noise cancelling headphones
- Changes in Staff Behavior:
* will be given extra processing time
* will be given immediate feedback about [her] behavior
* positive, neutral tones from staff

- Use of tools:
* timer
* visual schedule, choices

- General Curriculum:
* will be taught the Zones of Regulation to use as a strategy to help herself stay calm
*will use an incentive system to reinforce positive and expected behavior

Positive reinforcement –
When [Student A] engages in gaining attention appropriately and staying in expected area, she will receive points and money to spend in store.

Responding to Problem Behavior

When [Student A] is trying to gain negative attention from staff. Staff will calmly restate expectation and give her space to process and reduce attention. If [Student A] shows expected behavior, staff will immediately give positive attention to [Student A] and try to direct her back on schedule. When [Student A] leaves a designated area without permission, staff again will restate the expectation and give her space but with a limit. "I will set my timer for 2 minutes, would you like to go to the classroom or center-based?" [Student A] is typically demanding something at this point so staff will respond with "I would love to chat with you about that in center-base[d] or the classroom."

[District] may utilize food incentives for students with [BIPs] to encourage expected school behavior and progress towards their social/emotional goals. Tangible incentives (such as food and trinkets) are strategically faded as the student learns the targeted skills and is able to consistently implement them independently.

In the event that [Student A] poses a safety risk to herself, other students, or school staff, it may be necessary for trained school staff to use Non-violent Physical Crisis Intervention techniques.

6. On [redacted], Student A had a behavioral incident that resulted in the use of restrictive procedures. The District provided documentation of the incident, titled "Restrictive Procedures Form Physical Holding," which described the incident and District staffs' responses as follows:

Description of the incident that led to the physical holding:

[Student A] was having lots of noises and yelling in class. She was refusing work and expressed she would like to work in the 2nd grade [redacted] While in the [redacted] [Student A] continued being very loud and was laying on the tables. Her EA asked her to get off the table. [Student A] began yelling about work and walked away from staff and came to [the] center-base[d] [classroom]. [Student A] willingly went to the [redacted] and stated she wanted to work. Her EA instructed her she needed to keep the door closed to the [redacted] and she

would grab her work. [Student A] began climbing on the desk and chair that were in the [redacted] and yelling she did not want to work. EA removed the desk and chair but at this time [Student A] began hitting her EA. EA walked out of the [redacted] and [Student A] began spitting on the window and stated she wanted to nap. The EA brought in a bean bag and blanket for [Student A], but [Student A] continued to open the door and continued yelling. Staff reminded [Student A] that the door has to remain closed and if she continued to open it a staff member would have to be in the room with her. The door continued to get opened and slammed shut so EA went back into the [redacted]. [Student A] began to scratch, spit and attempted to bite EA. The mat was used multiple times to keep distance and the blanket was utilized to block the spit. [Student A] continued to climb on the mat and spit at EA. When the blanket was lowered [Student A] began to scratch at EA. [Student A] was asked to give space and not hurt staff, when the physical aggression continued a hold was performed for safety.

Description of the physical holding and the student's behavioral and physical status during intervention:

High
Children's Control

During the hold [Student A] continued to bite and was swinging her legs around. Staff member gave clear instructions to calm her body and keep hands to herself. [Student A] agreed and the hold was released. After release, [Student A] came at staff again screaming and trying to hit. Staff member held her hands and stated if the physical aggression continued she would have to put [Student A] in another hold. [Student A] continued to scream but did not get physical with staff anymore. Staff was able to get her to calm and [Student A] did end up falling asleep.

7. The District's documentation indicated District staff attempted to provide "redirection, correction, verbal or non-verbal feedback," "brief supervised removal (another location for purposes of engaging in activities or discussion related to behavior)" and a "safe place to relax/regroup (voluntary)." Additionally, it noted "redirection and de-escalation strategies were attempted but failed due to [Student A's] continued physical aggression towards staff," and that "[Student A] was spitting, scratching and attempting to bite staff and redirection was given multiple times and aggression continued for 20 minutes before hold was placed."

8. Regarding the physical hold of Student A, the District's documentation indicated it lasted 41 seconds, that another District staff member observed and recorded the hold, and that the physical holding ended when the threat of harm ended and staff determined Student A could safely return to the classroom.

9. During interviews, District staff reported that, prior to the physical hold, Student A had been disruptive for most of the day by making noises and refusing work. District staff reported Student A was dysregulated prior to leaving for the special education room and was screaming and becoming defiant.

10. District staff reported she followed Student A to the special education classroom and the [redacted], which was a preferred place for Student A. District staff also reported she instructed Student A to leave the door closed for Student A's safety, to prevent her fingers from being hurt by the door opening and closing, while she left the area to get the Student's work.

11. District staff reported she gave reminders to Student A to keep the door closed and not to come into the larger space in the special education classroom while escalated while she gathered work. District staff also reported that during this time, Student A was alone in the [redacted] and when Student A continued to escalate by climbing on the desk and chair and yelling, she did not leave the area and instead entered the [redacted] to remove the desk and chair to prevent Student A from injuring herself. She further reported that after removing the desk and chair, she left the [redacted] and Student A was again alone inside, escalated and with the door closed.

12. District staff reported Student A then repeatedly opened and closed the door to the [redacted], but did not exit. District staff continued to explain the sound of the door opening and closing was loud and disruptive to nearby peers, so District staff again reminded Student A to remain in the room with the door closed. District staff further reported she offered calming tools to Student A, including a rice or a sand bin, in response to her escalated behavior of climbing and yelling, but Student A refused.

13. Thereafter, Student A continued to open and close the door to the [redacted] loudly, so District staff entered the [redacted] with a mat to block the Student from exiting the room. Specifically, District staff described standing between Student A and the door, using the mat to keep Student A within the room and at a distance from herself.

14. District staff continued to report that once she began using the mat, Student A began to exhibit physical aggression (hitting, scratching, and attempting to bite) and District staff placed Student A into a physical hold for less than a minute, after radioing another District staff member to come and observe the hold. Following the release of the physical hold, the District staff member took a break, and the other District staff member began to supervise Student A in the [redacted]. This District staff member reported Student A continued to try to hit, kick, bite, and scratch her for another 20 minutes, but no additional physical holds were performed. This District staff member reported she remained in the [redacted] with Student A and prevented her from leaving until she was calm and eventually fell asleep.

15. District staff reported providing behavior interventions to Student A before and during Student A's escalated behaviors, including providing redirection, offering a sensory bin, modeling deep breathing and using minimal words, first/then statements, and reminders to keep her hands to herself.

16. District staff reported utilizing restrictive procedures with Student A was generally seen as a "last resort," as she had a history of trauma.

17. In a follow-up email after interviews, District staff provided the following explanation of the incident:

> While [Student A] was not physical at the time she was escalated. She had already not been following directions, climbing on tables, and screaming. [redacted] We keep all of the doors closed to begin with as students are working in [the] center base[d] [classroom]. Part of our program expectations when students are not following directions, screaming, etc. is to be in their chosen room [redacted] with the door closed (with or without staff if they choose) for a calming break. When they are regulated with a calm voice and staying in the room the door being open is an option.[6]

18. The District's documentation also indicated District staff held a debriefing meeting and notified Student A's parents of the physical hold two days later, on [redacted] in an email, following the return of Student A's case manager from a multi-day absence. The [redacted] documentation did not include any information about seclusion.

19. Specifically, to notify Student A's parents of the physical hold, District staff emailed Student A's parents on [redacted]:

> Hello. I wanted to send a quick email out – I have been out of the building all week with my own kids. I believe that you mentioned that you have an upcoming appointment for [Student A] next week and that any information on how school is going would be helpful. We have seen an increase in [Student A] becoming physical with her EAs when asked to leave class to take a break (either due to disruption/making noises or work avoidance which is accompanied by disruptive noises). She will begin to climb on tables in 2nd grade [redacted], or return to [the] center base[d] [classroom] where she becomes physical with staff. She has been kicking, hitting, scratching, and spitting. These stem from not wanting to do her work, which she will verbalize ("I do not want to do my work"). Staff utilize strategies we have discussed previously to try to help [Student A] work through it. A hold was used yesterday[7] due to [Student A's] increasing physical aggression toward staff at that time. [Student A] was given the opportunity to take a [redacted] break, lay in a quiet room or use the

[6] The District's special education director, during a phone interview with the Investigator, disputed this account, noting District staff try to "have a wedge" between the door and the frame to keep it from closing or will remain in the room to prevent seclusion. She further noted the students are not barred from exiting the room in these situations.
[7] The physical hold was performed two days prior to the [redacted] email, not the previous day.

> [redacted] to calm down. They tried using a mat first to block her hitting, kicking, pinching, attempting to bite and spitting. [Student A] jumped on and was climbing onto the mat to reach the staff. [Student A] broke the skin on her EAs hand during this time. One person performed the hold and one person directly observed to ensure everything was done correctly. When the team is seeing work avoidance, [Student A] is offered breaks, use of her first/then visual, work is always reduced (and further if needed) and [Student A] is given options as far as how/where to complete it.

20. On [redacted], Student A's case manager emailed the Complainant and Student A's other parent writing:

> I apologize again that you all were not informed of the hold and situation leading up to it in a timely manner. I was not in the building that day and not involved in the situation directly to be able to comment on it further. In our meeting in November, we discussed a number of things for [Student A]. Below is the unified behavior response plan: first/then chart – Paw Patrol Zones of Regulation – processing refusal/behavior. These things were shared and discussed with the EAs that work with [Student A]. I know that they are using these tools with [Student A], as [Student A] brought her first/then chart with her during a time I was working with her and she was excited to tell me about how it works and how she likes things written on it. There is a printed and laminated visual copy of her Paw Patrol Zones of Regulation that is kept in her folder in her classroom. The Zones are being used to check in with [Student A] before/after transition times, when she is displaying work refusal, or unexpected behaviors. We are in the process of making some programmatic changes. Starting after break you can expect to see a chart similar to what [District staff] has in place being shared with you. We will be updating all student [BIPs] as we are making programmatic changes and I will be sending a copy of that to you after break. I know at the end of November you were waiting on an outside report for [Student A], do you have a copy of that report at this time? We want to make sure we are taking the information into consideration as we are making programmatic changes and writing her [BIP].

21. The District did not complete documentation for the use of seclusion, notify the Complainant of the use of seclusion, and did not have a registered seclusion room at the school on [redacted].

22. On [redacted], the District proposed a reevaluation of Student A, which included a review of a private neuropsychological assessment obtained by Student A's parents in [redacted] and the completion of a new functional behavioral assessment (FBA). Student A's parents did not object within 14 calendar days to the proposal.

23. The District proposed, and completed, a checklist following the use of restrictive procedures for District staff to utilize as corrective action. The checklist included "Inform parent/guardian of the use of [restrictive procedure] on the SAME day as the incident. **Phone calls** are a preferred method of communication. If parent/guardian cannot be reached by phone, then an email is appropriate" as its first bullet point. (Emphasis in original.)

24. The District's special education director reported, since the filing of this complaint, the District assigned a special education administrator to supervise the special education teachers and paraprofessionals in the Student's school, in person, for approximately half the school day, five days a week.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with a student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101 and Minn. Stat. § 125A.03.

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs. . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

3. Minnesota Statutes § 125A.0941(f) defines restrictive procedures as "the use of physical holding or seclusion in an emergency" and provides "[r]estrictive procedures must not be used to punish or otherwise discipline a child."

4. Minnesota Statutes § 125A.0941(b) defines emergency as:

> "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

5. Minnesota Statutes § 125A.0941(c) defines physical holding as:

> "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:

(1) helps a child respond to or complete a task;

(2) assists a child without restricting the child's movement;

(3) is needed to administer an authorized health-related service or procedure; or

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

6. Minnesota Statutes § 125A.0941(g) defines seclusion as:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

7. Minnesota Statutes § 125A.0942, subd. 2(b) provides:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

8. Minnesota Statutes § 125A.0942, subd. 3(a) provides, in relevant part:

> Physical holding or seclusion may only be used in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time physical holding or seclusion began and the time the child was released;

(iv) a brief record of the child's behavioral and physical status; and

(v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

9. In response to Student A's disruptive behaviors in her general education classroom, on [redacted], District staff provided access to the [redacted] and [redacted] to support her academic task completion, as described in her September [redacted] IEP and as required by 34 C.F.R. § 300.17.

10. However, after Student A willingly entered the [redacted] while escalated, District staff instructed Student A to remain inside with the door closed while she went to retrieve Student A's work, resulting in seclusion of Student A, as defined by Minn. Stat. § 125A.0941(g) because Student A was confined alone in the [redacted] and her egress was barred. At this point, Student A's seclusion did not occur during an emergency, as defined by Minn. Stat. § 125A.0941(b), because immediate intervention was not

needed to protect Student A or another individual from physical injury, in violation of Minn. Stat. § 125A.0942, subd. 3(a). Additionally, the [redacted] Student A was secluded in was not a registered seclusion room with MDE, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(7).

11. Additionally, when Student A was initially secluded, the [redacted] contained a desk and chair, which were objects she could have used to injure herself or others, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(6)(vi). While District staff removed the desk and chair from the [redacted] to prevent Student A's injury, she did so after seclusion had begun.

12. Further, District staff's seclusion of Student A continued when District staff opened the door to the [redacted] and used a mat to keep Student A within the [redacted] because Student A was confined alone in the room and her egress was barred by District staff, as defined by Minn. Stat. § 125A.0941(g). Specifically, although District staff had entered the [redacted], it was for the purpose of blocking Student A, who was otherwise alone in the room, from leaving the [redacted] while she was escalated.

13. When District staff further secluded Student A, using her body and a mat to prevent her from leaving the room, Student A became physically aggressive (spitting, scratching, hitting, kicking, and climbing on the mat District staff was holding), resulting in an emergency, as defined by Minn. Stat. § 125A.0941(b) because immediate intervention was needed to protect Student A or another individual from physical injury. Thereafter, District staff placed her into a physical hold, as described by Minn. Stat. § 125A.0941(c), when District staff used physical intervention intended to hold Student A immobile or limit her movement, where body contact was the only source of physical restraint, and where immobilization is used to effectively gain control of Student A in order to protect her or another individual from physical injury. Additionally, during the physical hold of Student A, another District staff member observed her, as described in Minn. Stat. § 125A.0942, subd. 3(a)(4).

14. Following the conclusion of the physical hold and seclusion, the District staff member who observed the physical hold documented a description of the incident that led to the physical holding, why a less restrictive measure failed or was determined by District staff to be inappropriate or impractical, the time the physical hold began and was released, a brief record of Student A's behavioral and physical status, and a brief description of the post-use debriefing that occurred as a result of the physical hold (two days later on [redacted]), as described in Minn. Stat. § 125A.0942, subd. 3(a)(5). Further, as contemplated by Minn. Stat. § 125A.0942, subd. 2(b), the Complainant received written notification of the physical hold within two days, given A's case manager was out of the building.

15. However, as District staff did not recognize Student A was secluded during this behavior incident, the District did not document, as soon as possible after the incident concluded, a description of the incident that led to the seclusion, why a less restrictive measure failed or was determined by staff to be inappropriate or impractical, the time the seclusion began and the time she was released, a brief record of her behavioral and physical status, and a brief description of the post-use debriefing that occurred as a result of the use of the seclusion, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(5).

16. Additionally, by failing to recognize District staff secluded Student A on [redacted], District staff did not make reasonable efforts to notify Student A's parents on the same day seclusion was used on Student A or otherwise provide notice within two days by written or electronic means, in violation of Minn. Stat. § 125A.0942, subd. 2(b).

Decision

1. The District violated Minn. Stat. § 125A.0942, subd. 3(a) when it secluded Student A in a non-emergency situation.

2. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(7) when it secluded Student A in room not registered as a seclusion room with MDE.

3. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(6)(vi) when it secluded Student A in a room with objects that she could have used to injure herself or others.

4. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(5) when it did not document, as soon as possible after the incident concluded, a description of the incident that led to the seclusion, why a less restrictive measure failed or was determined by staff to be inappropriate or impractical, the time the seclusion began and the time Student A was released, a brief record of Student A's behavioral and physical status, and a brief description of the post-use debriefing that occurred as a result of the use of seclusion.

5. The District violated Minn. Stat. § 125A.0942, subd. 2(b) when it did not properly notify Student A's parents of the use of restrictive procedures on the same day or in writing within two days.

Corrective Action

Corrective action appears at the end of the decision.

Issue 2

[redacted]

Findings of Fact

[redacted]

[redacted]

[redacted]

[redacted]

Conclusions

1. [redacted]

[redacted]

[redacted]

Decision

[redacted]

Corrective Action

1. [redacted]

2. Within 15 calendar days of the date of this decision, the District's special education director must contact MDE's corrective action specialist, Sara K. Wolf at sara.k.wolf@state.mn.us, to coordinate

[9] Although Student A was not provided the same notice and did attend school, as a result of the staff absences, Student A did not receive her special education services that day.
[10] Students G and H did not have special education services scheduled for [redacted].

training to be provided by MDE staff, in collaboration with the District's special education director, to special education administrators and any staff who may be involved in the use of a restrictive procedure within the District. The training will cover the standards for restrictive procedures found in Minn. Stat. §§ 125A.0941 and 125A.0942.

The authority to review complaints is given in the federal regulations to the Individuals with Disabilities Education Act (IDEA), 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Official.*

Via encrypted email

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after May 13, 2023, one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted] The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective

action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for and respond to the Student's behaviors during the [redacted] school year. Specifically, the Complainant alleges the District improperly used removals from class, restrictive procedures, suspensions, and other discipline procedures, without following proper procedures and in lieu of implementing and/or developing an appropriate behavioral intervention plan (BIP).

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. The Student attended school within the District during the time period covered by the complaint. During the [redacted] school year, the Student was in 1st grade.

2. [redacted]

3. The Complainant reports that the Student was removed from the general education classroom because of behavior, without an individualized education program (IEP) team meeting, prior written notice, or parental consent. She further reports that, before deciding to change the Student's placement, the District did not provide all possible supports, develop a BIP, or provide additional specially designed instruction. [redacted]

4. The Student's most initial evaluation was completed in [redacted].

5. The Student's [redacted] evaluation report documented the team's determination that the Student met the initial eligibility criteria for the categories of Emotional or Behavior Disorders (EBD) and Speech or Language Impairments (SLI). The Student's [redacted] evaluation report identified the following educational needs:

> In the area of communication, [Student] needs to increase his articulation skills.

[redacted]

> In the area of academics, [Student] needs to improve his basis reading skills of decoding and comprehension. He needs to improve his math calculation skills of addition and subtraction and needs to improve his writing skills of letter formation and sentence writing.
>
> In the area of behavior, [Student] needs to increase his frustration tolerance by using calming strategies and a break card.
>
> In the area of social skills, [Student] needs to increase his social interactions with peers and adults by accepting redirection and demonstrating expected behavior.

6. The Student's [redacted] evaluation report further documents that the Student "functions within the below average range of intellectual ability compared to others his age," and documents concerns across school and home setting with his behavior, emotions and social skills, as follows:

> Across settings, [Student] has great difficulty with cooperating with directions he is given, tends to argue when he doesn't get his way, and he is overly aggressive. [Student's] mother and teacher note that he often breaks rules, disobeys and is dishonest. He struggles across home and school with distractibility, remaining focused and on-task, and with listening. His teacher notes that he is frequently irritable, is easily upset, worries and is tense, and sometimes isolates himself from the group . . . He struggles with adapting to changes, transitioning, and is slow to recover from a setback. His social interaction skills are weaker than those of his peers, and he has great difficulty with academic tasks, as well as with communicating effectively. [Student] will benefit from direct and explicit instruction in social-emotional skills, coping strategies, self-regulation skills, and following directions.

7. The Student's [redacted] evaluation report includes a functional behavioral assessment (FBA). The following summary statement is provided:

> [Student] displays work refusal/defiance and physical aggression when given independent work tasks he does not care to do, or perceives as difficult, or when he is corrected for his behavior or prompted more to do the work he does not care to do. The primary function of these behaviors is likely avoiding or escaping tasks he does not care to do, or perceives as difficult. [Student] escalates in behavior to include physical aggression as a continued response to escape or avoid tasks.

8. The Student's [redacted] evaluation report further includes more detailed results from the FBA, which documents that the FBA was completed using information collected through direct observations of the Student across several learning environments and questionnaires completed with the Student's parent and classroom teachers.[3] The FBA further identifies the following target behaviors: "work refusal/not completing work/not complying with directions" and physical aggression. The functional behavioral assessment includes information on the frequency, duration, and intensity of the target behaviors, the antecedents and current consequences, and the perceived function of the behavior.

9. The Student's [redacted] evaluation report further provides:

> Functionally-Relevant Replacement Behaviors to be Taught: Appropriately Request a Break: Rather than engage in uncooperative behaviors, destroying materials, or becoming physically aggressive, [Student] needs to be consistently taught and encouraged to request a break (or help from an adult) when he is feeling frustrated with a task. He needs to generalize this strategy across environments and situations, and would benefit from learning to take a break in the general education classroom so that he isn't missing instructional opportunities.
>
> Teach Self-Advocacy Skills and requesting help: [Student] has shown difficulty in demonstrating emotional and behavioral regulation once he becomes anxious, or overwhelmed. Teaching and reinforcing specific strategies for self-regulation; such as the breathing box, or mindfulness techniques, will be beneficial to him.
>
> Additionally, providing [Student] with instruction at his specific instructional level will be paramount in his ability to remain engaged in his classroom community; as well as helping him feel successful rather than defeated and frustrated. Incorporating opportunities for [Student] to have time with preferred activities may increase his willingness to attempt activities in the classroom, as well as his willingness to accept corrective feedback.
>
> Increasing [Student's] fine motor skills is important given how frequently writing and other fine motor tasks are a trigger to his behavior. Engaging in a check-in/check-out system will also be beneficial to [Student] in helping him set a goal for the day, providing him opportunity for positive reinforcement and praise as

[redacted]

well as feedback on his performance throughout the day, and giving him time with preferred adults or activities that are motivating to him.

10. The Student's IEP team met on [redacted], to review the results of the [redacted] evaluation, determine if the Student was eligible for special education, and develop an IEP for the Student. District records indicate that the Student's parent attended this meeting. [redacted]

11. The Student's parent consented to an initial IEP for the Student on [redacted].

12. The Student's initial IEP was dated [redacted]. The Student's May [redacted] IEP contained annual goals in the areas of articulation, frustration tolerance, social skills, reading, math, and written language. To enable the Student to make progress toward those goals, the Student's May [redacted] IEP provided for the following direct special education and related services:

Instruction or Service Provided	**Number of Minutes per Session**	**Anticipated Frequency of Sessions**
Speech/Language	10	6 times per month
Behavior Monitoring	15	5 times per week
Social Skills	20	5 times per week
Academic Support: Reading	15	5 times per week
Academic Support: Math	30	5 times per week
Academic Support: Written Language	15	5 times per week

13. The Student's May [redacted] IEP provides the following explanation of the Student's least restrictive environment (LRE):

> While receiving special education services, [Student] will not participate in the following general education classes/activities with non-disabled peers: [Student] is able to utilize the resource room to have a break, process his behavioral choices, earn free time, complete assignments or to have a time out. He will be checking in and out with the special education staff each day while working on a positive behavioral points system. Without specialized instruction, [Student] is not able to make gains. He will not miss core math or reading instruction in the classroom to receive reading, math, written language or speech services. If [Student] did not receive these services, he would become more frustrated and fall further behind his peers.

[redacted]

14. The Student's May [redacted] IEP further includes several program modifications, supports and adaptations in general and special education, including visual schedules and supports, number charts and manipulatives for math, scribe for written assignments, extra time for assignment completion, and modified assignments, in addition to fidgets, a check-in/check-out system to monitor behavior, and a break card "when he needs to calm."

15. The Student's May [redacted] IEP further documents that the Student has a BIP. The Student's BIP is dated [redacted], and addresses the target behaviors of "not completing written work, hitting, kicking, being destructive and running away from adults." The Student's BIP states that the Student will be taught the following replacement/behavior skills: "Take a Break" strategy and self-advocacy (self-regulation) and requesting help, and "receive support from the EBD teacher for check-ins/check-outs, breaks and calming activities in the [redacted], as well as with the [special education] teacher during instructional time in the [redacted]."

16. The Student's May [redacted] BIP further provides for the District to utilize the following responses to the Student's behaviors:

> 1. If [Student] engages in task refusal/destructive behaviors, staff will encourage [Student] to take a break.
>
> 2. If [Student] engages aggressive behavior (hitting, kicking, throwing things), staff will prompt [Student] to take a break. Staff will attempt to redirect the behavior and or ignore. If he continues to physically escalate and is a danger to staff or himself, a Handle with Care (HWC) Modified Primary Restraint Technique (PRT) will be implemented.
>
> 3. The Parents will be notified the same day as the procedure is used. If unable to notify Parents on the same day, a written or electronic notice must be sent home within two days.

17. Regarding the use of restrictive procedures, the May [redacted] BIP provides:

> 1. Seclusion: The parents will be notified the same day as the procedure is used. If unable to notify parents on the same day, a written or electronic notice must be sent home within two days.
>
> 2. Physical Hold: If aggressive behaviors escalate quickly, the use of an approved . . . physical restraint is an option for emergency situations due to potential harm to self or others.

18. The District's restrictive procedures plan (RPP) was last updated in [redacted]. The District's RPP documents that the District intends to use both seclusions and physical holding during emergencies, and documents that staff members are trained using Handle with Care, including training on de-escalation

methods, relationship building, positive behavior interventions, and alternatives to restrictive procedures.

19. The RPP further identifies a range of positive behavior strategies used within the District, and provides a link to mental health services contracted by the District. The RPP also describes how the District will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee.

20. Regarding training for District staff, the District reports:

> [The District] annually trains its certified staff and paraprofessionals in de-escalation techniques, consistent with Minn. Stat.§ 122A.187. The District also annually provides training to identified staff on the use of restrictive procedures, consistent with Minn. Stat. § 125A.0942. The staff involved in the identified restrictive procedure incidents have each been certified and trained in Handle with Care Behavior Management System and de-escalation strategies.

21. District records document that all of the staff who implemented physical holds or seclusions with the Student during the [redacted] school year were trained in the standards for using restrictive procedures. One individual received the full training on [redacted], and the others received a refresher on [redacted].[5] District records document that the District provided additional behavior-related professional development to staff on [redacted], as well as on [redacted]. During the course of this investigation, the District reported that these trainings were attended by all relevant staff members.

22. The [redacted] school year begin on [redacted]. The Student's May [redacted] IEP remained in effect at the start of the [redacted] school year.

23. The District reports:

> At the beginning of the [redacted] school year, [Student] began programming . . . with services for identified needs with social skills, academics (reading, math, and written language), speech, behavior monitoring, and indirect occupational therapy. These services were provided in a special education classroom, and most of [Student's] day was spent in the general education classroom.[6]

24. District records document that on [redacted], a physical hold was used with the Student, as the Student attempted to put the blade of a broken pencil sharpener in his mouth, and "when the sharp tool was taken away from him, then he became aggressive towards staff members," ultimately leading to a

[5] The individual who received the full training on [redacted], did not participate in the physical hold on [redacted].

[6] The Student's IEP provided for the Student to spend less than 21 percent of his school day outside the general education classroom, which the District refers to as [redacted]"

physical hold.[7] Records regarding this incident document that the Student's parent was notified of the physical hold, via voicemail, on [redacted], shortly after the physical hold ended, and a staff debriefing of the [redacted] hold occurred on [redacted]. The staff debriefing form indicates that the following actions were planned to prevent the future use of restrictive procedures: having daily check-in/check-out, monitoring point cards, and check in with general education teacher.

25. District records document that on [redacted], a physical hold was used with the Student after a behavioral incident in the lunchroom resulted in the Student spitting at peers and kicking and slapping staff. Records regarding this incident document that the Student's parent was notified of the physical hold, via voicemail, on [redacted], approximately two hours after the physical hold ended, and a staff debriefing of the [redacted] hold occurred on [redacted]. The staff debriefing form indicates that the following actions were planned to prevent the future use of restrictive procedures: adjusting the Student's medications, offering breaks, and offering for the Student to do his work in the resource room after lessons.

26. District records document that on [redacted], a physical hold was used with the Student after a behavioral incident while working in a small group with staff resulted in the Student attempting to elope from the classroom and kicking and punching staff. Records regarding this incident document that the Student's parent was notified of the physical hold, by phone, on [redacted], and reminded her of an already-scheduled IEP team meeting on [redacted].

27. The Student's IEP team met on October 3, 2023, "to review [Student's] accommodations, modifications, [BIP], any new information parent can share to see how we can better support [Student] during the school day." Records regarding this meeting document that the Student's parent and grandparent attended this meeting, [redacted]

28. Records from this meeting indicate that the Student's IEP team discussed various items, including the Student's medication schedule, an "on-task study," the Student's need to eat breakfast, and the role of individual attention for the Student, and other ideas regarding his programming—"likes to help others – find tasks to do" and "gets work and returns to [redacted]." During interviews, District staff indicated that, at the meeting, the Student's parent indicated that had recently adjusted the Student's medication, and the IEP team agreed to wait to see the effect of medication adjustments before making changes to his educational program. They also discussed the importance of ensuring the Student got enough to eat, and the IEP team discussed ways to help the Student develop a more positive association with the [redacted], leading to a plan that the Student would be invited to eat breakfast in the [redacted] and visit the [redacted] at other times of the day for snacks.

[7] There are no allegations that the District used prone restraints with the Student, and District forms for each incident document that the Student was not in a face-down position.

29. District records document that a physical hold was used with the Student on [redacted], when the Student's escalated behaviors resulted in the Student eloping from the classroom and flipping over tables, kicking, and hitting staff. Records regarding this incident document that the Student's parent was notified of the physical hold, by a phone call, on [redacted], at the end of the school day.

30. District records indicate that a staff debriefing of the [redacted] physical hold was held on [redacted]. The staff debriefing form indicates that the following actions were planned to prevent the future use of restrictive procedures: "offering to allow him to do his assignments in [redacted]. Offering him breaks. He has a point card and a direction tally to collect data on seeing where his needs are. Have a meeting scheduled."

31. District records indicate that a staff debriefing of the [redacted] physical hold was held on [redacted]. The staff debriefing form indicates that the following actions were planned to prevent the future use of restrictive procedures: "point cards and redirection sheets collected, giving prompts for breaks, allowing to work in [redacted]."

32. District records document that a physical hold was used with the Student on [redacted], when the Student's agitation in the classroom led to him flipping his desk, chair, and throwing objects at his teacher, running around the school, and ramming, pushing, and kicking staff. Records regarding this incident document that the Student's parent was notified of the physical hold, by a phone call, on [redacted], after the end of the school day. District records further document that a staff debriefing regarding the [redacted] physical hold was held the following day, and that the following actions were planned to prevent the future use of restrictive procedures, "Student is on a point sheet, data collection, and a meeting is going to be scheduled, as this is the [second restrictive procedure] within 30 days."[8]

33. District records document that a physical hold was used with the Student on [redacted], when the Student's behavior escalated in the special education room at the end of the school day, and the Student was pushing, jumping on tables, hopping from table to table, and throwing balls, books and chairs. Records regarding this incident document that the Student's parent was notified of the physical hold, by a phone call, on [redacted], and a staff debriefing of this incident took place on [redacted].

34. District records document that a physical hold was used with the Student on [redacted], when the Student was trying to elope from the [redacted], crawling under tables, kicking staff, punching, and spitting on staff. Records regarding this incident document that the Student's parent was notified of the physical hold, via voicemail and email, on [redacted], and that District staff also talked with the Student's parent over the phone the following school day to ensure that she received the message.

[8] In its original response, the District reported "The School District convened IEP team meetings as soon as reasonably practicable given the frequency of necessary restrictive procedures. The impracticability of convening additional IEP team meetings on short notice amounted, at most, to a harmless technical violation of Minn. Stat.§ 125A.092, subd. 2(c)."

35. Records further document that a staff debriefing of the [redacted] physical hold occurred on [redacted]. The staff debriefing form documents that the following actions were needed to prevent the need for future use of restrictive procedures: point cards, check-in and out, and breaks offered.

36. The Student's IEP team met on [redacted] to "review accommodations, modifications, [Student's day]. To see how we can better help him throughout [sic]." Records regarding this meeting document that the Student's parent and grandparent attended this meeting, [redacted]. Notes from this meeting include the following information: "Review restrictive procedures, review modifications and accommodations. [Student] has been going into the [redacted] to do some of his work." District staff reported that the IEP team agreed to continue to allow the Student to go to the special education room to complete work, as that significantly increased the Student's rate of work completion, but noted that the Student was choosing to spend an increased amount of time in the special education room rather than the general education classroom.

37. District records document that seclusion was used with the Student on [redacted], indicating that the Student was punching and kicking staff. Records document that the seclusion lasted 18 minutes and ended when the threat of harm ended.

38. District records document that the seclusion occurred in a seclusion room located within the Student's [redacted]. This room was registered with MDE in January 2013. The District reports that the seclusion room measures eight feet by seven and a half feet, does not contain any objects or furniture, and otherwise meets the requirements for a registered seclusion room.[9]

39. Records regarding this incident document that the Student's parent was notified of [redacted] seclusion on [redacted] by phone, and that a staff debriefing meeting of the incident took place on [redacted]. The staff debriefing form describes the following actions needed to prevent the need for future use of restrictive procedures: "continual communication with parent[,] point sheets, check-ins/outs[,] room available for breaks."

40. District records document that seclusion was used with the Student on [redacted] in the Seclusion Room after the Student became escalated and began kicking staff. Records document that the seclusion lasted 52 minutes, and the Student's parent was notified of the seclusion shortly after it occurred, and then came to pick up the Student and bring him home. District staff, reported, consistently and credibly, that the Student was not suspended or dismissed, but instead was picked up early at the Student's parent's choice.

41. Records regarding this incident document that a staff debriefing meeting of the [redacted] seclusion was held on [redacted]. The staff debriefing form further describes the following

[9] The Complainant did not raise concerns about the appropriateness of the seclusion room itself, or its compliance with the requirements of Minn. Stat. § 125A.0492, subd 3(a)(6).

actions needed to prevent the need for future use of restrictive procedures: "point sheets, check-in/outs, communication with mom setting up for another meeting."

42. District records document that physical holding and seclusion were used with the Student on [redacted], during a behavioral incident that included eloping, biting, kicking and punching students, and lunging at staff. Records regarding this incident document that the Student was secluded for one minute. The Student's parent was notified of the restrictive procedures over the phone the same day, and a staff debriefing occurred on [redacted]. The staff debriefing form further describes the following actions needed to prevent the need for future use of restrictive procedures: "point sheets, check-in/outs, communication with mom."

43. District records document that physical holding was used with the Student on [redacted], when the Student became escalated when he was asked to take a break and he hit, kicked, and spit on staff. Records regarding this incident document that the Student's parent was notified of the restrictive procedures over the phone the same day, stating "discussions were made about the upcoming meeting."

44. District records further document that a staff debriefing occurred on [redacted]. The staff debriefing form notes that "redirection seemed to agitate student, brief supervised removal to another location . . . made student more aggressive and physical." The form further describes the following actions needed to prevent the need for future use of restrictive procedures: "communication with mom, meeting on [redacted]."

45. The Student's IEP team met on [redacted], to discuss the use of restrictive procedures and "also, to look at [Student's] programming and setting and are we meeting his needs in that setting. Review other options to help [Student] be more successful." Records from this meeting document that the Student's parent attended the meeting over the phone, [redacted]. The record of team meeting further provides the following hand-written notes:

> Reviewed restrictive procedures, how he is doing in his [general education] class with pull-out services. Is he successful[?] Team determined that setting might be too much for him at this time. Team determined that Student might be more successful in a [different, more restrictive room, which the District describes as "Level 3" or a "self-contained" program]. He will have smaller class size, more [one-to-one] attention, more individualized academic support.
>
> Next steps[:] amending IEP, sending amendment and [prior written notice] to [Student's parent]. [Student's parent] is in agreement with student moving to smaller class [and] asked that he start today.

46. During interviews, District staff reported, consistently and credibly, that the Student's IEP team discussed the Student's behaviors and considered data at this meeting, including data regarding how often the Student was out of the general education classroom and his rate of work completion. District

staff reported that the IEP team considered making changes to his educational program, including moving the Student to a more restrictive setting, which the Student's parent was requesting, and discussed what the Student's educational program would look like in the more restrictive setting. District staff further reported, consistently and credibly, that the Student's parent "was excited" about the change and asked if the Student could start the new program immediately.

47. The District reports:

> While the [prior written notice] formally went into effect later, the parent began sending the Student to the center-based program on [redacted], following the IEP team meeting on [redacted], at which she confirmed that she was agreeing to place Student there.

48. The District was closed for winter break between [redacted].

49. District records document that physical holding and seclusion were used with the Student on [redacted]. District records document that the Student was physically held during a transport to the seclusion room, and secluded in the seclusion room for 43 minutes. Records regarding this incident document that the Student's parent was notified of the restrictive procedures use by phone, but does not indicate the date this took place.

50. District records further document that a staff debriefing regarding the use of restrictive procedures took place on [redacted], and notes that the necessary follow-up is "helping [Student] with routines of new placement."

51. District records document that seclusion was used with the Student on [redacted], when the Student attempted to eat a piece of plaster and tried biting, kicking and punching staff. The restrictive procedures form documents "Student was being unsafe to staff, kicking, punching [sic] A physical restraint (hold) was impractical as these tend to amp him up and spitting becomes excessive and targeted at the adults. The safest restriction is seclusion and he tends to self-regulate more quickly in this situation."

52. Records regarding this incident document that the Student's parent was notified of the seclusion by phone on [redacted], and that a staff debriefing meeting took place on [redacted]. The form further documents the following follow-up plan "continued contact with [Student's parent]. He is scheduled for a mental health evaluation with an outside agency later this month."

53. The District provided the Student's parent with prior written notice dated [redacted] and an amended IEP dated [redacted]. The agreement to amend documents that the Student's setting was being changed to more restrictive placement, in which the Student would spend less than 40 percent of his day with nondisabled peers, and which the District refers to as "a level 3 setting" or "center-based program." No other changes were made to the Student's IEP or BIP.

54. The [redacted] prior written notice documents the following:

> The Team feels as though the [more restrictive placement] will better support [Student's] behavioral, social and educational needs. Team feels as though [Student] will benefit from the smaller classroom, more [one-to-one] attention, academic support, as well as continual social skills that he will get inside the classroom. Student will receive 310 [minutes of] academic and behavioral support daily. He will be with his peers for lunch, recess, and specials . . .
>
> Other options considered and why those options were refused:
>
> Due to the data and the behavioral concerns the team felt that there weren't any viable options at this time.

55. [redacted] The District provided available information [redacted] on [redacted] which included the following information: "[Student] was out of his classroom for an average of 260 minutes a day before moving over to [center-based classroom] . . . In the months of September through December, [Student] was out of his classroom for holds, seclusions, and calm-down periods for a total of 852 minutes."

56. Regarding the Student's time out of the classroom and his BIP, the District reports:

> The School District has in place a [BIP] that was first developed and proposed alongside [Student's] initial IEP. The [BIP] continues to be appropriate and address [Student's] current needs, as shown by the substantial decrease in restrictive procedures and the potential increase in the general education setting with the most recent proposed IEP and [BIP]. [Student] has been out of the classroom a total of 1065 minutes, as documented on the [redacted] tracking sheet between [redacted] Reasons for being out of the classroom range from academic support, behaviors, breaks, lunch, [and] breakfast. The IEP accommodations confirm [Student] will be allowed to use a break card when he needs to calm down. On the tracking form, during identified "break times" occurring outside the classroom, [Student] was utilizing this accommodation. The [BIP] indicates [Student] will appropriately request a break (i.e., functionally equivalent replacement behavior) rather than engaging in uncooperative behaviors, destroying materials, or becoming physically aggressive. This strategy is being taught by the special education teacher through social skills instruction. The [BIP] also indicates [Student] will receive calming activities in the [special education] room. On the tracking form during the identified "behavior" times outside of the classroom [Student] was utilizing the support identified in the [BIP].

> The District properly implemented the accommodations in [Student's] IEP and [BIP], allowing him to request a break and access calming activities in the [special education] room. Complainant may believe that [Student's] IEP and [BIP] should look different. That the District implemented the behavioral accommodations, supports, and strategies in his IEP and [BIP] does not confirm - or even suggest - that [Student] was removed from the classroom as a disciplinary consequence. Any assertion to the contrary is disingenuous.

57. The District reports that the Student's parent did not respond to the [redacted] prior written notice, and the Student's amended IEP (December [redacted] IEP) went into effect after 14 calendar days on [redacted]

58. On [redacted], the Student's parent filed a special education complaint with MDE, raising concerns regarding the District's use of restrictive procedures, the effectiveness of the Student's BIP, and appropriateness of his goals. Before the MDE complaint investigator was able to connect with the Student's parent via phone, the Student's IEP team met, as described below. On [redacted], the Student's parent emailed the MDE investigator, saying, "It was just a misunderstanding, I'd like to withdraw the complaint."

59. The Student's IEP team met on [redacted] to discuss the Student's progress. District records document that this meeting was attended by the Student's parent, grandparent, and [redacted]. Notes from the meeting document the following:

> He is doing very well right now. [Student's parent and grandparent] feel he is doing well also. [Grandparent] reported he is coming into his emotions. Discussion as to why? Structure of the classroom, less students, more predictably . . .
>
> [Student's parent] reports he is showing being proud. He brings his homework home. He comes home very happy. It was noted that [redacted] attempts to get him to escalate. She is unable to do so . . .
>
> [Student's parent] mentioned she would like him to be back in the general [education classroom] by the start of next school year with a paraprofessional, the team, including [redacted] do not feel that would be realistic at this time, as we can't determine right at this moment where his behavioral data will be. If we push him too much, this could backfire and he could self-sabotage. It was noted that the data should drive this decision. [Student's parent] agreed at this time to review data before making a decision.
>
> When asked about any changes to the IEP at this time, [Student's parent] reported that she felt everything was going well and did not need to make any changes. [redacted] also summarized this question . . . it was discussed that

> the team would review his current progress [in May], and discuss what classroom teacher could be appropriate for him [in the general education classroom].

60. During interviews, District staff reported that, during this IEP meeting, both the Student's parent and his grandparent indicated that they were pleased with the Student's new educational program, and were "ecstatic" to see the progress he was making both at home and at school. District staff reported, consistently and credibly, that the Student's parent appeared pleased with the Student's current supports. District staff further reported, as well, that they saw significant changes in the Student once he settled into the new program, noting that the Student showed dramatically fewer behaviors, made significant educational gains, and "seemed happier" overall.

61. Following the [redacted] IEP team meeting, the District provided the Student's parent with a revised IEP (March [redacted] IEP) and prior written notice dated [redacted]. The prior written notice explains that "the District proposes to make no changes to [Student's IEP] at this time," but minor changes were made to correct a clerical error and more accurately reflect the services he was receiving, clarifying "his services have not been changed." The District reports that the March [redacted] IEP went into effect after 14 calendar days.

62. On [redacted], [redacted] emailed the Student's special education teacher, asking if the Student was "working up to grade level," and if he was "in your class specifically due to behavioral issues." The Student's special education teacher responded the next day with the following information:

> He is not at grade level due to the fact that his escape and avoidance (behaviors) have gotten in the way and he missed so much instruction, being out of the classroom before with me. He would be capable but he lacks confidence and refuses to do anything he deems as too difficult. He gets anxious about not knowing how to do tasks. He needs to improve his hand strength (writing, coloring, drawing, Thera putty, etc.) as he fatigues during tasks. So, yes ... he is in my room due to behaviors but he also requires small group support in order to get his work completed. That is why he has gone from completing nothing to turning in work daily.

63. This complaint was filed on [redacted].

64. The District reports:

> Another IEP team meeting was scheduled for [redacted], a mutually agreed-upon date and time. The day of that meeting, however, [Student's parent] notified the District she was unable to attend. With the [Student's parent's] permission, the District convened the meeting as scheduled. The [Student's parent] then requested - and the School District agreed - to meet on [redacted] so she could receive an update from School District personnel about the discussion during the [redacted] IEP team meeting before a prior

written notice was issued. For reasons unknown to the School District, the guardian did not show for the [redacted] conference.

Accordingly, the District sent a Prior Written Notice with a proposed annual IEP and an updated Positive Behavior Intervention Plan.

65. [redacted]

66. [redacted]

67. [redacted]

68. On [redacted], the District provided the Student's parent with a revised proposed IEP dated [redacted] (May [redacted] IEP) and prior written notice dated [redacted]. The [redacted] prior written notice documents:

> The District proposes [a revised] IEP to continue providing special education and related services for [Student] in a center-based classroom. These services are designed to address [Student's] unique educational needs and will include: Behavior Modification, Social Skills, Reading, Writing, Speech and Occupational Therapy.
>
> Additionally, the District proposes to discontinue special education math services in the center-based classroom. Starting in the fall [redacted] [Student] will transition to the general education classroom for math instruction. This transition is based on [Student's] demonstrated progress and readiness for inclusion in the general education setting.
>
> The District has also updated the reading and writing goals to reflect [Student's] current academic functioning . . . The Positive Behavior Intervention Plan

> targeted behaviors have been updated. The function of the behaviors remain the same . . .
>
> The team discussed a full day in the general education setting with paraprofessional support for fall [redacted] but rejected that option as [Student] continues to require special education services in the areas of behavior modification, social skills, reading, writing, speech, and occupational therapy that is best met in a self-contained setting. The team determined this would be too many changes at one time for [Student] and determined a slower transition throughout the school year would better fit his educational needs.

69. The District reports that the Student's May [redacted] IEP and BIP went into effect after 14 calendar days. The Student's [redacted] BIP addresses the target behaviors of "not completing written work, hitting, kicking, and being destructive." No other changes were made to the Student's May [redacted] BIP.

70. The [redacted] school year ended on [redacted]. The Student's grades from the [redacted] school year range from "needs improvement" to "excellent," but generally show improvement over the course of the school year. Progress reports dated [redacted] mostly indicate that the Student was making progress towards achieving his goals by the end of the year. However, the [redacted] progress note on his behavior goal notes that he had only been in the center-based program for a few weeks and "he is testing the limits and pushing boundaries" so it was difficult to assess his progress at that time, and the [redacted] progress report notes some work refusal regarding written language.

71. District staff further reported, consistently and credibly, that the Student was flourishing in his new placement, noting that his behaviors had decreased significantly, and his work completion was increasing, and he was making progress in the general education curriculum and on IEP goals. The student's general education teacher reported that the Student continued to join the general education classroom for morning meeting, specialists, recess, and field trips, noting that he was a more active participant, and showed fewer behaviors, during those times. Several District staff reported that the Student appeared happier as well, reporting that they now see him smile, greet staff, engage positively with peers, and note that he now seems to like school and "has done a complete 180."

72. District behavior records document that additional behavioral incidents, which did not involve the use of restrictive procedures, occurred on the following days in [redacted]: [redacted].

73. [redacted]

Conclusions

1. This complaint only examines allegations of special education violations that occurred not more than one year prior to the date that the complaint was received, [redacted], pursuant to 34 C.F.R. § 300.153(c). Although this complaint includes some factual information about the issues that occurred prior to [redacted], such facts are for contextual purposes only.

2. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the student's IEP, pursuant to pursuant to 20 U.S.C. §§ 1401(9) and 1412(a)(1)(A) and Minn. Stat. § 125A.03.

3. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

4. Regarding restrictive procedures plans, Minnesota Statute § 125A.0942, subdivision 1(a), provides:

> (a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:
>
> (1) lists the restrictive procedures the school intends to use;
>
> (2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;
>
> (3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4;
>
> (4) describes how the school will monitor and review the use of restrictive procedures, including:
>
> (i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and
>
> (ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and

> proposed actions to minimize the use of restrictive procedures; any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met; and
>
> (5) includes a written description and documentation of the training staff completed under subdivision 5.

5. Here, during the [redacted] school year, the District appropriately maintained a restrictive procedures plan, which describes that the District does intend to use physical holding and seclusion; how the school will implement a range of positive behavior strategies and provide links to mental health services; describes how the school will provide training on de-escalation techniques; and describes how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee, consistent with Minn. Stat. § 125A.0942, subd. 1(a).

6. Regarding the use of restrictive procedures, Minnesota Statute § 125A.0942, subd. 2, provides in pertinent part:

> (b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).
>
> (c) The district must hold a meeting of the individualized education program or individualized family service plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program, individualized family service plan, or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program, individualized family service plan, or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program or individualized family service plan meeting when the child's individualized education program or individualized family service plan provides for using restrictive procedures in an emergency.

(d) If the individualized education program or individualized family service plan team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

(e) At the individualized education program or individualized family service plan meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program, individualized family service plan, or behavior intervention plan.

(f) An individualized education program or individualized family service plan team may plan for using restrictive procedures and may include these procedures in a child's individualized education program, individualized family service plan, or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program, individualized family service plan, or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

7. Minnesota Statute § 125A.0942, subd. 3(a), provides:

Physical holding or seclusion. (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion is not used to discipline a noncompliant child;

(3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

(4) staff directly observes the child while physical holding or seclusion is being used;

> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding or seclusion began and the time the child was released;
>
> (iv) a brief record of the child's behavioral and physical status; and
>
> (v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;

8. Minnesota Statute § 125A.0942, subd. 2(b) provides, in pertinent part:

> (b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

9. Minnesota Statute § 125A.0942, subd. 4(11) prohibits the use of seclusion on children from birth through grade 3 by September 1, 2024.

10. Here, the District acknowledged that District staff used physical holds and seclusions with the Student on [redacted] during an emergency under Minn. Stat. § 125A.0941(b). Following these incidents, the District notified the Student's parent by phone and conducted post-use debriefing meetings, in accordance with under Minn. Stat. § 125A.0942.

11. Further, following each physical hold or seclusion, District staff documented, as soon as possible, a description of the incident that led to the physical holding or seclusion, why a less restrictive measure failed, the time the physical hold or seclusion began and ended, or a brief record of the Student's behavioral and physical status. The District further documented a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion, in accordance with Minn. Stat. § 125A.0942, subdivision 3(a)(5).

12. However, District staff used restrictive procedures on the Student on two separate school days within 30 calendar days, in [redacted], as well as [redacted], and did not always hold an IEP meeting within 10 calendar days, in violation of with Minn. Stat. § 125A.0942, subdivision 2(c). Specifically, the District failed to hold an IEP meeting with 10 calendar days of physical holds on [redacted], physical holding and seclusion on [redacted], and physical holds and seclusion on [redacted].

13. During the [redacted] school year covered by this complaint, the Student was not removed or dismissed from his educational program for disciplinary reasons. Although the Student's parent picked the Student up early from school on [redacted], following the use of seclusion, the District did not prohibit the Student from attending school. Therefore, the District did not improperly use disciplinary procedures. See 34 C.F.R. § 300.530 (authorizing school personnel on a case-by-case basis to remove a student who violates a code of student conduct from school) and Minn. Stat. § 121A.41 (defining dismissal to include exclusion, expulsion, and suspension).

14. The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1415(b)(3) requires school districts to provide:

> Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—
>
> (A)proposes to initiate or change; or
>
> (B)refuses to initiate or change,
>
> the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

15. Minnesota Statutes §125A.091, subdivision 3a provides:

> In addition to federal law requirements, a prior written notice shall:
>
> (1) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and
>
> (2) state that a parent who objects to a proposal or refusal in the prior written notice may:
>
> (i) request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9; or
>
> (ii) identify the specific part of the proposal or refusal the parent objects to and request a meeting with appropriate members of the individualized education program team.

16. Minnesota Rule 3525.3600 provides, in pertinent part:

> When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

17. Minnesota Statutes § 125A.091, subd. 28, provide:

> District liability. A district is not liable for harmless technical violations of federal or state laws, rules, or regulations governing special education if the school district can demonstrate that the violations did not harm a student's educational progress or the parent's right to notice, participation, or due process. This subdivision is applicable to due process hearings and special education complaints filed with the department.

18. Here, the District acknowledged that it implemented a change in the Student's educational placement in [redacted], without properly providing the Student's parent with prior written notice, in violation of Minn. Stat. §125A.091, subd, 3a and Minn. R. 3525.3600. Specifically, the District began implementing the December [redacted] IEP, including the Student's placement in a center-based program, on [redacted] prior to providing the Student's parent with prior written notice.

19. However, the Student's parent did provide verbal agreement to these changes at the [redacted] IEP team meeting, including a request that the Student start that day, and did not object to these changes via the [redacted] prior written notice or in subsequent conversations. The Student's parent has not indicated that this affected her ability to meaningfully participate in decisions about the Student's educational programming. Accordingly, this was a harmless technical violation of Minn. Stat. § 125A.091, subd. 3a and Minn. R. 3525.3600 that did not impact the Student's educational progress or the Student's parent's right to notice, participation, or due process.

Decision

1. The District violated Minn. Stat. § 125A.0942, subdivision 2(c) when it failed to hold an IEP meeting within 10 calendar days after using restrictive procedures on the Student on two separate school days within 30 calendar days, in [redacted].

2. The District's failure to provide prior written notice prior to implementing changes to the Student's educational placement was a harmless technical violation of Minn. Stat. § 125A.091, subd. 3a and Minn. R. 3525.3600.

Corrective Action

Within 15 days of the date of this decision, the District's special education director must contact MDE corrective action specialist, Sara K. Wolf at sara.k.wolf@state.mn.us, to coordinate training, to be provided by MDE staff, regarding the use of restrictive procedures as outlined in Minn. Stat. § 125A.0942 and prior written notice requirements under Minn. Stat. § 125A.091, subd. 3a and Minn. R. 3525.3600.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. MDE is responsible for ensuring all educational programs for children with disabilities in Minnesota are under its general supervision, meet its educational standards, and that the requirements of the IDEA are met, 20 U.S.C. §§ 1411(e)(2)(B), 1412(a)(11) and 1416(a)(3). Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

Disclaimer: *This complaint decision is distributed only to the parties. Any further request for publication or redistribution by MDE would be governed by the Minnesota Government Data Practices Act and would be processed through MDE's Data Practices Compliance Official.*

Via encrypted email

[redacted]

[redacted]

Re.: Complaint Decision File [redacted] on behalf of [redacted] from [redacted]

Dear [redacted]:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint [redacted] (Complainant) brought on behalf of [redacted] (Student), a student attending school in [redacted] (District) during the time period covered by this complaint. An independent investigation was conducted, which was limited to allegations that occurred on or after [redacted], one year prior to the date the complaint was received. The independent investigation included:

- Information provided by the Complainant.
- The District's response to the complaint and supporting documentation.
- The opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant and District staff.
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated [redacted]. The District provided a written response to the complaint on [redacted]. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

Issue

The Complainant alleges the District failed to appropriately plan for, and respond to, the Student's behavior during the [redacted] school year. Specifically, the Complainant alleges the District utilized restrictive procedures, including physical holds and seclusion, in lieu of developing and/or implementing an appropriate individualized education program (IEP) to address his behaviors, and without following the statutory requirements for restrictive procedures.

Findings of Fact

1. The Student has been found eligible for, and in need of, special education and related services under Minnesota law. He attended second grade in the District beginning in [redacted] after transferring from another Minnesota school district.

2. The Complainant is the [redacted].

3. The Student's latest evaluation report was written [redacted], by his previous Minnesota school district and described his eligibility for services under the Autism Spectrum Disorders (ASD) and Speech or Language Impairments (SLI) eligibility categories.

4. The Student's [redacted] evaluation report documented the Student scored in the "very low" range in broad reading and broad written language and in the "low average" category for broad math on the Woodcock-Johnson Tests of Achievement – Fourth Edition. It also noted the Student "struggles with peer and adult socialization, social/emotional reciprocity and behavioral rigidity" and with "completing tasks he perceives to be challenging or tedious" and "when unexpected things happen (e.g. seat changes, schedule changes)."

5. The Student's [redacted] evaluation report included a functional behavioral assessment (FBA) related to his "internalizing" behaviors of "choosing to withdraw from peers and/or adults," "excessively pacing to the point of impacting his ability to engage in activity," "refusing to engage in activities," and "ignoring prompting from adults." It noted that, based on the FBA results, "a [behavior intervention plan] is needed."[1]

[1] The Student's [redacted] evaluation report refers to a behavior intervention plan, or BIP, as a "positive behavior support plan." For clarity, BIP will be utilized throughout this complaint.

6. The Student began the [redacted] school year enrolled in his previous Minnesota school district, where he received special education and related services.

7. The Student enrolled in the District, and began attending school, on [redacted]. His IEP in effect at the time, developed by his previous Minnesota school district, was dated [redacted], and included annual goals related to the Student's communication (articulation) skills, coping skills for emotional regulation, and understanding of personal boundaries.

8. To assist the Student in achieving his annual goals, the Student's November [redacted] IEP described 20 minutes of communication, speech, and language instruction, 50 times a year in the special education setting; 30 daily minutes of social, emotional, and behavioral skills instruction from a school social worker in the special education setting; and 230 daily minutes of social, emotional, and behavioral instruction in the special education setting.

9. The Student's November [redacted] IEP included the following least restrictive environment (LRE) explanation:

> [Student] requires specialized instruction due to his [ASD]. [Student] requires a federal setting three placement due to his behaviors.[2] [Student] will have access to a self-contained classroom in order to get individualized math, reading, and social-emotional support. While receiving special education services, [Student] will not participate in the following general education classes/activities with non-disabled peers: math, reading, specials.

10. The Student's November [redacted] IEP described the following accommodations, modifications, and supports in general and/or special education:

> During oral reading checks, articulation errors will not be counted as reading errors.
>
> [Student] will be provided preferential seating within the classroom to allow for re-direction and academic support. For [Student], this needs to be next to the teacher.
>
> Classroom instructors, in consultation with the IEP manager, will provide verbal explanations of visual information presented to [Student].
>
> Adults who work with [Student] will repeat auditory information due to his short-term auditory memory weakness.

[2] The District's reference to a "federal setting three placement" refers to an instructional setting in which a student is in a separate classroom from their general education peers more than 60 percent of the school day.

> [Student] will be provided visual supports (daily schedule, visual reminders of rules, visual prompts, etc.) to promote an understanding of school expectations, increase his ability to self-monitor behaviors, assist in anticipating upcoming activities, and reduce his anxiety.
>
> Staff will use timers with [Student] to help with transitions.
>
> [Student] should earn breaks to help motivate him.
>
> During specials, [Student] will be able to take breaks as needed in the . . . special education classroom.
>
> [Student] needs para support during recess, especially to transition back inside.
>
> [Student] needs an end-of-the-day check-in to help him organize his belongings and get ready for home.
>
> At times, [Student] struggles with [redacted] specifically when stressed. Due to this having an effect on his ability to participate in the classroom, [Student] may need encouragement and supports [redacted]. These supports might look like: scheduled bathroom breaks, time set aside to use the bathroom right after meals, visual aids, visuals schedules/timers, access to private/adapted bathrooms, or support staff to assist [Student] with changing clothes as needed.

11. The Student's November [redacted] IEP included a BIP dated [redacted], to use in response to the Student's internalizing behaviors (choosing to withdraw from peers and/or adults to be by himself, excessively pacing to the point of impacting his ability to engage in activity, refusing to engage in activities, and ignoring prompting from adult as identified in his [redacted] evaluation report). It described his behaviors as typically occurring one to three times a day, for five to 10 minutes each occurrence.

12. The Student's January [redacted] BIP noted the Student's internalizing behaviors were less likely to occur if the Student has:

> a highly structured environment, in which rules and expectations are clearly defined and consistently enforced
>
> Information on any schedule changes including specials, assemblies, fire and lock down drills, field trips, and changes in support staff
>
> A classroom visual schedule to aid with transitions
>
> Warnings of upcoming transition

Discreet explanations for redirections so the student understands what is being asked of them without feeling embarrassed

Close adult proximity during independent work tasks

An individual visual schedule to aid with transitions and opportunities to self-monitor with the support of an adult

Scheduled motor breaks at a meaningful time

Modified assignments that feel more manageable (e.g. shortening, given one section at a time)

An opportunity to express why they are struggling whilst receiving choices as part of the problem solving process

Frequent adult check-ins during independent work time ("do you have any questions so far?"[])]

Opportunities to have structured restorative conversations with peers or staff that they are in conflict with

Specific praise/approvals

Shaping method (affirming positive approximation of expected behavior; e.g., teaching a disruptive student to quietly be at their desk during independent work time whether they work or not. Once that is accomplished, the next step is to teach them how to engage in the independent work)

First/then statements when possible (i.e. "First you finish you work, then you can go to the motor room")

(if needed) a token economy plan for when the student engages in desirable behavior (i.e. motor room breaks, helper jobs, fidgets, yoga ball time, dojo points, coupons, legos wall, magna-tiles)

13. The Student's January [redacted] BIP identified the following consequence interventions to use when the Student exhibited internalizing behaviors:

Ask [Student] if he needs support (e.g. processing problem, offer to further break down steps, backward chaining, referring to example)

Give choices (by present school staff) (e.g. "you can work at your desk or at the low table")

Use First, Then Language (e.g. "First complete your worksheet, then you can draw")

> Review daily chart with goals and (If applicable) the token economy system with [Student]
>
> Prompt student to [take] a break within the classroom
>
> If [Student] continues to struggle, call [special education] staff to assist [Student] with getting back on track while remaining in the classroom.
>
> If [Student] is disruptive while having [special education] push-in support, the [special education] staff will support [Student] in [the special education room] with a swift plan to return to the classroom as soon as he becomes regulated again.

14. On [redacted], the Complainant emailed the Student's IEP manager, asking for clarification about the special education and related services the Student had been receiving in the District. In response, the Student's IEP manager wrote, in relevant part, on [redacted]:

> [Student] is being serviced in a center based program area of [school] as a Federal Setting 3 learner. He [has] access to his general education peers and content within this setting while going to gym/music/recess and possibly lunch. During his transition here he has learned to follow his schedule with up to 90% accuracy in behavioral expectations and academic requirements necessary to be independent in his general education classroom. This intervention typically lasts 12 weeks unless learners are showing consistency with greater than 90% compliance with expectations in the center based classroom. [Student] has several "green days" where he has achieved this, he is still inconsistent to date with his application of classroom and schoolwide expectations for independence in the general education classroom. The social emotional learning minutes are correct, he has them infused in his learning during reading and math in his center based areas, as well as explicit instruction and unstructured coaching during community building play. We have every intention of getting [Student] working towards independence and inclusion in his general education classroom and we want it to be as productive as well. [School's] [redacted] program is unique to several area schools where learners with high needs have access to staff who help them extinguish bad behaviors, adopt new coping strategies, and enhance social emotional communication with language enrichment for handling tough emotions in groups.

15. On [redacted], the Student's IEP team met to review and revise the Student's November [redacted] IEP. The District proposed an IEP, by prior written notice, the same day and the Complainant signed her consent on [redacted].

16. The Student's January [redacted] IEP included new annual goals related to the Student's communication (articulation) skills, reading fluency skills, math fact fluency skills, and written language skills, and included the very similar annual goals related to coping skills for emotional regulation, and understanding of personal boundaries.[3]

17. The Student's January [redacted] IEP documented the Student's direct special education and related services as 1,100 minutes, daily,[4] of social/emotional instruction in the special education setting and 120 minutes, monthly, of speech language therapy in the special education setting.

18. The Student's January [redacted] IEP listed the Student's percentage of time spent in special education as 100% and described the Student's LRE as:

> [Student] is working to increase his active listening skills, and managing his high need for large motor activity to follow expected classroom behavior requirements necessary to be involved in a productive general education classroom at this time. [Student] needs a quiet environment to work on his articulation skills without distraction or embarrassment. He will be pulled into a quiet corner of the [special education] room or into the hallway to work on his skills during independent work time. [Student] will receive speech/language services in a 3:1 model which means the student will be seen directly by the speech pathologist in small groups for 3 weeks in the month and will be given indirect services 1 week per month (which will include promotion of skills in the classroom, collaboration with teachers, and communication with parents).

19. The Student's January [redacted] IEP did not include any supplemental aids and services or program modifications and supports for school personnel and documented the Student did not have any assistive technology, behavior, or limited English proficiency concerns.

20. The Student's January [redacted] IEP did not reference or otherwise attach a BIP.

21. In addition to the services described in his November [redacted] and January [redacted] IEP, the Student received mental health therapist services from a co-located mental health provider.

22. During interviews, the mental health therapist recalled hearing the Student brought to a small room [redacted] by District staff, approximately three times in [redacted]. Specifically, she recalled meeting with the Student in her assigned room [redacted] watching him return to the special education room, and then hearing him

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[3] There Student's coping skills and personal boundaries skills annual goals differed in the previous November [redacted] IEP to the January [redacted] IEP only in a reference to the provision of special education and related services of "social work services" (in former IEP) to the receipt of social emotional instruction (newer IEP). The rest of the content in the coping skills and personal boundaries annual goals was the same.

[4] 1,100 minutes per day of special education services listed in the Student's January [redacted] IEP appears to be a clerical error, as 1,100 daily minutes of services would equate to approximately 18 hours and 20 minutes of services provided, per day.

screaming and banging against the door from inside [redacted] for at least two to five minutes, within a few minutes. In [redacted], she reportedly informed District administration and the Complainant of what she had observed.

23. During interviews, District staff recalled picking up and carrying the Student to [redacted] regularly after he began the school year in the District (approximately [redacted]). District staff reported the Student would chase a younger student and would not respond to their requests to stop. Instead, District staff reported the Student would respond to her requests to stop by pinching or hitting them. District staff further described that she would then decide the Student needed to be carried to [redacted] and would pick him up under his armpits and carry him or grab his arm or hand and guide him. District staff recalled that the Student generally resisted her attempts to carry him by hitting, pinching, or attempting to get away and that she would hold the door closed when the Student was alone, inside, and escalated to prevent him from leaving due to safety concerns. District staff could not recall the number of times the Student was placed into a physical hold or carried to [redacted] and noted she felt District staff had never been told they could not pick up and carry students to [redacted] in response to their behaviors.

24. Another District staff member recalled the Student had a positive experience in her special education classroom, did well on his academics, and was placed into a physical hold once during that time (approximately [redacted]) when he was punching and kicking a paraprofessional. She described using interventions with the Student, such as offering choices, reducing screen (iPad) time, offering sensory breaks (including moving furniture around the room for sensory input), and giving him a preferred spot in the classroom near a window. She reported also witnessing firsthand or being told about other District staff placing the Student into physical holds approximately three times and placing him into [redacted] approximately three times during the school year, and that the Student had hit, pinched, or kicked District staff on multiple occasions. She recalled wondering why the Student did not have that behavior in her classroom, but did in the other special education classroom, and thought it could be that she used various interventions with him in response to his behaviors.

25. During an on-site visit, the MDE Investigator observed [redacted]. It is approximately six feet by five feet, with cinderblock walls, a hard floor, and a metal door. The metal door does not have a lock and has a small vertical window, approximately 12 inches by four inches. Inside the room are two large blue beanbag cushions [redacted] which the school principal reported were placed in the room to allow students something soft to crash into if they were escalated and needed to decompress.

26. The District did not register [redacted] with the commissioner before using it as a seclusion room.

27. The District provided 28 behavior referrals for the Student over 16 school days from [redacted]. Of the 28 behavior referrals, 17 were for physical contact and/or physical aggression, five for disruption, two for inappropriate language, two for threatening behavior, one for property damage/vandalism, and one for inappropriate language/out of bounds. Of the 28 behavior referrals, 22

occurred during the month of [redacted] (additionally, three were in [redacted], two in [redacted], and one in [redacted]).

28. At least six of the 28 behavior referrals reference District staff physically directing the Student, physically holding the Student, or removing him to [redacted] as follows (in part and bolded for readability):

> [redacted]**:** "[Student] was asked to do writing in his journal and began running around the room and throwing pencils at his peers. He hit a teacher and was asked to process in [redacted] . . . for calming down."
>
> [redacted]**:** "[Student] was asked to do math and he began running around the room throwing things at his peers and refusing to follow directions. [Student] hit a teacher who began to physically direct him to a calming space to stop running in the classroom."
>
> [redacted]**:** "[Student] was going after another student try[ing] to hit the student. Removed [Student] from the room and he hit staff in the wrist."
>
> [redacted]**:** "[Student] was running around [redacted], poking at other students, teasing other students and running away from adults. Staff needed to use a hold as he began to hit and get physical with others. 2 [paraprofessionals were] hit on arms and torso [multiple] times and were kicked by him on their legs. 1 teacher was hit on the arm one time. Parent notified via email re: all behaviors up until 2pm."[5]
>
> [redacted]**:** "[Student] chased another student down halls [and] staff caught up. [Student] began kicking [paraprofessional] on both legs multiple times attempting to escape. [Student] was brought to [redacted]."
>
> [redacted]**:** "[Student] was yelling at staff due to not having his way. He hit and scratched [paraprofessional] on the arms multiple times. He was brought to [redacted] for a cool down."

29. Additionally, the Student's special education teachers and the Complainant emailed and sent text messages during the school year regarding the Student's behaviors. For example (in part and bolded for readability):

> [redacted] **from Student's IEP manager**: "Hello, [Student] had a really tough day. He bit and spit at other teachers today. When asked to reflect he said he didn't want to work. He was constantly running around the classroom

[5] Communications between the parties document the Complainant was informed the Student was placed in a physical hold on [redacted]; however, the District acknowledged it did not otherwise have documentation of the incident.

and chasing other kids, he was not able to sit for even 5 minutes to do work today. He did enjoy exercising his body in the motor room and his timed runs around the school."

[redacted] **from Student's IEP manager**: "Hello, [Student] had a red day. He struggled with staying seated all day and could not sit for more than 5 minutes. He chased and ran after his peers several times each hour. He would not listen to redirection or the word no, throwing toys around the room at free choice and clean up time. He did not use much bad language, a few times with potty talk."

[redacted] **from Complainant**: "Going home on Friday [redacted][6] ended up being a good consequence for [Student]. He was very sad to miss seeing the TV be installed and set up in your classroom. He lost use of video games and my phone until noon on Sunday. That was very hard for him. Overall he seemed to lack energy and seemed pretty down on Saturday. He is also getting really mentally stuck on what he wants/the way he thinks things should be (so I want you to know this is happening at home right now too). Today has been better and his heart seems lighter.

We processed what happened at school on Friday. From his perspective, he was to take a break in his non-preferred room and when he didn't want to go, the assistant helped move him along.[7] That put him into fight mode. He has a history of doing that when touched/being put into a hold when he is in the red. It has happened several times. I am so sorry this happened and I don't disagree with the need to help him move along. He is kind of like an aggressive dog in that situation, so everyone please be careful.

I am moving him back to gluten/sugar restricted. For now he can still have breakfast but I will be sending lunch most days. He has been [redacted] again as well. He has also been coughing a bit so I have started having him [redacted]. If you notice coughing or the appearance of pushing to talk, [redacted]. I have not been giving [redacted] at home.

[6] The Student's attendance records did not indicate the Student was absent for any portion of the day on [redacted]; however, during interviews, the Complainant reported she was called to pick the Student up early from school that day because he was hurting staff. District staff also recalled requesting the Complainant pick the Student up early on occasion when he had challenging behaviors.

[7] This description, provided by the Complainant, appears to refer to the use of a physical hold; however, the District did not produce documentation of a physical hold for this day.

Thank you for all you are doing. Please let your para[professional] know I am so sorry. It is very embarrassing to have this happen. It was our para[professional] appreciation week last week. We cannot and would not want to do this work without them, so it makes me especially sad, embarrassed, and disappointed that he was so very hard on her last week."

[redacted] **from Student's other special education teacher**: ""I brought [Student] to [general education] class at 2:30 [p.m.]. He did great! I talked to him about that's the way to earn links in the chain and have a green day. He had a rough morning, but a great afternoon. I'm thinking that pushing in to [general education class] is nearing. Someone will need to be with him for a while to make sure behavior is on point. Can you explain why staff needs to be with him? He didn't mind me being there yesterday, but I'd need to send a [paraprofessional]. We all need to prep him before pushing in to mainstream. It will be great for him to be with peers in [general education]."

[redacted] **from the Student's other special education teacher**: "When upset [Student] can antagonize other students to the point of chases, pushing and yelling at each other. [redacted] incessantly and laughs [and] laughs [and] chases him around. He needs to [be] remove[d] as the student becomes so upset. He was with the principal today for over an hour. His energy was redirected in that hour."

[redacted] **from Student's other special education teacher**: "[Student] was all over the place this morning. I asked [Student's IEP manager] to give him a chance in her room instead today . . . because he was purposefully bothering ever[y] student. It wasn't a great day in her room either. We did talk about directions and [what] he can do when teachers ask him to sit, or follow schedule. He wasn't having any of it today.

Mid-morning was the best part of the day. [Student's IEP manager and] I will be trying to figure out if staff need to work with him on an individual basis and in a place where there are no other distractions. I don't want him to learn new bad behaviors from other kids, one, and two, I don't want to take away social time. Learning time and work time is something I take seriously, as it is of the essence of why we're in school.

We did our best today. He was telling teachers to shut up and you're not going to do anything like tell me what to do. We ask him to do things . . . but we never tell him. Things were looking up . . . we're trying to evaluate the situation to see what will work."

[redacted] **from Student's other special education teacher**: "Honestly, he's not as antsy when he is in the [general education] classroom [and] is doing well in music [and] gym with his mainstream classmates. He's showing he is able to work in [general education], even though there are 20+ kids in there. I'm thinking it's not as stimulating to him as the [general education] classroom is much more on task.

[Student's IEP manager and] I will meet to see if the private work room across the hall with [redacted], where there aren't distractions would be helpful."

[redacted] **from Student's other special education teacher**: "As far as [physical] holds: it is the LAST ditch effort. It is the last thing I would ever want to do. I've only done one in my life, and it was with him; the instance that he was [redacted]. The other student would have gotten physical with him and when [Student's] behavior is upsetting to the esteem of another or the entire class. . . [w]e generally exhaust all options before he needs to go across the hall. There is another room across the hall, too . . . which we deem [redacted] and is a work room, not a 'holding' room where he could work.[8]

. . .

He spent an hour [with] the principal again today. He threw hand sanitizer at my head. . . . He was running after other kids --- I really think that the dysregulation of others may be setting him off . . . sometimes."

[redacted] **from the Student's IEP manager**: "Good morning – [Student] was hitting, pinching and kicking all 3 [paraprofessionals] today. He had run out of class [and] down the hall. The [paraprofessionals] requested he come back in the room and he ran away. They asked him to go to the quiet room and ran [and] hit, kicked [and] pinched them. He also called them all the "N" word again. They had to physically bring him to the quiet area. I had to write this behavior up for the behavior team. Physically aggression must be documented."

[8] Across from the Student's other special education teacher's classroom is an identical room to [redacted] (called [redacted]), which District staff reported is generally used as a quiet space for students to work in. District staff recalled bringing a chair and a desk to [redacted] when a student wants to quietly work, and removing it after the student is done in order to leave the room empty.

30. The District provided a progress report for the Student on [redacted], detailing his progress toward his annual goals. The Student's progress report indicated he was progressing toward his communication, reading, and math goals; maintaining progress toward his coping skills and written language goals; and not progressing toward his personal boundaries goals. Specifically regarding the Student's coping skills and written language annual goals (labelled as "maintaining"), the related short-term objectives indicated the Student was not progressing.[9]

31. The last day of the second trimester was [redacted]. The Student achieved the following scores in various subjects:

    - 3, which means "proficient, consistent, accurate work on grade level standards" in music;
    - 2, which means "basic, simple, inconsistent work on grade level standards in math (numbers and operations), all categories related to reading language arts (comprehension and vocabulary and word analysis), communication (speaking, viewing, listening, media and technology), and physical education;"
    - 1, which means "limited evidence of understanding of grade level standards" in math (measurement and data and geometry), science, and social studies.
    - M, which means "meets expectations" in the life and work skill of being a problem solver; and
    - I, which means "inconsistently meets expectation" in the life and work skills of being resourceful, responsible, self-directed, and skill communicator.

32. On [redacted], the Complainant emailed the Student's IEP manager and the other special education teacher to inform them of the results of a recent neuropsychological evaluation (outside evaluation) conducted on the Student. Specifically, the outside evaluation resulted in a medical diagnosis of autism spectrum disorder and attention deficit hyperactivity disorder (ADHD) and below average test scores in reading, writing, and math. She also informed that the Student's neuropsychologist recommended one-to-one tutoring and phonics work and additional outdoor time for the Student, and that the results of the outside evaluation would be soon available.

[9] Specifically, the Student's [redacted] progress report noted the Student was displaying coping skills in one out of 10 opportunities, which was the established baseline of the goal when it was created in [redacted] and adopted in [redacted]. Similarly, the Student's [redacted] progress report indicated the Student had not displayed any level of "written language accuracy," as contemplated by his [redacted] IEP.

33. On [redacted], the Complainant requested to meet with the Student's IEP team to address the Student's behaviors, after learning of the use of [redacted] from the co-located mental health provider. The Student's IEP team met on [redacted], and thereafter proposed a revised IEP and BIP.

34. The last day of school was [redacted].

35. In its response, the District acknowledged, after conducting its own investigation and reviewing video footage,[10] District staff placed the Student into "a nonpermitted hold and seclusion on [redacted] and that the "hold lasted less than one minute and the seclusion lasted 16 minutes." It further acknowledged these restrictive procedures, and others reported by District staff during interviews, were not documented.

36. Regarding the implementation of the Student's November [redacted] and January [redacted] IEPs, the District wrote:

> The team did attempt to support [Student's] inadequate behavior progress through restorative practices, student teacher 1:1 conferences, parental communication, and pre teaching and reteaching of expectation. Additionally, he was assigned different seats and learning spaces in his classroom, provided positive 1:1 time with staff, and had modified work. These were ineffective attempts at improving [Student's] social, emotional, and behavioral skills.
>
> [Student] is in a [redacted] program and the team should have been utilizing his [BIP] to individualize the prevention and response to his behaviors. It was discovered at an IEP team meeting on [redacted] that the [redacted] case manager did not receive the [BIP] from the previous district. At no time did this teacher, or any team member, connect with the previous school or the parent to request the [BIP] nor did the team propose a meeting to develop a [BIP] until late [redacted]

37. Regarding the Complainant's allegations of seclusion used by District staff on the Student, the District acknowledged:

> The district recognized the errors made by the [redacted] team and made immediate changes upon receipt of this complaint. I will detail corrective action taken thus far to illustrate that the district takes this complaint very seriously and does not approve of the physical holds and seclusions used as behavior intervention within the [school] [redacted] program in addition to the lack of appropriate documentation and communication.

[10] The District reported the video footage was unavailable by the time it provided its response and documentation to MDE as part of this investigation.

On [redacted], the director and assistant director of Student Services were informed by a co-located mental health therapist that seclusion was occurring at [school]. That same day, the assistant director visited [school] and met with the [redacted] team to make clear that seclusion is not an approved district practice and would stop immediately. On [redacted], the director of student services instructed the building principal to close [redacted] which was the small room allegedly used for students as a behavior intervention, which included seclusion as demonstrated by the [redacted] incident. The room was closed prior to school starting on the [redacted] and remains closed. The director instructed the assistant director and building special education coordinator to complete 5 unannounced visits to [school] [redacted] between [redacted] to ensure seclusion was not being used and physical holds, if used, were appropriate and were documented. [redacted] were weekend days. On [redacted], the district behavior specialist (DBS) provided a 45 minute training on appropriate responses to student behavior, including alternatives to restrictive procedures, to all [redacted] staff. On [redacted] the district began an internal investigation of 8 staff members in the [redacted] program, which included interviews and video footage review. This investigation is ongoing.

38. The District proposed the following corrective action:

Training Name	Target Audience	Description
Overview of Seclusion Policies	[School] [redacted] Staff	In person training on Minnesota and [District] Seclusions policies and procedures
Overview of Seclusion Policies	All staff that attend [redacted] courses	The [redacted] trainers will add information [on] seclusion policies and procedures to their training plan
Restrictive Procedures Documentation	District Wide Licensed Special Education staff	A required online training describing the requirements for documentation, parental notification, and debriefing following a restrictive procedure
Keeping staff and students safe during tier III behaviors	[School] [redacted] Staff and Administration	The [redacted] team will create a training to ensure that [School] [redacted] staff have all of the tools they need to respond to student behavior prior to the need for restrictive procedures
Center Based Training for New Teachers	[School] [redacted] Teachers	The district has a new training planned for this summer for all new center based teachers. Both strategies teachers would benefit from attending this course.

Other:

1. Seclusion is not currently addressed in our Total Special Education System (TSES). Seclusion law and the district standard of no seclusion will be added to the TSES.

2. Building administrators, district administrators, and [redacted] staff will create a [redacted] Support Plan that will provide wrap-around program support for the first 2 weeks of school. This plan may include outside consultants on site, DBSs on site, increased staffing, restructuring of learning spaces, and/or restructuring of programming. Support will be faded with thoughtful intentionality after 2 weeks.

3. The district has allocated $500 to repurpose [redacted] located, by the [school] [redacted] rooms. The room is currently vacant. The district lead occupational therapist will purchase items that allow the space to be used for student elected breaks and calming.

4. Unannounced visits by the assistant director of student services or a designee will continue once per week through [redacted].

5. The district will pay for counseling/therapy fees not covered by insurance for [Student] for up to 24 sessions. The parent and district will enter into a contract prior to this taking effect.

Conclusions

1. School districts must make available to each eligible student a free appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with a student's IEP, pursuant to the Individual with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1412(a)(1)(A) and 1401(9), and Minn. Stat. § 125A.03.

2. In addition, Minnesota Statutes § 125A.08(b)(1) requires that every school district ensure that "all students with disabilities are provided the special instruction and services which are appropriate to their needs . . . . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an [IEP]."

3. The IDEA, at 20 U.S.C. § 1414(d)(3), requires, in relevant part:

> (A) In general
>
> In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider -
>
> (i) the strengths of the child;
>
> (ii) the concerns of the parents for enhancing the education of their child;

(iii) the results of the initial evaluation or most recent evaluation of the child; and

(iv) the academic, developmental, and functional needs of the child.

(B) Consideration of special factors –

The IEP Team shall –

(i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

. . .

(C) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

4. The IDEA, at 20 U.S.C. § 1414(d)(4), requires:

(A) In general

The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team –

(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(ii) revises the IEP as appropriate to address –

(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

(II) the results of any reevaluation conducted under this section;

(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

(IV) the child's anticipated needs; or

(VI) other matters.

(B) Requirement with respect to regular education teacher

A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

5. Minnesota Statutes § 125A.0941(f) define "restrictive procedures" as "the use of physical holding or seclusion in an emergency" and notes "[r]estrictive procedures must not be used to punish or otherwise discipline a child."

6. Minnesota Statutes § 125A.0941(b) define "emergency" as:

> "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or a table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

7. Minnesota Statutes § 125A.0941(c) define "physical holding" as:

> "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:
>
> (1) helps a child respond or complete a task;
>
> (2) assists a child without restricting the child's movement;
>
> (3) is needed to administer an authorized health-related service or procedure; or
>
> (4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

8. Minnesota Statutes § 125A.0941(g) define "seclusion" as:

> "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

9. Minnesota Statutes § 125A.0942, subd. 3(a) require:

> Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:
>
> (1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;
>
> (2) physical holding or seclusion is not used to discipline a noncompliant child;
>
> (3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
>
> (4) staff directly observes the child while physical holding or seclusion is being used;
>
> (5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:
>
> (i) a description of the incident that led to the physical holding or seclusion;
>
> (ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
>
> (iii) the time the physical holding or seclusion began and the time the child was released;
>
> (iv) a brief record of the child's behavioral and physical status; and
>
> (v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;
>
> (6) the room used for seclusion must:
>
> (i) be at least six feet by five feet;
>
> (ii) be well lit, well ventilated, adequately heated, and clean;
>
> (iii) have a window that allows staff to directly observe a child in seclusion;
>
> (iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;
>
> (v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view the room.

10. Minnesota Statutes § 125A.0942, subd. 2(b) require:

> A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

11. Minnesota Statutes § 125A.0942, subd. 2(c) – (e) provide:

> (c) The district must hold a meeting of the individualized education program or individualized family service plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program, individualized family service plan, or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program, individualized family service plan, or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of the parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program or individualized family service plan meeting when the child's individualized education program or individualized family service plan provides for using restrictive procedures in an emergency.
>
> (d) If the individualized education program or individualized family service plan team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

> (e) At the individualized education program or the individualized family service plan meeting under paragraph (c), the team must review any known medical or psychological limitations, including medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program, individualized family service plan, or behavior intervention plan.

12. Minnesota Statutes § 125A.0942, subd. 4(11) prohibits the use of seclusion on children from birth through grade 3 by September 1, 2024.

13. The evidence leads to the conclusion that District staff utilized restrictive procedures, including both physical holding and seclusion, as defined in Minn. Stat. §§ 125A.0941(c) and (g), on the Student an undetermined number of times during the [redacted] school year. Specifically, as acknowledged by the District, District staff used physical intervention to hold the Student immobile and physically escort him to [redacted] when the Student's resistance was more than minimal. Once in [redacted], the Student was then subjected to seclusion because he was confined alone in the room and his egress was barred by staff closing the door and preventing the Student from leaving.

14. District staff generally recalled using physical holding and seclusion (on at least two occasions: [redacted]) in order to protect themselves or others from physical injury, as described in Minn. Stat. §§ 125A.0941(f) and (b); however, due to the lack documentation, MDE is unable to substantiate whether these situations met the definition of "emergency" under Minn. Stat. § 125A.0941(b). MDE is able to substantiate that the District failed to adhere to the standards for using restrictive procedures found in Minn. Stat. § 125A.0942, as described below.

15. As acknowledged by the District, District staff did not properly document the uses of restrictive procedures with the Student during the [redacted] school year, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(5). None of the documentation or communications provided by the District included the required elements: a description of the incident that led to the physical holding or seclusion (mainly as physical holding or seclusion was only communicated to the Complainant on one occasion, [redacted]); why a less restrictive measure failed or was determined by staff to be inappropriate or impractical; the time the physical holding or seclusion began and the time of release; a brief record of the Student's behavioral and physical status; or a brief description of the post-use debriefing that occurred as a result of the physical hold or seclusion.

16. The District also acknowledged that [redacted] was used as a seclusion room on at least one occasion, [redacted], yet [redacted] contained objects that a child may use to injure themselves (bean bag cushions) and failed to register the room with the commissioner, in violation of Minn. Stat. § 125A.0942, subd. 3(a)(6) and 3(a)(7).

17. Further, as acknowledged by the District, the District did not make reasonable efforts to notify the parent on the same day a restrictive procedure was used on the Student (with the exception of [redacted]) or provide notice within two days by written or electronic means to the Complainant, in violation of Minn. Stat. § 125A.0942, subd.2(b).

18. Even though the District failed to properly document the use of restrictive procedures, a review of the evidence shows that at least six physical holds and/or uses of seclusion were described ([redacted] – Student brought to [redacted] to calm down, [redacted] – removed Student from the room, [redacted] – staff tried to "move [Student] along," while he was taking a break which put him into "fight mode" according to the Complainant, [redacted] – acknowledged use of a physical hold by District staff, [redacted] – acknowledged use of a physical hold and seclusion by the District, and [redacted] – District staff "had to physically bring" Student to the quiet area). Therefore, the District used at least three restrictive procedures on the Student within the month of [redacted] and at least two restrictive procedures within the month of [redacted].

19. As such, the District also violated Minn. Stat. § 125A.0942, subd. 2(c) – (e), when, following the use of restrictive procedures on two separate school days within 30 calendar days in [redacted], or a pattern of use emerged, it did not hold an IEP team meeting within ten calendar days, to: conduct or review an FBA; review data; consider actions to reduce the use of restrictive procedures; consider actions to reduce the use of restrictive procedures; modify the Student's IEP as appropriate; consult with professionals working with the Student; consult with experts in behavioral analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; consider whether to reevaluate the Student; or review any known medical or psychological limitations that contraindicate the use of restrictive procedures (such as his entering "fight mode" when touched or his asthma) and consider whether to prohibit restrictive procedures.

20. The District also violated 20 U.S.C. § 1414(d)(3)(B), and 1414(4)(d)(A) when it did not provide services in conformity with his January [redacted] BIP nor did it timely review and revise the Student's November [redacted] IEP or January [redacted] IEP during the [redacted] school year (prior to [redacted]) to address his lack of progress toward his annual goals and in the general education curriculum or his anticipated behavioral needs by considering the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Specifically, the District did obtain the Student's January [redacted] BIP to implement and the Student's IEP team did not meet until [redacted], to review and revise his November [redacted] IEP and January [redacted] BIP. Subsequently, the District removed all supplementary aids and services to assist the Student in the general education classroom and removed the Student's January [redacted] BIP. The Student's IEP team did not meet again until after this complaint was filed, in [redacted].

21. As a result of the violations listed above, the District failed to provide the Student a FAPE in violation of 20 U.S.C. § 1401(9) and Minn. Stat. § 125A.03 and the Student is entitled to compensatory educational services due to the resulting loss of educational benefit. Specifically, the violations impeded the Student's right to a FAPE (including failing to provide services in conforming with his January [redacted] BIP and using restrictive procedures without following the standards of restrictive procedures),

significantly impeded the Complainant's opportunity to participate in the decision-making process (by failing to provide documentation and notice of the use of restrictive procedures, and failing to hold timely IEP team meetings) and caused a deprivation of educational benefit (evidenced by his lack of progress towards his annual goals, grades, and lack of time in his general education classroom with his nondisabled peers).

Decision

1. The District violated Minn. Stat. § 125A.0942, subd. 3(a)(6) and 3(a)(7), when it used [redacted] as a seclusion room even though it contained objects that a child may use to injure themselves (bean bag cushions) and failed to register the room with the commissioner.

2. The District violated Minnesota Statutes § 125A.0942, subd. 3(a)(5) when it did not properly document any of District staffs' uses of restrictive procedures with the Student during the [redacted] school year.

3. The District violated Minnesota Statutes § 125A.0942, subd.2(b) when it did not make reasonable efforts to notify the parent on the same day a restrictive procedure was used on the Student during the [redacted] school year, with one exception, or provide notice within two days by written or electronic means to the Complainant.

4. The District violated Minn. Stat. § 125A.0942, subd. 2(c) – (e) when it failed to hold an IEP team meeting within ten calendar days of the use of restrictive procedures on two separate school days within 30 school days or when a pattern of use emerged.

5. The District violated 20 U.S.C. § 1414(d)(3)(B), and 1414(d)(4)(A) when it failed to provide services in conformity with his January [redacted] BIP and failed to timely review and revise the Student's November [redacted] IEP or January [redacted] IEP during the [redacted] school year to address his lack of progress toward his annual goals and in the general education curriculum or his anticipated behavioral needs.

6. The District violated 20 U.S.C. § 1401(9) and Minn. Stat. § 125A.03 by failing to provide the Student with a FAPE.

Corrective Action

1. The District's corrective action is accepted as proposed, with the following modifications:

   a. As already agreed to by the District, the District's special education director will contact MDE's corrective action specialist, Sara K. Wolf at sara.k.wolf@state.mn.us, to coordinate the delivery of training to all special education teachers, paraprofessionals, and related service providers located at the school, including social workers or others who may use restrictive procedures in the course of their duties, regarding Minnesota's standards related to the use of restrictive procedures, consistent with Minn. Stat. §§ 125A.0941 and 125A.0942, and special education due process, regarding the requirement to provide services in conformity with all students' IEPs and review and revise IEPs,

consistent with 20 U.S.C. §§ 1401 and 1414 and its accompanying regulations, to be delivered in coordination with the special education director and MDE staff.

b. Within 21 days of the date of this decision, the District must submit to MDE's corrective action specialist, Sara K. Wolf, at sara.k.wolf@state.mn.us, the following:

   i. a copy of it revised TSES pertaining to the use of restrictive procedures (including seclusion) for MDE's review;

   ii. a copy of its [redacted] Support Plan that will provide wrap-around program support for the first 2 weeks of the [redacted] school year for MDE's review;

   iii. a photo of the repurposed [redacted];

   iv. the results of visits by the assistant director of student services or a designee's once per week visit to the [redacted] Program through [redacted].

c. Within 14 days of the date of this decision, the District must invite the Complainant to an IEP team meeting, to occur within 30 days of the date of this decision, at a time and place mutually agreed upon by the District and the Complainant. At this IEP team meeting, the Student's IEP team must:

   i. Develop an FBA (or alternatively a sufficiently comprehensive reevaluation) plan for the Student to gather information to maximize the efficiency of behavioral supports, consistent with Minn. Stat. § 125A.08(d) and defined in Minn. R. 3525.0210, subp. 22.

   ii. If the Complainant chooses not to participate in an IEP team meeting to plan the FBA, the District must propose a plan to the Complainant within 30 calendar days of the date of this decision.

d. Following the completion of the Student's FBA, the District must contact the Complainant to schedule an IEP team meeting within 14 calendar days. At the IEP team meeting, the Student's IEP team must develop an IEP that meets the requirements of 20 U.S.C. § 1414, Minn. Stat. § 125A.08, and 34 C.F.R. § 300.324. The Student's IEP team, when developing the Student's new IEP, must:

   i. Address any lack of expected progress toward the Student's annual goals and in the general education curriculum, consistent with 20 U.S.C. § 1414(d);

   ii. Address the results of any evaluations, including the FBA, consistent with 20 U.S.C. § 1414(d);

   iii. Address information about the Student provided to, and by, the Complainant, such as the contents of the [redacted] outside evaluation, his reactions to restrictive procedures, and his asthma, consistent with 20 U.S.C. § 1414(d) and Minn. Stat. § 125A.0942(e)

iv. Consider additional positive behavioral interventions and supports to address the Student's behavior, consistent with the Student's FBA, consistent with 20 U.S.C. § 1414(d);

v. Consider the provision of additional related services, including but not limited to, psychological services, occupational therapy, recreation, including therapeutic recreation, counseling services, and parent counseling and training to assist the Student in benefitting from special education, consistent with 20 U.S.C. § 1401;

vi. Determine an appropriate educational placement for the Student after reviewing potential supplementary aids and services, program modifications, or supports for school personnel, to be provided to the Student to enable him to be involved in and make progress in the general education curriculum and to participate in extracurricular and nonacademic activities and to be educated and participate with other children with disabilities and nondisabled children in these activities, consistent with 20 U.S.C. § 1414(d).

e. Once there is an agreed-upon IEP in place, the IEP team must reconvene within 14 days to determine appropriate compensatory services for the Student (in addition to paying for counseling/therapy fees not covered by insurance for the Student for up to 24 sessions). Compensatory services seek to make up for any loss in the Student's skills, including academic, functional, or behavioral skills, and lack of expected progress in the general education curriculum or toward the Student's IEP annual goals that resulted from the District's delay in appropriately identifying and developing services to meet each of the Student's needs during the [redacted] school year. The District's offer of up to 24 therapy sessions for the Student may be considered part of the compensatory education owed to the Student.

f. Compensatory services are in addition to the special education and related services necessary to provide the Student with a FAPE as outlined in the Student's current IEP and may be provided in many different ways, including but not limited to, additional special education and related services, outside tutoring or programs, or other academic or enrichment services necessary to compensate for the Student's loss of skills or lack of progress.

g. The Student's IEP should be amended to reflect agreed-upon compensatory services, including the frequency, location, and duration of the services, as outlined in 34 C.F.R. § 300.320(a)(7). A copy of that IEP must be provided to MDE's corrective action specialist, Sara K. Wolf within 30 days of the IEP team meeting described in item d.

h. If the District and the parent are unable to reach an agreement on compensatory education within that 30 days, the Complainant, parent, and/or the District may contact Sara K. Wolf for assistance and to determine next steps.

i. Consistent with other IEP team meetings, either the Complainant or the District may request a facilitated team meeting or mediation from MDE by contacting mde.adrservices@state.mn.us or 651 582-8518.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. MDE is responsible for ensuring all educational programs for children with disabilities in Minnesota are under its general supervision, meet its educational standards, and that the requirements of the IDEA are met, 20 U.S.C. §§ 1411(e)(2)(B), 1412(a)(11) and 1416(a)(3). Questions about the corrective action should be directed to the corrective action specialist at 651-582-8602.

Sincerely,

Sara V. Winter, J.D.
Dispute Resolution Supervisor
Office of General Counsel
Minnesota Department of Education
400 Northeast Stinson Boulevard
Minneapolis, MN 55413

SVW/kr

c: [redacted]

Overview of Seclusion in Minnesota

Daron Korte, Assistant Commissioner
Office of Student Support Services

Agenda

- Introduction to seclusion and restrictive procedures in Minnesota
- Statewide data 2014-2024
- Disaggregated data from recent years (2021-22 through 2024-25)
- 2024-25 specific data
- Findings from prior working groups

Seclusion in Minnesota

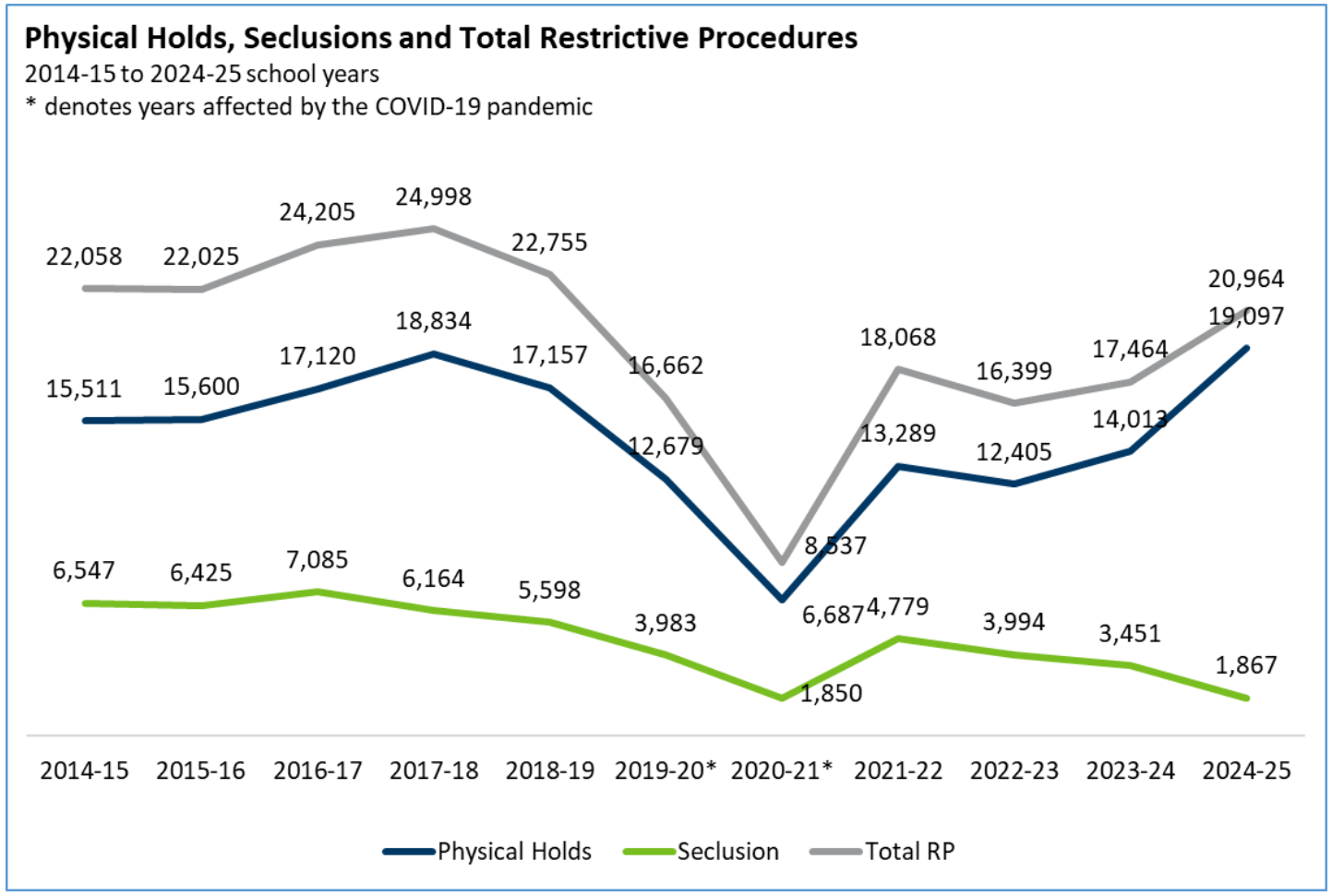
- Terminology:
  - **"Restrictive procedures"** means the use of physical holding or seclusion of children with disabilities in an emergency in Minnesota schools. Restrictive procedures must not be used to punish or otherwise discipline a child.
  - **"Emergency"** means a situation where immediate intervention is needed to protect a child or other individual from physical injury.
  - **“Seclusion”** means a situation in which a child is confined alone in a room and is prevented from leaving.
  - **“Physical holding”** means physical intervention intended to hold a child immobile or limit a child’s movement where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect the child or other person from injury.
- History of MDE involvement on the subject of restrictive procedures
- Statutory changes impacting MDE's work
- Current work and plans for next steps

Total Restrictive Procedure Usage Statewide (1)

Year	# of Physical Holds	# of Seclusions	Total Restrictive Procedure Usage
2014-15	15,511	6,547	22,058
2015-16	15,600	6,425	22,025
2016-17	17,120	7,085	24,205
2017-18	18,834	6,164	24,998
2018-19	17,157	5,598	22,755
2019-20*	12,679	3,983	16,662
2020-21*	6,687	1,850	8,537
2021-22	13,289	4,779	18,068
2022-23	12,405	3,994	16,399
2023-24	14,013	3,451	17,464
2024-25	19,097	1,867	20,964

*The COVID-19 pandemic and the resulting impacts related to school environments should be noted when analyzing data sets

Total Restrictive Procedure Usage Statewide (2)



*The COVID-19 pandemic and the resulting impacts related to school environments should be noted when analyzing data sets

Annual Physical Holding Data

	2024-25	2023-24	2022-23	2021-22
Total Physical Holds	19,097	14,013	12,405	13,289
Students Physically Held (Unduplicated)	2,810	2,777	2,750	2,489
Staff Injuries	1,711	1,222	920	801
Student Injuries	240	201	132	249

Annual Seclusion Data

	2024-25	2023-24	2022-23	2021-22
Total Seclusions	1,867	3,451	3,994	4,779
Students Secluded (unduplicated)	358	553	738	728
Districts Reporting Zero Seclusions	541	545	540	528
Staff Injuries	98	144	193	185
Student Injuries	36	60	37	76
Average Length of Seclusion	00:09:13	00:11:59	00:13:42	00:18:43

Students Experiencing Seclusion by Race/Ethnicity from 2021-22 through 2024-25

	2024-25	2023-24	2022-23	2021-22
Asian	6	10	14	9
Black or African-American	80	104	146	125
Hispanic or Latino	29	44	66	53
American Indian or Alaska Native	11	11	24	25
Two or More Races	33	64	72	76
Native Hawaiian or other Pacific Islander	0	0	0	0
White	199	320	416	440

Students Experiencing Seclusion by Age from 2021-22 through 2024-25

	2024-25	2023-24	2022-23	2021-22
0-5 Years	4	32	69	40
6-10 Years	166	376	477	486
11-15 Years	138	108	150	159
16-22* Years	50	37	42	43*

*In the 2022 legislative session, Minnesota state law was amended to conform with federal guidance that students through age 22 were eligible to receive special education services. The data in the 2021-22 school year reflects the numbers of students receiving special education services ages 16-21.

Students Experiencing Seclusion by Disability Category from 2021-22 through 2024-25

	2024-25	2023-24	2022-23	2021-22
Autism Spectrum Disorders	133	173	210	200
Developmental Cognitive Disorder	20	20	31	20
Deaf-Blind	0	1	0	0
Deaf-Hard of Hearing	1	1	2	5
Developmental Delay	4	32	53	55
Emotional Behavior Disorders	141	226	303	332
Other Health Disabilities	36	54	78	65

Students Experiencing Seclusion by Disability Category from 2021-22 through 2024-25 (continued)

	2024-25	2023-24	2022-23	2021-22
Physically Impaired	1	1	2	0
Severely Multiply Impaired	9	9	15	20
Specific Learning Disability	12	31	35	24
Speech/Language Impaired	1	4	7	4
Traumatic Brain Injury	0	1	2	3
Visually Impaired	0	0	0	0

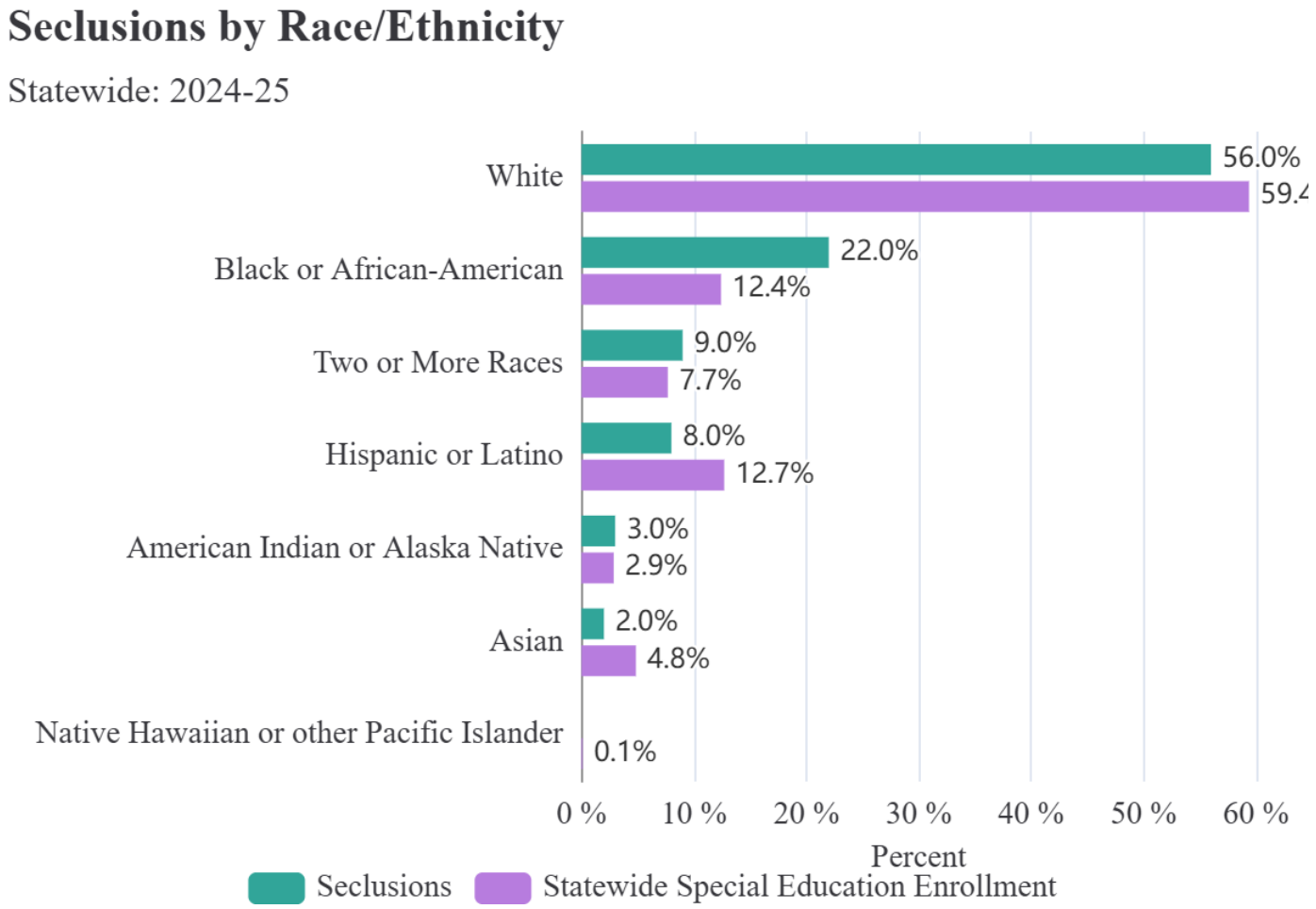
Students Experiencing Seclusion by Gender from 2021-22 through 2024-25

	2024-25	2023-24	2022-23	2021-22
Male	290	450	616	618
Female	68	103	122	110

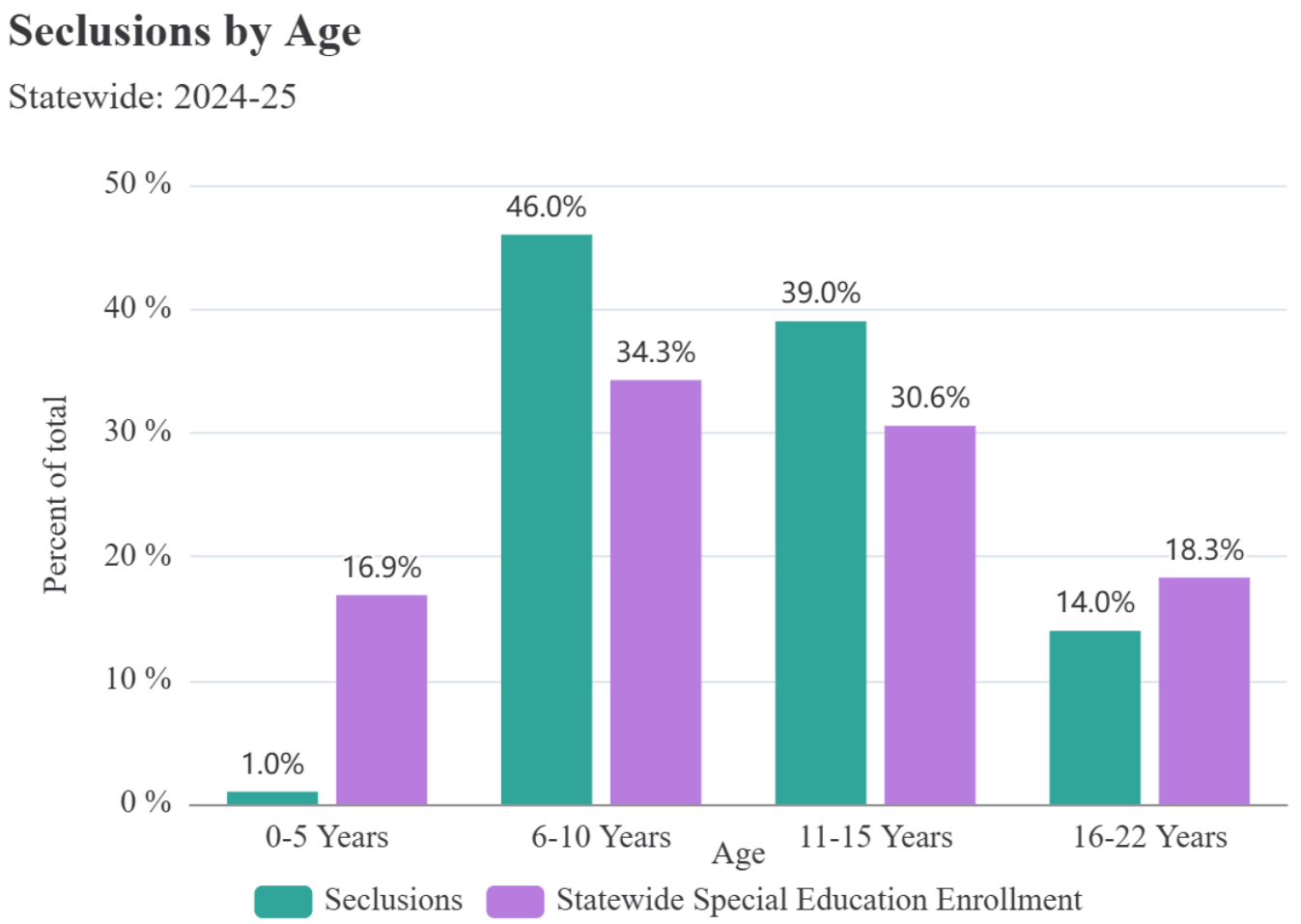
Students Experiencing Seclusion by Setting from 2021-22 through 2024-25

	2024-25	2023-24	2022-23	2021-22
01 – Outside of the regular classroom less than 21% of the school day	20	51	94	83
02 – Resource room between 21 and 60% of the school day	22	76	89	88
03 – Separate classroom more than 60% of the school day	68	150	192	200
04 – Public separate day school > 50% of the school day	240	257	340	347

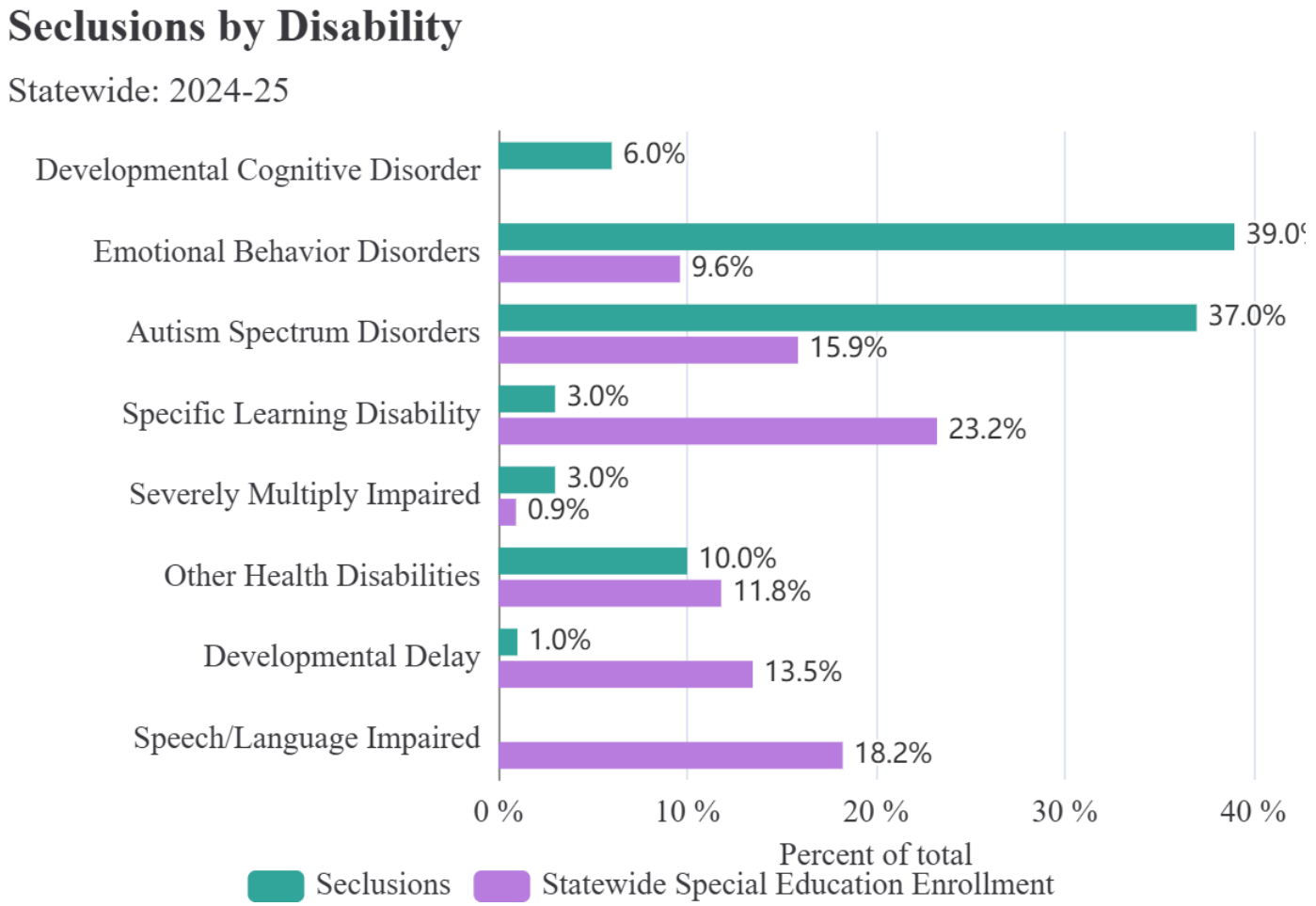
Students Experiencing Seclusions vs. Statewide Enrollment by Race/Ethnicity in 2024-25



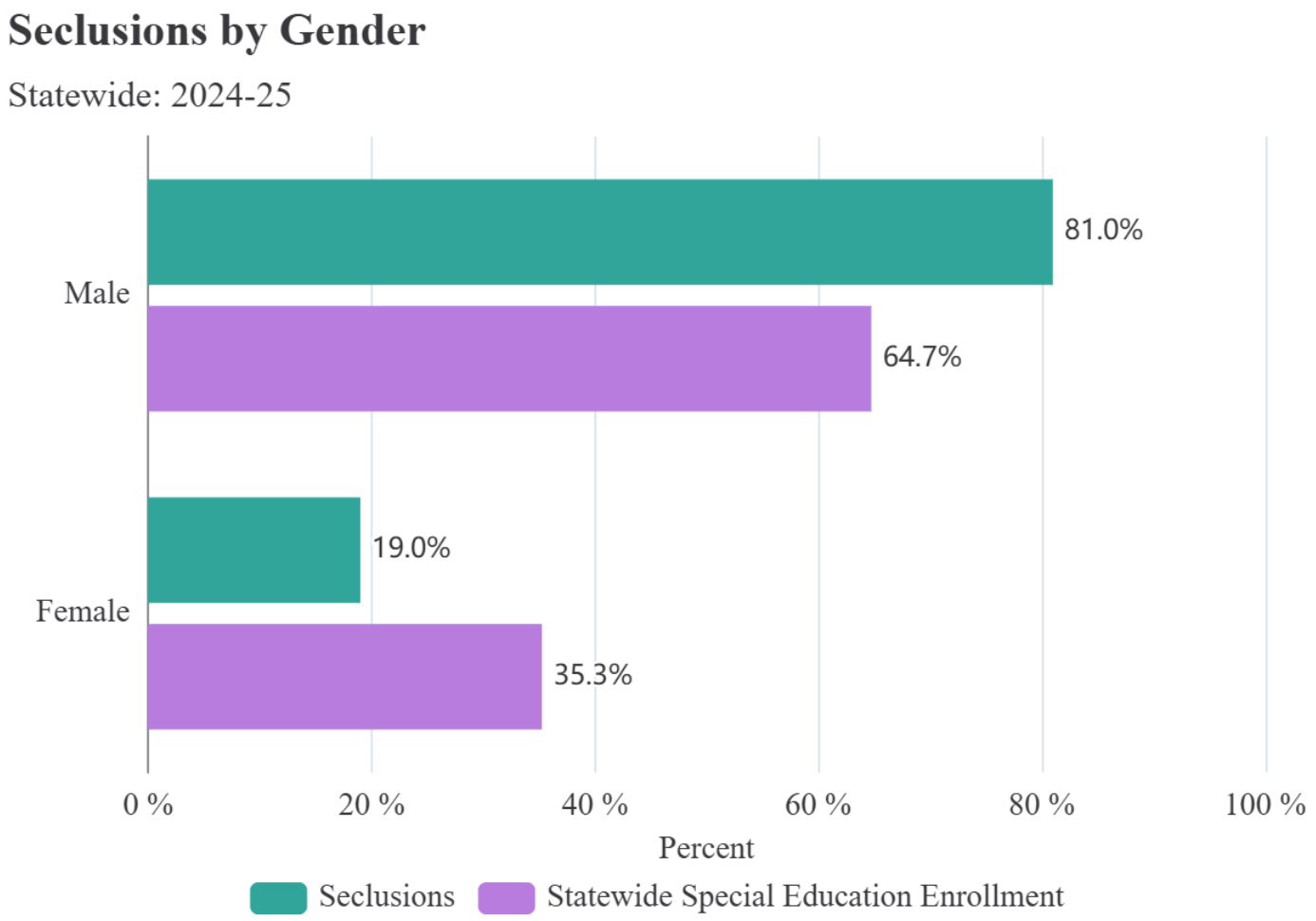
Students Experiencing Seclusions vs. Statewide Enrollment by Age in 2024-25



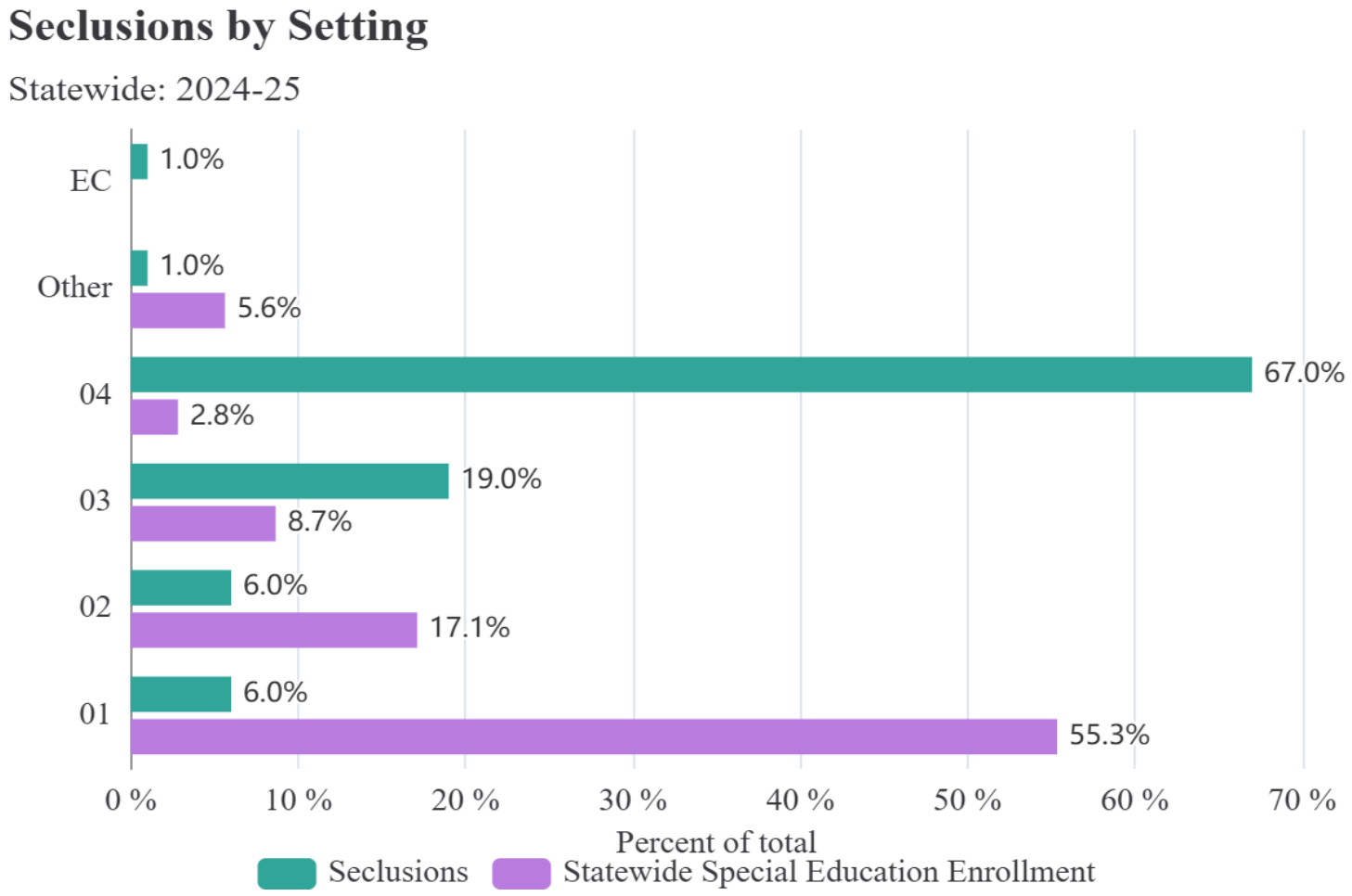
Students Experiencing Seclusion vs. Statewide Enrollment by Disability Category in 2024-25



Students Experiencing Seclusion vs. Statewide Enrollment by Gender in 2024-25



Seclusion Use vs. Statewide Enrollment by Setting in 2024-25



Findings from Prior Working Groups (1)

1. Recommendation to **prohibit the use of seclusion on all children** by September 1, 2026

2. Consideration of **direct resources or funding opportunities** to schools to obtain training and systemically implement evidence-based behavioral crisis prevention and/or alternatives to restrictive procedures for managing student behavioral crises, and to systemically install and implement the practice.

3. Training for **general education staff and teacher candidates** on positive behavioral intervention options for students experiencing dysregulation.

**The charge of the restrictive procedures legislation in 2023 also intersects with two goals outlined in the Minnesota Olmstead Plan aimed at reducing the number of incidents of emergency use of restrictive procedures and the number of students receiving special education services who experience an emergency use of restrictive procedures in the school setting.*

Findings from Prior Working Groups (2)

Critical feedback from external partners:

- Schools are experiencing **staffing shortages and an increased need** for separate school programming (Level 4);
- Resources to **provide annual training** on the use of restrictive procedures, trauma-informed care, and social-emotional strategies are essential;
- Expanding **training opportunities to general education staff**;
- Addressing the **increasing challenges of student dysregulation in early grades** is a priority;
- **Dedicated funding for trauma-informed care**, responding to dysregulation, and other supportive strategies is necessary;
- Support for **teacher recruitment and retention efforts**, with a focus on setting 4 programs;
- **Collaboration with DHS** to increase residential and other mental health placements;
- A **delay of two years is not necessary** and delays implementation of a **goal the state has held for over a decade**;
- The state should **emphasize more upstream solutions** to avoid getting students into situations where students become dysregulated to begin with.

Questions?

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Effects of School-Based Mental Health Services on Youth Outcomes

Ezra Golberstein
Irina Zainullina
Aaron Sojourner
Mark A. Sander

ABSTRACT

School-based mental health services (SBMH) may increase students' access to care, which could yield benefits for mental health status and human capital-related outcomes. We use a difference-in-differences design with 19 years of survey and administrative data to estimate the impacts of SBMH on a range of K–12 student outcomes. SBMH increases average outpatient mental health service use and reduces self-reported suicide attempts. There is weaker evidence that SBMH reduces suspensions and juvenile justice involvement and no evidence that SBMH affects average attendance, standardized test scores, or self-reported substance use.

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(continued on next page)

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Special Issue: Causes and Consequences of Child Mental Health
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I. Introduction

The prevalence and implications of mental health problems among children and adolescents are well established. Mental disorders are relatively common for children and adolescents (Kessler et al. 2012; Merikangas et al. 2010; Substance Abuse and Mental Health Services Administration 2021), and key indicators such as suicides have been deteriorating for more than a decade (Curtin 2020). Beyond the actual symptoms of mental health problems, mental health can affect human capital formation (Currie 2020). Mental health problems in childhood and adolescence lead to worse subsequent academic outcomes and greater use of public assistance in early adulthood (Currie et al. 2010), and depression in adolescence leads to increased criminal behavior in early adulthood (Anderson, Cesur, and Tekin 2015; Cornaglia, Crivellaro, and McNally 2015). Childhood psychological problems are also associated with long-term consequences, including worse labor market and marital outcomes into middle-aged adulthood (Goodman, Joyce, and Smith 2011).

While correlations between mental health problems in childhood and adolescence and health, human capital, and economic-related outcomes are well established, less is known about how mental health service interventions affect these outcomes. A range of psychotherapy and pharmaceutical services exist for mental disorders that commonly occur in childhood and adolescence, including depression, anxiety, and attention disorders. However, evidence suggests that mental health services are underused among children and adolescents, despite recent trends of increased service use. Between 2010 and 2012, only 44 percent of youths aged 6–17 who had relatively severe mental health impairments were estimated to have received any outpatient services in the past year (Olfson, Druss, and Marcus 2015). Even among children and adolescents who had a current mental health diagnosis, only half received specialty mental health services in 2016 (Whitney and Peterson 2019). Moreover, among adolescents who do receive treatment, services often fall short of established care guidelines (Cuddy and Currie 2020). As such, policies and interventions that facilitate diagnosis and improve treatment of mental health disorders might improve a range of youth outcomes. As noted by Currie (2020), there is a paucity of economic research on what intervention strategies are most effective for addressing mental health problems among adolescents.

Several papers examine the causal effects of policy shocks and interventions on specific childhood mental health disorders. Busch, Golberstein, and Meara (2014) examine the effect of the FDA's black box warnings for pediatric antidepressant use, which caused an unanticipated downward shock to the use of depression treatment for adolescents, and find that it led to poorer academic outcomes and greater levels of substance use, with stronger effects for girls than for boys. Currie, Stabile, and Jones (2014)

acknowledge grant funding from the Robert Wood Johnson Foundation Evidence for Action program (Grant No. 7588) and the University of Minnesota Center for Urban and Regional Affairs Faculty Interactive Research Program. The authors disclose that Dr. Mark Sander has been employed by Hennepin County and Minneapolis Public Schools and has had direct involvement with the program studied here. The authors have no other disclosures. The University of Minnesota IRB approved all aspects of this study. The authors are unable to share the administrative data, nor the school identifiers in the Minnesota student survey data. The authors are willing to assist (Ezra Golberstein, egolber@umn.edu) with sharing analysis code and providing guidance on accessing the data used here.

examine changes in ADHD drug use driven by the expansion of prescription drug insurance in Quebec and find no evidence of improvements in academic outcomes. Chorniy and Kitashima (2016) leverage variation in provider treatment patterns and find that ADHD drug treatment reduces risky behavior–related outcomes among youth in South Carolina Medicaid. Dalsgaard, Nielsen, and Simonsen (2014) use a similar source of variation and find that ADHD drug treatment reduces both hospital use and interactions with police among Danish youth. Other research suggests an important role of youth mental health treatment on social and economic outcomes, such as incarceration (Cuellar and Dave 2016; Deza, Lu, and Maclean 2021; Jácome 2022), along with experimental evidence that cognitive behavioral therapy among youths leads to improved school engagement and reduced criminal justice involvement (Heller et al. 2017).

In two papers that have important similarities to our study, Reback examines the effect of school counselors, whose roles can include mental health support and services, on student outcomes. One paper (Reback 2010a) leverages variation in state-level school counselor policy as an instrument for school counseling use and finds that schools with more counseling use have better test scores and reports of problem behaviors but no difference in interest or confidence in specific social or academic topics in the third grade. The other paper (Reback 2010b) uses a regression-discontinuity design based on a threshold that influenced the number of elementary school counselors in Alabama schools and finds that greater subsidies for counselors led to reductions in behavioral problems but no effect on standardized test scores.

We add to the evidence on how mental health interventions for children and adolescents affect a range of outcomes related to health and human capital. We examine a specific intervention that places mental health clinicians in school settings. We construct a novel policy data set of the implementation of this intervention across many K–12 public schools in Minnesota's largest county. Hennepin County includes the city of Minneapolis and 44 surrounding suburbs, encompasses 17 school districts, and is socioeconomically, racially, and ethnically diverse. The staggered implementation of SBMH across many schools provides an opportunity to assess SBMH's effects on mental health services and on other human capital-related outcomes that might be affected by improvements in mental health services use. We merge the policy data with linked administrative data that include student characteristics, educational-related outcomes, Medicaid claims data, juvenile justice involvement, and child welfare involvement. We also link the policy data set with seven waves of a large-scale triennial survey from 2001 to 2019 that include suicidality and substance use outcomes.[1] We apply the Borusyak, Xavier, and Speiss (2023) heterogeneity-robust, difference-in-differences estimator to leverage the staggered implementation of SBMH across schools.

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II. The School-Based Mental Health Model

School-based mental health services (SBMH) embody a model of service delivery that aims to enhance the diagnosis and treatment of mental health services among youth by placing mental health clinicians directly in school settings. Even in the absence of the SBMH model, schools generally offer some mental health services and

1. The outcomes and analysis plan were preregistered at https://osf.io/u8h5r (accessed October 11, 2023).

supports, typically from school social workers, school counselors, or school psychologists, though these resources are frequently limited. Nevertheless, schools are an important source of mental health services. For instance, data from the 2012–2015 National Survey of Drug Use and Health show that 57 percent of all adolescents who reported receiving any mental health services in the past year indicated that they received some sort of services from a school setting (Ali et al. 2019).

The specific SBMH model that we examine is also known as the "expanded" SBMH model and has four key features. First, licensed mental health clinicians (master's or doctoral-trained social workers, psychologists, or mental health counselors) work directly inside of schools, complementing existing school counselors and social workers to expand capacity for mental health services. School counselors and school social workers are a main source of referral to SBMH services. Second, SBMH clinicians deliver a variety of services that include diagnosing and assessing mental health problems and delivering treatments in the form of individual, group, and family psychotherapy. Third, SBMH clinicians coordinate with and refer to other professionals as needed. Notably, SBMH clinicians generally do not have authority to prescribe prescription drugs and would refer a client to a physician to prescribe drugs. Fourth, SBMH clinicians train the school's teachers in identifying mental health problems among students, and teachers subsequently are a major source of referring students to SBMH services.

The specific intervention we study has two other important features. First, the clinicians are not employed by schools, but by community mental health services agencies. Second, if a student has insurance, either private or Medicaid, then the SBMH provider's agency would bill the insurer for the services. Students who were uninsured were not charged for services, and those services were paid for with state grant funds, and any cost-sharing was also paid for with state grant funds.

SBMH could improve mental health services for children through several mechanisms. Proponents argue that SBMH reduces the time, hassle, and disruption for children and parents by delivering services where children already spend their time. Providing SBMH with no cost-sharing could remove cost-related barriers and also reduce the significant search costs of finding an available clinician. Students might feel less stigma in receiving care in a school setting than at a specialty clinic (Committee on School Health 2004). Delivering services in schools could help to identify and treat symptoms quickly, as teachers, school social workers, and counselors are well positioned to recognize potential problems and can easily refer students to SBMH (Stephan et al. 2007). SBMH could enhance equity in mental health care as well, to the extent that it overcomes existing barriers for underserved populations (for example, low-income, uninsured, and racial/ethnic minorities) (Alegría et al. 2015).

While the SBMH model is a promising approach to improving child mental health and related outcomes, existing causal evidence on the model is limited. A large literature describes a variety of specific SBMH models and school settings (Farahmand et al. 2011; Reddy et al. 2009; Rones and Hoagwood 2000), but this literature has important limitations. Many studies either lack a control group or directly compare SBMH users with other students without accounting for selection (Armbruster and Lichtman 1999; Ballard, Sander, and Klimes-Dougan 2014). Many other studies, including some experimental designs, examine very small samples of students or schools (Reddy et al. 2009) or either examine a very narrow version of school-based intervention or target a very narrow type of mental health problem (Farahmand et al. 2011).

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Despite the limited evidence base for the causal effects of SBMH, policy interest in this model is intense in the United States. Some states are appropriating direct funding for SBMH services, some states are creating subsidies to increase the SBMH workforce, and other states are changing their Medicaid policies to allow for more Medicaid financing of SBMH (Anderson 2021; Hill 2021; Kennedy 2022). At the federal level, recent House and Senate bills have been proposed to enhance funding for SBMH (Napolitano 2021; Smith 2021). Every single witness in Senate Finance Committee hearings on child mental health in February 2022 testified to the importance of SBMH, and the Surgeon General called for greater investment in SBMH in a 2021 advisory (U.S. Surgeon General 2021).

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III. Methods

A. Analytic Approach

We leverage the staggered adoption of SBMH services across Hennepin County public schools to assess the effects of SBMH on the study outcomes in a difference-in-differences framework. The first SBMH programs started in five Minneapolis schools in the 2005–2006 academic year, with funding from a federal Safe Schools/Healthy Student grant awarded to Minneapolis Public Schools. In 2008, the state of Minnesota offered grant funding to support SBMH, and since then SBMH has expanded more rapidly. Figure 1 describes the expansion of SBMH across schools in Hennepin County.

Our basic design compares outcome changes following the introduction of SBMH into a school to outcome changes in school–years without SBMH. The credibility of the research design hinges on the assumption that the timing of particular schools' SBMH adoption is independent of changes in unobservable influences on outcomes, as outcomes in implementing schools would have changed similarly to nonimplementing schools over the same time periods but for SBMH. A key issue is thus the way that SBMH was rolled out across the county. We have had conversations with state and county officials and reviewed documents to understand that process. SBMH grants were awarded to community mental health agencies, which then partnered with school districts in their service areas to decide which specific schools would receive SBMH services. The state had no discretion over which specific schools received services. We understand that at least some school districts allocated SBMH services on the basis of schools' perceived to have a "high need" for mental health resources, but our conversations have not revealed any sense that this was based on trends in need for services. We examine predictors of SBMH adoption below. To further address differences between schools that did and did not implement SBMH, we also create a complementary analytic sample of schools that are matched based on observable school characteristics that include percentage of minority students, percentage of students eligible for free or reduced-price lunch, percentage of limited English proficiency students, and percentage of students enrolled in special education programs. We use the nearest-neighbor matching method to identify the schools for a matched analytic sample, similar to methods used in Cabral et al. (2022).[2]

Our analytic approach uses difference-in-differences models that compare changes in outcomes in schools after implementing SBMH to those changes in schools that never

2. We are grateful to a referee for this suggestion.

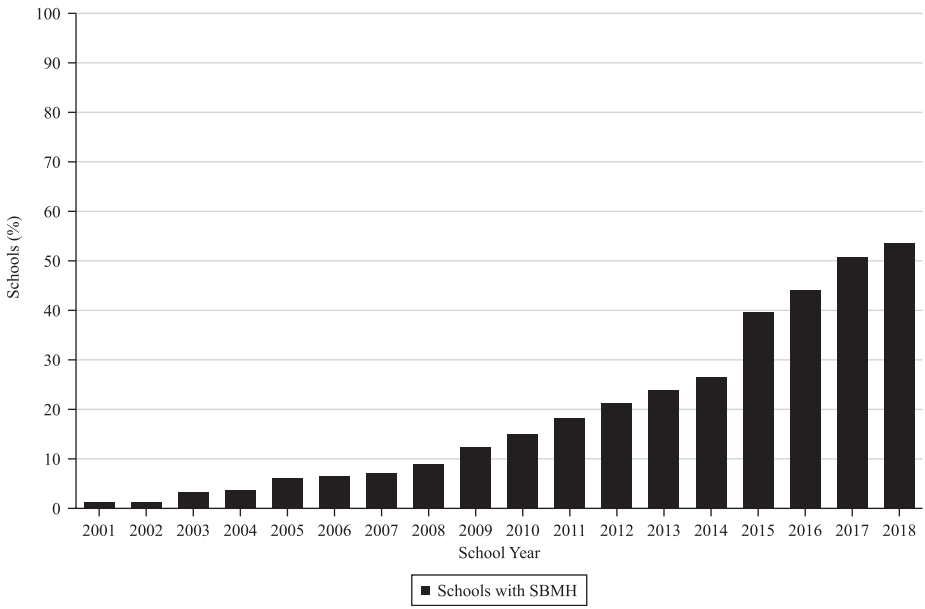

Figure 1

Trend in SBMH Implementation across Hennepin County Schools

Notes: Data on SBMH collected by the authors.

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implement SBMH. A recent econometric literature identifies problems with applying conventional two-way fixed-effects models to difference-in-differences models in settings with staggered adoption and heterogeneous treatment effects across units (Goodman-Bacon 2021). These concerns are salient for us since it is quite plausible that the effects of SBMH vary over time.

We use a recently developed imputation estimator (Borusyak, Jaravel, and Speiss 2023) that is robust to those issues to estimate our difference-in-differences models. Treatment occurs at the school–year level, but we analyze student–year data. We seek to identify and estimate the average treatment-on-treated effect (ATT) across academic years on any outcome for student i in academic year t in school s (Y_{sti}). We assume the treatment effect for a given student–year is the difference in the student's potential outcomes, $\tau_{ti} = Y_{ti}(1) - Y_{ti}(0)$, where each potential outcome's argument indicates whether the student is treated with SBMH (D_{st}). Averaging τ_{ti} across treated student–years will yield the estimand $\tau = E[\tau_{ti} | D_{st} = 1]$. We impose parallel trends by assuming the never-treated potential outcome would be

$$Y_{ist}(0) = X'_{ist}\alpha + \delta_s + \theta_t + \gamma_{l(s)t} + \varepsilon_{ist},$$

where the never-treated potential outcome is produced by observable control variables varying at the individual–school–year level (X_{ist}), individual-school fixed effects (δ_s), academic-year fixed effects (θ_t), and the interaction of level of school (elementary,

middle, and high school: $l(s)$) by academic year fixed effects ($\gamma_{l(s)t}$), and an idiosyncratic unobservable with conditional mean zero ($E[\varepsilon_{ist}|X_{st}, 1_s, 1_t, 1_{l(s)t}] = 0$). As such, the model relies on variation in SBMH implementation across schools that are within the same level. We impose no-anticipation by assuming outcomes observed among never-treated individuals equal their never-treated potential outcomes; thus, there is no effect of a possible future treatment. Under these assumptions, the never-treated observations and the pretreatment ever-treated observations identify (α, δ, θ, γ), implying a model of $E[Y(0)|X_{st}, 1_s, 1_t, 1_{l(s)t}]$ for all observations. Because the observed outcome equals treated outcome $Y_{sti} = Y_{sti}(1)$ for all treated observations, this identifies each τ_{ti} as the difference between observed Y_{sti} and imputed $E[Y(0)|X_{st}, 1_s, 1_t, 1_{l(s)t}]$. Then, the ATT is estimated by the average τ_{ti} among treated observations. We also estimate dynamic effects that allow heterogeneous ATT effects by years elapsed from initial treatment and placebo tests for "effects" in years prior to SBMH treatment. The individual–school–year-level (X_{ist}) covariates differ depending on the data used for analysis and are described below. In all models, we estimate standard errors that are robust to heteroskedasticity and correlation within school. The interpretation of the results of these models is at the school level, measuring how average outcomes change in a school after SBMH is adopted. We address student-level dynamics with respect to these school-level estimates below.

B. Data and Measures

We use three main data sources. First, data on the intervention come from a novel SBMH adoption data set. Second, outcome and covariate data come from either (i) public agencies' administrative records, which are linked together at the student level and deidentified, or (ii) from the Minnesota Student Survey (MSS), a state survey of students conducted every three years. The Minnesota-Linking Information for Kids project (Minn-LInK) linked the administrative data.[3] The Online Appendix includes more details about data and measures.

1. Policy data: School-based mental health implementation

We created a novel data set of the implementation of SBMH services for K–12 public schools in Hennepin County for 2001–2019. We worked with each of the 17 community mental health agencies that delivered SBMH to identify which schools they worked in and when they started working in each school. Where there was ambiguity about when an agency started working in a school, we worked with school health staff to verify the start date. We were unable to verify SBMH start dates for 16 schools that had implemented SBMH with one agency, and those 16 schools were dropped from the analysis. The sample of schools is limited to "standard" schools, which excludes online-only schools, alternative learning centers, and schools affiliated with a mental health or substance-use treatment program. The key intervention variable varies at the school–year level and is coded as one if a school implemented SBMH by the middle of the fall semester of an academic year, and zero otherwise. Figure 1 displays the trend in the share of schools that implemented SBMH.

3. More information is available at https://cascw.umn.edu/community-engagement-2/minn-link/ (accessed October 11, 2023).

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We use public data at the school–year level on staffing of school social workers, counselors, and psychologists from the Minnesota Department of Education to measure whether the adoption of SBMH and the attendant expertise brought in from external agencies crowds out internal district staff with relevant expertise. We add up full-time-equivalent (FTE) staffing in these three licensed occupations and divide by student enrollment to get a measure of relevant internal FTE staff per 100 students enrolled in each school, each year. These data are available only for academic years ending in 2007 and forward.

2. Administrative data: Minn-LInK

The Minn-LInK administrative data cover children ages 5–18 in Hennepin County from 2001 to 2018. Over that period, we observe the 477,991 unique students who attended any of 263 schools using student–school–year enrollment data from the Minnesota Automated Reporting Student System (MARSS). MARSS follows each unique student across any Hennepin County schools and districts they attended during the study period. We merged the administrative data on which school each child attended in each year with our own data set on SBMH implementation, relying on the school that each student attended at the start of the school year. These data represent the broadest of the administrative data samples, and all other samples are subsets of it. Summary statistics of student demographics and outcomes from this administrative data sample are in Online Appendix Table 1. Student–year covariates in the administrative data sample include gender, age, race/ethnicity, and free or reduced-price lunch eligibility.

Outcomes related to academic performance are derived from Minnesota Department of Education administrative data. The first academic outcome is average daily attendance, defined as the proportion of school days attended per academic year, and is available for all students in all years. The second academic outcome is standardized test scores. We examine the Minnesota Comprehensive Assessment reading, math, and science scores from standardized tests that are administered annually. Test scores are available for 2006–2018 for math and reading and 2011–2018 for science. We pool information on standardized scores across any tested subjects within child–year to measure achievement. The third academic outcome is in-school disciplinary action of suspension in the academic year, which was available for 2009–2017.

A second administrative data outcome domain is juvenile justice involvement and comes from administrative data in the State Court Administrator's Office. We measure whether each child had any juvenile justice involvement that initiated within an academic year. This outcome is available for all students in the years 2010–2017.

A third administrative data outcome domain is mental health services use. These outcomes are derived from administrative Medicaid data made available by Hennepin County, which include month- and child-level enrollment data along with complete administrative claims for inpatient, outpatient, residential, and pharmaceutical services. We created school–year-level units of analysis for each child that appeared in the Medicaid data, and required at least six out of nine school–year months of Medicaid enrollment for inclusion in the analysis sample. The Medicaid data are available for the 2002–2003 through 2017–2018 academic years, and 19 percent of the sample are enrolled in Medicaid in those years.

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We examine three outcomes related to outpatient mental health services and prescription drug use. We assess whether there was any psychotropic prescription drug use in the academic year, and also look separately by drug classes: (i) antidepressants, (ii) antipsychotics, (iii) anxiolytics (for treating anxiety disorders), (iv) mood stabilizers, and (v) stimulants (that is, ADHD drugs). We assess whether there was any outpatient mental health therapy received in the academic year. Our preferred approach to identify outpatient mental health therapy uses CPT/HCPCS procedure codes for services that do not have an institutional (that is, hospital, emergency department, or residential facility) place-of-service code. These procedures include psychotherapy and psychosocial services (Finnerty et al. 2016; Hoagwood et al. 2016), and the specific codes are in the Online Appendix.[4] We also identify the subset of outpatient mental health services with a place-of-service code for "school."[5] Additionally, we create a measure of a new mental health diagnosis within a school year, defined as having any new mental health diagnosis compared to the previous year (for those students observed in the previous year).

We also examine the use of hospital-based mental health services, including inpatient and emergency-department use (defined by place-of-service codes for general hospital, psychiatric/substance use disorder facility, or emergency department) for a primary mental health diagnosis (listed in the Online Appendix). We also examine the subset of those hospital-based services that are suicide-related. To the extent that SBMH improves access to outpatient mental health services, we would predict a reduction of intensive services that are delivered in inpatient or emergency settings. However, it is also possible that increased identification of mental health problems could lead to an increase in hospital-based services, including for suicidality.

For context, we also examine how adoption of SBMH affects children's probability of being enrolled in Medicaid. To the extent that SBMH providers have an incentive to enroll eligible children in Medicaid to receive payment for services, it is possible that exposure to SBMH will increase Medicaid enrollment. We code Medicaid enrollment in a school year as being enrolled in Medicaid at least six out of nine months.

3. Survey data: Minnesota Student Survey

We also used student-level data from the 2001–2019 Minnesota Department of Education's Minnesota Student Survey (MSS). The MSS is a cross-sectional survey conducted every three years in January, with seven waves during our study period. More than 81 percent of school districts in the state opted to participate in each MSS wave in 2001–2019. The MSS only includes specific grades in each wave: Grades 6, 9, and 12 before 2010 and Grades 5, 8, 9, and 11 afterwards. All students in participating districts and eligible grades are eligible for the MSS, but they or their parents can opt out of participating. Nevertheless, the MSS includes the majority of Minnesota students in the

4. We also use two other approaches to identifying outpatient mental health services. One uses the Berenson–Eggers type-of-service algorithm, with similar results. The other relies on diagnosis codes on claims. This latter approach is only viable for 2009–2018, since diagnosis information was missing for the managed care claims that are the majority of the data in earlier years. We provide more detail on this in the Online Appendix.

5. The Medicaid data represent a lower bound on mental health services use, as we learned in discussions with local officials that some SBMH agencies did not start billing Medicaid for services until several years after starting their work in schools.

eligible grades. Districts, rather than students within districts, drive almost all the variance in MSS participation. The MSS is an unbalanced panel of schools, due to school openings and closings over the study period and due to school district decisions to participate in the MSS in given years. Within Hennepin County, the MSS included an average of 31,000 students per wave between 2001 and 2019, from an average of 120 schools per wave. With the permission of all 17 school districts in Hennepin County, we obtained confidential school identifiers for each survey respondent to link to our SBMH adoption data set. Unlike the Minn-LInK data, we are unable to follow individual students over time in the MSS. Summary statistics of student demographics and outcomes for the MSS sample are in Online Appendix Table 2. Student–year covariates in the MSS include gender, age, and race/ethnicity.

The MSS data include five relevant outcomes that were collected in all seven waves from 2001 to 2019. Two measures assessed suicidal behavior for students in sixth grade and higher. One measured suicidal thoughts, as students were asked, "Have you ever thought about killing yourself?" We code this outcome as one if the student indicated "Yes, during the last year," and zero otherwise. Among respondents, 13.8 percent reported past-year suicidal thoughts, which is identical to the most comparable national measure for high school students indicating having seriously considered attempting suicide in the past 12 months in the national 2009 Youth Risk Behavior Survey (YRBS) (Eaton et al. 2010). The other measure is the more severe outcome of suicide attempt, using the MSS question, "Have you ever tried to kill yourself?" We code this as one if the student responded "Yes, during the last year," and zero otherwise; 3.7 percent of MSS respondents reported a suicide attempt in the past year. In comparison, 6.3 percent of high school students in the national 2009 YRBS reported a past-year suicide attempt (Eaton et al. 2010).

We also examine any self-reported past-30-day substance use, which we view as a second-order outcome because substance use might be affected by mental health status but was not the main target of the SBMH intervention. The any-substance-use outcome considers self-reports of any past 30-day alcohol use, any marijuana or hashish use (both were collected from respondents in Grade 6 and higher), and any cigarette use (collected from respondents in Grade 5 and higher). The sample means for these three types of substance use are 17.7 percent, 10.4 percent, and 7.7 percent, which are comparable to national estimates for 12–17-year-olds from the National Survey of Drug Use and Health (Substance Abuse and Mental Health Services Administration 2021).

Two measures were not available in every wave. We do not focus on these outcomes but include them, as they were pre-registered. First is a mental health status measure from an index of four items from the General Well-Being Schedule (Dupuy 1977) that were collected in the 2001–2010 MSS waves from students in sixth grade or higher. Each question refers to the past 30 days and includes five response categories, with one indicating the lowest level of well-being and five indicating the best level of well-being.[6] Summing the response values forms an index ranging from 4 to 20. Second is a binary measure of mental health services use in the past year from a question in the 2007–2019 MSS waves only for students in eighth grade or higher: "Have you ever been treated for a

6. The four questions are as follows: "During the last 30 days, have you: 1) felt you were under any stress or pressure? 2) felt sad? 3) felt so discouraged or hopeless that you wondered if anything was worthwhile? and 4) felt nervous, worried, or upset?"

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mental health, emotional, or behavioral problem?" with possible answers of "Never," "During the past year," or "More than a year ago."

In our preregistration, we hypothesized that after a school implements SBMH: (i) outpatient and prescription drug mental health services use will increase; (ii) new mental health diagnoses will increase; (iii) mental health status will improve; (iv) hospital-based mental health care, including for suicidality, will decrease; (v) academic outcomes (attendance and academic achievement) will improve; (vi) juvenile justice outcomes will improve; (vii) substance use will fall, and (viii) these effects will be strongest for students with the greatest needs for mental health services, including those involved in the child welfare system, and for racial/ethnic minorities, who face relatively greater barriers to accessing mental health care. Because we present results for many outcomes, we also calculate sharpened False Discovery Rate (FDR) q-values (Benjamini, Krieger, and Yekutieli 2006) for the 24 ATT results that we present in the main body of the paper. This adjustment does not have a large effect on our statistical inference, since as we note below, only one ATT estimate with a $p < 0.10$ has a q-value > 0.10.

C. Subgroup Analyses

We investigate whether the effects of adopting SBMH are stronger in certain subpopulations where theory and prior evidence would predict different magnitudes of effects. We estimated stratified models across seven dimensions:

1. Grade level, as mental health risks differ across age groups—we stratify the sample into elementary school (K–5), middle school (Grades 6–8), and high school (Grades 9–12).
2. Gender, as there are gender differences in youth mental health problems, along with evidence that the effects of mental health services on academic outcomes vary by gender.
3. Race and ethnicity, as racial/ethnic minority children may face greater barriers to mental health care because of various forms of racism or discrimination, and to assess SBMH's effects on equity in mental health services.
4. Household economic status, proxied by whether the student qualifies for free or reduced-price lunch, based on data from the Minnesota Department of Education.
5. Whether a child ever had Medicaid coverage during the study period, which both reflects low family income and the difficulty in accessing specialty mental health services for children on Medicaid.
6. Child welfare system involvement, as children involved in the child welfare system are at higher risk of mental health problems—we identify children who ever had a child protective services investigation or any out-of-home placement using data from the Department of Human Services.
7. Risk of mental health problems, using a predictive modeling approach to identify high- and low-risk children.

The predictive modeling approach uses external data to identify children with higher risks of mental health problems in the Minn-LInK data. We used the 2001–2017 National Health Interview Survey, which included two measures of mental health

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problems among youth aged 4–17 and had variables for age, sex, race/ethnicity, and Medicaid enrollment that were measured as in the Minn-LInK data. We constructed an outcome for presence of mental health problems from two measures in the NHIS that had a sample average of 7.4 percent and then estimated a LASSO model of that outcome on a random "training" sample. The LASSO model yielded meaningful variation in predicted mental health problems, with the 10th, 25th, 75th, and 90th percentiles being 3.0 percent, 4.6 percent, 8.6 percent, and 14 percent, respectively. We assigned the predictive values from the LASSO model to the Minn-LInK sample, and we partition the sample into high (>75th percentile), medium (25th–75th percentile), and low (<25th percentile) risk of mental health problems. Further details on the predictive modeling are in the Online Appendix.

Subgroup analyses differ for outcomes derived from Minn-LInK data and outcomes derived from the MSS data. We implement all of the aforementioned subgroup analyses with Minn-LInK data. However, we are only able to examine subgroups for grade level, race/ethnicity, and gender in the MSS because other student-level information is unavailable. We do not implement the predicted mental health risk stratification in the MSS because the MSS has a narrower age range and does not include Medicaid status, which greatly diminishes the variation in predicted mental health problems.

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IV. Results

A. Selection into Treatment and Contemporaneous Changes in School Resources

We begin by comparing the 123 schools that ever implement SBMH to the 140 that never implement SBMH, in terms of their average outcomes and other observable characteristics (Online Appendix Table 3a). We also split implementers into early and late implementers. A greater proportion of implementing schools than of nonimplementing schools were senior high schools. Senior high schools were also disproportionately early adopters, making up 26 percent of the 35 schools that adopted up to the academic year ending in 2010, but only 10 percent of the 88 schools that implemented afterward. In contrast, elementary schools were disproportionately less likely to implement, and middle schools were as likely to implement as not, constituting 10 percent of both groups. Implementing schools had a slightly higher average share of students of racial or ethnic minority groups and students qualifying for free or reduced-price lunch (FRPL) compared to nonimplementing schools, and there was little difference between early and later implementers. There was even more similarity across implementation status in the share of students with limited English proficiency (LEP) and those using special education services. While the analytic approach we use is not biased by differences in fixed observable or unobservable school characteristics, this gives some sense of the types of students who are most likely to be treated and hence included in the average treatment on treated (ATT) estimates. We also created a matched sample of implementing and nonimplementing schools, and the characteristics of this subsample are described in Online Appendix Table 3b.

To help understand the magnitude of resource changes implied by SBMH implementation, we talked with SBMH providers, reviewed public reports on the program, and drew on coauthor Sander's deep experience with the SBMH program. The typical

school participating in SBMH has 0.75 full-time-equivalent clinical staff, along with some additional offsite support by the agency. An onsite clinician FTE costs the agency approximately $110,000 annually. With overhead and support, we estimate it costs about $100,000 for the typical school's participation for both onsite and offsite resources. The onsite SBMH staffing provides services to students at school, and the agency helps arrange for payment behind the scenes, which can include helping students enroll in Medicaid. Based on knowledge of the program and data from several agencies, we estimate that approximately 5 percent of students use services in a year if their school has SBMH.

To assess whether there were changes in school resources associated with the implementation of SBMH, we estimate difference-in-differences models of school–year-level measures of counseling, social work, and psychologist staffing using the empirical methods described above. The ATT estimate of SBMH implementation on support staff per 100 students is −0.032 ($p = 0.452$), which corresponds to a 6 percent reduction relative to the sample mean that seems to attenuate with time (Online Appendix Figure 1). This could partially offset the increase in staffing brought in through SBMH and would imply an offset to costs as well, though it is important to note that such offsets are not an intended feature of the SBMH model.

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B. Effects on Study Outcomes

For every outcome, we report estimates of the average treatment effect on the treated (ATT) from models estimated from the full sample and the matched sample. In the interest of space, we show some of the heterogeneity analysis results and event study models in the main body of the paper, with the remainder in the Online Appendix. The event study and heterogeneity graphs that we present are estimated from the full sample. Analogous versions for the matched sample were quite similar and the text notes any exceptions.[7]

1. Administrative Minn-LInK data outcomes

We begin by analyzing positive academic outcomes: attendance rate and academic achievement on standardized tests. SBMH does not appear to affect school attendance rates across all students (Table 1). Students attend an average 94 percent of school days. ATT estimates from both the full and the matched samples are very close to zero, and estimates rule out even small effects on attendance. As displayed in Figure 2, in the years leading up to SBMH implementation, attendance rate trends are similar between the soon-to-implement and never-implementer schools, which lends credibility to the maintained assumption of parallel trends. With the exception of a drop in the fourth year after implementation, the estimated treatment effects show no effect (the version of this model from the matched sample shows no effects in any of the first five years after implementation).

7. Other heterogeneity-robust difference-in-differences and event study estimators have been recently developed (for example, Callaway and Sant'Anna 2021; Sun and Abraham 2021). In Online Appendix Tables 3a–3b and Figures 2a–2b, we show that the main estimates are similar to those from other estimators.

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Table 1
Estimated Effects of School SBMH on School and Juvenile Justice Administrative Data Outcomes

	Average Daily Attendance		Standardized Test *z*-Score (Subjects Pooled)		Any Out-of-School Suspension		Any Juvenile Justice Case Initiated	
ATT	–0.0012	0.0004	–0.0124	–0.0085	–0.0041	–0.0044	0.0002	–0.0010
SE	(0.0018)	(0.0019)	(0.0164)	(0.0177)	(0.0026)	(0.0026)	(0.0006)	(0.0004)
p-value	0.511	0.834	0.451	0.631	0.111	0.087	0.807	0.020
Sharpened *q*-value	0.424	0.569	0.424	0.461	0.205	0.183	0.569	0.068
Matched sample		X		X		X		X
Sample mean	0.942	0.945	–0.026	0.011	0.0383	0.0410	0.0047	0.0041
N	2,528,624	1,873,627	1,754,574	1,438,697	997,579	796,191	853,319	685,120

Notes: Attendance data are from administrative data available on all students. Test score data are available for all students who took tests in years they were eligible to do so. All results are from models with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status), and include grade level by year fixed effects.

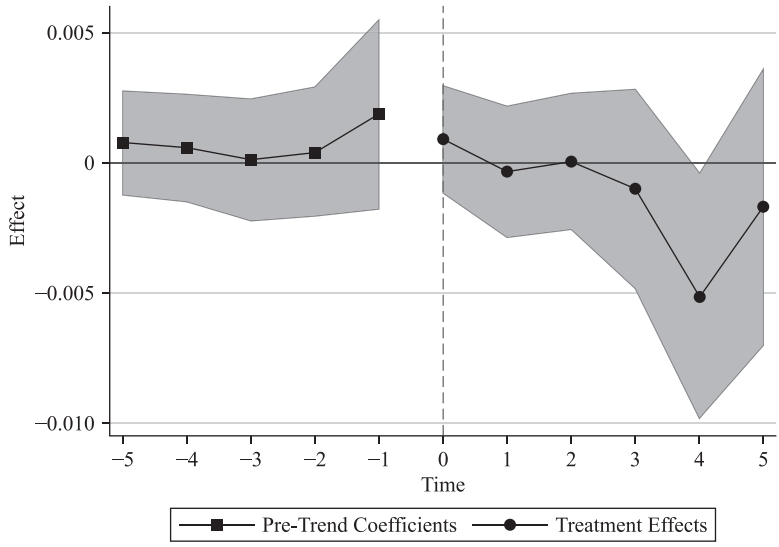

Figure 2

Event Study Model of Average Daily Attendance

Notes: Data are from administrative data on all students. Results are from an event study model with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status), and grade level by year fixed effects. Significance of test of pre-intervention trends: $p = 0.823$.

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For this first outcome of attendance rate, we describe the analysis of heterogeneous effects across all subgroups in Figure 3 to provide interpretative guidance for other outcomes. Figures describing ATT heterogeneity are expressed in relative terms to account for different levels of outcomes across groups. SBMH is estimated to affect attendance negatively among students who are white, who are in grades K–5, and who have low risk for mental health problems. SBMH is estimated to have a null effect on attendance rate among all other groups. However, even when statistically significant, effect sizes are very small.

Estimates indicate that SBMH does not seem to affect students' average standardized test scores, pooling across all tested subjects and grades. In the full sample (Table 1, Column 3), the estimated ATT is –0.0124 standard deviations with a 95 percent confidence interval of –0.0446, –0.0198. In the matched sample (Column 4), the estimated ATT is closer to zero (–0.0085 standard deviations, with a 95 percent confidence interval of –0.045, 0.020).[8]

The event study model shows parallel trends in standardized test scores leading up to SBMH adoption and no effects on test scores with the exception of a negative effect the third year after implementation (Figure 4). Results from the matched sample are very similar. The heterogeneity analysis (Figure 5) reveals negative effects for American

8. We investigated and did not find evidence that SBMH affected the number of students who took standardized tests.

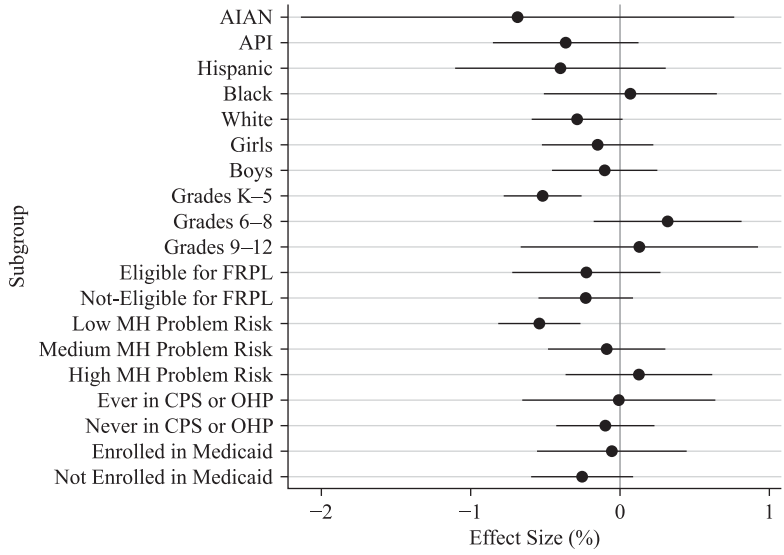

Figure 3

Estimated Relative ATT Effect and 95 Percent Confidence Interval of SBMH on Attendance Rate, by Subgroup

Notes: Daily attendance rate ranges from zero to one. AIAN is American Indian or Alaska Native. API is Asian or Pacific Islander. FRPL is free/reduced-price lunch, and FRPL eligibility is a proxy for low family income. MH is mental health, and the risk model is based on predictions made from a model trained in a separate, nationally representative sample. CPS represents a child protective services investigation, and OHP is out-of-home (foster care) placement; these two things proxy for child welfare system involvement.

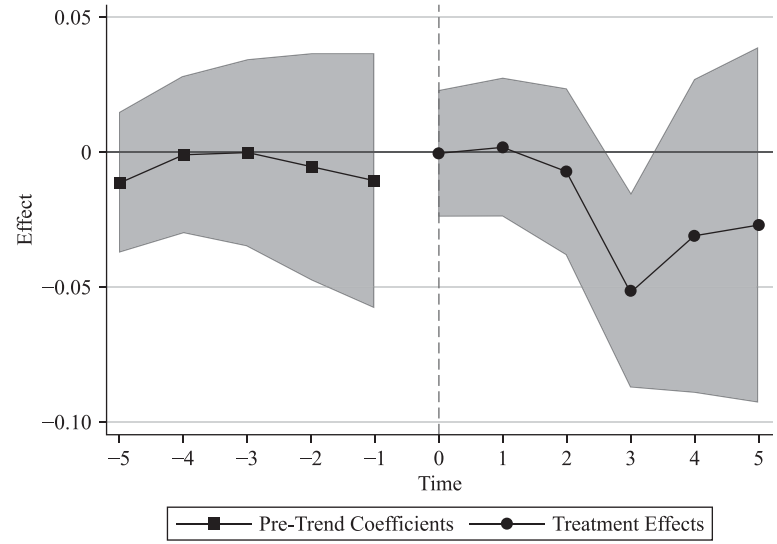

Figure 4

Dynamic Effects on Standardized Test z-Scores (Pooled Academic Subjects)

Notes: Test score data are available for all students who took tests in years they were eligible to do so. Results are from an event study model with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status), and grade level by year fixed effects. Significance of test of pre-intervention trends: $p = 0.865$.

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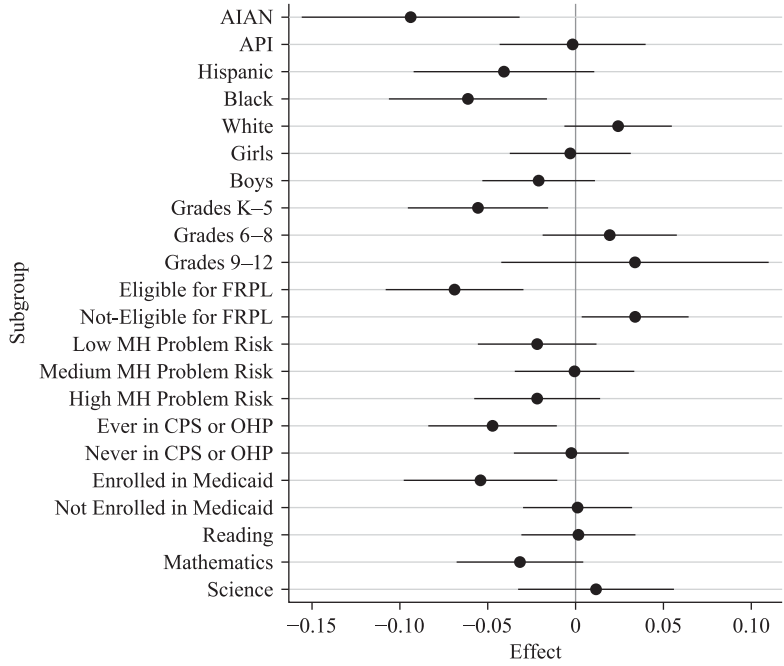

Figure 5

Estimated Relative ATT Effect and 95 Percent Confidence Interval of SBMH on Standardized Test z-Score, by Subgroup

Notes: AIAN is American Indian or Alaska Native. API is Asian or Pacific Islander. FRPL is free/reduced-price lunch, and FRPL eligibility is a proxy for low family income. MH is mental health, and the risk model is based on predictions made from a model trained in a separate, nationally representative sample. CPS represents a child protective services investigation, and OHP is out-of-home (foster care) placement; these two things proxy for child welfare system involvement.

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Indian, Black students, boys, K–5 students, those eligible for FRPL, and those with child welfare involvement, along with positive effects for students not eligible for FRPL. As shown at the bottom of Figure 5, none of the ATTs for specific subjects are significant at $p < 0.05$, but the ATT for math scores is negative, in contrast to null reading and science score ATTs.

There is weak evidence that negative behaviors towards others, measured by out-of-school suspensions and by any juvenile justice involvement, improve after SBMH is implemented. ATT estimates are similar in the full and matched samples (Table 1, Columns 4–5) and correspond to an approximate 10 percent relative reduction in the likelihood of out-of-school suspension. However, the ATT is only statistically significant at the $p < 0.10$ level in the matched sample (ATT = –0.0044, 95 percent confidence inverval of –0.0095, 0.0006), and the sharpened FDR q-value is 0.183. The event study model (Figure 6) shows parallel trends prior to implementation and decreasing suspension rates subsequently. Matched sample results are similar. No subgroup had a positive ATT estimate

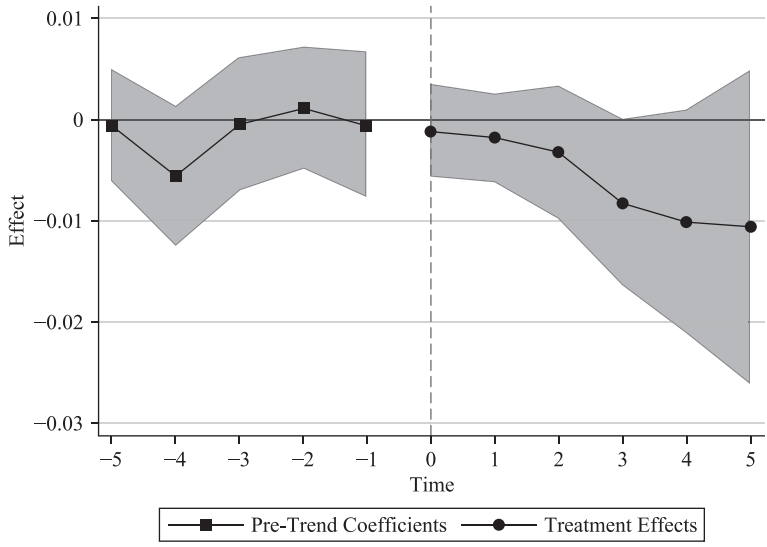

Figure 6

Event Study Model of the Probability of Any Out-of-School Suspension

Notes: Data are from administrative data on all students. Results are from an event study model with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status), and grade level by year fixed effects. Significance of test of pre-intervention trends: $p = 0.306$.

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for suspensions (Online Appendix Figure 3). Asian and Hispanic students, high school students, students with high mental health problem risk, and students without child welfare involvement all had significantly negative ATT estimates.

Results for the likelihood of annual juvenile justice involvement are more sensitive to the sample than results for suspensions. The ATT estimate for the full sample is positive but close to zero and quite imprecise (Table 1, Column 5). In contrast, the ATT estimate from the matched sample is –0.001 and precise (Table 1, Column 6), corresponding to a 25 percent relative reduction in the low average likelihood of juvenile justice involvement. For the full sample, pre-intervention trends are not significant, and there is little evidence of effect in the first five years after the intervention, except for an increase in the fourth year (Online Appendix Figure 4). However, the matched sample event study shows flat and nonsignificant pre-trends, followed by several years with negative and significant effects (Online Appendix Figure 5). In the full sample, most subgroups have null ATTs for juvenile justice, except for high-schoolers, medium mental health risk students, and students without child welfare involvement (Online Appendix Figure 6).

Turning to mental health services use outcomes, SBMH increases use of either outpatient mental health or prescription drug services. The ATT estimates are very similar in the full and matched samples, and both are precise (Table 2, Columns 1–2). In the full sample, estimates indicate that SBMH increases the likelihood of any outpatient or prescription drug mental health services among the treated by 0.013 (confidence interval: 0.004–0.023). In the full sample, there is a weak and nonsignificant increasing

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Table 2
Estimated ATT Effects of SBMH on Mental Health Services Administrative Data Outcomes

	Outpatient MH Services or Psychotropic Drug Use		Psychotherapy Services		Any MH Medication		Any Inpatient or ED Use for Mental Health Diagnosis		Any New Mental Health Diagnosis	
ATT	0.0137	0.0129	0.0159	0.0167	0.0024	0.0026	0.0026	0.0026	0.0090	0.0058
SE	(0.0049)	(0.0050)	(0.0040)	(0.0043)	(0.0037)	(0.0039)	(0.0020)	(0.0021)	(0.0036)	(0.0037)
p-value	0.005	0.009	<0.001	<0.001	0.514	0.511	0.184	0.232	0.012	0.117
Sharpened *q*-value	0.039	0.050	0.007	0.007	0.424	0.424	0.267	0.303	0.054	0.205
Matched sample		X		X		X		X		X
Sample mean	0.1807	0.1832	0.1223	0.1228	0.1108	0.1143	0.0334	0.0261	0.0811	0.0798
N	401,387	301,443	401,387	301,443	401,387	301,443	258,284	194,700	346,351	260,030

Notes: All mental health services use data are from administrative data available on Medicaid-enrolled students. All results are from models with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status) and include grade level by year fixed effects.

pre-intervention trend (Online Appendix Figure 7). In the full sample, most subgroups had significant increases in outpatient or prescription drug mental health service use, except for students who were white, boys, high-schoolers, not eligible for FRPL, at low risk of mental health problems, or had no child welfare involvement (Online Appendix Figure 8).

Within types of mental health services, the observed increase in any outpatient mental health or prescription drug use is driven entirely by outpatient mental health services, specifically by psychotherapy services (Table 2, Columns 3–4). The psychotherapy use results are similar and precisely estimated in both the full and matched sample, about a 13 percent relative increase. For other outpatient services, we find no effect on non-psychotherapy psychosocial services but a precisely estimated increase in outpatient services with a school place-of-service code. This is small in absolute value but a large increase relative to the mean (Online Appendix Table 5). SBMH did not affect the likelihood of using prescription drugs for mental health overall (Table 2, Columns 5–6). Looking within specific drug classes, there is little evidence SBMH affected prescription drug classes, with the exception of increasing antipsychotic use (Online Appendix Table 6). We find little evidence SBMH affected the probability of hospital-based mental health services, with positive but imprecise ATT estimates (Table 2, Columns 7–8; Online Appendix Figure 9 presents event study results). Within hospital-based services for mental health, however, the likelihood of suicide-related hospital or emergency department use increases significantly (Online Appendix Table 5). We also find weak evidence that SBMH increased the likelihood of a new mental health diagnosis (Table 2, Columns 9–10). In the full sample, the ATT is a precisely estimated 0.009, an 11 percent relative increase. However, the ATT estimate is smaller and not significant at $p < 0.10$ in the matched sample.

Aside from the effects of SBMH on mental health services use within Medicaid, we find that after schools implement SBMH, the likelihood students are enrolled in Medicaid increases in both the full and matched sample (Online Appendix Table 5). While it is possible that SBMH clinicians would have an incentive to help eligible students enroll in Medicaid, the event study graphs illustrate a clear pre-trend in this outcome, the only outcome we examine with a statistically significant pre-intervention trend (Online Appendix Figure 10).[9]

2. Minnesota Student Survey data outcomes

We focus here on the three outcomes available in all seven MSS waves. ATT estimates indicate that SBMH did not affect self-reports of any substance use in the past 30 days (Table 3, Columns 1–2), and there are no clear pre-implementation trends in substance use (Online Appendix Figure 11). ATT estimates for the models of past-12-month suicidal ideation are negative but imprecise (Table 3, Columns 3–4). ATT from the full sample is –0.002 ($p = 0.564$) and from the matched sample is –0.004 ($p = 0.390$), corresponding to small relative changes in suicidal ideation. The event study model of suicidal ideation does not reveal any clear pre-trend but has two years post-intervention

9. We also examined whether SBMH affected the likelihood of a student having an individualized education plan (IEP). SBMH did not affect the overall likelihood of having an IEP, but reduced the likelihood of having an IEP for an emotional or behavioral disability (Online Appendix Table 7).

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Table 3
Survey Data Outcomes from MSS: Estimated ATT Effects

	Any Substance Use in Past 30 Days		Suicidal Ideation in Past 12 Months		Any Suicide Attempts in Past 12 Months	
ATT	–0.0001	0.0035	–0.0021	–0.0041	–0.0038	–0.0053
SE	(0.0076)	(0.0091)	(0.0037)	(0.0047)	(0.0019)	(0.0025)
p-value	0.995	0.697	0.564	0.390	0.050	0.034
Sharpened *q*-value	0.596	0.497	0.205	0.205	0.073	0.089
Matched sample		X		X		X
Sample mean	0.230	0.218	0.138	0.135	0.025	0.036
N	147,151	104,303	156,323	110,507	156,511	110,672

Notes: Data are from Minnesota Student Survey data available every three years for some grades and schools. All results are from models with individual-level covariates (grade, race/ethnicity, sex) and include grade level by year fixed effects.

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with significant declines (Online Appendix Figure 12). Evidence is stronger that SBMH affects past-12-month self-reports of suicide attempts. ATTs for the full sample and matched sample are –0.0038 ($p = 0.050$) and –0.0053 ($p = 0.034$), respectively, corresponding to relative reductions of 15 percent in each sample. The event study models do not show a clear pre-intervention trend in suicide attempts, and the pre-intervention trends are not statistically significant (Figure 7). The only clear heterogeneous effects are that SBMH led to larger decreases for white students compared to other racial and ethnic groups and an increase for the small group of students who had multiple or missing race or ethnicity (Online Appendix Figure 13). For the two MSS outcomes where data were available only for a subset of survey waves, there is no evidence that SBMH affected mental health status as measured by the general well-being index, with small and very imprecise estimates. However, we find small but somewhat precise negative ATTs on past-12-month self-reported mental treatments (Online Appendix Table 8). This latter result is from data that were only collected from students in Grade 8 and higher, and consistent with this, effects on mental health service use in the administrative Medicaid data are not statistically significant for the high school group.

3. Dynamic effects of SBMH

The above results are all interpreted at the school–year level and do not account for heterogeneity in effects based on students' prior SBMH exposure. Such dynamics could be important. For instance, a student who starts using mental health services because their school has SBMH is likely to continue using services even after moving to another school, regardless of whether that next school has SBMH. Similarly, the estimated effect of SBMH on a school is likely to vary by whether students in that school had previous exposure to SBMH, which would vary over time as adoption expanded. To explore these dynamics we focused on two grade-level groups whose prior exposure to SBMH was most relevant: middle school and high school (Grades 6–8 and 9–12, respectively). For

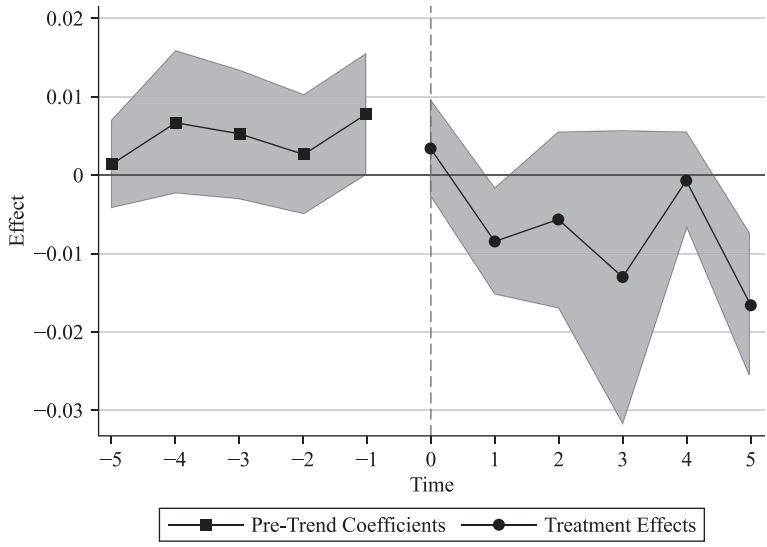

Figure 7

Event Study Model of Any Suicide Attempts in Past 12 Months

Notes: Data are from Minnesota Student Surveys. Results are from an event study model with individual-level covariates (age, race/ethnicity, sex), and grade level by year fixed effects. Significance of test of pre-intervention trends: $p = 0.173$.

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all students, we assessed whether they were exposed to any SBMH in Grades K–5 and in Grades 6–8. We then reestimated models focusing on middle school (high school) and stratified by whether students had any K–5 (Grades 6–8) SBMH exposure. We can only do this for the Minn-LInK data, where we follow students over time. The overall pattern of results is mixed (Online Appendix Table 9). SBMH seems to increase any mental health services use and average daily attendance more among students with prior exposure than those without prior exposure. For other outcomes (suspensions, juvenile justice involvement, test scores) the prior SBMH exposure patterns are less consistent between middle school and high school. Overall, we find some evidence of dynamic complementarity in SBMH's effects, but not robust evidence that SBMH has stronger effects among previously unexposed students.

V. Discussion

We examine an example of expanding mental health services to children and adolescents that is policy-relevant, as many U.S. localities are currently implementing or considering the SBMH model, and as federal and state policymakers support expanding funding for this model. This research sheds new light on how expanding mental health services affects human capital-related outcomes, along with evaluating this specific model.

When considering the full population in our data on K–12 public school students in Hennepin County, Minnesota, we find no evidence that SBMH improved average attendance, test scores, substance use, or suicidal ideation. We do find some evidence that SBMH reduced antisocial behaviors (suspensions and juvenile justice involvement) and stronger evidence it reduced self-reports of suicide attempts. It could be that the "first-stage" effect of SBMH on mental health services is not big enough to detect broader effects, as we estimate that only 5 percent of students typically use SBMH services in schools that offer them. Our estimated effects on any outpatient mental health or prescription drug use for children on Medicaid were small in absolute magnitude (1.3–1.4 percentage points). That absolute increase is only moderately lower than the absolute increase in stimulant use reported in Currie, Stabile, and Jones (2014). In addition, a back-of-the-envelope calculation suggests that the drops in adolescent antidepressant use reported in Busch, Golberstein, and Meara (2014) were at most 1 percent for the full population. Thus, our shock to mental health treatment is reasonably similar to other relevant research, but we are limited in our ability to identify the specific students who actually need and use services.

Our approach to identify students who are at higher or lower risk of mental health problems, and thus might be more or less likely to use and benefit from SBMH, did not yield a consistent set of results. This may reflect insufficient predictive power of our predictive modeling approach and/or a disconnect between the predictions of need for mental health services and which students were most likely to receive SBMH in schools that implemented the model.

Our results should be interpreted with several limitations in mind. We are unable to identify all the students who use SBMH services or quantify the amount of SBMH services that they used. We only attempt to identify mental health services with a place-of-service code for a school among the subset of students who were enrolled in Medicaid. SBMH clinicians delivered services to students who were not billable to insurance and thus not observable in the Medicaid data. Some SBMH agencies did not immediately bill Medicaid when they started working in schools. As such, it is hard to assess the degree to which SBMH services were truly marginal or just represented a shift in the location of inframarginal services. However, the overall effects on Medicaid service use and, albeit weak, evidence of an increase in new mental health diagnoses suggest net increases in service use, though these effects must be interpreted in the context of our estimate that SBMH led to increases in Medicaid enrollment. Although we cannot identify all students who actually used SBMH themselves, it is still useful to consider effects across the whole student population. Aside from direct service provision, SBMH clinicians also did some amount of teacher education and engagement. And to the extent that treating mental health yields spillovers for classmates (Aizer 2011), it is useful to look at the full population.

Another limitation is that this study was limited to a single urban and suburban county, albeit one that is large and reasonably diverse. The effects of SBMH likely depend on the accessibility of mental health services outside of school settings. To the extent that Hennepin County, Minnesota, has greater access to youth mental health services than other areas, our estimated effects on SBMH there might be lower than if the intervention were implemented elsewhere.

As policymakers grapple with how best to address the crisis of child and adolescent mental health, information on the costs and benefits of different interventions is critical. As discussed early in the "Results" section, we estimate that the intervention costs about

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$100,000 per school year.[10] In the midpoint of the intervention period, schools that implemented SBMH had an average enrollment of 858 students, indicating that the per student cost of SBMH is approximately $117 per year. In the specific SBMH model that we study, these costs were shared across state grant funds and health insurers, to the extent children had insurance. Other potential SBMH benefits were not quantified here, such as the reduced time and hassle costs of obtaining services for both children and parents. Nevertheless, the evidence of reductions in self-reported suicide attempts and the more suggestive evidence of improvements in disciplinary behavior and juvenile justice involvement indicate the potential for important benefits. As schools continue to be an important place for identifying and treating mental health problems, additional research that further quantifies costs, benefits, and optimal size of school-based services will be valuable.

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10. The SBMH model is not intended to replace existing student support staff, but in theory school districts could respond to it by reducing support staffing. Combining our admittedly imprecise estimate of the effect of SBMH on student support staffing per 100 students with the average school size yields an estimated reduction of 0.3 support staff FTE, which according to BLS data would save $30,400 per school year.

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To the Seclusion Work Group,

I have served over 42 years in the field of Special Education. Currently, I serve as the Assistant Superintendent of Programs and Services in District 287 and I am in support of the "Runaway with Support" proposal. I am in agreement for the preservation of seclusion as an emergency tool for the time being, coupled with funding and dedicated support for evidence-based alternatives. We work tirelessly to support student behavior while keeping staff safe and it is important that promising alternatives are fully funded and supported. I encourage the seclusion committee to move forward the "Runaway with Support" proposal.

Sincerely,

Elisabeth

Elisabeth Lodge Rogers, Ph.D. her/hers/she

Assistant Superintendent of Programs and Services

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Intermediate District 287

RESPONSIVE. INNOVATIVE. SOLUTIONS.

Overview of Seclusion Working Group Enabling Legislation

Legislative Coordinating Commission

August 13th, 2023

Andrew George, LCC Research Analyst

Minnesota 2025 Special Session Law, Chapter 10, Article 7, Sec. 10

- The Seclusion Working Group was established to evaluate the use of seclusion as an emergency procedure, and not as a discipline, as required in Minnesota Statutes section 125A.0942, subd. 3.

Members

4 Legislative Appointments

- 2 members of the senate, one appointed by the senate majority leader and one appointed by the senate minority leader
- 2 members of the House of Representatives, one appointed by the speaker and one appointed by the DFL Caucus

12 Joint Appointments who represent the following groups

- Special education directors from a setting 3 or 4 program
- Cooperative unites under MN Statutes, section 123A.24, that provide special education instruction and services
- Parents or family of students who have been secluded
- Teachers who work with students in a setting 3 or 4 program
- Paraprofessionals who work with students in a setting 3 or 4 program
- Licensed school psychologists or school counselors who work with students in a setting 3 or 4 program
- Organizations that represent students who are disproportionately affected by the use of restrictive procedures

Duties of the Working Group

- Evaluate the effectiveness of seclusion compared to other methods of restrictive procedures used in emergency situations on different age groups and in different educational settings
- Analyze how the lack of alternatives to seclusion forces children and their families to interact with the criminal justice system
- Evaluate workable alternatives to seclusion
- Consider the effects of seclusion on children's mental health, access to a free and appropriate public education, academic outcomes, and overall well-being

Duties of the Working Group

- Identify new and existing resources necessary for staff capacity and training, children's supports, child mental health services, and schoolwide collaborative efforts
- Visit school sites that currently use seclusion
- Review applicable laws defining and regulating seclusion in schools
- Report its findings and recommendations regarding the use of seclusion to the chairs and ranking minority members of the legislative committees with jurisdiction over kindergarten through grade 12 education no later than January 30, 2026

Chair, Administrative Support, Consultation

- Member appointed by the senate majority leader to convene the first meeting on or before August 15th, 2025. Working Group meetings must meet monthly and be open to the public.
- The Legislative Coordinating Commission will provide meeting space, technical and administrative support, and staff support for the working group.
- The Working Group must consult with the Department of Education and the Department of Human Services, including a representative from the Department of Human Services specializing in school-linked mental health.

Expiration

- The Working Group expires January 31st, 2026, or when the final report is submitted to the legislature, whichever is later.

Questions

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Legislative Coordinating Commission

Erin Sandsmark and Jessica Heiser – Recommendations

Seclusion Working Group

1. Eliminate the use of Seclusion by 2026 per MDE recommendations

2. Continue the ban on PreK-3rd Seclusions as is

3. Continue the ban on PreK-3rd grade seclusions with improved implementation policy and funding for schools to adjust course, and provide support for alternative systems outside of seclusion.

4. Eliminate use of Seclusion in a different time frame, with more time to adopt improved implementation strategies for a shifting system without seclusion, that prioritizes other methods of de-escalation like Ukeru.

5. Create an accessible mechanism for parents and families to report when they think seclusion is being misused that does not require them to go through their school (MDE?). Make sure that every family has that contact information every time seclusion is used.

6. Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION.

7. Require school districts to publicly document the number seclusions each year in a public-facing manner so parents have visibility to high seclusion use schools. Ensure data includes disaggregation by race and disability.

8. Mandate training on ableism for schools to increase understanding that what is perceived as "behavior" is often part of the person's disability. (We know they will say "no" to this, but maybe we throw in a few nos to get closer on the yeses?

9. Broaden the scope of those who receive training in co-regulation and de-escalation strategies. Often there is only a single interventionist per school who has received this training. These strategies are invaluable to everyone in the educational environment and should be offered to lunchroom staff, bus drivers, paras, library personnel, social workers as well as students themselves. Everyone who comes in contact with students should be trained in conflict resolution and de-escalation strategies.

10. Train educators on how to support demand avoidant students. Teach educators what demand avoidance is, how it presents, and how "conventional" strategies often have the opposite of the desired effect.

11. Shift outmoded control and compliance-based strategies and focus on communication and connection instead. Teachers are often rewarded for their ability to "control" their classroom, and punished for their leniency when they prioritize connection over control and communication over compliance. This is an outdated way of thinking that actually causes harm, especially to students with a trauma history.

12. Open an honest dialogue about the harm that is done when school becomes a place where trauma occurs. Even though it may be a painful process, we cannot solve the problems we are not willing to admit exist. We need to talk about what happens when school becomes a place where trauma occurs, how it has happened in the past, and what can be done to prevent it from happening in the future.

13. Encourage educators to explore any strategy that will break the cycle of trauma. We have seen successful de-escalation through humor, through music, through physical exercise, through changing environment, and all of these strategies should be explored.

14. Build bridges between educators and adults with disabilities. As parents and advocates, we have learned that adults with disabilities are often our greatest teachers and can help us gain insight into better understanding and supporting our kids. We are fortunate in Minnesota to have a rich community of adult advocates who are more than willing to share their experiences and expertise. When we passed the ableism bill in 2023, we had hoped that a discussion with adults with disabilities would become part of teacher training for every teacher supporting students with disabilities. That dream has not been realized, and it is a missed opportunity.

15. Consider an audit of outdated practices that escalate rather than de-escalate students with disabilities. Practices such as "whole body listening" or goals for eye contact often increase dysregulation. Practices such as sensory profiles, helping students identify regulation strategies, and allowing unlimited access to breaks increase a student's ability to regulate and decrease disruptive behavior.

16. Teach children about their nervous system, and what is actually happening to their brains and bodies when they are in fight/fight/freeze/fawn mode. Helping kids understand what they are going through, and helping adults understand what children need to feel safe cannot be over-emphasized. Strategies like teaching "I feel ____. I need ____. ____ helps me." taught when a child is regulated and utilizing whole communication has proven an effective strategy ***as long as the adults honor it.***

17. We often see school districts reducing or eliminating related services in an effort to reduce costs. Speech therapy services and OT services are often the first on the list to be cut in times of difficult budgets, but communication and self-regulation skills are two of the best tools we have to help reduce problem behavior.

18. Engage with families in collaborative problem-solving before behavior occurs. Open and honest conversations about what helps and what hurts can often help teams avoid difficult situations. Once a restricted procedure is used, families and educators often find themselves in an antagonistic position. Time invested in a collaborative relationship before that happens can provide a foundation on which to build during times of stress.

Erin Sandsmark and Jessica Heiser – Recommendations

Seclusion Working Group

1. Eliminate the use of Seclusion by 2026 per MDE recommendations

2. Continue the ban on PreK-3rd Seclusions as is

3. Continue the ban on PreK-3rd grade seclusions with improved implementation policy and funding for schools to adjust course, and provide support for alternative systems outside of seclusion.

4. Eliminate use of Seclusion in a different time frame, with more time to adopt improved implementation strategies for a shifting system without seclusion, that prioritizes other methods of de-escalation like Ukeru.

5. Create an accessible mechanism for parents and families to report when they think seclusion is being misused that does not require them to go through their school (MDE?). Make sure that every family has that contact information every time seclusion is used.

6. Fund training on de-escalation, co-regulation, and understanding sensory processing needs for ALL staff (not just a single behavior intervention person per school). Everyone who receives the MDE training on how to use seclusion legally should also receive training on how to AVOID USING SECLUSION.

7. Require school districts to publicly document the number seclusions each year in a public-facing manner so parents have visibility to high seclusion use schools. Ensure data includes disaggregation by race and disability.

8. Mandate training on ableism for schools to increase understanding that what is perceived as "behavior" is often part of the person's disability.

9. Broaden the scope of those who receive training in co-regulation and de-escalation strategies. Often there is only a single interventionist per school who has received this training. These strategies are invaluable to everyone in the educational environment and should be offered to lunchroom staff, bus drivers, paras, library personnel, social workers as well as students themselves. Everyone who comes in contact with students should be trained in conflict resolution and de-escalation strategies.

10. Train educators on how to support demand avoidant students. Teach educators what demand avoidance is, how it presents, and how "conventional" strategies often have the opposite of the desired effect.

11. Shift outmoded control and compliance-based strategies and focus on communication and connection instead. Teachers are often rewarded for their ability to "control" their classroom, and punished for their leniency when they prioritize connection over control and communication over compliance. This is an outdated way of thinking that actually causes harm, especially to students with a trauma history.

12. Open an honest dialogue about the harm that is done when school becomes a place where trauma occurs. Even though it may be a painful process, we cannot solve the problems we are not willing to admit exist. We need to talk about what happens when school becomes a place where trauma occurs, how it has happened in the past, and what can be done to prevent it from happening in the future.

13. Encourage educators to explore any strategy that will break the cycle of trauma. We have seen successful de-escalation through humor, through music, through physical exercise, through changing environment, and all of these strategies should be explored.

14. Build bridges between educators and adults with disabilities. As parents and advocates, we have learned that adults with disabilities are often our greatest teachers and can help us gain insight into better understanding and supporting our kids. We are fortunate in Minnesota to have a rich community of adult advocates who are more than willing to share their experiences and expertise. When we passed the ableism bill in 2023, we had hoped that a discussion with adults with disabilities would become part of teacher training for every teacher supporting students with disabilities. That dream has not been realized, and it is a missed opportunity.

15. Consider an audit of outdated practices that escalate rather than de-escalate students with disabilities. Practices such as "whole body listening" or goals for eye contact often increase dysregulation. Practices such as sensory profiles, helping students identify regulation strategies, and allowing unlimited access to breaks increase a student's ability to regulate and decrease disruptive behavior.

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DISTRICT196
One District. Infinite Possibilities.

Janet Fimmen
Director of Special Education

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March 22, 2024

Dear Dakota County Legislators,

I am writing to express my concerns regarding the legislative movement to end seclusion for all students in Minnesota. I understand the intent behind such a proposal, and agree that there is a need to examine current practices, but I believe that an immediate blanket ban on seclusion may inadvertently harm both students and educators. As a Special Education Administrator I have worked in our most restrictive environment, a federal setting 4 school for the last 12 years. There are no other educational placements within our school district for the students we serve, and at Dakota Ridge we pride ourselves on "figuring out" how to help every student find success at school. For a student who has experienced significant trauma and physical abuse the worst thing we can do is physically restrain them, yet we must keep them safe. Keeping them safe is far more complex than it sounds. This looks like moments of mental health crisis including attempts to run into traffic, eloping or the use of objects to harm themselves or others. Through knowing our students and their stories we determine as teams when it is appropriate to consider the use of seclusion and we educate students on how to use the tools and skills we teach them to calm and regulate in a safe space. Once students have calmed we are able to enter these spaces with them, continue to co-regulate and utilize our strong relationships to help them move past the moment of crisis and find success as a student.

When used appropriately and as a last resort, seclusion can be a necessary tool to ensure the safety of students and staff in situations where behaviors pose an immediate risk of harm. It is crucial to recognize that every student is unique, and their individual needs and challenges must be addressed with a range of interventions and support strategies. By completely eliminating seclusion as an option, we risk:

- Escalated conflicts and increased risks to the safety of students and staff;
- Increased use of physical restraints with students who have experienced trauma and physical abuse;
- Staff who are ill-equipped to handle severe behavioral outbursts;
- Students unable to attend in-person learning as a result of significant behaviors that compromise safety, and
- Depriving students, families and educators of a valuable tool for managing crisis situations effectively.

A ban on seclusion could have unintended consequences for students with special needs who require additional support. For some individuals with certain disabilities or mental health conditions, seclusion is a part of their individualized education plan (IEP) and can be implemented in a manner that is both safe and respectful of their rights. Instead of prohibiting the use of seclusion, I urge policymakers to focus on:

- Improving training and oversight related to the use of seclusion;
- Investing in alternative strategies for de-escalation and behavior management, and
- Slow gradual elimination of seclusion starting with least restrictive environments to most restrictive environments (federal setting) where students demonstrate greater levels of need.
- Support expanded and enhanced mental health services.

This approach would ensure that seclusion is only utilized when absolutely necessary and that all efforts are made to prevent its use through proactive intervention and support.

Any legislative action in this area should involve meaningful input from educators, mental health professionals, parents, and advocates to ensure that the rights and safety of all students are upheld. In conclusion, I urge you to reconsider the proposed legislative movement to end seclusion for all students in Minnesota. While the goal of promoting safer and more supportive learning environments is commendable, a balanced approach that considers the diverse needs of students and the realities faced by educators is essential. Thank you for your attention to this important matter.

Sincerely;

Janet Fimmen
Director of Special Education

Andrea Engstrom
Special Education Coordinator

Cc: Mary Kreger, Superintendent

- Contingent on the adoption of the other working group recommendations (explicit consent, IEP team meeting requirements, increased accountability, etc.) **and** the provision of appropriations,
    - Permit the limited use of seclusion for students in grades 1-12, receiving setting 3 or setting 4 special education services, until July 1st, 2036
    - Should appropriations be provided to strengthen the continuum of behavior interventions (aka alternatives to seclusion), the use of seclusion would sunset at this time.
- The Commissioner of Education/MDE must analyze the efficacy of Ukeru (or other vetted and funded interventions) used as an alternative to seclusion
- MASE must collect and study the data related to the reduction or elimination of seclusion (eg Physical holds, including supine, suspensions, homebased placements, law enforcement interventions, rates of student and staff injuries, etc)

Hennepin County School Mental Health Program – 2005 to 2025

Dr. Mark Sander, Psy.D, LP
Senior Clinical Psychologist, Hennepin County
Director of School Mental Health, Hennepin County

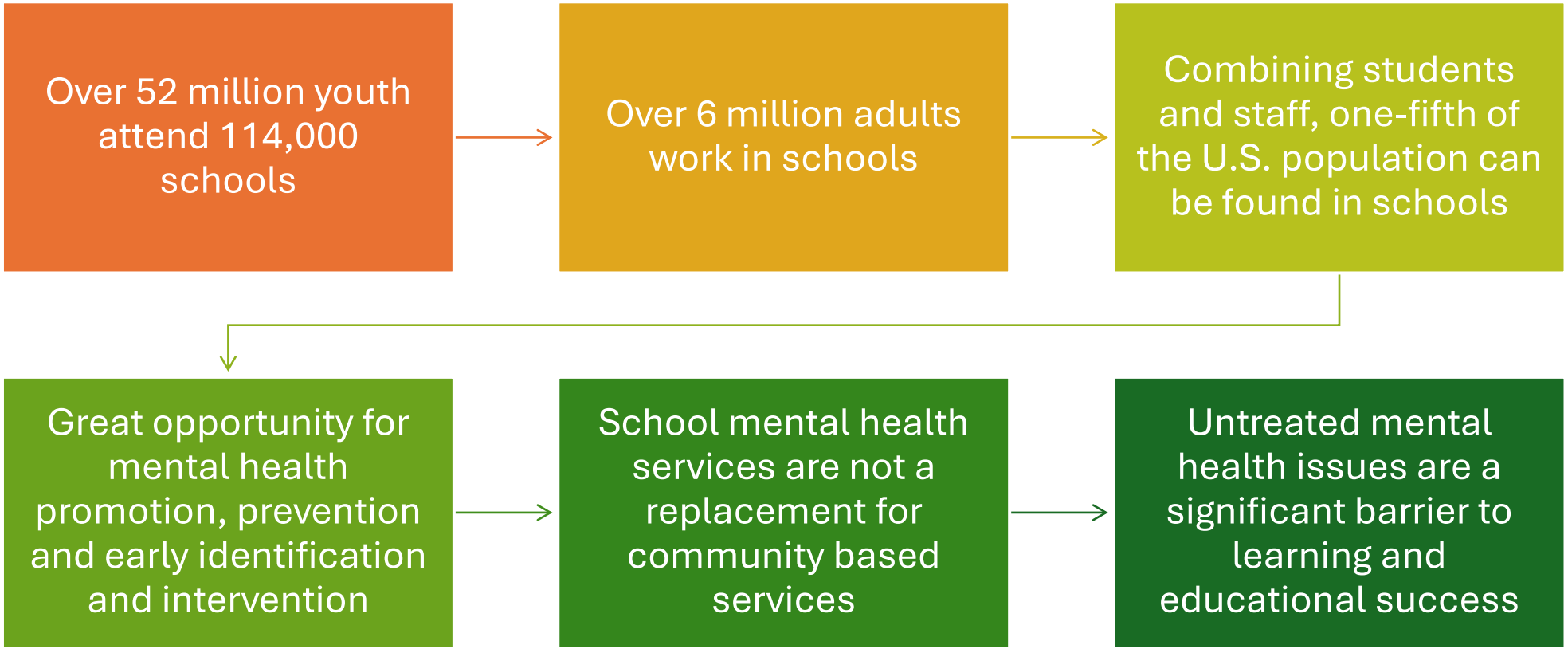
Mental Health Need

- Significant gap between mental health needs and available services
- Urgent need to improve access: 1 in 5 children have a diagnosable mental health disorder, yet 70-80% receive no or inadequate levels treatment
- Low income, urban communities as high as 40%; averaging only 4 session and less than 9% still in care after 3 months
- Youth needing mental health services are not accessing established sites for care
- Wait times; kept appointment/show rate at urban community mental health centers: 38-53%
- **50% of adults with MH illness had symptoms before 14 years old.**

Barriers to Mental Health Care

- Financial/Insurance
- Burden of accessing care
  - Childcare
  - Transportation
  - Employment concerns
- Mistrust/Stigma
- Past Experiences
- Waiting List/Intake Process
- Stress

Why Schools?


Over 52 million youth attend 114,000 schools
Over 6 million adults work in schools
Combining students and staff, one-fifth of the U.S. population can be found in schools
Great opportunity for mental health promotion, prevention and early identification and intervention
School mental health services are not a replacement for community based services
Untreated mental health issues are a significant barrier to learning and educational success

Building on what schools already do…

- School can and often do provide programs and supports focused on:
  - School Climate and Culture
  - Social and Emotional Learning (SEL)
  - Positive Behavioral Interventions and Supports (PBIS) and/or Multi-Tiered Systems of Support (MTSS)
  - Response to Intervention (RtI)
  - Student Support Staff (school psychologist, school nurses, school counselors, school social workers)

School Mental Health Goals

- **Improve access to and engagement in children's mental-health services**, particularly for families with transportation, financial or cultural barriers
- **Improve symptoms and functioning** for children experiencing mental health difficulties
- **Improve school outcomes –** increase attendance and decrease suspensions
- **Integrate with a broad continuum of mental health services and supports** into school and build capacity of school staff

Brief History of SMH in MPS and Hennepin County

- MPS Program began in Winter 2005 (with planning in 2004)
- Started in 5 schools with 2 different agencies
- Currently in 64 schools with 10 different mental health agencies (~$7.4 million per year) serving about ~2000 students

- Across Hennepin County – 22 mental health agencies in 220 schools with ~230 FTEs of mental health professionals (~$25 million per year), ~7000 students

School Mental Health Services

Direct Clinical

- Individual or family therapy
- Most often in school, but can be at student's home or in community based on preference of family
- Billed through insurance plan whenever possible
- Services based on goals identified on ITP
- Services can be provided year around

Ancillary

- Partnering with student support staff to implement full continuum of supports & services
- Providing teacher & staff consultation
- Care coordination with professionals in the community and in the schools
- Professional development
- Building relationships & connections to establish caseload
- Classroom presentations

Brief Evaluation from MPS ESMHP

Access and sustained engagement in treatment

- 85 % of students seen once face to face; 70% within 10 days; 50-65% 1st time receiving services
- Average 17 visits per school year and average of 25 over multiple years
- BIPOC students were significantly more likely to access SMH services than Caucasian students

Improved mental health functioning

- Parents and teachers report decreases in the emotional and behavioral problems on the Strength and Difficulties Questionnaire (SDQ)
- Study by the University of MN found that school mental health services reduced suicided attempts

Improved school functioning

- Decrease in school suspensions for students receiving mental health treatment
- Principals and school social workers reported reduced office referrals and student suspensions

What School Staff Had to Say

92% felt that mental health clinicians were well integrated in the schools

88% said they were more mindful of mental health needs because of MH services available in their building

98% said students more likely to receive MH care

80% strongly agreed onsite services increased ability of clinicians to help students

School setting made services more welcoming to parents especially low-resourced families

Evaluation of SMH Service in Hennepin County (Wilder Research, Sept 2016)

What Parents had to Say

Collaborative work between clinicians, school staff and families helps caregivers feel more connected to school

76% said students' relationship with school staff either improved a little or a lot

75% said students' interest in school increased

88% said my child has greater sense of belonging to the school community

75% said their children were more involved in school

Evaluation of SMH Service in Hennepin County (Wilder Research, Sept 2016)

Contact Information

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Senior Clinical Psychologist, Hennepin County

Director of School Mental Health, Hennepin County

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School Districts' Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools

Report to the Legislature

As required by Minnesota Statutes, section 125A.0942

For more information:

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As requested by Minnesota Statutes, section 3.197: This report cost approximately $20,000 to prepare, including staff time, printing, and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, braille or audio recording. Printed on recycled paper.

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Legislative Charge

In accordance with Minnesota Statutes 2023, section 125A.0942, subdivision 3(b):

By February 2015, and annually thereafter, stakeholders may, as necessary, recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures, and the commissioner must submit to the Legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and recommendations to clarify and improve the law governing districts' use of restrictive procedures. The commissioner must consult with interested stakeholders when preparing the report, including representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. Beginning with the 2016-17 school year, in a form and manner determined by the commissioner, districts must report data quarterly to the Minnesota Department of Education (MDE) by January 15, April 15, July 15, and October 15 about individual students who have been secluded. By July 15 each year, districts must report summary data on their use of restrictive procedures to MDE for the prior school year, July 1 through June 30, in a form and manner determined by the commissioner. The summary data must include information about the use of restrictive procedures, including use of reasonable force under section 121A.582.

The 2022-23 Restrictive Procedures Stakeholders' Workgroup (workgroup) included representation from the following legislatively mandated participants: advocacy organizations, special education directors, teachers, intermediate school districts, school boards, county social services, state human services department staff, mental health professionals, and autism experts.

A list of workgroup participants may be found in Appendix A of this report.

Introduction

To govern the use of restrictive procedures for children with disabilities, Minnesota's restrictive procedures legislation – Minnesota Statutes, sections 125A.094, 125A.0941, and 125A.0942 – were initially passed in 2009 and made effective in 2011. In 2013, following subsequent statutory revisions, the Legislature tasked MDE and interested stakeholders with developing a statewide plan to reduce districts' use of restrictive procedures, which as of 2013, must include "specific measurable implementation and outcome goals for reducing the use of restrictive procedures"[1] along with the following components:

[1] Minn. Stat. 125A.0942, subd. 3(b) (2013).

- The resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and
- Recommendations to clarify and improve the law governing districts' use of restrictive procedures.[2]

During the 2016 legislative session, prone restraint[3] was added to the list of actions or procedures prohibited in the school setting.[4] Further in 2016, the restrictive procedures statute was amended to add "eliminate the use of seclusion"[5] as part of the legislative charge outlined in Minnesota Statutes, section 125A.0942, subdivision 3(b).

During the 2023 legislative session, standards for the use of restrictive procedures were revised to:[6]

- Clarify that the restrictive procedures statutory provisions apply to children with disabilities from birth until the child with a disability becomes 22 years old;
- Add an additional responsibility to the oversight committee to quarterly review the use of restrictive procedures based on patterns or problems indicated by any disproportionate use of restrictive procedures based on race, gender, or disability status, the role of the school resource officer (SRO) or police in emergencies and the use of restrictive procedures, and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met;
- Add a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion to the information required to be documented each time physical holding or seclusion is used;
- Prohibit the use of seclusion on children from birth through grade 3 by September 1, 2024; and
- Clarify the restrictive procedures reporting requirement for districts by stating that any reasonable force used under sections 121A.582, 609.06, subdivision 1, and 609.379, which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedures, including physical holding or seclusion used by an unauthorized or untrained staff person.

---

[2] Minn. Stat. 125A.0942, subdivision 3(b) (2016).
[3] "Prone restraint" means placing a child in a face down position. Minn. Stat. 125A.0941(e).
[4] Minn. Stat. 125A.0942, subdivision 4(10). The elimination of prone restraint was a result of building district capacity supported by a 2015 legislative appropriation totaling $150,000 disbursed from November 2015 through June 30, 2016, to six entities (three intermediate school districts and three independent school districts) to develop work plans to address their specific needs.
[5] "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion. Minn. Stat. 125A.0941(g).
[6] Minnesota Session Laws 2023, Chapter 55.

Further, during the 2023 legislative session, Minnesota Statutes, section 125A.0942, subdivision 6(c) was added:

By February 1, 2024, the commissioner, in cooperation with stakeholders, must make recommendations to the Legislature for urgently ending seclusion in Minnesota schools. The commissioner must consult with interested stakeholders, including parents of students who have been secluded or restrained; advocacy organizations; legal services providers; special education directors; teachers; paraprofessionals; intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2; school boards; day treatment providers; county social services; state human services department staff; mental health professionals; autism experts; and representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities. The recommendations must include specific dates for ending seclusion by grade or facility. The recommendations must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.

Additionally, during the 2023 legislative session, Minnesota Statutes, section 121A.582, added a new reporting requirement for school districts pertaining to general education students: Beginning with the 2024-25 school year, districts must report annually by July 15, in a form and manner determined by the commissioner, data from the prior school year about any reasonable force used on a general education student to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125.0941, paragraph (c).

Finally, the charge of the restrictive procedures legislation also intersects with two goals outlined in the Minnesota Olmstead Plan[7] aimed at reducing the number of incidents of emergency use of restrictive procedures and the number of students receiving special education services who experience an emergency use of restrictive procedures in the school setting.[8]

Since fall 2012, MDE has convened a workgroup as a method to consult with interested stakeholders when preparing this report and recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures, a statewide plan, as outlined in Minnesota Statutes, section 125A.0942, subdivision 3(b).

This legislative report includes: key data points on districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2022-23 school year; recommended strategies and resources to assist districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures; recommended clarification and improvement of the law specifically related to urgently ending seclusion; the workgroup process; and the progress made on the

[7] An Olmstead Plan is a "public entity's plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings." Statement of the DOJ on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.*, U.S. DOJ, Civil Rights Division, June 22, 2011, Question 12, page 4 (DOJ Statement), last visited January 3, 2023. It is named after a United States Supreme Court decision: *Olmstead v. L.C.*, 527 U.S. 581 (1999).

[8] See, Putting the Promise of Olmstead into Practice: Minnesota's Olmstead Plan, for the 2021 Minnesota Olmstead Plan Revision (goal 4 and goal 5 pertaining to restrictive procedures in the school setting).

February 2023 Two-Year Statewide Plan developed through the workgroup. The statewide plan outlines three goals: to continue the submission of this legislative report; to compile of strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures; and to reduce seclusions by 10% in both the number of seclusions and the number of students with disabilities experiencing seclusion. The statewide plan emphasizes addressing disproportionalities in the use of restrictive procedures, family engagement, and mental health and trauma. The statewide plan also outlines MDE actions and workgroup actions to meet the goals.

The February 2023 Two-Year Statewide Plan may be found in Appendix B of this report.

Analysis

Overview

The next sections of this report provide summary analyses of key data points, recommended strategies and resources, recommended clarification and improvement to the law related to urgently ending seclusion, and workgroup processes. Appendices contain further information and analyses. In brief:

- Key data points from the 2022-23 school year show:[9]
    - An increase in restrictive procedures and the number of students with disabilities experiencing restrictive procedures as compared to the 2021-22 school year; however, a decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - A decrease in seclusions and an increase in the number of students with disabilities experiencing seclusions as compared to the 2021-22 school year; however, a decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - An increase in physical holds and the number of students with disabilities experiencing physical holds as compared to the 2021-22 school year; however, a decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - Continued disproportionalities in seclusions and physical holds, with students with disabilities who identify as Black or African American, two or more races, or American Indian or Alaska Native, experiencing a disproportionate amount of restrictive procedures.

[9] Readers should use caution interpreting the trends noted here. The COVID-19 pandemic and the resulting impacts related to school environments have certainly affected the use of restrictive procedures over the last three school years.

- Recommended strategies and resources:
    - Through the annual submission of restrictive procedure data, school districts continued to report strategies they used to reduce the use of restrictive procedures in their district. For most districts, staff training was a frequently used strategy, with many districts providing specific information regarding the training programs they used. MDE has compiled information about the trainings recommended by school districts, and this information is available as part of Appendix D.
    - Through MDE actions and the workgroups actions, the compilation of strategies include resources outlining and guiding trauma-informed practices; consistent, widespread training and support from onsite staff; social-emotional learning; evaluations of the use of SROs in schools; improvements to referral processes, debriefing meetings and individualized data reviews; relationship building; implementation of positive behavioral interventions and supports (PBIS); approaches to prevent and de-escalate behaviors; and mental health support.

- MDE's recommendations for urgently ending seclusion:

    - MDE recommends prohibiting the use of seclusion on all children by September 1, 2026. MDE recommends revising Minnesota Statutes, section 125A.0942, subdivision 4, by adding the following prohibition: **(12) the use of seclusion on all children by September 1, 2026**.
    - In addition to the strategies and resources outlined in Appendix D, MDE will continue efforts, based on future resources and staffing capacity, to consider the following:
        - Training for general education staff consistent with Minnesota Statutes, section 125A.0942, subdivision 5.
        - MDE collaborating with higher education to develop coursework for students preparing to become teachers consistent Minnesota Statutes, section 125A.0942, subdivision 5.
        - MDE working with the professional educators licensing and standards board (PELSB) to refine the positive behavior intervention requirement for professional licensure to include elements outlined in Minnesota Statutes, section 125A.0942, subdivision 5.
        - Developing a process where MDE staff are available to consult with school districts on specific students that exhibit extreme behaviors.
        - Expanding school districts' access to PBIS and other research-based behavior intervention programs.
        - Expanding mental health services.
        - MDE producing an online training course on the legal framework for using restrictive procedures in schools to increase availability of the training session currently offered by MDE.
        - MDE advocating for resources to support special education workforce needs.

  Additional information on MDE's recommendations may be found in Appendix F of this report.

- Workgroup processes:
    - MDE continues to utilize the workgroup as the means to consult with interested stakeholders when preparing this legislative report and recommending to the commissioner specific and measurable outcome goals for reducing restrictive procedures and eliminating seclusion.
    - MDE continues to utilize a consultant from Minnesota Management and Budget's (MMB's) Management Analysis and Development (MAD) to facilitate the workgroup meetings and increase stakeholder engagement.
- Statewide plan:
    - MDE reports on the progress made on the goals outlined in the February 2023 Two-Year Statewide Plan, including the MDE actions and workgroup actions taken to meet the goals.

Key Data Points from the 2022-23 School Year

Statewide, during the 2022-23 school year, districts reported a total of 16,343 restrictive procedures, including 3,938 seclusions and 12,405 physical holds. Overall, the use of restrictive procedures increased during the 2022-23 school year from the 2021-22 school year. However, as shown in Table 1 below, as compared to the 2018-19 school year, the pre-COVID-19 baseline, restrictive procedures use has continued to decline across all measurements.[10] For example, the overall number of restrictive procedures in the 2022-23 school year (16,343) represents an increase of 11% from the 2021-22 school year; however, this is a 28% decrease from the 2018-19 school year, the pre-COVID-19 baseline.[11]

Table 1. Annual Physical Holds, Seclusion, and Total Restrictive Procedures, 2018-19 through 2021-22 school years.[12]

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2018-19	17,157	5,596	22,753
2019-20*	12,679	3,983	16,662
2020-21*	6,666	1,850	8,516
2021-22*	10,091	4,598	14,689
2022-23	12,405	3,938	16,343

[10] Given the 2019-20 and 2020-21 school years were heavily impacted by school closures and variations in learning models, contributing to a significant decline in the overall use of restrictive procedures as compared to the 2018-19 school year, MDE uses the 2018-19 school year as the pre-COVID-19 baseline. In tables and charts throughout this report, asterisks have been used to identify school years heavily affected by the COVID-19 pandemic.

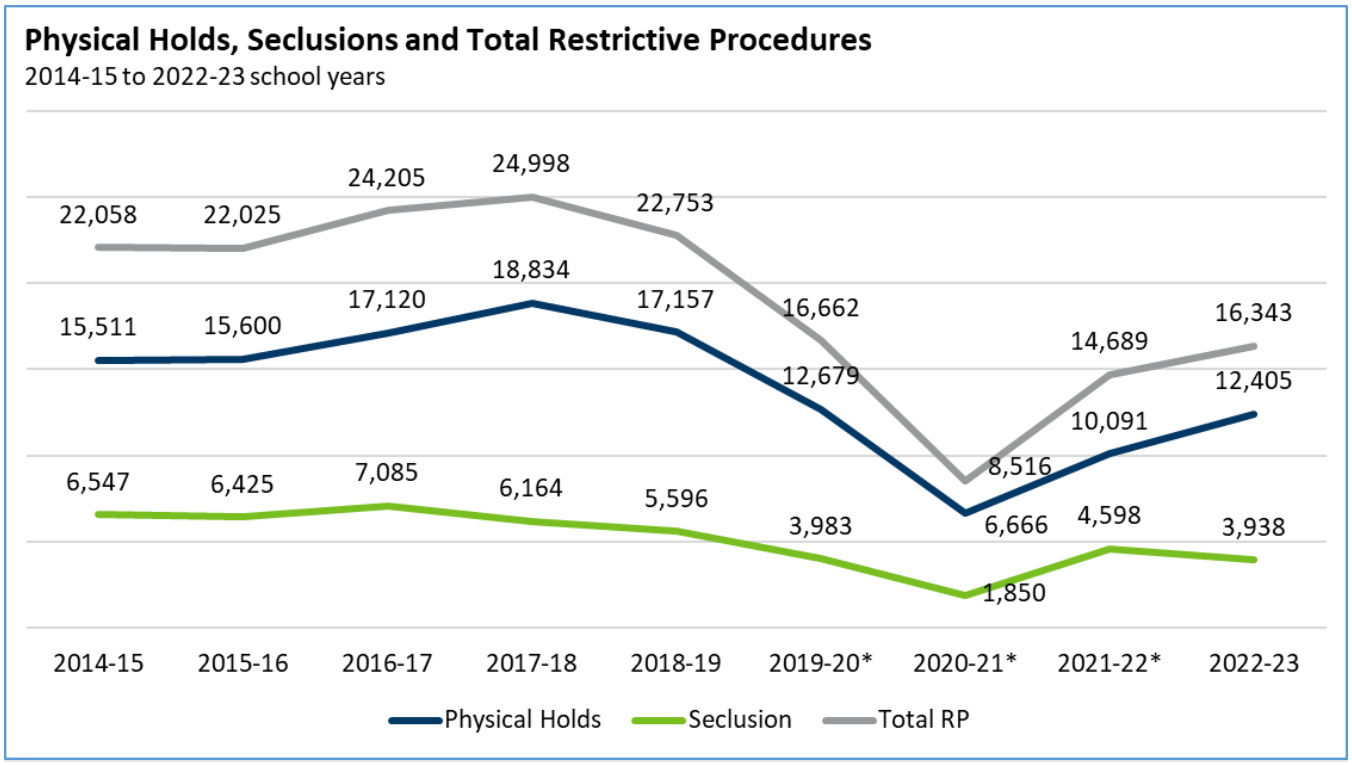
[11] Caution should be used when comparing data from recent years to similar data from other years, due to the continued effect of the COVID-19 pandemic on school environments.

[12] Due to ongoing correction of data errors and an analysis with updated software, total counts of restrictive procedures reported in previous legislative reports has been revised and updated in this report.

Similarly, more students with disabilities experienced restrictive procedures during the 2022-23 school year than in 2021-22, although fewer students than in previous years. Districts reported that 2,956 students with disabilities experienced one or more restrictive procedure during the 2022-23 school year.

Figure A (below) shows the trend in the number of restrictive procedures, as well as seclusions and physical holds, reported by districts since the 2014-15 school year. As shown in Figure A, the number of seclusions started decreasing in the 2016-17 school year, with an accelerated decline in the 2019-20 and 2020-21 school years due to the COVID-19 pandemic, and the number of physical holds begun to decrease in the 2018-19 school year, with an accelerated rate of decrease starting in the 2019-20 school year, due largely to the COVID-19 pandemic. Although 2022-23 school year data indicates an increase in restrictive procedures over the previous year, rates continue to remain below the 2018-19 school year, the pre-COVID-19 baseline.

Figure A. Annual Physical Holds, Seclusions, and Total Restrictive Procedures, 2014-15 through 2022-23 school years.



During the 2022-23 school year, districts reported a total of 3,938 seclusions and 730 students with disabilities experiencing seclusion. As compared to the 2021-22 school year, this represents a decrease of 14% in seclusions and an increase of 2% of students with disabilities experiencing seclusion. However, as compared to the 2018-19 school year, the pre-COVID-19 baseline, the 2022-23 school year data indicates a continued decrease: a reduction of 30% in seclusions, and a decrease of 15% of students with disabilities experiencing seclusion, as compared to the 2018-19 school year, the pre-COVID-19 baseline.

Annual data indicates an overall increase in the number of physical holds during the 2022-23 school year, the second year of increasing numbers after several years of decreases – although the last few years have been

heavily affected by the COVID-19 pandemic. When comparing the total number of physical holds (12,405) as well as the total number of students with disabilities experiencing physical holds (2,750), both numbers increased from the 2021-22 school year (23% and 37%, respectively). However, both the number of physical holds and number of students with disabilities experiencing physical holds remain below the 2018-19 school year, the pre-COVID-19 baseline, of 17,157 physical holds and 3,347 students with disabilities experiencing physical holds (a decrease of 28 and 18%, respectively).

Restrictive procedures data from the last several years has shown a pattern of disproportionalities in the use of restrictive procedures. Typically, students with disabilities who identify as Black or African American, two or more races, or American Indian or Alaska Native experienced a disproportionate number of restrictive procedures, with slight variation from year to year.

Disproportionality continued to be present during the 2022-23 school year in other areas as well, with little change in the trends from year to year. Restrictive procedures continue to be most prevalent in elementary grades. As in previous years, students who receive services under the Emotional or Behavioral Disorders (EBD) and Autism Spectrum Disorders (ASD) categories were more likely to experience seclusions and physical holds. In addition, students with disabilities receiving services in federal setting four (setting 4), meaning the students receive special education and related services outside at separate school facilities for more than 50% of the school day, comprise about 3% of the special education population but 46% of secluded students. Finally, even though the special education population is disproportionately male (about 66%), male students experienced a disproportionate share of seclusions and physical holds (about 84% and 83%, respectively).

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2022-23 school year may be found in Appendix C of this report.

Recommended Strategies and Resources

MDE and the workgroup continue to compile strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. These strategies and resources include the increased use of PBIS and other positive strategies to address behaviors, the distribution of the Olmstead Local Improvement (OLI) Grant funding for districts to reduce the rates of restrictive procedures, and MDE training and other technical assistance sessions to enhance school districts' understanding of restrictive procedures laws and strategies to reduce the use of restrictive procedures.

Further recommendations include federal resources discussing civil rights, potential discrimination, and disproportionalities in the use of restrictive procedures on students with disabilities and students of color with disabilities. These federal resources urge districts to focus on preventing the need for restrictive procedures, using only behavioral interventions that are consistent with a student's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all students and staff. Further, the resources warn districts that the use of restrictive procedures may result in discrimination against students with disabilities and reiterate that there is no evidence that using restrictive procedures is effective in reducing problem behaviors. Finally, these resources highlight disproportional use of restrictive procedures on students with disabilities and

students of color with disabilities. Federal guidance has long emphasized that individualized education programs (IEPs) should support educational, social, emotional, behavioral, and related needs with high-quality and evidence-based support and utilize functional behavioral assessments (FBAs) to develop individualized behavioral intervention plans (BIPs) for students whose behaviors interfere with their ability to access and benefit from the education program.

In recent years, in an effort to combat the improper use of seclusion, the Department of Justice (DOJ) conducted investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the Americans with Disabilities Act of 1990 (ADA). In recent investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program and improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions. The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities.

Based on information collected by MDE, school districts continue to recommend staff training on de-escalation techniques; using strategic supports to meet student needs (e.g., FBAs, proactive and positive behavioral supports, addressing sensory needs, adjusting programming and/or special education services, social-emotional learning, and trauma-informed practices); staff collaboration and/or team meetings to troubleshoot student needs and providing a consistent process for staff to debrief together following behavioral incidents; and strategically using staff by creating specific positions to address behaviors or maintain particular expertise on their staff. In the 2022-23 school year, most districts reported a reliance on staff training regarding de-escalation strategies and the legal standards relating to the emergency use of restrictive procedures, using a variety of different training programs, as reported in Appendix D. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysists, and mental health supports on their use of restrictive procedures.

A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures (2022-23 school year) may be found in Appendix D of this report.

Recommendations for Urgently Ending Seclusion

MDE recommends prohibiting the use of seclusion on all children by September 1, 2026. MDE, in cooperation with interested stakeholders, continues to compile strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. This compilation is found in Appendix D of this report and includes existing resources and new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.

MDE's recommendations were based on: Minnesota's cumulative efforts working to end the use of seclusion since 2016; the U.S. DOJ findings that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs, using eligibility criteria that effectively subject students with disabilities to discrimination, and failing to make reasonable modifications to avoid discrimination in school programs; the ADA integration mandate, the Individuals with Disabilities Education Act's (IDEA's) least restrictive environment mandate; and stakeholder engagement.

Further, in addition to the strategies and resources outlined in Appendix D, MDE will continue efforts, based on future resources and staffing capacity, to consider the following:

- Training for general education staff consistent with Minnesota Statutes, section 125A.0942, subdivision 5.
- MDE collaborating with higher education to develop coursework for students preparing to become teachers consistent Minnesota Statutes, section 125A.0942, subdivision 5.
- MDE working with PELSB to refine the positive behavior intervention requirement for professional licensure to include elements outlined in Minnesota Statutes, section 125A.0942, subdivision 5.
- Developing a process where MDE staff are available to consult with school districts on specific students that exhibit extreme behaviors.
- Expanding school districts' access to PBIS and other research-based behavior intervention programs.
- Expanding mental health services.
- MDE producing an online training course on the legal framework for using restrictive procedures in schools to increase availability of the training session currently offered by MDE.
- MDE advocating for resources to support special education workforce needs.

Additional information on MDE's recommendation to end the use of seclusion by September 1, 2026, may be found in Appendix F of this report.

Workgroup Process

MDE continues working with a consultant from MMB's MAD to facilitate workgroup meetings and to increase stakeholder engagement when preparing the legislative report and recommending to the commissioner specific and measurable implementation and outcome goals for reducing restrictive procedures and eliminating seclusion. After the submission of the February 1, 2023, Legislative Report, the workgroup met on February 22, 2023. In June 2023, due to an unexpected low response to RSVPs to the scheduled June 21 meeting, MDE sought feedback from the stakeholders in an asynchronous manner, using a combination of email updates and survey input. The workgroup convened again on September 27, 2023, and MDE held an office hour on December 13, 2023. The workgroup worked on the action items outlined in the February 2023 Two-Year Statewide Plan to achieve the identified goals. The action items emphasize that recommendations will specifically consider disproportionalities, family engagement, and mental health trauma. Workgroup representatives were consistent with the interested stakeholders outlined in Minnesota Statutes, section 125A.0942, subdivision 3(b).

February 2023 Two-Year Statewide Plan Progress

The February 2023 Two-Year Statewide Plan includes three measurable goals along with five MDE actions and four workgroup actions to support the goals. Progress on the goals is provided below, and progress on the goals, along with the progress on MDE actions and workgroup actions, may be found in Appendix E of this report.

The goals and progress on the goals outlined in the February 2023 Two-Year Statewide Plan:

Legislative Report

Goal 1: MDE will annually submit a report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures. The report will also summarize MDE's strategies and the workgroup's progress on actions in the statewide plan.

> **Goal 1 progress**: Under Minnesota Statutes, section 125A.0942, subdivision 3(b), MDE submits the annual legislative report on school districts' progress in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The statewide plan, submitted along with the legislative report, recommends to MDE measurable goals for reducing the use of restrictive procedures and strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. Components of the statewide plan include: resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce school districts' use of seclusion.
>
> This legislative report, including the appendices, serves as the February 1, 2024, annual report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures.

Recommend Strategies and Resources

Goal 2: By December 31, 2024, the workgroup will compile and recommend to MDE, strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

> **Goal 2 progress**: Under Minnesota Statutes, section 125A.0942, subdivision 3(b), MDE must consult with interested stakeholders when preparing the legislative report and MDE utilizes the workgroup as the means to consult with interested stakeholders when preparing this report.
>
> The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with two districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, and updating the oversight committee agenda and companion guide, to assist districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1), and reviewing MDE's 2023 legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2).
>
> A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures may be found in Appendix D of this report.

Reduce Seclusion

Goal 3: Through the combined efforts of all those involved in this work, there will be at least a 10% reduction in seclusion annually using the 2018-19 school year data as a baseline.[13] During the 2018-19 school year, school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion.

a. By the end of the 2022-23 school year, the number of seclusions will be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 5,038 seclusions and at most 774 students with disabilities experiencing seclusion.

[13] The previous statewide plan also used the 2018-19 school year as the baseline which reported 5,596 seclusions and 860 students with disabilities experiencing seclusion. This statewide plan adopts the same baseline instead of developing a new baseline because of the impact of the COVID-19 pandemic and related disruptions. Data in recent years shows positive trends, but it is unclear if these are due to changes in practice or due to changes in learning modes and staffing challenges related to the pandemic. MDE will continue to evaluate data and consult with stakeholders to reexamine the baseline for the next two-year statewide plan.

b. By the end of the 2023-24 school year, the number of seclusions will again be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 4,478 seclusions and at most 688 students with disabilities experiencing seclusion.

Goal 3 progress: Under Minnesota Statutes, section 125A.0942, subdivision 3(b), school districts must report data quarterly to MDE by January 15, April 15, July 15, and October 15 about individual students who have been secluded. The quarters are broken down in dates as follows: Quarter 1: July 1–September 30, 2021; Quarter 2: October 1–December 31, 2021; Quarter 3: January 1–March 31, 2022; and Quarter 4: April 1–June 30, 2022.

Restrictive procedures data from the 2022-23 school year demonstrates an increase in the use of restrictive procedures, including an increase in the use of physical holding and a decrease in the uses of seclusion, as compared to the 2021-22 school year. Minnesota school districts reported 3,938 seclusions during the 2022-23 school year, a decrease of 14% from the 2021-22 school year. Minnesota school districts also reported that 730 students with disabilities experienced seclusion, an increase of two percent from the previous school year.

Seclusion data regarding the 2018-19 school year was collected prior to the COVID-19 pandemic. Minnesota school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion during the 2018-19 school year. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2022-23 school year represents a 30% decrease in seclusions and a 15% decrease in the number of students with disabilities experiencing seclusion. However, as school districts continue to be affected by lasting impacts of COVID-19, it is likely to be some time before conclusions can be drawn about long-term trends in the use of seclusions.

Further, the workgroup identified the Legislature's charge to urgently end seclusion and the prohibition of seclusion of children birth through grade 3 effective September 1, 2024, as an emergent issue. As a result, the workgroup discussed whether to revise the targets for the reduction of seclusion for the end of the 2023-24 school year outlined in this goal.

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2022-23 school year may be found in Appendix C of this report.

Conclusion

MDE respectfully submits this report consistent with Minnesota Statutes, section 125A.0942, subdivisions 3(b) and 6(c). The report details school districts' progress on reducing the use of restrictive procedures and eliminating seclusion along with strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. During the 2022-23 school year, the data reported by school districts, although an increase from previous COVID-19-impacted school years in some measures, continued a downward departure from the 2018-19 school year, the pre-COVID-19 baseline. Programs and interventions such as training on de-escalation techniques and the legal

standards relating to the emergency use of restrictive procedures, positive behavioral strategies, trauma-informed training and practices, restorative practices, social-emotional learning, and extended grant opportunities continue to be recommended to assist school districts in reducing the use of restrictive procedures.

MDE anticipates this report will result in informed decision-making, promoting safe educational environments. MDE appreciates the opportunity to inform the Legislature about this important issue and commends the Legislature for its continued commitment to this task.

Appendix A – List of Restrictive Procedures Workgroup Participants

Stakeholder Organizations that Participate in the Workgroup
Anoka-Hennepin Public School District 011
AspireMN
Autism Society of Minnesota
Edina Public School District 273
Grand Rapids Public School District 318
Intermediate School District 287
Intermediate School District 917
Minnesota Association of County Social Service Administrators – Hennepin County
Minnesota Administrators for Special Education
Minnesota Department of Human Services
Minnesota Disability Law Center
Minnesota School Boards Association
National Alliance on Mental Illness Minnesota
Northeast Metro Intermediate District 916
Northern Pines Mental Health Center
Olmsted County Child & Family Services
PACER Center, Inc.
Rosemount-Apple Valley-Eagan District 196
Roseville Public School District 623
Shakopee Public School District 720
Southwest Metro Intermediate District 288
Southwest West Central Service Cooperative
The Arc Minnesota
Wayzata Public School District 284

MDE Participants
Office of General Counsel – Dispute Resolution
Division of Special Education

Appendix B – February 2023 Two-Year Statewide Plan

Statutory Context

For MDE, in consultation with interested stakeholders, to report school districts' progress on reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures under Minnesota Statutes, section 125A.0942, subdivision 3(b).

For MDE, in consultation with interested stakeholders, to recommend strategies for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. Components include the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion and recommendations to clarify and improve the law governing districts' use of restrictive procedures under Minnesota Statutes, section 125A.0942, subdivision 3(b).

Measurable Goals

Goal 1: MDE will annually submit a report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures. The report will also summarize MDE's and the workgroup's progress on actions in the statewide plan.

Goal 2: By December 31, 2024, the workgroup will compile and recommend to MDE, strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

Goal 3: Through the combined efforts of all those involved in this work, there will be at least a 10% reduction in seclusion annually using the 2018-19 school year data as a baseline.[14] During the 2018-19 school year, school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion.

a. By the end of the 2022-23 school year, the number of seclusions will be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 5,038 seclusions and at most 774 students with disabilities experiencing seclusion.

[14] The previous statewide plan also used the 2018-19 school year as the baseline which reported 5,596 seclusions and 860 students with disabilities experiencing seclusion. This statewide plan adopts the same baseline instead of developing a new baseline because of the impact of the COVID-19 pandemic and related disruptions. Data in recent years shows positive trends, but it is unclear if these are due to changes in practice or due to changes in learning modes and staffing challenges related to the pandemic. MDE will continue to evaluate data and consult with stakeholders to reexamine the baseline for the next two-year statewide plan.

b. By the end of the 2023-24 school year, the number of seclusions will again be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 4,478 seclusions and at most 688 students with disabilities experiencing seclusion.

Scope of the February 2023 Two-Year Statewide Plan

The February 2023 Two-Year Statewide Plan outlines actions that MDE and the workgroup, with the facilitation and support from MDE, will take to reduce the use of restrictive procedures and eliminate seclusion.

Timeline

The February 2023 Two-Year Statewide Plan will be implemented starting February 1, 2023. Updates to the February 2023 Two-Year Statewide Plan, including progress and revisions as needed, will be provided in the annual Legislative Report submitted by MDE.

MDE's Actions in Support of the Goals

MDE Action 1: MDE will collect, analyze and report school districts' use of quarterly seclusion data and physical holding summary data, including data on disproportionalities, for each school year. MDE will also report annually on trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures.

MDE Action 2: MDE will convene quarterly workgroup meetings to consult with interested stakeholders, facilitate stakeholder recommendations to MDE, develop and implement the two-year statewide plan, and prepare the legislative report.

MDE Action 3: MDE will report at least annually on activities that are potentially connected to school districts' efforts to reduce the use of restrictive procedures and eliminate seclusion, such as: school district use of PBIS each school year, including the number of new and reconnecting schools participating in cohort training; the status and provisions of the OLI Grants awarded to school districts for the duration of the grants; and school district use of suspension and expulsions (from disciplinary incident reporting).

MDE Action 4: MDE will offer training sessions to school districts and other interested stakeholder groups throughout the state. The training will include an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures and eliminating seclusion. The Assistance and Compliance Division will collaborate with the Equity, Diversity, and Inclusion (EDI) Center to incorporate elements in the training to assist school districts in identifying and addressing disproportionalities in the use of restrictive procedures, and to advise school districts on engaging families and students.

MDE Action 5: MDE will compile a list of MDE resources and federal resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

Workgroup Actions in Support of the Goals

Workgroup Action 1: The workgroup will identify, develop, and recommend to MDE strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The workgroup will focus on areas such as:

- Developing a resource for school districts on engaging families and students (particularly in school districts' efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures);
- Collaborating with MDE on a restrictive-procedures-focused resource for school districts using or considering police liaison officers/SROs;
- Providing feedback on a list of training programs developed by MDE after consultation with the Minnesota Department of Human Services (DHS) that may meet requirements for the skill and knowledge areas outlined in Minnesota Statutes, section 125A.0942, subdivision 5 for staff who use restrictive procedures; and
- Providing feedback and recommendations on a list of experts developed by MDE to help IEP teams reduce the use of restrictive procedures.

The workgroup may also identify emergent issues and develop and recommend strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

Workgroup Action 2: The workgroup will review MDE's 2023 and 2024 legislative reports required under Minnesota Statutes, section 125A.0942, to identify, develop, and recommend to MDE ways to use and share the information presented. In particular, the workgroup will review the sections and appendices on *Data on School Districts' Progress on Reducing the Use of Restrictive Procedures and Eliminating Seclusion* and *Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion, and Address Disproportionalities in the Use of Restrictive Procedures.*

Workgroup Action 3: The workgroup will review strategies provided by school districts in response to annual summary information questions and identify, develop, and recommend to MDE ways to use that information to support school districts in their efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

Workgroup Action 4: The workgroup will review other state advisory groups focusing on education, students' behavioral health, students with disabilities, and other related topics to identify possibilities for workgroup collaboration on recommendations to MDE regarding changes to guidance, practice, or legislation related to reducing the use of restrictive procedures.

Appendix C – Data on School Districts' Progress on Reducing the Use of Restrictive Procedures and Eliminating Seclusion During the 2022-23 School Year

Background on Data Collection

Beginning in the 2011-12 school year, public school districts began submitting annual summary data to MDE on the use of restrictive procedures. After legislative changes in 2016, districts were also required, on a quarterly basis, to submit detailed data regarding individual seclusion uses to MDE through a secure website. Starting in April 2019, MDE clarified that all districts were required to complete quarterly seclusion reporting, either through completing the previously mentioned form or emailing to confirm zero seclusion uses. In July 2021, MDE released a new data collection tool, Stepwell MN, to collect restrictive procedures data.

Currently, school districts, including intermediate school districts and charter schools, are required to submit annual data regarding the overall use of restrictive procedures and physical holds and quarterly data regarding seclusion use. This section of the legislative report provides a summary of all restrictive procedures use and demographic information about students with disabilities who experienced a restrictive procedure.

Collection Methods and Limitations

The data elements, tools, and strategies to measure the progress on reducing the use of restrictive procedures and eliminating the use of seclusion, as statutorily mandated, have evolved over time. As all public school districts are required to complete restrictive procedures reporting, whether or not they have used seclusion or physical holding, data collection efforts must consider the reporting burden to districts and the integrity of the data reported.

The data collection system in place prior to July 2021 presented significant challenges for districts in reporting data, as well as for MDE staff in collecting and analyzing the data. Seclusion data, which was recorded on a spreadsheet and uploaded to MDE via a secure server, was particularly challenging for districts, and the spreadsheet provided to MDE often contained substantial errors. Identifying and correcting errors in the data was particularly challenging and required extensive staffing resources and time.

Between March and December 2021, MDE developed a new data collection and analysis tool, Stepwell MN. Stepwell MN is a web-based tool that allows districts to enter restrictive procedures data based on each student's Minnesota Automated Reporting Student System (MARSS) data, which is compared, in real time, to pre-loaded MARSS numbers for students within that district. This process reduces errors in the reporting of MARSS numbers and demographic information, making it easier for districts to report accurate data and easier for MDE to collect and analyze this data. Physical holding data was first collected via Stepwell MN in July 2021 (for data from the 2020-21 school year), and quarterly seclusion data collection began at the start of the 2021-22 school year.

As the 2022-23 school year was the third year using the Stepwell MN system, there were fewer challenges regarding data collection than in the previous school year. District staff showed increased familiarity with the Stepwell MN reporting system and provided positive feedback regarding the ease of reporting and reviewing their district's data, and MDE staff worked with the Stepwell MN vendor to make improvements to the Stepwell MN system, many suggested by district users.

The Stepwell MN data collection system has reduced reporting errors and minimized the limitations inherent to MDE's previous data collection system. However, some limitations persist. Most notable is the challenge of moving between systems and reconciling new data collection processes with historic data collected using previous processes. Although MDE now has several school years of both physical holding and seclusion data, variations between how this data was collected, analyzed and reported over time suggests that care should be taken when examining longitudinal data. Another limitation is that demographic data in Stepwell MN is based on student data that is provided by districts, via MARSS, and verified by MDE on an annual schedule, and then uploaded into the Stepwell MN system on a quarterly basis. The nature of this process, and the legislatively mandated seclusion reporting periods, means that up-to-date student data is not always available via Stepwell MN, and can lead to some inaccuracies in the restrictive procedures data. This limitation is particularly evident with regard to age and grade data reported via seclusion.

During the 2020-21 school year, MDE began collecting information from districts about: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities?; and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools? These questions were developed in consultation with the workgroup, and districts were asked to provide narrative responses to these qualitative questions for the first time in July 2021, and then again in July 2022 and July 2023. MDE, with input from the workgroup, has begun developing systems to review and analyze this data. For example, during the 2022-23 school year, the workgroup piloted a case study approach to obtain additional information from participating districts.[15]

Effect of the COVID-19 Pandemic

2019-20 School Year

Due to the global COVID-19 pandemic, Minnesota schools were closed March 18 through 27, 2020, to prepare for distance learning, then buildings were closed for typical in-person instruction March 30, 2020, through the end of the 2019-20 school year. During summer 2020, districts offered summer programs and extended school

[15] Two districts were identified and agreed to participate in the case study. For further information, please see Case Study: Intermediate School District 917 and Case Study: Rum River Special Education Cooperative; both are available on the Restrictive Procedures Workgroup website.

year services through either a distance learning model or a hybrid model that employed both distance learning and in-person learning.[16]

The impact of school closures due to COVID-19 can be observed in the restrictive procedures data from the 2019-20 school year. In the 2019-20 school year, quarter three contained approximately 10 fewer school days than in previous years. As no districts or charter schools provided in-person learning during the remainder of the 2019-20 school year, there were zero reported seclusions for the fourth quarter of the 2019-20 school year. These changes affected annual summary numbers for both physical holding and seclusion, with the effect that the 2019-20 data demonstrated a significant reduction in the use of seclusions, physical holds, and total restrictive procedures as compared to previous years.

2020-21 School Year

In summer 2020, Minnesota schools were directed to prepare to develop plans for three learning models at the start of the 2020-21 school year, specifically, an in-person model, distance learning model, and a hybrid model.[17] MDE and the Minnesota Department of Health (MDH) developed the Safe Learning Plan guidance document[18] explaining how to determine the appropriate instructional model in each district across the state. Further, Minnesota schools were tasked with providing an equitable distance learning option for all families, regardless of the instructional model the district was using.

Throughout the 2020-21 school year, Minnesota school districts used a variety of different learning models at different times, switching between learning models based on public health guidelines and local COVID-19 case counts, in accordance with the Safe Learning Plan. While some districts operated in distance learning for the majority of the school year, other districts were in-person for most or all of the year. In many cases, different grades operated in different learning models than the remainder of the district, with high school students being more likely to remain in distance learning for longer periods of time. In addition, in some districts, specific schools and/or programs operated in different learning models than the remainder of the district for portions of the school year, with some districts prioritizing in-person learning for students with disabilities.

Learning model data reported to MDE throughout the 2020-21 school year indicates that 78.3% of Minnesota districts reported using a distance or hybrid model for at least some of their students, for at least a portion of the time between July 1 and September 30, 2020. This percentage increased during quarter two and three, such that 95% of districts reported using a distance or hybrid model for at least some of their students for some portion of the time frame between October 1 to December 31, 2020, and January 1 through March 31, 2021. By quarter four, more districts were operating fully in person – only 46% of districts used a hybrid or distance learning model during this time period. However, because all districts were required to provide an equitable

[16] Minn. Exec. Order No. 20-02 (March 15, 2020); Minn. Exec. Order No. 20-19 (March 25, 2020); and Minn. Exec. Order No. 20-41 (April 24, 2020).
[17] Minn. Exec. Order No. 20-82 (July 30, 2020) (last accessed Jan. 3, 2023).
[18] Minnesota's Safe Learning Plan for the 2020-21 School Year (July 30, 2020) (last accessed Jan. 3, 2023).

distance learning option for all families, some families elected to have their students remain in distance learning for the full 2020-21 school year.

Because of the variation described above, it is challenging to understand the impact of COVID-19 on restrictive procedures use during the 2020-21 school year. Data from 2020-21 shows a marked decrease in the use of both seclusion and physical holds among Minnesota students with disabilities. This can be attributed, in part, to the fact that many districts had fewer in-person learning days during the 2020-21 school year than in previous years. Some districts reported that social distancing requirements and smaller class sizes reduced the likelihood of physical altercations within their buildings, which in turn led to a decrease in the use of restrictive procedures. However, anecdotal information from some districts indicate that the frequent movement between learning models was disruptive to students and may have contributed to increased use of restrictive procedures. It is likely that, beyond learning models, a complex set of factors affected restrictive procedures use during the 2020-21 school year, including the specific COVID-19-related mitigation factors in place in each building, the particular families that chose to keep their students in distance learning, the mental health and trauma-related needs of students and staff, the ability of districts to maintain training and coaching for staff during the COVID-19 pandemic, and other factors.

2021-22 School Year

During the 2021-22 school year, Minnesota schools and communities continued to be affected by the COVID-19 pandemic. The MDH and the Centers for Disease control continued to provide recommendations to ensure the health and safety of all students, and school districts made local decisions based on this guidance and other factors. Although MDE did not systemically collect information on COVID-19-related learning model decisions or school closures during the 2021-22 school year, anecdotal evidence suggests that at least some Minnesota schools continued to be affected by COVID-19, including interruptions due to quarantines, staff shortages, and the continuing effect of learning loss, mental health, and trauma experienced by students in recent years.

2022-23 School Year

During the 2022-23 school year, at least some Minnesota schools and communities continued to be affected by COVID-19, including ongoing staff shortages and the continuing effect of learning loss, mental health, and trauma experienced by students in recent years. These impacts remain difficult to measure and affected each community differently, but statewide assessment results released in August 2024 reinforce that students, families, school communities, and educators are continuing to recover from the COVID-19 pandemic.[19]

Over the last several years, data has demonstrated a downward trend in the use of restrictive procedures, indicating that Minnesota school districts have been making progress in reducing the use of seclusion and physical holding. Although these rates were already trending downwards prior to the COVID-19 pandemic,

[19] Statewide assessment results remain below pre-pandemic levels, and schools report ongoing attendance concerns. Minnesota test scores stagnant as COVID-'s effects linger on students, schools, MPR News August 24, 2023; Minnesota Department of Education News Release, August 24, 2023.

school closures during the spring of the 2019-20 school year and the use of hybrid and distance learning models during the 2020-21 school year contributed to an accelerated decrease in rates. Although the effect of COVID-19 and staff shortages during the 2021-22 and 2022-23 school year is harder to interpret, it is possible that this data remains affected by COVID-19 and its continued effects.

In general, caution should be used when comparing 2019-20, 2020-21, and 2021-22 data to similar data from other years, due to the effect of COVID-19. Because of the varying and potentially unknown effect of COVID-19, 2022-23 restrictive procedures data is compared both to data from the previous year and to data from 2018-19. As the last full school year prior to the COVID-19 pandemic, the 2018-19 school year is considered the pre-COVID-19 baseline.

Total Restrictive Procedures

Prior to COVID-19, the use of restrictive procedures, as outlined below in Table 1 (below), was decreasing since a peak in the 2017-18 school year. This trend was accelerated during the 2019-20 and 2020-21 school years due to effects of the COVID-19 pandemic. In the 2021-22 school year, for the first time since the start of the COVID-19 pandemic, data showed an increase in the use of restrictive procedures. Likewise, the 2022-23 school year also showed an increase in the use of restrictive procedures, although this overall measure includes both an increase in the use of physical holds and a decrease in the use of seclusions during the past year. Restrictive procedures during the 2022-23 school year continues to be significantly below the 2018-19 school year, the pre-COVID-19 baseline. This may be due to the continued effect of the COVID-19 pandemic or the successful efforts of districts to reduce their use of restrictive procedures, or both. It may be one or more additional school years until the effect of COVID-19 on this data is fully understandable.

Statewide, during the 2022-23 school year, districts reported a total of 16,343 restrictive procedures, including 3,938 seclusions and 12,405 physical holds, as described in Table 1 (below).

Table 1. Annual Physical Holds, Seclusion, and Total Restrictive Procedures, 2014-15 through 2022-23 school years.[20]

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2014-15	15,511	6,547	22,058
2015-16	15,600	6,425	22,025
2016-17	17,120	7,085	24,205
2017-18	18,834	6,164	24,998
2018-19	17,157	5,596	22,753
2019-20*	12,679	3,983	16,662

[20] Due to ongoing correction of data errors and an analysis with updated software, total counts of restrictive procedures reported in previous legislative reports has been revised and updated in this report.

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2020-21*	6,666	1,850	8,516
2021-22*	10,091	4,598	14,689
2022-23	12,405	3,938	16,343

During the 2022-23 school year, the number of restrictive procedures increased from the 2021-22 school year by 11%, as described in Table 2 (below). As further described by Table 2, below, districts reported 3,938 seclusions during the 2022-23 school year, a decrease of 14% during from the 2021-22 school year, and 12,405 physical holds during the 2022-23 school year, an increase of 23% from the 2021-22 school year.

Table 2. Percentage Change in the Number of Restrictive Procedures, 2021-22 to 2022-23 school years.

Year	Physical Holds	% Change	Seclusion	% Change	Total Restrictive Procedures	% Change
2021-22*	10,091		4,598		14,689	
2022-23	12,405	+23%	3,938	-14%	16,343	+11%

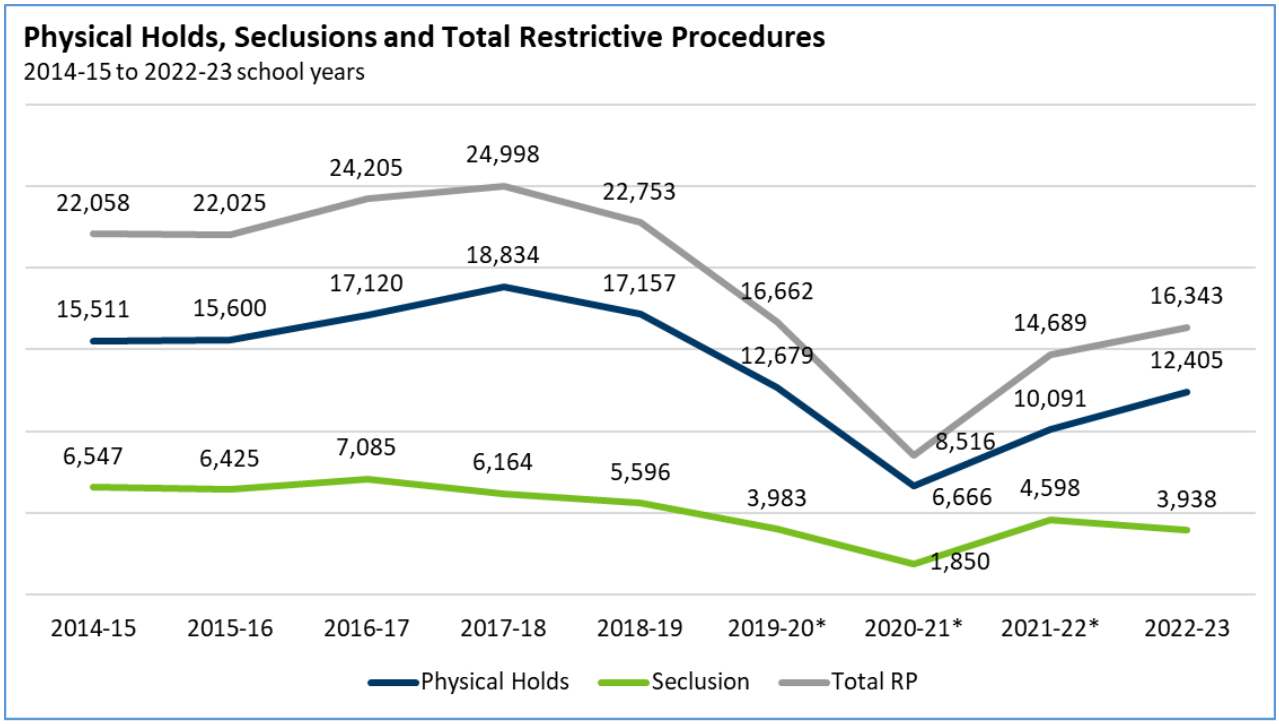
However, during the 2022-23 school year, total restrictive procedures continued to decrease as compared to the 2018-19 school year, the pre-COVID-19 baseline, by 28%, as described in Table 3 (below). As further described by Table 3, below, districts reported 3,938 seclusions during the 2022-23 school year, a 30% decrease from the 2018-19 school year, the pre-COVID baseline, and 12,405 physical holds during the 2022-23 school year, a decrease of 28% from the 2018-19 school year, pre-COVID-19 baseline.

Table 3. Percentage Change in the Number of Restrictive Procedures, 2018-19, the pre-COVID-19 baseline, to 2022-23 school years.

Year	Physical Holds	% Change	Seclusion	% Change	Total Restrictive Procedures	% Change
2018-19	17,157	n/a	5,596	n/a	22,753	n/a
2022-23	12,405	- 28%	3,938	- 30%	16,343	- 28%

Figure A (below) shows the trend in the number of restrictive procedures, as well as seclusions and physical holds, reported by districts since the 2014-15 school year. As shown in Figure A, the number of seclusions started decreasing in the 2016-17 school year, with an accelerated decline in the 2019-20 and 2020-21 school years due to the COVID-19 pandemic, and the number of physical holds begun to decrease in the 2018-19 school year, with an accelerated rate of decrease starting in the 2019-20 school year, due largely to the COVID-19 pandemic. Although 2022-23 school year data indicates an increase in restrictive procedures over the previous year, rates continue to remain below the 2018-19 school year, the pre-COVID-19 baseline.

Figure A. Annual Physical Holds, Seclusions, and Total Restrictive Procedures, 2014-15 through 2022-23 school years.



Similarly, more students with disabilities experienced restrictive procedures during the 2022-23 school year than the 2021-22 school year as shown in Table 4 (below). Districts reported that 2,956 students with disabilities experienced one or more restrictive procedures during the 2022-23 school year, a 26% increase from the 2,341 students with disabilities experiencing restrictive procedures in 2021-22, though a 24% decrease from the 2018-19 school year, the pre-COVID-19 baseline.

Table 4. Annual Number of Students with Disabilities Experiencing Restrictive Procedures, 2016-17 through 2022-23 school years.

Year	Number of Students with Disabilities Experiencing Restrictive Procedures
2016-17	3,476
2017-18	3,546
2018-19	3,603
2019-20*	3,052
2020-21*	1,685
2021-22*	2,341
2022-23	2,956

Seclusion

MDE now has detailed data of individual seclusions for seven school years. The number of school days in each reporting quarter varies, leading to a wide variance in the total number of seclusions and the number of

students with disabilities secluded during each quarter. Therefore, quarterly data should only be compared for the same reporting quarter across school years. The following data presents a longitudinal analysis of the seclusion data received through the 2022-23 school year, as well as a comparison of each reporting quarter across school years.

As discussed above, school closures due to the COVID-19 pandemic affected quarter three and four of the 2019-20 school year, as well as summary data for the 2019-20 school year. Likewise, the 2020-21 school year was characterized by frequently shifting learning models, as each district used public health guidelines and local data to determine its response to COVID-19. COVID-19 continued to impact schools and communities differently during the 2021-22 school year, and its effects continue to affect Minnesota schools and communities differently. Because of variation in number of learning days, variety of learning models use across districts, and varying effects of learning loss, trauma, and ongoing impacts of COVID-19, seclusion data from recent years should be interpreted with caution, particularly with regard to making comparisons from year-to-year data. It is likely to be one or more additional school years until further conclusions can be drawn about long-term trends regarding restrictive procedures use in Minnesota.

Reporting Districts

A total of 54 districts reported using seclusion during the 2022-23 school year, a slight decrease from 55 districts during the 2021-22 school year. In 2020-21, 45 school districts reported seclusions, and 54 reported using seclusion in 2019-20. The number of districts reporting seclusions remains below the pre-COVID-19 baseline: 66 districts reported using seclusions in the 2018-19 school year.

Overall Seclusions

Annual statistics indicate a decrease in the number of seclusions during the 2022-23 school year from the previous school year. During the 2022-23 school year, districts reported a total of 3,938 seclusions and 730 students with disabilities experiencing seclusion, a decrease of 14% in seclusions and an increase of two percent of students with disabilities experiencing seclusion from the previous school year. Data from 2022-23 continues to remain well below the 2018-19 school year, the pre-COVID-19 baseline, with a 30% reduction in seclusions and a 15% decrease in students with disabilities experiencing seclusion since that year. Data regarding the change in the number of students with disabilities experiencing seclusion is presented below in Table 5.

Table 5. Annual Number of Students with Disabilities Experiencing Seclusion, 2016-17 through 2022-23 school years.

Year	Number of Students with Disabilities Experiencing Seclusion
2016-17	**1,044**
2017-18	**855**
2018-19	**860**
2019-20*	**710**

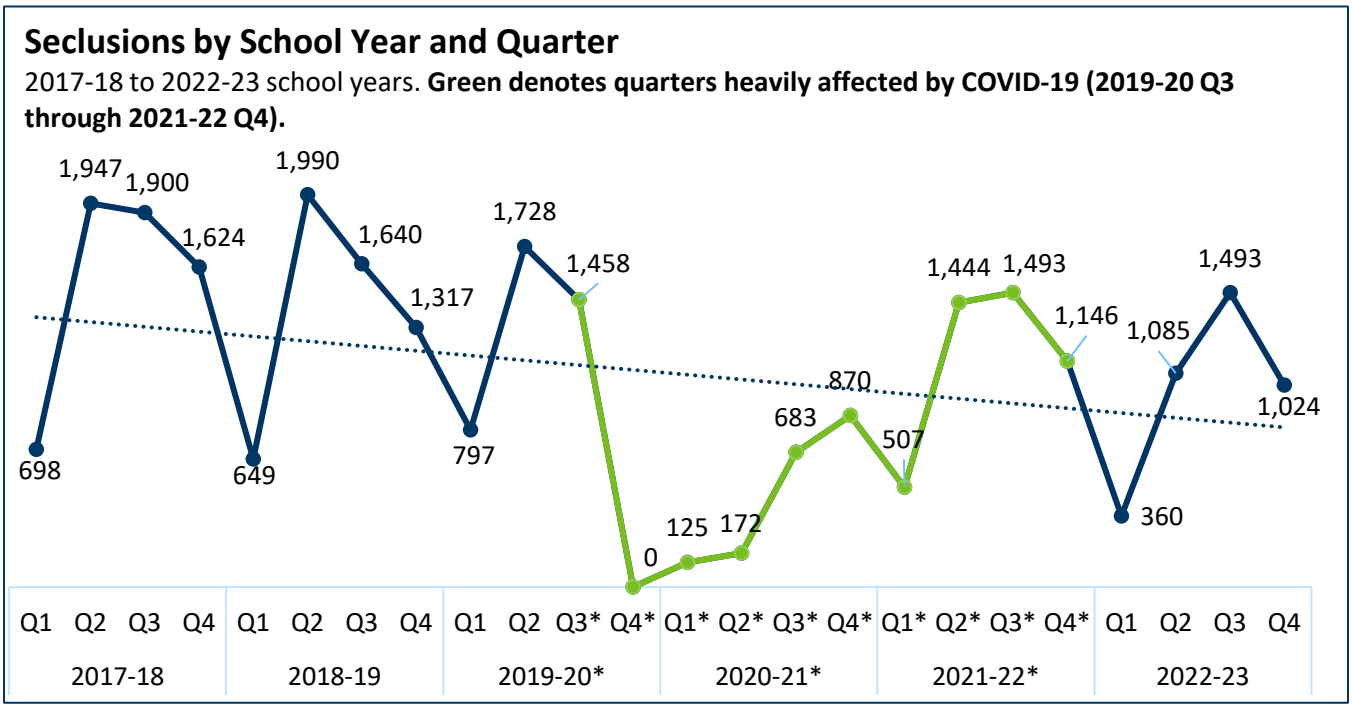
Year	Number of Students with Disabilities Experiencing Seclusion
2020-21*	463
2021-22*	718
2022-23	730

Figure B (below) highlights the overall trends in the number of seclusions since the 2018-19 school year. In typical years, variation is seen from quarter-to-quarter, as each quarter contains a different number of school days. Fewer seclusions are generally seen in quarter one each year, as this time period (July 1 through September 30) typically includes fewer school days, and higher rates of seclusion are reported for quarters two, three and four (typically with a peak in quarter two or three).

Figure B, below, also demonstrates the slight decrease in seclusions in quarter three of the 2019-20 school year, which may have been due to both a general downward trend in the use of seclusion as well as COVID-19 school closures. Due to statewide school closures during the spring of the 2019-20 school year, there were no seclusions reported during quarter four of the 2019-20 school year. The 2020-21 school year showed a slow increase in the use of seclusions across each quarter, with the highest number of seclusions occurring in the fourth quarter, although seclusions continued to be significantly below pre-COVID-19-era totals.

As further demonstrated by Figure B, below, as compared to 2019-20 and 2020-21, which were heavily affected by COVID-19, quarterly data for the 2021-22 and 2022-23 school years more closely represent the pattern in 2018-19 and previous years: a relatively low number of seclusions in quarter one, increased numbers in quarter two and three, which include more school days, and a decline in quarter four. The 2022-23 school year, however, shows a pattern of decrease not just since 2018-19, the pre-COVID baseline, but also compared to the corresponding quarter in the 2021-22 school year. The current year's decrease in the use of seclusions, while likely still related to COVID-19, may also show the effectiveness of the strategies and resources used in Minnesota schools to reduce the use of seclusions, but it is likely that additional time and data will be needed before the patterns in this data can be fully understood.

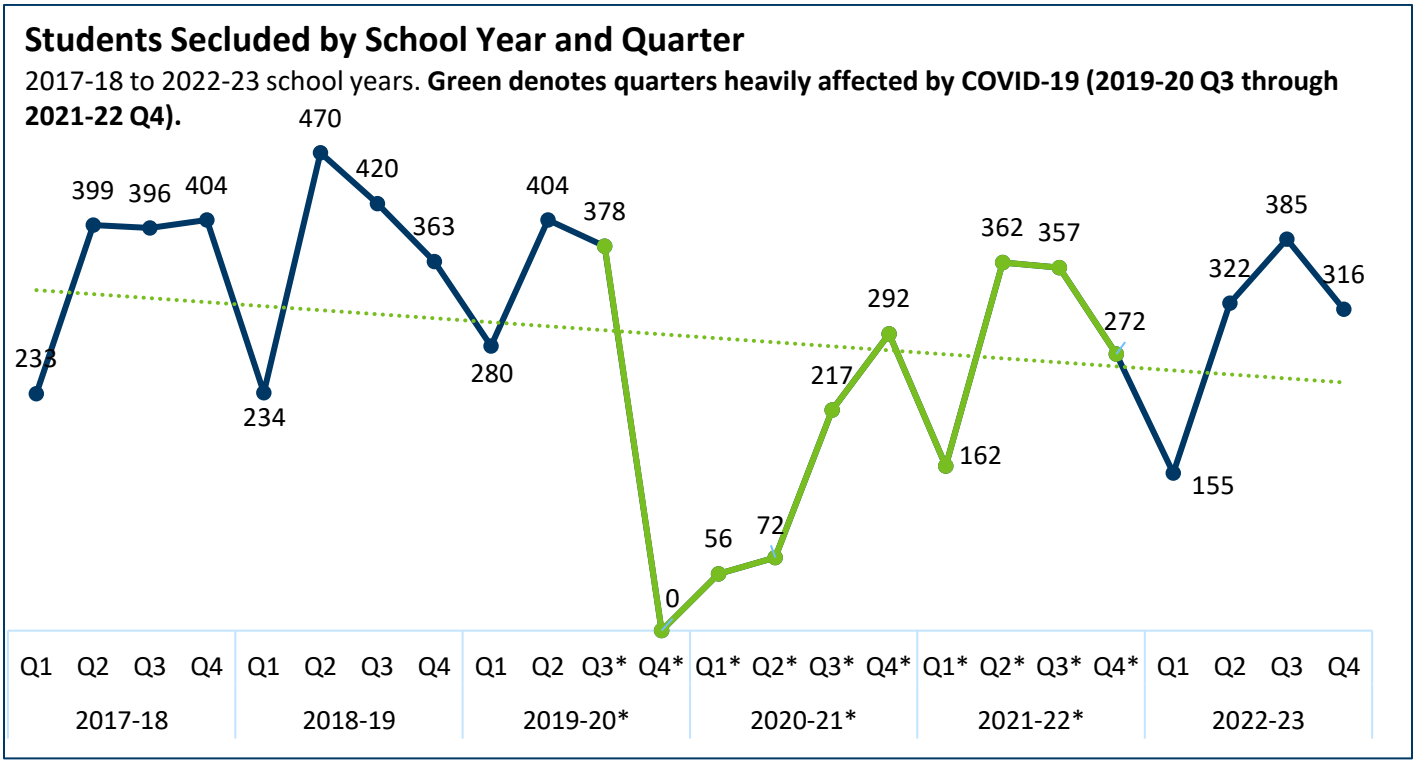
Figure B. Seclusions by School Year and Quarter, 2017-18 through 2022-23 school years.



Similar to the pattern shown in total seclusions, quarterly data for the number of students with disabilities secluded during the 2022-23 year demonstrates a relatively low number of students with disabilities secluded in quarter one, increased numbers in quarter two and three, and a decline in quarter four, a typical pattern for years that were not heavily affected by COVID-19.

Figure C (below) highlights the overall trends in the number of students with disabilities experiencing seclusion since the 2017-18 school year. The 2018-19 school year remains the pre-COVID-19 baseline. Across all quarters, the number of students with disabilities experiencing seclusions reported in the 2022-23 school year remains lower than the corresponding quarter in the 2018-19 school year, the pre-COVID-19 baseline. Given the overall downward trend in the number of students with disabilities experiencing seclusion over time, it is possible that a decrease in the number of students with disabilities experiencing seclusion would have continued to occur during 2019-20 and 2020-21 school years in the absence of the COVID-19 pandemic, though to a lesser extent. Data from future years is likely necessary before any conclusions can be drawn regarding whether the continued decline since 2018-19 is due to the continuing effect of COVID-19 or other factors.

Figure C. Students with Disabilities Secluded by School Year and Quarter, 2018-19 through 2022-23 school years.



Student Demographics

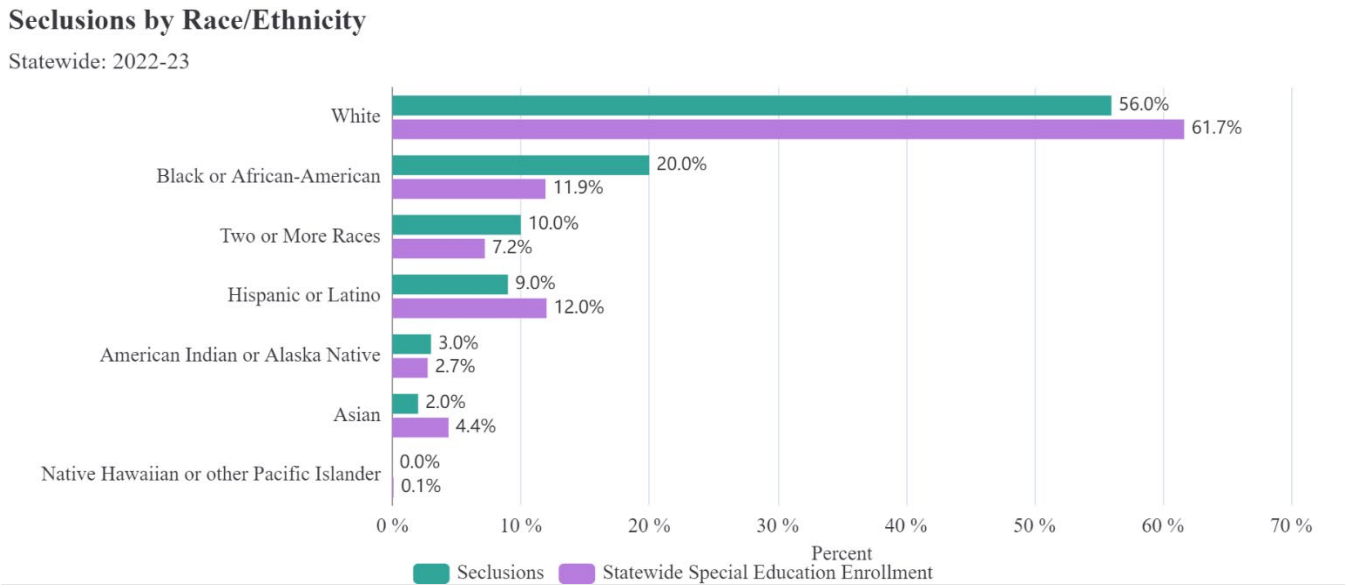
Race/Ethnicity

Since at least the 2016-17 school year, students with disabilities identified as Black or African American or two or more races, as well as American Indian or Alaska Native students, have been overrepresented in the total number of students with disabilities secluded, a pattern that is also consistent with students with disabilities experiencing physical holding. In contrast, students with disabilities identified as Hispanic or Latino and Asian students are underrepresented with regard to seclusions. White students with disabilities experience seclusion at a generally proportional rate in most years. In the 2022-23 school year, 56% of students with disabilities experiencing seclusion were white, and white students with disabilities comprised 61.7% of the special education population.

In the 2022-23 school year, 20% of the secluded students with disabilities were Black or African American, although they comprise 11.9% of the special education population. Students with disabilities identified as two or more races accounted for 10% of secluded students, although they comprise just 7.2% of the special education population. American Indian or Alaska Native Students, at 2.7% of the special education population, were 3% of the secluded students with disabilities.

Figure D (below) compares the percentage of students with disabilities who experienced seclusion in each race/ethnicity category to the percentage of students enrolled in special education services in each category for the 2022-23 school year.

Figure D. Students with Disabilities Secluded by Race/Ethnicity, as compared to Special Education Enrollment, 2022-23 school year.



Age

Legislative reports prior to 2021 reported the age of students who were secluded, rather than the grade level, due to the reporting system in place at that time. Starting in 2021, MDE began including information regarding the grade level of secluded students in the legislative report, and in the 2022 legislative report, data was provided with regard to both the age and grade of students with disabilities experiencing seclusion. Although data consistently shows similar trends with regard to both age and grade from year to year, MDE has identified inaccuracies in grade data reported through the current Stepwell MN system. In the 2023 legislative report, MDE notified the Legislature that future legislative reports would include data regarding the age, but not the grade, of students with disabilities experiencing seclusion.

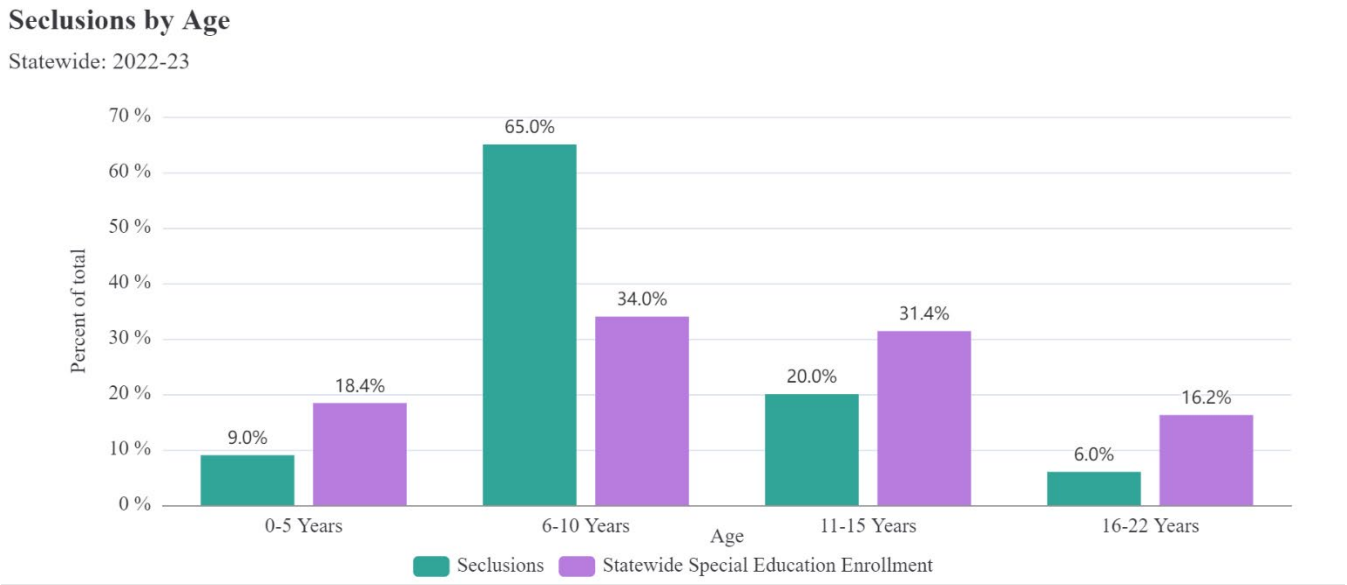
At this time, MDE is not able to collect, or report, accurate quarterly data regarding the grade of students with disabilities experiencing seclusion, particularly for the first two quarters of each school year. Minnesota statute requires that MDE collect quarter one seclusion data by October 15 annually, which is before most Minnesota school districts have provided updated, complete fall student data. Given this conflict, the grade reported for most students through Stepwell MN is inaccurate for the first quarter of each school year under MDE's current

legislative mandate. However, as age and grade data do show similar trends from year to year, information regarding the age of students provides similar and sufficient information at this time.[21]

During the 2022-23 school year, the majority of students with disabilities experiencing seclusion were in the 6-10-year age range: 65%. Students with disabilities in this age range are 34% of the total special education population. Twenty percent of students with disabilities experiencing seclusion were in the 11-15-year age range. This pattern is consistent with both age and grade data from previous years. As in previous years, a relatively small percentage of students with disabilities under 5 or over the age of 16 experienced seclusion.

Figure E (below) compares the ages of students with disabilities who experienced seclusion to the percentage of students in the total special education population for the 2022-23 school year.

Figure E. Students with Disabilities Secluded by Age, as compared to Special Education Enrollment, 2022-23 school year.



Setting

Districts reported using seclusion most often for students with disabilities receiving services in federal setting four (setting 4), meaning the student receives special education and related services at a separate school facility

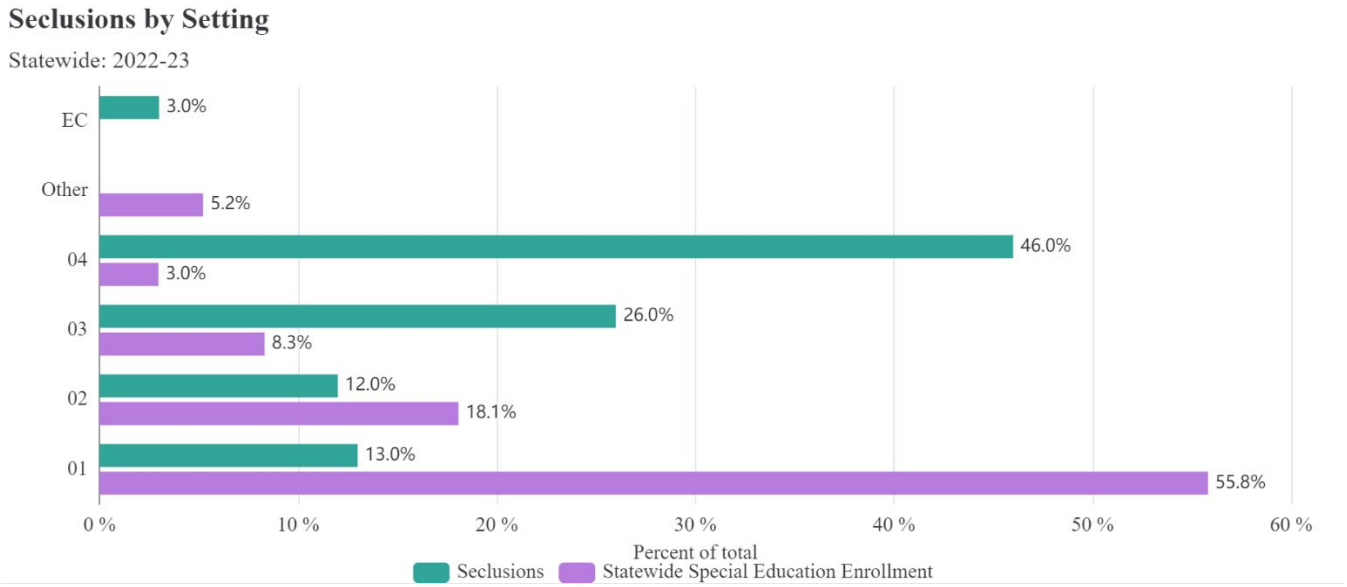
[21] Starting on September 1, 2024, the use of seclusion on children from birth through grade three is prohibited. In Minnesota, most students tend to turn 9 during third grade, so the 6-10 year age range includes some fourth-grade students. Because of this, MDE's data regarding students aged 6-10 provides only approximate information regarding students in this age range. Legislative changes and/or changes to the Stepwell MN system may be necessary if more detailed information regarding the age and/or grade of students is required.

for more than 50% of the school day. This includes setting 4 programs operated by independent school districts, intermediate school districts, and special education cooperatives.

During the 2022-23 school year, 3% of the special education population received services in setting 4 programs. However, students with disabilities receiving services in setting 4 programs were 46% of the students with disabilities experiencing seclusion, as shown below in Figure F. This has changed slightly from last year, when 47% (2021-22) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs. In previous years, 57% (2020-21) and 60% (2019-20) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs.

On the other end of the spectrum, the majority of students with disabilities receive special education and related services outside the general education classroom for less than 21% of the school day and are considered setting 1 students. Setting 1 students with disabilities make up 55.8% of the special education population and are much less likely to experience seclusion. During the 2022-23 school year, 13% of secluded students with disabilities were receiving services in a setting 1.

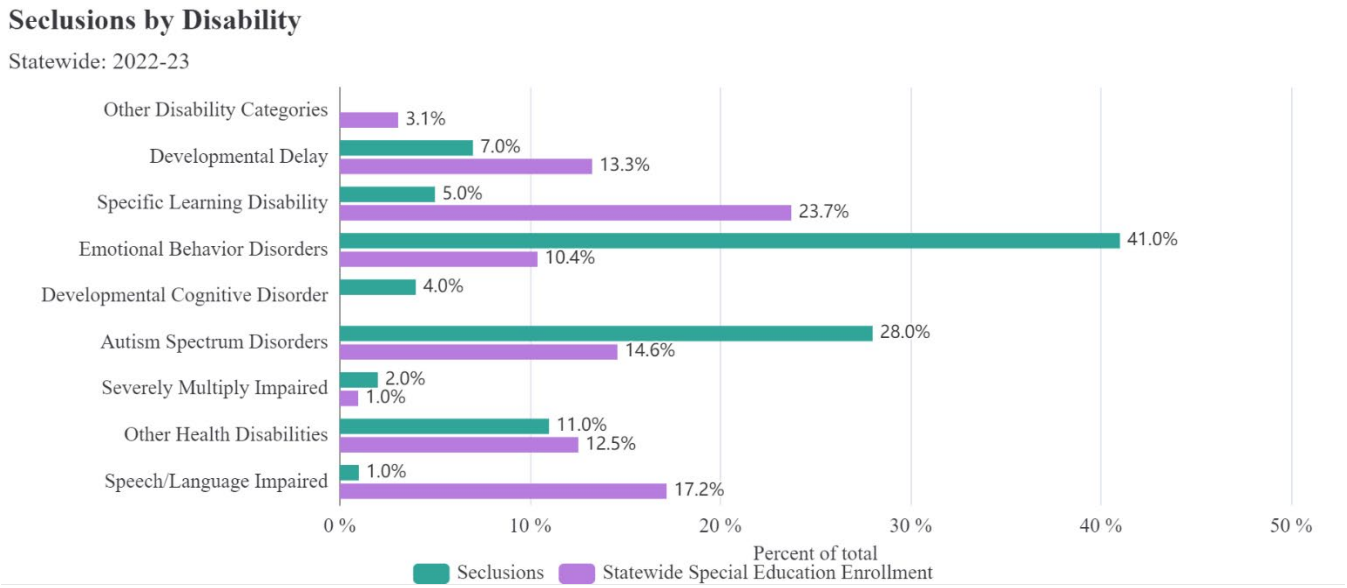
Figure F. Students with Disabilities Secluded by Setting, as Compared to Special Education Enrollment, 2022-23 school year.



Disability Category

Figure G (below) provides information regarding the disability category of students with disabilities who experienced seclusion during the 2022-23 school year. Consistent with the previous school year, as well as physical holding data, the majority of students with disabilities experiencing seclusion receive services under the EBD and ASD categories. Although EBD students comprise 10.4% of the special education population, they were 41% of the students with disabilities that experienced seclusion during the 2022-23 school year. ASD students, who comprise 14.6% of the special education population, were 28% of students with disabilities who experienced seclusion during the 2022-23 school year.

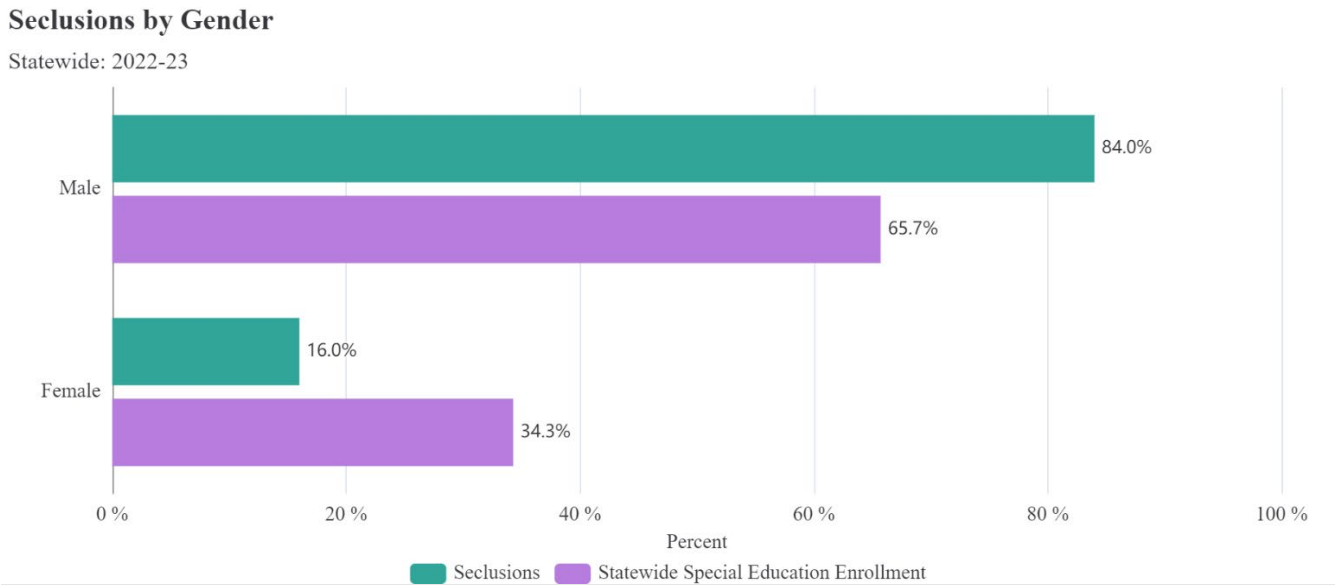
Figure G. Students with Disabilities Secluded by Disability Category, as Compared to Special Education Enrollment, 2022-23 school year.



Gender

Male students have comprised a greater proportion of students receiving special education services, and a greater proportion of students with disabilities experiencing seclusion, since at least the 2011-12 school year. As in previous years, male students continue to be overrepresented in the special education population, at 65.7%, with female students comprising just 34.3% of the total special education population. Even considering this overrepresentation in the special education population, male students with disabilities are disproportionately secluded. As shown in Figure H (below), 84% of the students with disabilities who experienced seclusion in the 2022-23 school year were male. This is similar to the percentages reported in previous years: students with disabilities experiencing seclusion in 2021-22 were 85% male, 2020-21 were 88% male, and 90% male in 2019-20.

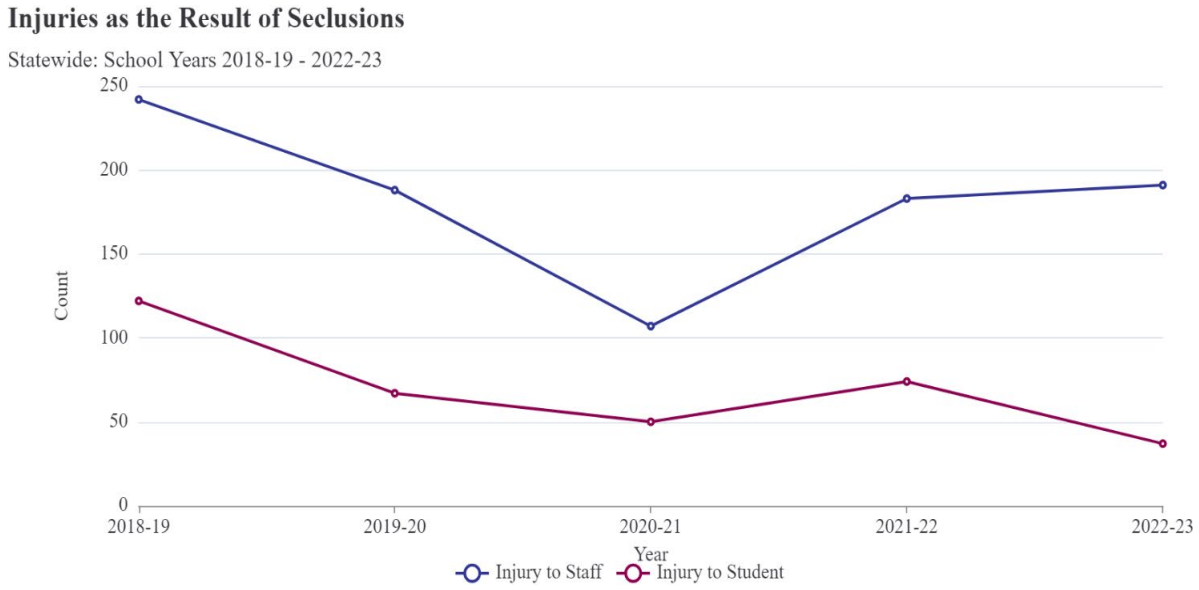
Figure H. Students with Disabilities Secluded by Gender, as Compared to Special Education Population, 2022-23 school year.



Staff and Student Injuries Reported by Districts Resulting from Seclusions

Figure I (below) shows staff and student injuries from the 2017-18 through 2022-23 school years, which indicates a similar pattern as other restrictive procedures data: a general downward trend in both staff injuries and student injuries resulting from seclusions since the 2018-19 school year, the pre-COVID-19 baseline. Despite this, there was a slight increase in staff injuries during the 2022-23 school year, and a decrease in student injuries. Both measures remain well below the 2018-19 school year, the pre-COVID-19 baseline. For the 2022-23 school year, districts reported 191 staff injuries and 37 student injuries as a result of seclusion, as compared to 183 and 74 injuries, respectively, in the 2021-22 school year.

Figure I. Student and Staff Injuries Resulting from Seclusions, 2017-18 through 2022-23 school years.



Physical Holding

This section provides data about reporting districts and overall physical holding numbers and trends as reported by districts annually.

Reporting Districts

A total of 258 districts reported using physical holds during the 2022-23 school year, a slight increase from the 2021-22 school year, when 249 districts reported using physical holds, and the 2020-21 school year, when 245 districts reported using physical holds. This remains below the pre-pandemic baseline: 285 districts reported using physical holds in 2018-19, and 302 in 2017-18.

Overall Physical Holds

Annual data indicates an overall increase in the number of physical holds during the 2022-23 school year, the second year of increasing numbers after several years of decreases – although the last few years have been heavily affected by the COVID-19 pandemic. During the 2022-23 school year, districts reported a total of 12,405 physical holds and 2,750 students with disabilities experiencing physical holds, an increase of 23% in physical holds and an increase of 37% in the number of students with disabilities experiencing physical holds. However, 2022-23 data remains well below the 2018-19 school year, the pre-COVID-19 baseline of 17,157 physical holds and 3,347 students with disabilities experiencing physical holds (a decrease of 28 and 18%, respectively). During the 2022-23 school year, the average number of physical holds per physically held student was 4.5, a decrease from 5.0 in 2021-22. This is also a slight decrease from pre-COVID-19-era years: the average number of physical holds per physically held student was 5.1 in 2018-19 and 5.4 in 2017-18. Accordingly, even as physically holding data from the past few years has been significantly impacted by the COVID-19 pandemic, it is

possible that continued decreases in the use of physical holding would have been observed in the absence of the global pandemic. It is likely to take additional time to fully understand patterns in the data from recent years.

Districts reported using physical holds with 2,750 students during the 2022-23 school year, which is an increase of 37% from the previous year. Compared to the 2018-19 school year, the pre-COVID-19 baseline, this is a decrease of 18%. The lower numbers of physical holds during the 2019-20 and 2020-21 school years is likely due, at least in part, to the COVID-19 pandemic. However, the comparative increase during the 2021-22 and 2022-23 school years, while remaining significantly under pre-COVID baselines, indicates that a continued decrease in the use of physical holding may have been observed even in the absence of the global pandemic. The percentage of students with disabilities experiencing physical holds increased slightly in the 2022-23 school year to 1.7%, as compared to 1.3% in the 2021-22 school year. However, this continues to be a decrease in the percentage of students with disabilities experiencing physical holds as compared to earlier years: 1.9% during the 2019-20 school year and 2.3% in the 2018-19 school year, the pre-COVID-19 baseline.

Data regarding the change in the number of students with disabilities experiencing physical holding from the 2017-18 through 2022-23 school years is presented below in Table 6.

Table 6. Annual Number of Students with Disabilities Experiencing Physical Holds, 2017-18 through 2022-23 school years.

Year	Number of Students with Disabilities Experiencing Physical Holds
2017-18	3,465
2018-19	3,347
2019-20*	2,828
2020-21*	1,576
2021-22*	2,001
2022-23	2,750

Student Demographics

Race/Ethnicity

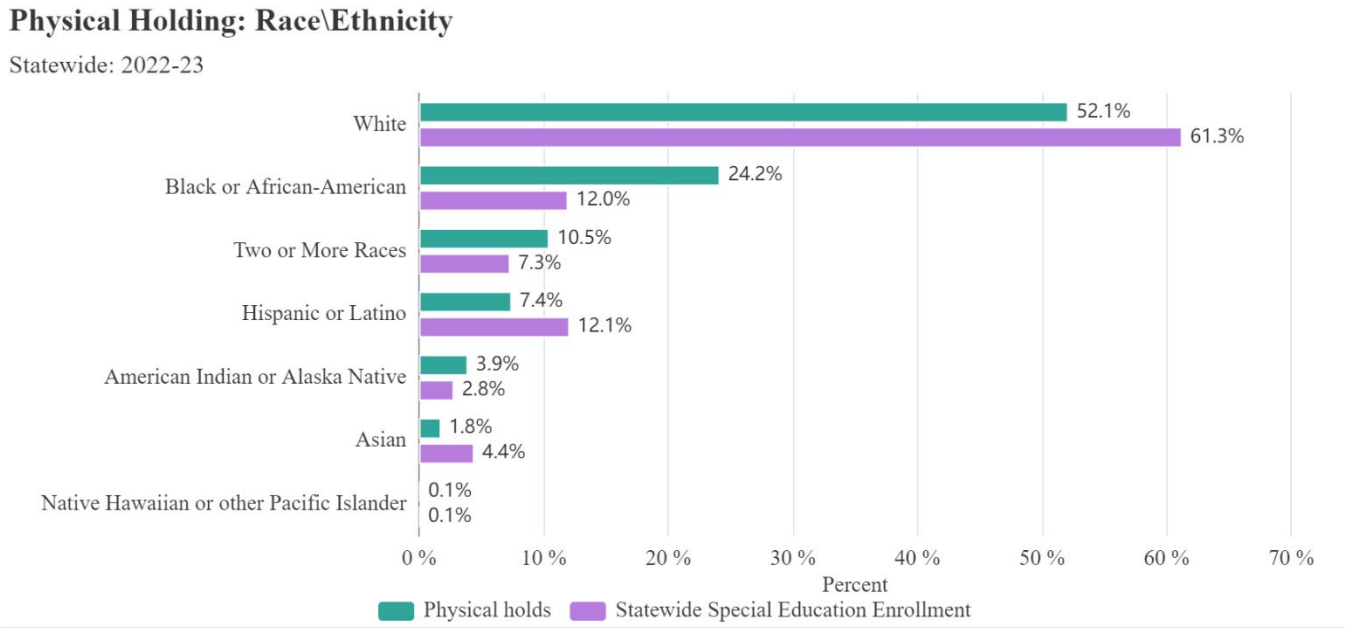
Students with disabilities identified as Black or African American students, American Indian or Alaska Native students, and students reported under the category of two or more races continue to be overrepresented in the use of physical holds. Conversely, categories of white, Hispanic or Latino, and Asian students with disabilities continue to be considerably underrepresented.

In the 2022-23 school year, 24.2% of the physically held students with disabilities were Black or African American, although they comprise just 12% of the special education population. Students with disabilities identified as two or more races accounted for 10.5% of physically held students with disabilities, although they comprise 7.3% of the special education population. American Indian or Alaska Native Students, at 2.8% of the

population, were 3.9% of the physically held students with disabilities. Since the 2020-21 school year, this disproportionality has remained relatively consistent. The percentage of physically held students with disabilities in these race/ethnicity categories has stayed relatively similar – with minor fluctuations in both the percentage of physically held students in these race/ethnicity groups (in 2020-21, 19.6, 10.2, and 3.4%, respectively, and in 2021-22, 24.2, 10.9, and 3.4) and their percentage of the population (in 2020-21, 11.9, 6.9, 2.8%, respectively, and in 2021-22, 11.9, 7.1, and 2.7, respectively).

Figure J (below) compares the race/ethnicity of students with disabilities who experienced physical holds during the 2022-23 school year to the race/ethnicity of students receiving special education services.

Figure J. Students with Disabilities Physically Held by Race/Ethnicity, as Compared to Special Education Enrollment, 2022-23 school year.

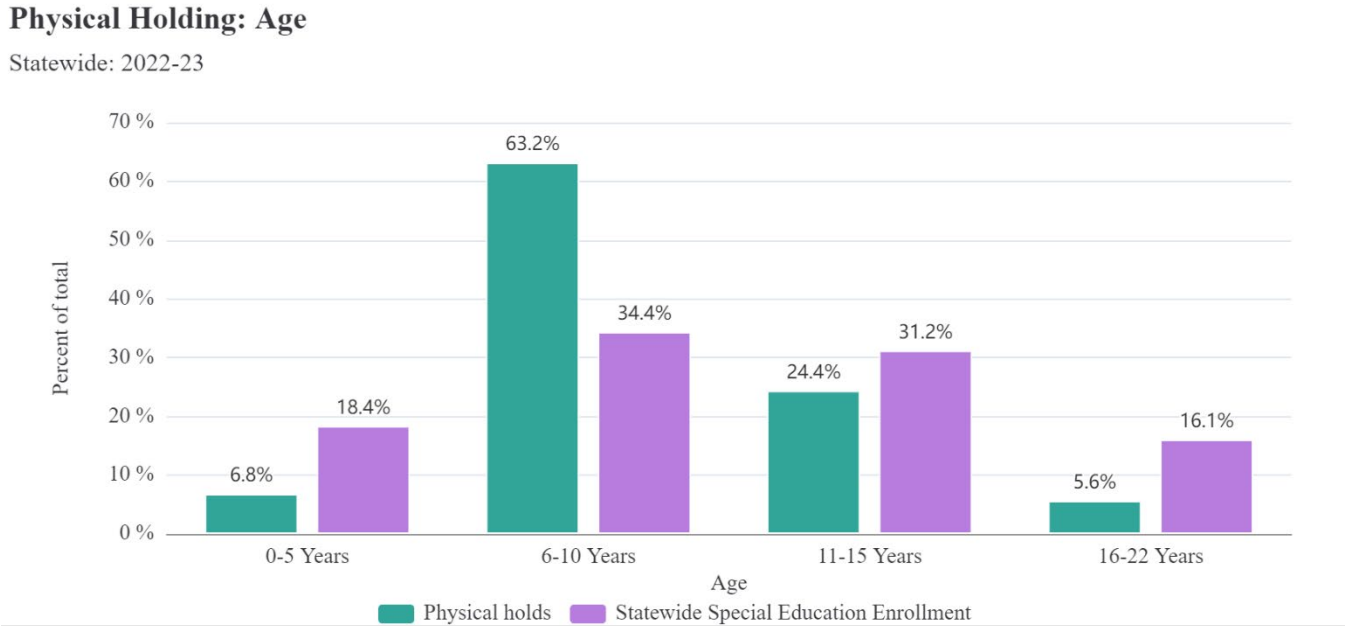


Age

During the 2022-23 school year, the majority of students with disabilities experiencing physical holds were in the 6-10 age range: 63.2% of the physically held students with disabilities were in the 6-10-year age range, although students in this age range comprised just 34.4% of the special education population. This pattern is consistent with the age range data from previous years. In contrast, 24.4% of the physically held students with disabilities were in the 11-15-year age range, although students in this range comprise 31.2% of the special education population. As in previous years, a relatively small percentage of physical holds were used on students with disabilities under 5 or older than the age of 16, just 6.8% and 5.6%, respectively.

Figure K (below) compares the age of students with disabilities who experienced physical holds in the 2022-23 school year to the age of students in the total special education population.

Figure K. Students with Disabilities Physically Held by Age, as Compared to Special Education Enrollment, 2022-23 school year.

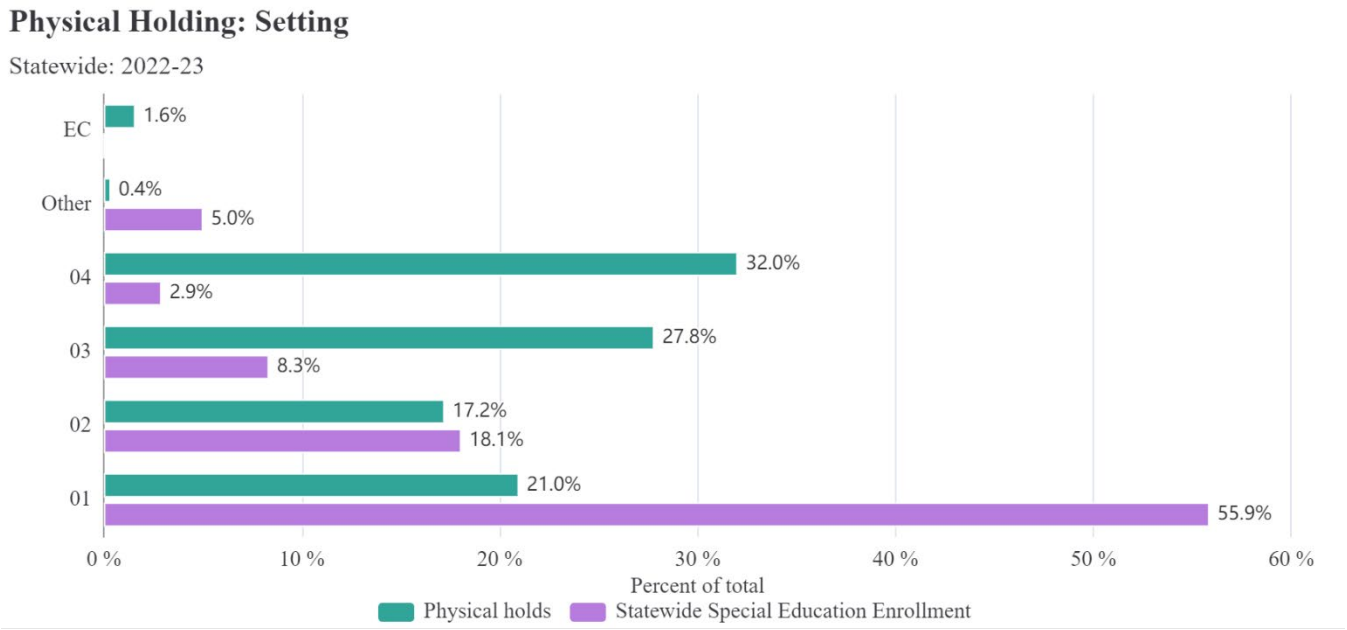


Setting

In 2014-15, MDE began collecting demographic data related to the federal setting of physically held students with disabilities. Since then, the pattern of physical holding use across students in different instructional settings has been generally consistent. Relative to the proportion of all students in setting 4 programs, a disproportionate number of students with disabilities experiencing physically holds are in setting 4 programs, a trend that is consistent with data from the past four school years and with seclusion data.

During the 2022-23 school year, 3.9% of the special education population received services in setting 4 programs. However, students with disabilities receiving services in setting 4 programs were 32% of students with disabilities experiencing physical holds. As shown in Figure L (below) most of the physically held students with disabilities in 2022-23 received services in setting 4 programs (32.0%) or setting 3 programs (27.8%), although these students comprise a relatively small percentage of the total special education population (2.9% and 8.3%, respectively). In contrast, only 38.2% of students who were physically held received services in settings 1 or 2, although these students comprised 74% of students with disabilities in the 2022-23 school year.

Figure L. Students with Disabilities Physically Held by Setting, as Compared to Special Education Enrollment, 2022-23 school year.

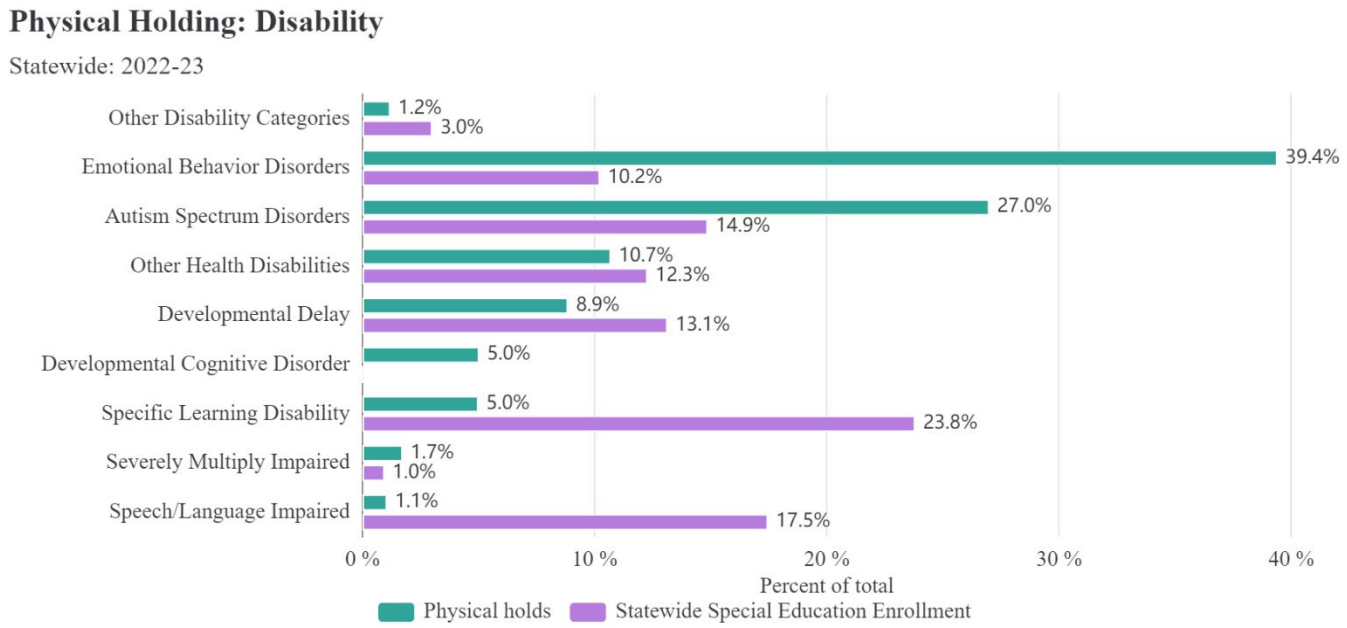


Disability Category

As in previous years, students who received services under the disability category of EBD or ASD experienced the majority of physical holds during the 2022-23 school year. Together, students from those two categories comprised 66.4% of the students who experienced physical holds. Students in both categories experienced physical holds at a rate disproportionate to their representation in the special education population. EBD students, who were 39.4% of physically held students, comprised just 10.2% of the special education population. ASD students, who were 27% of physically held students, comprised 14.9% of the special education population. The percentage of physically held students who receive services under the disability category of EBD remained relatively consistent since the 2016-17 school year, between 40 and 50%.

Figure M (below) provides information regarding the disability of categories of students who experienced physical holding during the 2022-23 school year.

Figure M. Students Physically held by Disability Category, as Compared to Special Education Enrollment, 2022-23 school year.

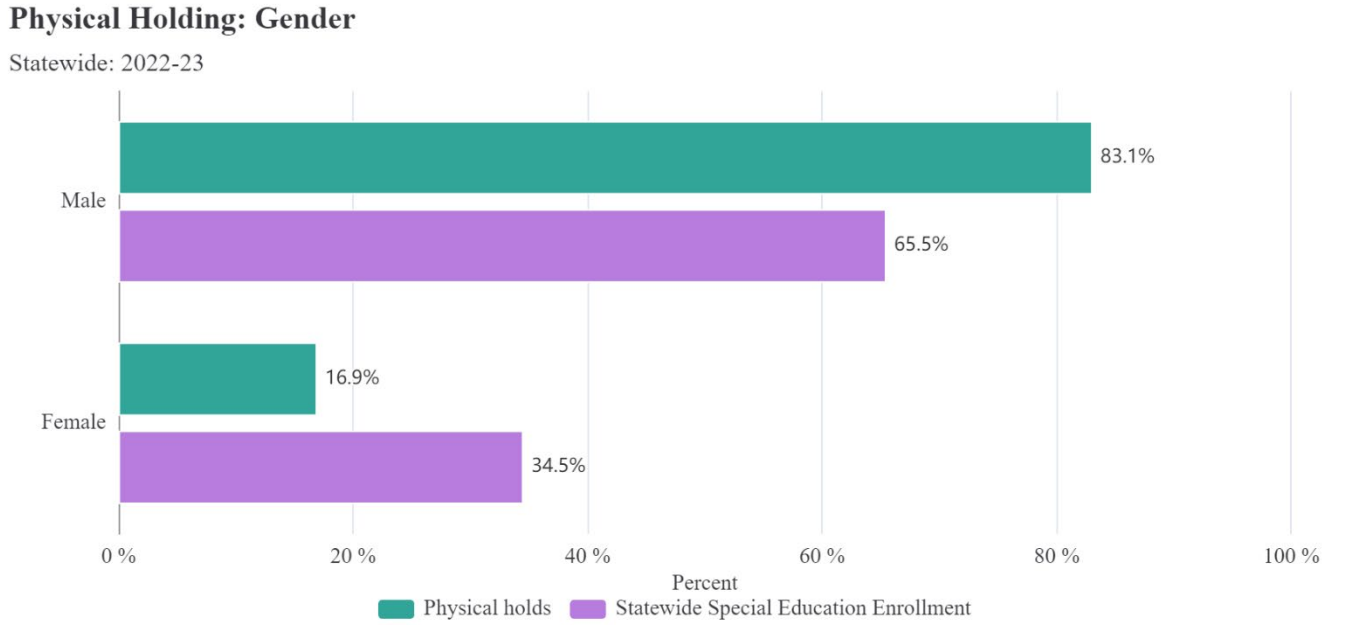


Gender

Consistent with previous years, male students comprised a greater percentage of students receiving special education services as well as a greater percentage of students with disabilities experiencing physical holding. This pattern is also consistent with seclusion data. During the 2022-23 school year, 65.5% of students receiving special education services were male and 34.5% of students were female, a ratio of approximately two male students to each female student. During the same time period, 83.1% of the students experiencing physical holds were male, and 16.9% were female. This is a ratio of 4.9 male students to each female student, meaning male students with disabilities are about five times more likely to experience a physical hold.

Figure N (below) provides information regarding the gender of students with disabilities who experienced physical holds during the 2022-23 school year.

Figure N. Students with Disabilities Physically Held by Gender, as Compared to Special Education Enrollment, 2022-23 school year.

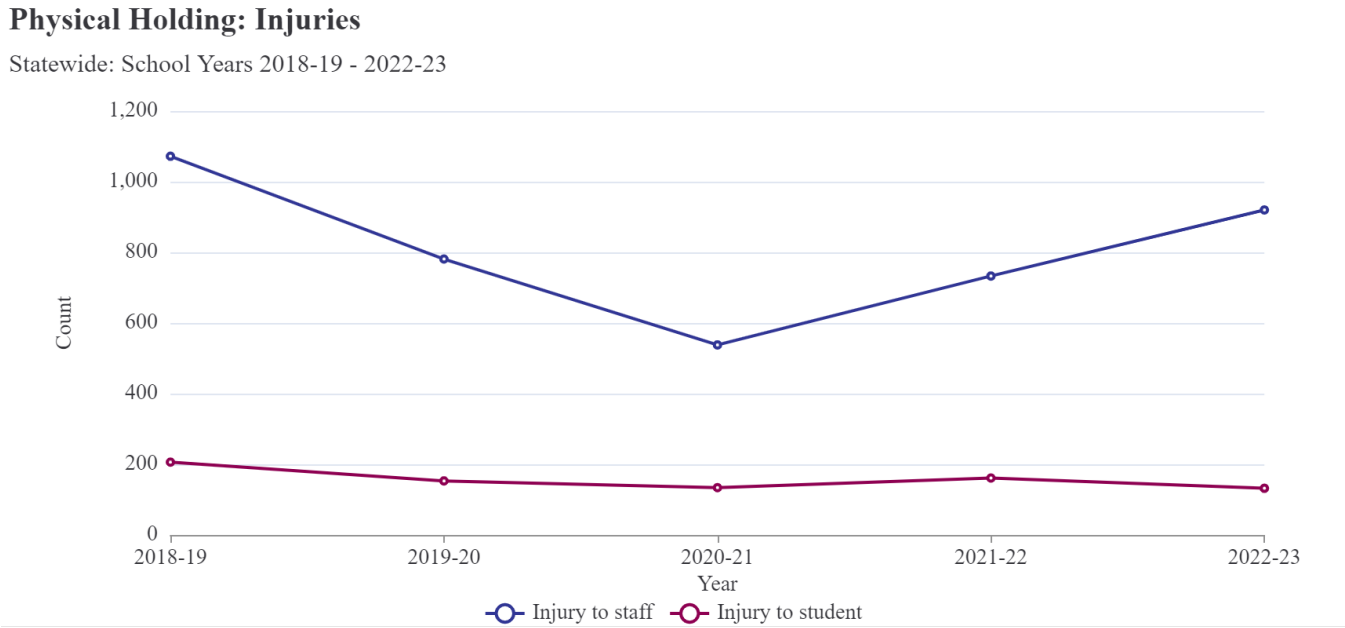


Staff and Student Injuries Reported by Districts Resulting from Physical Holding

During the 2022-23 school year, districts reported 920 staff injuries directly related to physical holding, an increase of 25.5% since the 2021-22 school year and an approximate rate of one staff injury for every 13 physical holds. During the same time period, districts reported 132 student injuries directly related to physical holding, a decrease of 18% since the 2021-22 school year, and a rate of one student injury for every 94 physical holds. In 2021-22, staff injuries occurred at a rate of one injury for every 14 physical holds, and student injuries occurred at a rate of one injury for every 63 physical holds. This suggests that, relative to the number of physical holds occurring, staff are injured at a similar rate, while students are less likely to be injured. Figure O (below) shows the rate of staff and student injuries since the 2018-19 school year. As with other measurements, although the staff number of injuries increased this year as compared to previous years, injuries remain well below the numbers reported during the 2018-19 school year, the pre-COVID-19 baseline.

A factor that may confound the number of injuries reported is the subjectivity in defining an injury and determining whether it was directly related to physical hold use. Given the lack of a consistent definition of injury, districts locally determine a threshold for the level of injury and how close in time it must occur to the physical hold when deciding whether to include an injury in their yearly counts.

Figure O. Staff and Student Injuries Resulting from Physical Holding, 2018-19 through 2022-23 school years.



Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2022-23 School Year)

This appendix includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Federal Resources on Civil Rights Law and Disproportionality in the use of Restraint and Seclusion

In 2012, the U.S. Department of Education issued the Restraint and Seclusion: Resource Document outlining 15 principles to consider when examining the use of restraint and seclusion in schools, with an emphasis on preventing the need for restraint and seclusion, using only behavioral interventions that are consistent with a child's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all children and adults.

In 2016, the U.S. Department of Education, Office for Civil Rights (OCR), issued a Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities warning school districts that the use of restraint and seclusion may result in discrimination against students with disabilities and reiterating that there is no evidence that using restraint or seclusion is effective in reducing problem behaviors, noting that instead, research supports a positive approach that incorporates positive behavioral interventions, evidence-based positive classroom strategies, and trauma-informed care.

In January 2019, the U.S. Department of Education announced an initiative to examine the use of restraint and seclusion in the school setting, with a focus on providing technical assistance to support schools in understanding how Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the ADA, and the IDEA inform the development and implementation of policies regarding restraint and seclusion and in January 2020, as part of this initiative, the Department released a webinar to explain how federal laws apply to the use of restraint and seclusion.

In July 2019, the U.S. Commission on Civil Rights issued Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, a report focusing on exclusionary discipline policies and addressing nationwide data showing the disproportionate use of restraint and seclusion on students with disabilities, which may have an unlawful discriminatory effect on students of color with disabilities.

In April 2020, the U.S. Government Accountability Office released a Report to Congressional Committees: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data finding that the U.S. Department of Education's quality control processes for data it collects on incidents of restraint and seclusion are "largely ineffective" and recommending several changes to better detect problematic data in the Civil Rights Data Collection (CRDC), including that the Department expand its CRDC business rules to cover all school districts, identify and address factors underlying misreporting, and refine and clarify its definitions of restraint and seclusion.

In July 2020, the Children's Equity Project and the Bipartisan Policy Center issued a policy agenda titled Start with Equity: From the Early Years to the Early Grades that included data and research on "harsh discipline," including seclusion and inappropriately used restraint, and its disproportionate effect on Black children and children with disabilities. The agenda recommended policy changes for all levels – Congress, federal agencies, states and school districts – including recommending that districts ban harsh discipline, ensure that young children never have negative interactions with SROs, and invest in systems supporting positive discipline and anti-bias approaches.

In October 2021, the U.S. Department of Education released a supplement to its ED COVID-19 Handbook on Strategies for Safely Reopening Elementary and Secondary Schools titled Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs. The guidance emphasized that IEPs should "support children and students in each area of unique need—including educational, social, emotional, behavioral, and related areas—with high-quality and evidenced-based support" and "employ [FBAs] to develop individualized BIPs for students whose behaviors interfere with their ability to access and benefit from the education program" instead of relying on "inappropriate disciplinary practices, such as corporal punishment, seclusion, and restraint that disproportionately impact children of color and children with disabilities" and programs with "little or no research to support their effectiveness."

On July 19, 2022, the U.S. Department of Education's Office of Special Education and Rehabilitative Services and the Office of Special Education Programs issued guidance on addressing disparities in the use of discipline for children with disabilities and the implementation of IDEA's discipline provisions in a Dear Colleague Letter on Implementation of IDEA Discipline Provisions. In addition, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision and Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders were issued to support state educational agencies' and local educational agencies' efforts to fulfill their obligations to appropriately meet the needs of children with disabilities.

On July 19, 2022, the U.S. Department of Education also released Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973,

guidance describing schools' responsibilities under Section 504 to ensure nondiscrimination against students based on disability when imposing student discipline. Specifically, the guidance explains how compliance with Section 504's requirement to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and that could lead to student discipline. By using Section 504's procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline. As the guidance explains, when schools do choose to administer discipline for students with disabilities, they must do so in a nondiscriminatory manner.

On March 23, 2023, the U.S. Secretary of Education, Miguel Cardona, released a guidance letter regarding the use of corporal punishment in schools in the United States. Included in the release was an infographic describing the current use of corporal punishment in schools. Secretary Cardona urged states that permit or practice corporal punishment in schools and educational settings to move swiftly toward condemning and eliminating it.

In March 2023, The U.S. Department of Education also released Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates. This resource identifies five guiding principles and suggests actions schools and school districts can take to create inclusive, safe, supportive, and fair learning environments and lists federal resources to support these efforts. The five guiding principles are: 1. Foster a sense of belonging through a positive, safe, welcoming, and inclusive school environment; 2. Support the social, emotional, physical, and mental health needs of all students through evidence-based strategies; 3. Adequately support high-quality teaching and learning by increasing educator capacity; 4. Recruit and retain a diverse educator workforce; and 5. Ensure the fair administration of student discipline policies in ways that treat students with dignity and respect (including through system-wide policy and staff development and monitoring strategies).

On May 1, 2023, the U.S. Department of Education's OCR released its Annual Report to the President and the Secretary of Education for fiscal year 2022. The report includes a description of compliance reviews of three districts' use of restraint and seclusion to assess whether its use denied students with disabilities a FAPE.

In November 2023, the U.S. DOJ released a School Resource Officers, 2019-2020 report. This report provides details on demographics and certification of SROs by the type of law enforcement agency that employs them. It also describes law enforcement, mentoring, and teaching activities performed by the officers. The report discusses equipment typically carried and training received by the officers.

Also, in November 2023, the U.S. Department of Education's OCR released New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic. The 2020-21 school year data showed "stark inequities in students' educational access throughout the nation and across civil rights indicators, including regarding courses and programs, school staff, and student discipline." Given OCR paused the collection of data due to the pandemic, the 2020-21 CRDC is the first published since the 2017-18 collection which was related in 2020. The 2020-21 data contains information collected from over 17,000 school districts and 97,000 schools.

The 2020-21 CRDC details the following pertaining to restraint and seclusion:

- Approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion at schools.
- Boys, Black students, students of two or more races, and students with disabilities who received services under the IDEA were subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments.
    - Boys represented 51% of K-12 student enrollment, but 83% of students physically restrained, 82% of students mechanically restrained, and 82% of students secluded.
    - Black students represented 15% of the K-12 student enrollment, but 21% of students physically restrained, 42% of students mechanically restrained, and 19% of students secluded.
    - Students of two or more races were 4% of K-12 student enrollment yet accounted for 7% of students physically restrained and 7% of students secluded.
    - Students with disabilities who received services under IDEA represented 14% of K-12 student enrollment but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.

In an effort to combat the Improper Use of Seclusion in Schools the Educational Opportunities Section of the Civil Rights Division of the DOJ initiated investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the ADA, 42.U.S.C §§ 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Pt. 35. Title II provides that no "individuals with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." In recent investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program, see 28 C.F.R. § 35.130(b)(1)(i); using eligibility criteria that effectively subjects students with disabilities to discrimination, see 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid discrimination in the school districts' program, see 28 C.F.R. § 130(b)(7). Specifically, the DOJ concluded that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.

The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities. For more information about the DOJ's work to combat improper seclusion of students with disabilities in public schools, read summaries of recent investigations, including press releases, notice letters, and settlement agreements. A summary of the *Action Steps from Settlement Agreements between the U.S. Department of Justice and School Districts Ending the Use of Seclusion* may be found on MDE's website Restrictive Procedures.

Potential Legislation Impacting the Use of Restraint and Seclusion in Schools

The *Keeping All Students Safe Act* has been annually introduced into the U.S. Congress since 2007.

Most recently, the Keeping All Students Safe Act was introduced into the 118th Congress S.1750 - 118th Congress (2023-2024): Keeping All Students Safe Act | Congress.gov | Library of Congress. This bill prohibits the use of seclusion and limits the use of physical restraint in schools and Head Start programs that receive federal funding. The bill prohibits the use of mechanical or chemical restraints or physical restraints that restrict breathing or are life threatening. The bill outlines the requirements for the use of physical restraint, including that the student's behavior must pose an imminent danger of serious physical injury to the student or other individual. Each state must ensure that a sufficient number of program personnel are trained and certified by a state-approved crisis intervention training program. Additionally, each program must establish procedures to follow after an incident involving physical restraint. Further, the bill establishes enforcement provisions, including a private right of action for a student who has been subjected to unlawful seclusion or restraint. The Department of Education and the Department of Health and Human Services must withhold payments from a program for unlawful seclusion or restraint. Finally, the bill requires state educational agencies to establish, implement, and enforce policies and procedures required by the bill. It also creates a grant program to assist state educational agencies with these activities.

State Resources on Restrictive Procedures Legal Standards

Restrictive Procedures Use in Schools: MDE provides training and model forms to assist Minnesota school districts in ensuring that restrictive procedures used in emergency situations are implemented safely and in accordance with the standards for using restrictive procedures found in Minnesota Statutes, sections 125A.0941 and 125A.0942. You can find more information on the use of restrictive procedures, including data collection, recent legislation, and other resources on the MDE Restrictive Procedures webpage.

- **MDE training sessions**. MDE offers interactive training sessions to school districts and other interested groups throughout the state. These sessions can be provided as online sessions or in person at no cost to participants. For more information or to request a training, please contact MDE's Division of Assistance and Compliance.
    - MDE's restrictive procedures training provides an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations, along with strategies that support reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionality in the use of restrictive procedures.
    - MDE offers a variety of training sessions on special education due process and the legal standards outlining the use of discipline in schools that support the reduction in use of restrictive procedures and can be customized to meet the needs of participants.

- **MDE model forms**. MDE posts model forms related to the use of restrictive procedures. The model forms outline the minimum compliance standards in a format that school districts can modify to meet their needs.

Partners in Policy Making: Thirty-five years ago, the Minnesota Governor's Council on Developmental Disabilities in the Department of Administration created Partners in Policymaking, a groundbreaking advocacy and leadership training program to give people with disabilities and their families the resources and skills to communicate effectively with elected officials. In today's political climate of radical change, we must work harder than ever to prevent the loss of basic rights for people with disabilities. The goal of *Partners in Policymaking* is to educate participants to be active partners with those who make policy. The idea is to develop partnerships that are based on positive relationships.

The Partners in Policymaking e-learning site gives participants the opportunity to increase knowledge and understanding of best practices in the disability field, and learn how to communicate effectively with their elected officials. Six online courses are now available at **PartnersOnlineCourses.com** to anyone who would like to increase their knowledge and skills.

Strategies Reported by School Districts in Narrative Responses

Beginning in the 2020-21 school year, as part of reporting annual physical holding data, school districts are asked to respond to two questions: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities? and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools?

The emerging strategies reported by school districts used to reduce the use of restrictive procedures in July 2022 included:[22]

- Staff training
    - Crisis Prevention Institute (CPI) and other similar training programs
    - Trainings focusing on de-escalation techniques
    - Trainings focusing on specific school and student behavior concerns

[22] Although this information is not currently paired with quantitative data from school districts, MDE does expect to be able to add this information to its analysis moving forward. MDE is currently able to report broad information regarding what districts reported has worked in their district, but in the future may be able to report whether districts that used a specific strategy actually experienced an increase or decrease in their reported restrictive procedures use. Likewise, because this information is new, it cannot be compared to previous years to identify patterns or determine pre-COVID-19 baselines. Further, because the information is summarized, overview information about district strategies and initiatives, it may not provide the more detailed information necessary to successfully replicate these strategies in other districts. For example, a district may have reported that providing time for staff collaboration was an important strategy the district employed that year, but the details of which staff attended meetings, the timing and agenda of the meetings, and the training staff received surrounding these meetings is not provided.

    - Benefit of on-site trainers, continued coaching, or other on-going training opportunities for staff
- Providing student supports
    - FBAs
    - Proactive and positive behavioral support plans
    - BIPs
    - Addressing sensory needs
    - Adding special education services
    - Adjusting schedules or programming
    - Developing relationships with staff
    - Incorporating social-emotional learning
    - Utilizing trauma-informed practices
    - Supporting mental health
- Staff collaboration and/or team meetings
    - Allowing for collaboration and/or troubleshooting a particular student's needs
    - Developing a consistent process for staff to debrief together following behavioral incidents
    - Involving parents, oversight committees, and IEP team members
- Strategic staffing
    - Using specific staff positions to address behaviors (i.e., behavior specialists, crisis teams)
    - Maintaining particular expertise on staff (i.e., contracting with a board-certified behavior analysist, social worker, or school counselor, behavior teams or crisis teams trained to respond to student behaviors)

Compilation of School Districts' Narrative Responses: 2022-23 School Year

In July 2023, 449 school districts and charter schools provided information on strategies they used to reduce the use of restrictive procedures within their district during the 2022-23 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.

Although some districts (about a third) did not provide information about the specific training they use, most districts provided more detailed information about their training curriculums. Of the districts that did provide specific information, about half of them indicated that they use CPI to provide training. Some districts explicitly identified CPI's Verbal Intervention Training as an effective resource for their staff.

The use of programs other than CPI appears to be growing, with about 15% of schools reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or Professional Crisis Management (PCM), as compared to the 2021-22 school year. Districts reported using the following programs to provide training for their staff:

- Handle With Care
- Ukeru
- PCM
- Life Space Crisis Intervention (LCSI)
- Safety Care

Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysts, and mental health supports on their use of restrictive procedures.

Other Trainings and Resources Mentioned by Districts

BARR Program
Coaching for Equity
Reclaiming Youth at Risk (book)
Brih Design
Catalyst Training
Nurtured Heart
Larry Thompson/Innovative Schools
Cradle to Career Education Summit
Envoy
Conscious Discipline
Move Mindfully
Boys Town
Registered Behavior Technician training
Safe Schools Platform
Brightworks
PREPaRE Training
Teach To Heal
Tough Kid Workshop
Dialectical Behavior Therapy training
Zones of Regulation
Olweus Bullying Prevention Program
Top 20 Training
Developmental Designs
Responsive Classroom
Incredible Flexible You
Prevent-Teach-Reinforce/Pyramid Model Training
Multi-Tiered System of Supports Implementation Reviews

Utilize Trauma-Informed Practices

Trauma-informed training and practices emphasize physical, psychological, and emotional safety for students, families, and staff, and helps trauma survivors rebuild a sense of control and empowerment. Becoming "trauma-informed" means recognizing that people often have many different types of trauma in their lives. People who have been traumatized need support and understanding from those around them. Trauma-informed resources and practices used by school districts include Conscious Discipline, Trauma-Informed Care, Boys Town training, the Nurtured Heart Approach, Life Space Crisis Intervention (LSCI), information on Adverse Childhood Experiences, and culturally sensitive trainings.

- Districts continue to report that training staff to approach crises with empathy has had a meaningful

impact on students and staff, including decreases in the use of restrictive procedures and increases in staff retention.

- MDE also offers Responding to Tragedy and Trauma, a collection of resources for schools, families, and students on responding to crises and traumatic events.

Offer Consistent, Widespread Training and Support from Onsite Staff

In narrative responses collected by MDE, school districts frequently mentioned staff training as a strategy they used to reduce the use of restrictive procedures during the 2020-21, 2021-22, and 2022-23 school years. About three-quarters of districts mentioned training staff, with many specifically mentioning CPI and/or other trainings focused on de-escalation.

Districts also reported that maintaining specific expertise on their staff is critical to ensuring they have well-trained staff and consistent implementation of programs, particularly through targeted training and other ongoing learning opportunities for staff. Districts have reported that using Board Certified Behavior Analysts (BCBAs) or other on-staff trainers to assess skills, provide best practices, and target key areas of skill development for students and staff generally led to students spending more time receiving instruction as well as decreases in challenging student behavior and staff injuries. These districts reported that training all staff, including paraprofessionals, to implement tools consistently and creating time for teams to plan and problem-solve has been critical to successful implementation of programs.

Emphasize Social Emotional Learning (SEL) for Students

SEL is "the process through which young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions."[23] According to the Collaborative for Academic, Social, and Emotional Learning (CASEL), "SEL advances educational equity and excellence through authentic school-family-community partnerships to establish learning environments and experiences that feature trusting and collaborative relationships, rigorous and meaningful curriculum and instruction, and ongoing evaluation" and "can help address various forms of inequity and empower young people and adults to co-create thriving schools and contribute to safe, healthy, and just communities." Developing such competencies in students fosters positive social skills, reduces conduct problems, diminishes emotional stress, and improves academic performance.[24]

- Districts report that focusing on programs that explicitly teach students prosocial behaviors and emotional regulation has strengthened positive staff and student relationships, contributed to

[23] CASEL. Fundamentals of SEL – CASEL (Dec. 2021) (last accessed Jan. 3, 2023).
[24] Greenberg, Weissberg, O'Brien, Zins, Fredericks, Resnik, Elias. "Enhancing school-based prevention and youth development through coordinated social, emotional, and academic learning" (2003) American Psychologist: 58, 466-474; Durlak. "The impact of enhancing students' social and emotional learning: A meta-analysis of school-based universal interventions" (2011). Child Development, 872 (1), 1-29.

reductions in the use of restrictive procedures, and increased student capacity for academics. Further, several districts reported that compensating staff for intentionally integrating SEL into core academic curriculum has furthered staff's depth of understanding and ability to confidently implement the skills learned in staff development trainings.

- Connecting Social and Emotional Learning (SEL) to Professional Growth
  Developed in partnership with the Midwest Comprehensive Center at American Institutes for Research (AIR), this webinar reviews SEL, why it is important and practices that promote SEL. During the webinar, Nicholas Yoder, researcher and technical assistance consultant at AIR, describes the important connection between SEL and school climate, and helps the audience develop an understanding of the coordinated school climate and SEL effort to implement in schools and districts.

- Social and Emotional Learning Implementation Guidance is meant to help schools integrate SEL into school-wide teaching and learning practices so that students will learn, practice, and model essential personal life skills that contribute to academic, vocational, and personal success. Integrating SEL into school helps students learn to be caring and civil, make healthy decisions, problem-solve effectively, value excellence, be respectful and responsible, be good citizens, and be empathic and ethical individuals.

- Integrating Social Emotional Learning into Academics
  This webinar focuses on integrating SEL into academic content. SEL is an evidence-based school climate improvement practice. During this webinar, school staff, superintendents and district and school leaders will receive information on how they can best lead and support integration of SEL into the school day.

Improve Referral Processes, Debriefing Meetings and Individualized Data Reviews

In narrative responses, about a third of districts explicitly mentioned time for staff collaboration and/or team meetings as an effective tool to reduce the use of restrictive procedures. Many districts reported the importance of regular team meetings, to allow for collaboration and/or troubleshooting a particular student's needs, as well as developing a consistent process for staff to debrief together following behavioral incidents.

- Districts report that the development and implementation of new procedures to address student behaviors, including procedures for office referrals and more formal debriefing meetings following incidents, have contributed to a reduction in the use of restrictive procedures. Some districts implemented a more formal process to refer a student to a behavior interventionist or other specialist, while other districts successfully implemented a team meeting process to address individual student behavior and allow opportunities for staff to process their emotions concerning a recent behavior event. Further, districts report that better data collection tools and processes have increased their ability to support students and have reduced their use of restrictive procedures.

- The Oversight Committee Model Agenda and Companion Guide are offered as support for program, school, and district oversight committee meetings to increase efficiency and effectiveness in collaborative discussion and decision-making on the use of restrictive procedures with the goal of reducing the use of restrictive procedures. These documents are meant to be revised and adjusted to meet the needs of the district. They are a work in progress and we encourage users to offer feedback

and suggest improvements. Please submit feedback to MDE's Division of Assistance and Compliance or by calling 651-582-8689.

- Minnesota Multi-tiered System of Supports Framework (MnMTSS)
  This document provides a description of the essential systemic components of MnMTSS and how these interact, including universal screening, data-based decision-making, evidence-based, tiered instruction and interventions, progress monitoring, leadership behaviors, beliefs and dispositions of educators and staff, community involvement, and culture/climate context.

    - MnMTSS Overview Part I
      This webinar slide deck will provide an overview of the MnMTSS as a systemic foundation for addressing inequity and improving outcomes for all students in Minnesota and for reaching the Collaborative Minnesota Partnerships to Advance Student Success (COMPASS) goal of accelerating student learning by meeting academic, social-emotional, and school climate needs. Content will include the Minnesota context for development of this framework, the rationale for implementing MnMTSS, and some of the typical implementation challenges.
    - MnMTSS Overview Part II
      This session will introduce the subcomponents of the MnMTSS framework that serve as the essential foundations necessary for implementing the COMPASS academic, social-emotional and school climate work. Participants will also be provided with Level I of the District and School Self-Assessment tools that will be used to measure current level of district or school implementation in the essential foundations.

Focus on Relationship Building

Strong relationships with teachers and school staff can enhance students' level of motivation and promote learning. Students who have access to strong relationships are more academically engaged, have stronger social skills, and experience more positive behavior.

- Restorative practices are drawn from the traditions of Indigenous people and communities of color around the world. They are grounded in a belief that people are profoundly relational, interconnected and inherently good. Restorative practices include ways of creating community that honor the importance of relationships amongst all members in the community, as well as practices to repair relationships when harm has been caused. Restorative practices address the needs of all people impacted by the harm. By using restorative practices in the school, people get to know one another and build relationships with each other, which are key elements to learning, bullying prevention, and creating a positive school climate for students and adults. Key principles guide the practices.

- The BARR (Building Assets, Reducing Risks) Center Model
  In this webinar, presenters discuss BARR. BARR is a strengths-based model that provides schools with a comprehensive approach to meeting the academic, social, and emotional needs of all students. BARR uses eight interlocking strategies that facilitate real, meaningful relationships between adults and students. The BARR model allows teachers to focus on building relationships with students to access their strengths and areas for growth.

- Person-Centered Practices
  Person-centered practices are a continuum of strategies and activities that support the informed choice of students and families to make or have input into both major transitions and everyday life decisions. Person-centered practices focus on the interests and needs of the person receiving instruction or support. They emphasize each person's strengths and dreams rather than weaknesses or deficits. Person-centered principles and practices can help assure that people with disabilities have the same rights and responsibilities as other people, including having control over their lives, making their own choices and contributing to the community in a way that makes sense to the person.

  Ten Suggestions for Adding Person-Centered Features in IEPs AND Person-centered Interagency Individualized Education Program (IEP) sample facilitator actions

  These documents provide recommendations of good practices that are not required, but can be helpful to increase student and family engagement in the IEP planning process. Use this document to add person-centered features that may support students to:

  - Have more control over their lives.
  - Make more of their own choices.
  - Contribute to their school and community in a way that makes sense to them

- Person-Centered Thinking®
  For people supported with services, it is not person-centered planning that matters as much as the pervasive presence of PCT®. PCT® begins with learning *both* what is "important to" a person and what is "important for" a person and the balance between them. PCT® skills help people describe both how they want to live, and a reasonable balance between the components of "important to" and "important for" in their lives. As the core PCT® concept, this balance is at the center of both planning and practice.

  PCT® training has been made available to educators in Minnesota since April 2018. For more information, contact the Person-Centered Practices in Education Leadership Team (MDE).Person-Centered@state.mn.us).

- Teacher-Child Interaction Training – Universal (TCIT –U) is a professional development, train-the-trainer-model, designed to strengthen teacher-child relationship skills.

Implement PBIS

PBIS as defined in Minnesota Statutes, section 125A.0941, are interventions and strategies to improve the school environment and teach children the skills to behave appropriately. The State of Minnesota has had a longstanding policy encouraging the use of positive approaches to behavioral interventions. Specifically, Minnesota Rules, part 3525.0850, provides: "The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities."

- In narrative responses, about half of the districts reported using strategic supports to meet student needs and reduce the use of restrictive procedures. Many referenced supports that are required by

state and federal special education law, like FBAs, positive behavior support plans, BIPs, or similar proactive, positive behavioral supports for students. Other student supports that districts reported included planning for sensory needs and developing relationships with staff.

- Online training from MDE includes three online training modules for statewide use that provide positive strategies for school district staff to use with students with disabilities, including students with ASD, complex EBD, and complex learning needs. These stand-alone modules and supplementary documents are designed for school districts to use in independent staff training.

- PBIS implementation is a state-initiated project that provides districts and individual schools throughout Minnesota with the necessary training, coaching, technical support and evaluation to promote improvement in student behavior across the entire school, especially for students with challenging social behaviors. PBIS school teams establish clearly defined outcomes that relate to students' academic and social behavior, systems that support staff efforts, practices that support student success and data to guide decision-making. Information is also available about the federal implementation of PBIS.

    - Restraint and Seclusion (R/S) Alternatives in All States and Territories: A Review of Legislation and Policies, August 2021.

    - Systematic Literature Review of Tier 1 PBIS Implementation in Alternative Education Setting.

    - Center on PBIS "5-Point Intervention Approach for Enhancing Equity in School Discipline" outlining a 5-point multicomponent approach to reduce discipline disproportionality in schools: 1) collect, use, and report disaggregated discipline data; 2) implement a behavior framework that is preventive, multi-tiered, and culturally responsive; 3) use engaging instruction to reduce the opportunity (achievement) gap; 4) develop policies with accountability for disciplinary equity; and 5) teach strategies for neutralizing implicit bias in discipline decisions.

    - Additional materials on the topic of PBIS and equity outlining how equity-focused strategies in action plans achieve more equitable outcomes for all student groups using a multi-component approach.

    - "Establishing Preliminary Evidence for Culturally Responsive PBIS: The Personal Matrix Activity" recording.

    - Additional information about PBIS and aligned initiatives recording.

    - Additional information on PBIS to support students with disabilities.

- BIPs are typically developed following an FBA. An FBA can identify the combination of antecedents (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the problem behavior and guide the development of a BIP. A complete BIP should describe strategies for: 1) addressing the characteristics of the setting and events, 2) removing antecedents that trigger the problem behavior, 3) adding antecedents that maintain appropriate behavior, 4) removing consequences that maintain or escalate the problem behavior, 5) adding consequences that maintain appropriate behavior, and 6) teaching alternative appropriate behaviors, including self-regulation

techniques, to replace the problem behaviors.

- Behavior Specific Praise: Implementing, Coaching, and Measuring the Impact of this Simple yet Specific Strategy: Dr. Benjamin Riden, Ph.D., BCBA-D, James Madison University, and Dr. Andy Markelz, Ph.D., Ball State University; implementing and measuring behavior specific praise for specificity, contingency, and variety.
- **Collaborative & Proactive Solutions (CPS)** is the model of care Dr. Greene originated and describes in his various books. The CPS model is based on the premise that challenging behavior occurs when the demands and expectations being placed on a kid exceed the kid's capacity to respond adaptively.

Use Effective De-escalation Techniques

Adult responses to student behavior can serve to either escalate or de-escalate a student's behavior. Adults may not always be aware of how their own behavior may inadvertently escalate the behavior of a student they are trying to support, even as they do their best to ensure student safety and uphold classroom and school expectations. When adults use effective de-escalation techniques as a student's behavior is becoming more intense, they have a unique opportunity to prevent intense behavioral responses or other student behavior that can lead to negative consequences, including the use of restrictive procedures on students.

- Strategies for De-escalating Student Behavior in the Classroom provides practical, research-based strategies educators can use to de-escalate challenging student behavior in the classroom. Despite the development of supportive, safe, and predictable school environments, students may, at times, become agitated, and their behavior may escalate to unsafe levels. With some advance planning, educators can reduce reliance on reactive strategies, such as punitive or exclusionary practices (e.g., restraint, seclusion, suspension, expulsion) in favor of safer, more instructive, and inclusive approaches.
- Prevention and De-escalation of Intense Behavior Responses: What Adults Can Do from the Wisconsin Department of Public Instruction provides strategies and resources for understanding effective ways to de-escalate student behavior and support prosocial replacement behavior that is a critical skill for adults to understand and consistently use.

Support Mental Health

- Children's Mental Health Division of the Minnesota DHS administers policy and practice to ensure effective and accessible mental health services and supports for children and families in Minnesota. The division works together with many public and private partners across thestate so that children and youth with mental health needs can develop and function as fully as possible in all areas of their lives. DHS is committed to making sure the right services are available at the right time for children with mental health needs and their families.
    - School-Linked Mental Health Services
    - Children's Mental Health Crisis Response Services

    - Crisis Text Line offers free help for those who are having a mental health crisis or are contemplating suicide. Services are available 24/7 across Minnesota. **Text "MN" to 741741.**
    - **Call **CRISIS (**274747)** from a cell phone to talk to a team of professionals who can help you.

- Mental Health Education in Schools
  From the National Alliance on Mental Illness, this document includes age-appropriate model learning activities, best practices in mental health education, and resources for planning and implementing of age-appropriate mental health curriculum and instruction (per Minn. Stat. 120b.21 [2022]).

- Responding to Tragedy and Trauma is an MDE webpage that identifies many resources to help educators respond to racism, violence, and trauma in ways that support students.

- Coping with Crisis Website: The Minnesota DHS offers Minnesotans resources for dealing with crisis and maintaining mental and physical health.

Other Resources

- COMPASS (Collaborative Minnesota Partnerships to Advance Student Success) is a statewide education system created through a collaboration between MDE, Minnesota Service Cooperatives and Regional Centers for Excellence. COMPASS Pathways are now available for six topics. COMPASS Pathways offer a variety of resources, evidence-based practices and facilitated guidance in formats that work best for schools. Types of pathways will vary by the topic, but may include on-demand learning, cohort learning groups or a hybrid of on-demand resources and cohort learning groups. Learn more about the topics below:

- Student Maltreatment Program at MDE assesses and investigates reports of alleged physical abuse, neglect, or sexual abuse of students that occurs in Minnesota public schools and charter schools. This includes allegations of maltreatment involving students 18-21 years of age, including students receiving special education services, up to and until graduation and the issuance of a secondary diploma.

- Minnesota Ombudsman for Mental Health and Developmental Disabilities (OMHDD) promotes the highest attainable standards of treatment, competence, efficiency, and justice for persons receiving services for mental illness, developmental disabilities, chemical dependency, or emotional disturbance. The OMHDD is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials, who investigates, and if the complaints are justified, takes action to remedy the complaints. Visit its website for more information, or to file a complaint by contacting your regional ombudsman.

- The Hexagon Tool can be used by communities and organizations to better understand how a new or existing program or practice fits into an implementing site's existing work and context.

Appendix E – February 2023 Two-Year Statewide Plan: Progress

The February 2023 Two-Year Statewide Plan includes three measurable goals along with five MDE actions to support the goals and four workgroup actions to support the goals. Progress on the first year of implementation of the February 2023 Two-Year Statewide Plan is outlined below.

Measurable Goals and Progress

Legislative Report

Goal 1: MDE will annually submit a report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures. The report will also summarize MDE's and the workgroup's progress on actions in the statewide plan.

> **Goal 1 progress**: Under Minnesota Statutes, section 125A.0942, subdivision 3(b), MDE submits the annual legislative report on school districts' progress in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The statewide plan, submitted along with the legislative report, recommends to MDE measurable goals for reducing the use of restrictive procedures and strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. Components of the statewide plan include: resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce school districts' use of seclusion.
>
> This legislative report, including the appendices, serves as the February 1, 2024, annual report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures.

Recommended Strategies and Resources

Goal 2: By December 31, 2024, the workgroup will compile and recommend to MDE, strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

> **Goal 2 progress**: The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with two districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, and updating the oversight committee agenda and companion guide, to assist districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1), and reviewing MDE's 2023

legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2).

A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures may be found in Appendix D of this report.

Reduce Seclusion

Goal 3: Through the combined efforts of all those involved in this work, there will be at least a 10% reduction in seclusion annually using the 2018-19 school year data as a baseline.[25] During the 2018-19 school year, school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion.

a. By the end of the 2022-23 school year, the number of seclusions will be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 5,038 seclusions and at most 774 students with disabilities experiencing seclusion.

b. By the end of the 2023-24 school year, the number of seclusions will again be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 4,478 seclusions and at most 688 students with disabilities experiencing seclusion.

Goal 3 progress: Under Minnesota Statutes, section 125A.0942, subdivision 3(b), school districts must report data quarterly to MDE by January 15, April 15, July 15, and October 15 about individual students who have been secluded. The quarters are broken down in dates as follows: Quarter 1: July 1–September 30, 2021; Quarter 2: October 1–December 31, 2021; Quarter 3: January 1–March 31, 2022; and Quarter 4: April 1–June 30, 2022.

Restrictive procedures data from the 2022-23 school year demonstrate an increase in the use of restrictive procedures, including an increase in the use of physical holding and a decrease in the uses of seclusion, as compared to the 2021-22 school year. Minnesota school districts reported 3,938 seclusions during the 2022-23 school year, a decrease of 14% from the 2021-22 school year. Minnesota school districts also reported that 730 students with disabilities experienced seclusion, an increase of 2% from the previous school year.

[25] The previous statewide plan also used the 2018-19 school year as the baseline which reported 5,596 seclusions and 860 students with disabilities experiencing seclusion. This statewide plan adopts the same baseline instead of developing a new baseline because of the impact of the COVID-19 pandemic and related disruptions. Data in recent years show positive trends, but it is unclear if these are due to changes in practice or due to changes in learning modes and staffing challenges related to the pandemic. MDE will continue to evaluate data and consult with stakeholders to reexamine the baseline for the next two-year statewide plan.

Seclusion data regarding the 2018-19 school year was collected prior to the COVID-19 pandemic. Minnesota school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion during the 2018-19 school year. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2022-23 school year represents a 30% decrease in seclusions and a 15% decrease in the number of students with disabilities experiencing seclusion. However, as school districts continue to be affected by lasting impacts of COVID-19, it is likely to be some time before conclusions can be drawn about long-term trends in the use of seclusions.

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2022-23 school year may be found in Appendix C of this report.

MDE's Actions in Support of the Goals

MDE Action 1: MDE will collect, analyze and report school districts' use of quarterly seclusion data and physical holding summary data, including data on disproportionalities, for each school year. MDE will also report annually on trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures.

MDE Action 1 progress: MDE collected, analyzed and reported school district use of quarterly seclusion data and physical holding summary data, including data on disproportionalities, for the 2022-23 school year. MDE also reported trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures for the 2022-23 school year.

A total of 54 districts reported using seclusion during the 2022-23 school year, a slight decrease from 55 districts during the 2021-22 school year. In 2020-21, 45 school districts reported seclusions, and 54 reported using seclusion in 2019-20. The number of districts reporting seclusions remains below the pre-COVID baseline: 66 districts reported using seclusions in the 2018-19 school year.

A total of 258 districts reported using physical holds during the 2022-23 school year, a slight increase from the 2021-22 school year, when 249 districts reported using physical holds, and the 2020-21 school year, when 245 districts reported using physical holds. This remains below the pre-pandemic baseline: 285 districts reported using physical holds in 2018-19, and 302 in 2017-18.

Restrictive procedures data continues to demonstrate disproportionalities, in similar patterns as previous years. Students with disabilities who identify as Black or African American, two or more races and American Indian or Alaska Native; EBD and ASD students; elementary age students; students who receive services in setting 4 programs; and male students typically experience a disproportionate number of restrictive procedures in Minnesota school districts.

MDE is in the third year of utilizing the collection and analysis of restrictive procedures data through Stepwell MN. Physical holding data was first collected via Stepwell MN in July 2021 (for data from the 2020-21 school year) and seclusion data collection began at the start of the 2021-22 school year. The Stepwell MN system streamlines data collection and analysis. As part of this process, MDE began collecting information from districts about what each district is doing to reduce the number of

restrictive procedures in the district and which strategies they would recommend to other districts. These questions were developed in consultation with the workgroup, and districts were asked to provide narrative responses to these qualitative questions for the first time in July 2021. Districts are asked to provide updated information annually as part of their July 15 annual physical holding reporting.

In July 2023, 449 school districts and charter schools provided information on strategies they used to reduce the use of restrictive procedures within their district during the 2022-23 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.

Although some districts (about one third) did not provide information about the specific training that they use, most districts provided more detailed information about their trainings. Of the districts that did provide specific information, about one half of them indicated that they use CPI to provide training. Some districts explicitly identified CPI's Verbal Intervention Training as an effective resource.

The use of programs other than CPI appears to be growing, with about 15% of districts reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or PCM, as compared to the 2021-22 school year. Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysists, and mental health supports on their use of restrictive procedures.

Please see Appendix D of this report for more information about the compilation of narrative responses.

MDE Action 2: MDE will convene quarterly workgroup meetings to consult with interested stakeholders, facilitate stakeholder recommendations to MDE, develop and implement the two-year statewide plan, and prepare the legislative report.

MDE Action 2 progress: The workgroup met quarterly to facilitate the implementation of the February 2023 Two-Year Statewide Plan. Meetings were held on February 22, June 21 (due to an unexpected low response to RSVPs, MDE determined to seek feedback from the stakeholders in an asynchronous manner, using a combination of email updates and survey input), September 27, and an office hour December 13, 2023.

MDE Action 3: MDE will report at least annually on activities that are potentially connected to school districts' efforts to reduce the use of restrictive procedures and eliminate seclusion, such as: school district use of PBIS each school year, including the number of new and reconnecting schools participating in cohort training; the status and provisions of the OLI Grants awarded to school districts for the duration of the grants; and school district use of suspension and expulsions (from disciplinary incident reporting).

MDE Action 3 progress:

PBIS: MDE reported school districts' use of PBIS for the 2022-23 school year. PBIS is a multi-tiered framework to support schools to be more effective places by establishing a social culture and the behavior supports needed to improve social, emotional, behavioral and academic outcomes for all students (students with and without disabilities) and is flexible enough to support student, family, and community needs. The use of PBIS continued to increase with 57% of Minnesota school districts, 40% of Minnesota schools, and 47% of Minnesota students participating.

OLI Grants: The funding for the OLI grants was awarded to three school districts – including one metro, one in Greater Minnesota, and one intermediate school district encompassing at least 1,000 students with IEPs – and goals were set to reduce the rates of restrictive procedures. Districts that received OLI grants reported focusing on students with disabilities served in special education instructional settings three, four, and separate sites. Districts identified students with EBD as a group in need of additional supports, and especially students with disabilities who are Black, male, and under the age of 15. Districts are also focusing on supporting students with multiple life stress factors, including students with disabilities that have high absenteeism, are living in economically challenged families, or who have experienced trauma. The programs identified for implementation by the districts include Love and Logic, LCSI, and CPI Peer Coaching. The hexagon tool assisted districts and schools to systematically evaluate new and existing interventions by needs, fit, capacity, evidence, usability, and supports. The three districts have implemented the selected programs since the 2020-21 school year. By the fourth year of the grant, the percentage of students with disabilities experiencing restrictive procedures was reduced by 5%, from 28% of students with disabilities experiencing restrictive procedures to 23% of students with disabilities.

Discipline Data: Public school districts self-report disciplinary data through MDE's electronic disciplinary incident reporting system. Reports are available that summarize the disciplinary incident data as well as student demographic data (grade, gender, race/ethnicity) for disciplinary actions (out of school suspensions for one day or more, exclusions and expulsions) by district and state totals for the most current school years. The 2021-22 state trend report reported 48,735 disciplinary actions in Minnesota. This is the most recent published data as of the date of this report. This number is a slight decrease from the 2018-19 pre COVID-19 school year, which reported 49,437 disciplinary incidents statewide.

MDE Action 4: MDE will offer training sessions to school districts and other interested stakeholder groups throughout the state. The training will include an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures and eliminating seclusion. The Assistance and Compliance Division will collaborate with the EDI Center to incorporate elements in the training to assist school districts in identifying and addressing disproportionalities in the use of restrictive procedures, and to advise school districts on engaging families and students.

MDE Action 4 progress: MDE continues to collaborate internally among divisions in developing and improving training and continues to offer training sessions to school districts and other interested

stakeholder groups throughout the state. The restrictive procedures training includes an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. MDE provided four restrictive procedures training sessions during FY23 to approximately 60 participants. MDE also provided nine discipline training sessions during FY23 to over 200 participants and provided information about its dispute resolution programs in six forums for parents, advocates, and people with disabilities, with over 300 participants.

In April and May, 2023, MDE provided opportunities for workgroup participants to provide feedback to assist school districts in identifying and addressing disproportionalities in the use of restrictive procedures, and to advise school districts on engaging families and students.

MDE Action 5: MDE will compile a list of MDE resources and federal resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

MDE Action 5 progress: MDE continues to compile resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. The compilation includes resources, training, technical assistance, mental health services, and collaborative efforts taken to reduce the use of restrictive procedures and work toward eliminating the use of seclusion. Appendix D of this report includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources and references regarding efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Workgroup's Actions in Support of the Goals

Workgroup Action 1: The workgroup will identify, develop, and recommend to MDE strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The workgroup will focus on areas such as:

- Developing a resource for school districts on engaging families and students (particularly in school districts' efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures);
- Collaborating with MDE on a restrictive-procedures-focused resource for school districts using or considering police liaison officers/SROs;

- Providing feedback on a list of training programs developed by MDE after consultation with the Minnesota DHS that may meet requirements for the skill and knowledge areas outlined in Minnesota Statutes, section 125A.0942, subdivision 5, for staff who use restrictive procedures; and
- Providing feedback and recommendations on a list of experts developed by MDE to help IEP teams reduce the use of restrictive procedures.

The workgroup may also identify emergent issues and develop and recommend strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

Workgroup Action 2: The workgroup will review MDE's 2023 and 2024 legislative reports required under Minnesota Statutes, section 125A.0942, to identify, develop, and recommend to MDE ways to use and share the information presented. In particular, the workgroup will review the sections and appendices on *Data on School Districts' Progress on Reducing the Use of Restrictive Procedures and Eliminating Seclusion* and *Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion, and Address Disproportionalities in the Use of Restrictive Procedures.*

Workgroup Action 3: The workgroup will review strategies provided by school districts in response to annual summary information questions and identify, develop, and recommend to MDE ways to use that information to support school districts in their efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

Workgroup Action 4: The workgroup will review other state advisory groups focusing on education, students' behavioral health, students with disabilities, and other related topics to identify possibilities for workgroup collaboration on recommendations to MDE regarding changes to guidance, practice, or legislation related to reducing the use of restrictive procedures.

> **Workgroup Action 1-4 progress**: The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by: identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with two districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, to assist school districts in engaging families and students and updating the oversight committee agenda and companion guide, to assist school districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1); providing feedback and recommendations on experts to help IEP teams reduce the use of restrictive procedures (workgroup action 1); and, reviewing MDE's 2023 legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2) and identifying other state advisory groups for workgroup collaboration on recommendations to MDE regarding changes to guidance, practice, or legislation related to reducing the use of restrictive procedures (workgroup action 4).

Appendix F – Letter to Education Chairs

Dear Legislators:

As part of amendments enacted during the 2023 legislative session, the Legislature tasked the Minnesota Department of Education (MDE), in cooperation with stakeholders, with making recommendations for urgently ending seclusion in Minnesota schools. Minn. Stat. 125A.0942, subd. 6(c) Sec. 125A.0942 MN Statutes. The recommendations include specific dates for ending seclusion by grade or facility and must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts. The 2023 amendments also prohibit "the use of seclusion on children from birth through grade 3 by September 1, 2024." Minn. Stat. 125A.0942, subd. 4(11) Sec. 125A.0942 MN Statutes.

1. Recommendation for Specific Dates for Ending Seclusion

MDE Recommends Prohibiting the Use of Seclusion on All Children by September 1, 2026

MDE recommends revising Minnesota Statute, section 125A.0942, subdivision 4 by adding the following prohibition: (12) the use of seclusion on all children by September 1, 2026. (Attachment 1).

2. Resources Necessary for Ending Seclusion by September 1, 2026

Policy makers could consider direct resources or funding opportunities to schools to obtain training and systemically implement evidence-based behavioral crisis prevention practices and/or alternatives to restrictive procedures for managing student behavioral crises, and to systemically install and implement the practices.

3. Feedback received from Restrictive Procedures Work Group and Special Education Advisory Panel Members

While the legislature directly charged the commissioner with developing these recommendations, MDE values the feedback and input from our partners regarding the use of restrictive procedures in schools. Therefore, these recommendations were shared with members of the Restrictive Procedures Working Group and the Special Education Advisory Panel. Below is a summary of their feedback for policy makers to consider as they review these recommendations:

- Schools are experiencing staffing shortages and well as an increased need for level IV programming
- Resources to provide annual training for use of restrictive procedures, trauma-informed care, and social-emotional strategies are essential.
- Expanding training opportunities to general education staff

- Addressing the increasing challenges of student dysregulation in early grades is apriority. Dedicated funding for trauma-informed care, responding to dysregulation, and other supportive strategies is necessary.
- Support for teacher recruitment and retention efforts, with a focus on setting four programs
- Collaboration with DHS to increase residential and other mental health placements
- A delay of two years is not necessary and delays implementation of a goal the state has held for over a decade.
- The state should emphasize more upstream solutions to avoid getting students into situations where students become dysregulated to begin with.

Existing and New Resources are Compiled in Appendix D of the FY24 Restrictive Procedures Legislative Report

MDE, in cooperation with interested stakeholders, continues to compile strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. The most recent compilation of Appendix D is included in the FY24 Restrictive Procedures Legislative Report titled *School Districts' Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools.* Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2022-23 school year) is attached (Attachment 2).

Appendix D includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. It includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. Appendix D embeds resources and strategies necessary for staff capacity, staff training, children's supports, child mental health services and schoolwide collaborative effects. This document continues to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

In addition to the strategies and resources outlined in Appendix D, MDE will continue efforts, based on future resources and staffing capacity, to consider the following:

- Training for general education staff consistent with Minnesota Statute, section 125A.0942, subdivision 5.
- MDE collaborating with higher education to develop coursework for students preparing to become teachers consistent Minnesota Statute, section 125A.0942, subdivision 5.
- MDE working with PELSB to refine the positive behavior intervention requirement for professional licensure to include elements outlined in Minnesota Statute, section 125A.0942, subdivision 5.

- Developing a process where MDE staff are available to consult with school districts on specific students that exhibit extreme behaviors.
- Expanding school districts' access to PBIS and other research-based behavior intervention programs.
- Expanding mental health services.
- MDE producing an online training course on the legal framework for using restrictive procedures in schools to increase availability of the training session currently offered by MDE.
- MDE advocating for resources to support special education workforce needs.

3. Stakeholder Engagement

Consistent with Minnesota Statutes section 125A.0942, subdivision 6(c) Sec. 125A.0942 MN Statutes, MDE engaged interested stakeholders by utilizing existing advisory groups, the Special Education Advisory Panel (SEAP), the Restrictive Procedures Workgroup (workgroup), and developing an open-link survey to gather insights and input. The survey link was distributed in MDE's Special Education Updates in November and December 2023 and distributed to PACER (Minnesota's parent training and information center) and the Minnesota Disability Law Center (Minnesota's designated Protection and Advocacy System). Both organizations are represented on the workgroup, however MDE conducted extra outreach given their connections with families and students. MDE encouraged workgroup members, PACER, and the Minnesota Disability Law Center to distribute the survey link as well. In all, MDE received 176 responses to the survey.

Opinions on use of seclusion range widely. Some individuals are in favor of ending the practice immediately for all ages and settings, and some are concerned that ending seclusion will have negative consequences. MDE received few grade recommendations from stakeholders. Instead, stakeholders noted that setting is more relevant than age when considering a transition plan to end seclusion, and described different challenges and needs within federal settings, especially for students receiving services in setting 4 programs, which include Minnesota's students with more intense behavioral needs.[26]

Resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts have been incorporated into Appendix D as appropriate. Detailed information about stakeholder engagement may be found in Attachment 3.

4. Legal and Data Driven Support for Recommendations

The U.S. Department of Justice (DOJ), through its investigatory authority, is consistently finding that school districts' seclusion and restraint practices deny students with disabilities access to school districts' programs and

[26] Setting 1: Students receive special education and related services outside the general education classroom for less than 21 percent of the school day. Setting 2: Students receive special education and related services outside the general education classroom, typically a resource room, for 21 percent to 60 percent of the school day. Setting 3: Students are outside of the general education classroom for more than 60 percent of the school day. Setting 4: Students receive special education and related services at separate school facilities for more than 50 percent of the school day.

services in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. sections 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Part 35.[27] The DOJ finds that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs (see 28 C.F.R. section 35.130(b)(1)(i)); using eligibility criteria that effectively subject students with disabilities to discrimination (see 28 C.F.R. section 35.130(b)(8)); and failing to make reasonable modifications to avoid discrimination in school district programs (see 28 C.F.R. section 130(b)(7)). The DOJ has entered into settlement agreements with school districts after concluding that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.[28] The settlement agreements require school districts to immediately end the use of seclusion and outline action steps to assist in doing so.[29]

Further, the U.S. Department of Education, Office for Civil Rights (OCR) continues to find stark inequities in students' educational access throughout the nation and across civil rights indicators, including the use of

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[27] See Civil Rights Division | Seclusion Enforcement – Recent Investigations (justice.gov).

[28] The DOJ has reached a series of settlement agreements in which school districts have agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead putting in place appropriate interventions and supports for students with disabilities. See Kentucky (Civil Rights Division | Covington Independent Public Schools - Settlement Agreement | United States Department of Justice), Indiana (Civil Rights Division | North Gibson School Corporation - Settlement Agreement | United States Department of Justice), Maryland (Civil Rights Division | Frederick County Public School District - Settlement Agreement | United States Department of Justice), Iowa (Civil Rights Division | Cedar Rapids Community School District - Settlement Agreement | United States Department of Justice), Florida (Civil Rights Division | OKALOOSA COUNTY SCHOOL DISTRICT - SETTLEMENT AGREEMENT | United States Department of Justice), Alaska (Civil Rights Division | Anchorage School District - Settlement Agreement | United States Department of Justice), and Washington (Civil Rights Division | Spokane Public Schools - Settlement Agreement | United States Department of Justice).

[29] Under each settlement agreement, the school district agreed to immediately end the use of seclusion in its schools. Action steps included in the settlement agreements and a brief description of each may be found here Restrictive Procedures. Briefly, the action steps included: prohibit the use of seclusion; appoint an intervention coordinator; create classroom-wide behavior management plans; provide annual training to staff; supplement annual training with ongoing observation and in-service coaching; complete an incident report for any instance of seclusion or restraint; review all BIPs of current students who were secluded and/or restrained in the past five years; develop a complaint procedure to ensure that the school district timely responds to any complaint about the use of restraint or seclusion; send a letter to all parents and guardians of currently enrolled students who were secluded or restrained in the past five years; require each school to have a crisis prevention team with at least three staff members trained on crisis prevention and intervention and revise school district policies and practices to permit only crisis prevention team members to physically restrain students; provide counseling or psychological support to the student after physical restraint; adopt policies and procedures for suicide prevention, trauma, and toxic stress responses; ensure that school administrators lead a debrief meeting and log data after a student is restrained as well as hold a weekly meeting each week that a crisis prevention call is made; contract with consultants to provide professional development and school-level consultation to eliminate the use of seclusion as a response to student behavior; develop an individualized plan for students who, based on the documented history of the intensity of the student's past behaviors, may be anticipated to be subjected to the use of physical restraint; strengthen MTSS processes; require behavior support specialists to be Board Certified Assistant Behavior Analysts (BCaBAs); complete a written report every time school district staff requests that a School Resource Officer (SRO) or other law enforcement officer responds to student behavior; consult with SROs, administrators, the intervention coordinator, and parents and students, to identify ways to minimize unnecessary referrals to or reliance on SROs; and stop stationing SROs at school district elementary schools.

seclusion and restraint. Similar to Minnesota's data collection on the disproportionate use of restrictive procedures, OCR's civil rights data collection found that, nationwide, during the 2020-21 school year, boys, Black students, students of two or more races, and students with disabilities who receive services under the Individuals with Disabilities Education Act (IDEA) continue to be subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments. Students with disabilities who receive services under IDEA represented 14% of K-12 student enrollment nationwide but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.[30]

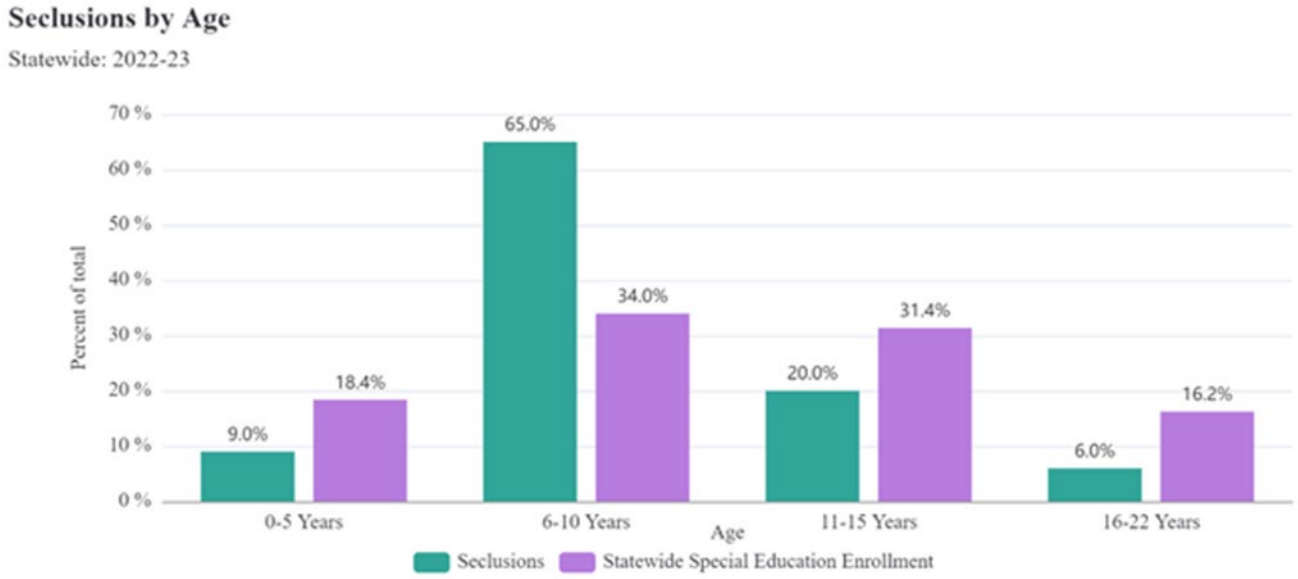
Currently, Minnesota's data only provides information about the use of seclusion with students with disabilities.[31] This data consistently shows disproportionate use of seclusion in Minnesota schools, indicating that seclusion is used disproportionally on boys, students receiving services under the categories of autism spectrum disorders (ASD) and emotional or behavioral disorders (EBD), and students who are Black, two or more races, or American Indian. In addition, seclusion is most frequently experienced by students in the 6-10 year age range and by students receiving services in setting 4 programs.

Below is a chart comparing the percent of seclusions experienced by students with disabilities with the percent of statewide special education enrollment by age for the 2022-23 school year.[32]

[30] See U.S. Education Department's Office for Civil Rights Releases New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic | U.S. Department of Education (Nov. 2023) (finding the 2020-21 school year data, the first published since the 2017-18 collection was released in 2020, that approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion). Note that Minnesota school districts are not required to report to MDE uses of mechanical restraint.

[31] During Minnesota's 2023 legislative session, Minnesota Statutes, section 121A.582 added a new reporting requirement for school districts pertaining to general education students that "[b]eginning with the 2024-2025 school year, districts must report annually by July 15, in a form and manner determined by the commissioner, data from the prior school year about any reasonable force used on a general education student to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125A.0941, paragraph (c)." This data will inform the level of disproportionality in the use of physical holding between students with and without disabilities in Minnesota.

[32] In general, students in grade 3 are 8-9 years old.

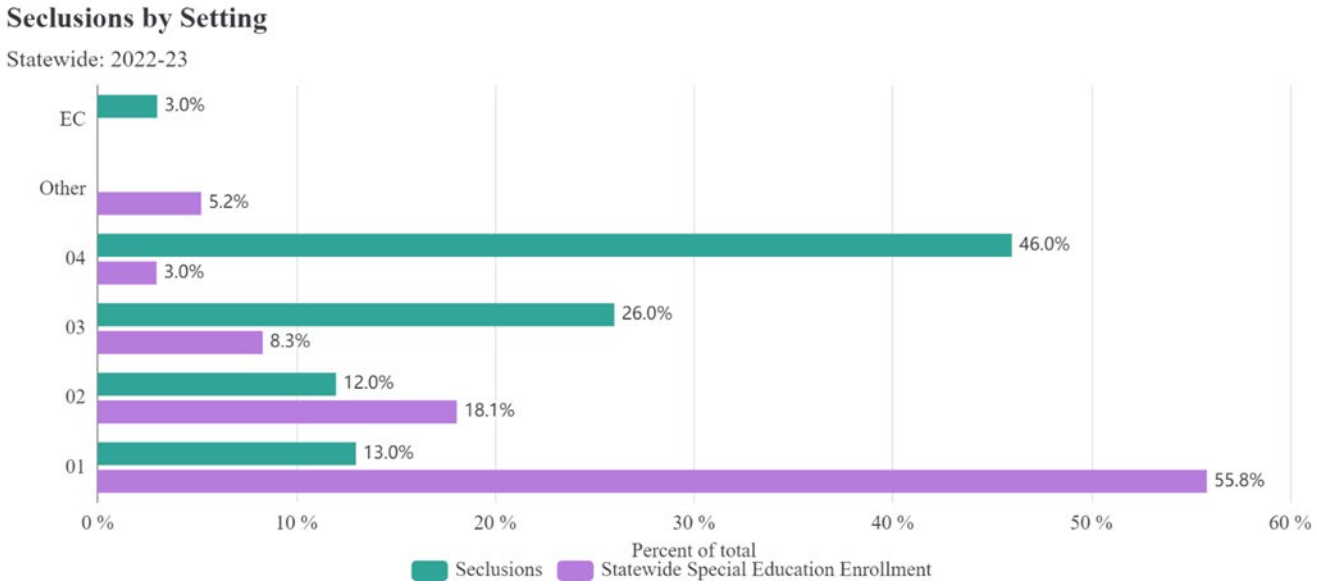


During the 2022-23 school year, 74% of students with disabilities experiencing seclusion were birth through age 10. The majority (65%) of students with disabilities experiencing seclusion were in the 6-10-year age range. Students with disabilities in this age range are 34% of the total special education population. Further, 20% of students with disabilities experiencing seclusion were in the 11-15-year age range. This pattern is consistent with both age and grade data from previous years. As in previous years, a relatively small percentage of students with disabilities under age 5 or over age 16 experienced seclusion during the 2022-23 school year.

Minnesota ends the use of seclusion on children from birth through grade 3 by September 1, 2024.[33] By September 1, 2024, Minnesota will end 74% of seclusions under the currently statutory scheme.

Below is a chart comparing the percent of total seclusions experienced by students with disabilities with the percent of total statewide special education enrollment by setting for the 2022-23 school year.

[33] The 2023 amendments prohibit "the use of seclusion on children from birth through grade 3 by September 1, 2024." Minn. Stat. 125A.0942, subd. 4(11) Sec. 125A.0942 MN Statutes.



During the 2022-23 school year, only 3% of the special education population received services in setting 4 programs, yet students in setting 4 programs were 46% of the students with disabilities experiencing seclusion. This has changed slightly from previous years, when 47% (2021-22), 57% (2020-21), and 60% (2019-20) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs.

On the other end of the spectrum, the majority of students with disabilities (55.8%) spend less than 20% of their time in special education settings and are considered setting 1 students. Setting 1 students with disabilities are much less likely to experience seclusion. During the 2022-23 school year, 13% of secluded students with disabilities were receiving services in setting 1.

Title II of the ADA, 42 U.S.C. § 12132, prohibits public entities (school districts) from discriminating against individuals with disabilities in the provision of public services. The ADA's implementing regulations, 28 C.F.R. § 130(d)(the "integration mandate"), requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." Further, DOJ has consistently interpreted the "most integrated setting appropriate" to mean one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."[34] *See also, Olmstead v. L.C.*, 527 U.S. 581 (1999) (holding, when interpreting the ADA's integration mandate, that Title II prohibits unjustified segregation of individuals with disabilities).

The IDEA, 20 U.S.C. § 1412(a)(5), ensures that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not

[34] See Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. pt. 35, app. B (addressing 28 C.F.R. § 35.130).

disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (the "LRE mandate").

The MDE considered stakeholder recommendations and concerns voiced over ending seclusion in setting 4 programs.[35] However, recommendations based on setting (i.e., eliminating seclusion in settings 1, 2, and 3 prior to eliminating seclusion in setting 4), interferes with Title II of the ADA's integration mandate and IDEA's LRE mandate.

Finally, Minnesota has taken steps to reduce the use of restrictive procedures, eliminate seclusion, and identify disproportionate use of restrictive procedures.

Below is a chart illustrating the number of physical holds, seclusions, and total restrictive procedures students with disabilities experienced from the 2014-15 school year through the 2022-23 school year.

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2014-15	15,511	6,547	22,058
2015-16	15,600	6,425	22,025
2016-17	17,120	7,085	24,205
2017-18	18,834	6,164	24,998
2018-19	17,157	5,596	22,755
2019-20*	12,679	3,983	16,662
2020-21*	6,666	1,850	8,516
2021-22*	10,091	4,593	14,689
2022-23	12,405	3,938	16,343

Since 2012: MDE has collected annual data from school districts on the use of seclusion and physical holding; MDE has provided training throughout the state regarding the standards for using restrictive procedures, including statutory responsibilities and reporting requirements; and state legislation has required school districts to:[36]

[35] Stakeholders noted that setting is more relevant than age or grade-level when considering a transition plan to end seclusion, and described different challenges and needs within federal settings, especially for students receiving services in setting 4 programs, which include Minnesota's students with more intense behavioral needs.

[36] Minnesota has eliminated the use of other restrictive procedures. Specifically, prone restraint was phased out over a three year period (2012-2015). During the 2016 legislative session, beginning FY17, Minnesota provided additional monies to entities that serve students with the highest needs to address challenging behaviors to prevent and/or reduce the use of restrictive procedures. Intermediate school districts and special education cooperative units that provide level four or

- develop a restrictive procedures plan if they intend to use seclusion or physical holding;
- implement a range of positive behavior strategies;
- provide training on de-escalation techniques and additional skills and knowledge areas to reduce the use of restrictive procedures and ensure the safety of the child and staff;
- monitor and review the use of restrictive procedures by conducting post-use debriefings and convening quarterly oversight committee meetings;
- document the use of restrictive procedures;
- limit the school personnel that my use a restrictive procedure based on their licensure;
- timely notify parents when a restrictive procedure is used on their child;
- hold a team meeting within 10 calendar days after a restrictive procedure is used on two separate school days within 30 calendar days or a pattern of use emerges, or at the request of a parent or the district, to: conduct or review a FBA; review data; consider developing additional or revised positive behavioral interventions and supports; consider actions to reduce the use of restrictive procedures; modify the child's education plan or BIP as appropriate; and review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedures, consider whether to prohibit that restrictive procedure, and document such in the education plan or BIP;
- consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child, if the district uses restrictive procedures on a child on ten or more school days during the same school year;
- only use restrictive procedures if: there is an emergency; it is the least intrusive intervention that effectively responds to the emergency; it is not used to discipline a noncompliant child; it ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity; staff directly observes the child when a restrictive procedure is used; and staff documents the use as soon as possible after the incident concludes.

Furthermore, since 2016 MDE has been charged with working to eliminate the use of seclusion. Effective the 2016-17 school year, MDE has collected seclusion data from school districts on a quarterly basis. Effective the 2019-20 school year, three school districts received grants funded by MDE's federal IDEA funds, each receiving approximately $15,000 annually, to implement evidence-based practices to reduce the use of restrictive procedures (commonly referred to as the Olmstead Local Improvement Grants).

Since 2021, via Stepwell MN, MDE has collected specific information from each school district on what is working for school districts to reduce the use of restrictive procedures and to address disproportionalities in the use of restrictive procedures and MDE compiles this qualitative data and includes it in the annual legislative

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higher settings, received funding (state legislative appropriation in the amount of $4,500,000) for FY17, FY18 and FY19 specifically to use for activities related to enhancing services to students who have challenging behaviors or mental health issues or suffering from trauma.

report; and MDE has compiled and reported out strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. This information may be found in the legislative reports, Appendix D. Legislative Reports. This information is also shared during restrictive procedures trainings conducted by MDE and is available on MDE's website Restrictive Procedures.

Finally, during the 2023 legislative session, Chapter 55 - MN Laws, standards for the use of restrictive procedures were revised to:

- clarify that the restrictive procedures statutory provisions apply to children with disabilities from birth until the child with a disability becomes 22 years old;
- add an additional responsibility to the oversight committee to quarterly review the use of restrictive procedures based on patterns or problems indicated by any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met;
- add a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion to the information required to be documented each time physical holding or seclusion is used;
- prohibit the use of seclusion on children from birth through grade 3 by September 1, 2024;
- clarify the restrictive procedures reporting requirement for districts by stating that any reasonable force used under sections 121A.582, 609.06, subdivision 1, and 609.379 which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion used by an unauthorized or untrained staff person; and
- urgently end the use of seclusion.

5. Conclusion

Based on Minnesota's cumulative efforts working to end the use of seclusion since 2016, the DOJ findings that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs; using eligibility criteria that effectively subject students with disabilities to discrimination; and failing to make reasonable modifications to avoid discrimination in school district programs; the ADA's integration mandate, and the IDEA's LRE mandate; and stakeholder engagement, MDE recommends Minnesota prohibits the use of seclusion on all children by September 1, 2026. A compilation of strategies and resources to assist school districts in reducing the use of restrictive procedures, may be found in Appendix D.

Attachment 1. Proposed change to Minnesota Statutes, section 125A.0942, subdivision 4:

Subd. 4. **Prohibitions.**

The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under chapter 260E;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso;

(10) prone restraint; ~~and~~

(11) the use of seclusion on children from birth through grade 3 by September 1, 2024; and

(12) the use of seclusion on all children by September 1, 2026.

Attachment 2. Appendix D of Legislative Report

Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2022-23 school year)

This appendix includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Federal Resources on Civil Rights Law and Disproportionality in the use of Restraint and Seclusion

In 2012, the U.S. Department of Education issued the Restraint and Seclusion: Resource Document outlining 15 principles to consider when examining the use of restraint and seclusion in schools, with an emphasis on preventing the need for restraint and seclusion, using only behavioral interventions that are consistent with a child's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all children and adults.

In 2016, the U.S. Department of Education, Office for Civil Rights (OCR), issued a Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities warning school districts that the use of restraint and seclusion may result in discrimination against students with disabilities and reiterating that there is no evidence that using restraint or seclusion is effective in reducing problem behaviors, noting that instead, research supports a positive approach that incorporates positive behavioral interventions, evidence-based positive classroom strategies, and trauma-informed care.

In January 2019, the U.S. Department of Education announced an initiative to examine the use of restraint and seclusion in the school setting, with a focus on providing technical assistance to support schools in understanding how Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA) inform the development and implementation of policies regarding restraint and seclusion and in January 2020, as part of this initiative, the Department released a webinar to explain how federal laws apply to the use of restraint and seclusion.

In July 2019, the U.S. Commission on Civil Rights issued Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, a report focusing on

exclusionary discipline policies and addressing nationwide data showing the disproportionate use of restraint and seclusion on students with disabilities, which may have an unlawful discriminatory effect on students of color with disabilities.

In April 2020, the U.S. Government Accountability Office (GAO) released a Report to Congressional Committees: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data report finding that the U.S. Department of Education's quality control processes for data it collects on incidents of restraint and seclusion are "largely ineffective" and recommending several changes to better detect problematic data in the Civil Rights Data Collection (CRDC), including that the Department expand its CRDC business rules to cover all school districts, identify and address factors underlying misreporting, and refine and clarify its definitions of restraint and seclusion.

In July 2020, the Children's Equity Project and the Bipartisan Policy Center issued a policy agenda titled Start with Equity: From the Early Years to the Early Grades that included data and research on "harsh discipline," including seclusion and inappropriately-used restraint, and its disproportionate effect on Black children and children with disabilities. The agenda recommended policy changes for all levels – Congress, federal agencies, states and school districts – including recommending that districts ban harsh discipline, ensure that young children never have negative interactions with SROs, and invest in systems supporting positive discipline and anti-bias approaches.

In October 2021, the U.S. Department of Education released a supplement to its ED COVID-19 Handbook on Strategies for Safely Reopening Elementary and Secondary Schools entitled Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs. The guidance emphasized that IEPs should "support children and students in each area of unique need—including educational, social, emotional, behavioral, and related areas—with high-quality and evidenced-based support" and "employ functional behavioral assessments to develop individualized BIPs for students whose behaviors interfere with their ability to access and benefit from the education program" instead of relying on "inappropriate disciplinary practices, such as corporal punishment, seclusion, and restraint that disproportionately impact children of color and children with disabilities" and programs with "little or no research to support their effectiveness."

On July 19, 2022, the U.S. Department of Education's Office of Special Education and Rehabilitative Services and the Office of Special Education Programs issued guidance on addressing disparities in the use of discipline for children with disabilities and the implementation of IDEA's discipline provisions in a Dear Colleague Letter on Implementation of IDEA Discipline Provisions . In addition, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision and Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders were issued to support state educational agencies' and local educational agencies' efforts to fulfill their obligations to appropriately meet the needs of children with disabilities.

On July 19, 2022, the U.S. Department of Education also released Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973, guidance describing schools' responsibilities under Section 504 to ensure nondiscrimination against students based on disability when imposing student discipline. Specifically, the guidance explains how compliance with

Section 504's requirement to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and that could lead to student discipline. By using Section 504's procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline. As the guidance explains, when schools do choose to administer discipline for students with disabilities, they must do so in a nondiscriminatory manner.

On March 23, 2023 the U.S. Secretary of Education, Miguel Cardona, released a guidance letter regarding the use of corporal punishment in schools in the United States. Included in the release was an infographic describing the current use of corporal punishment in schools. Secretary Cardona urged states that permit or practice corporal punishment in schools and educational settings to move swiftly toward condemning and eliminating it.

In March 2023, The US Department of Education also released Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates. This resource identifies five guiding principles and suggests actions schools and school districts can take to create inclusive, safe, supportive, and fair learning environments and lists federal resources to support these efforts. The five guiding principles are: 1. Foster a sense of belonging through a positive, safe, welcoming, and inclusive school environment; 2. Support the social, emotional, physical, and mental health needs of all students through evidence-based strategies; 3. Adequately support high-quality teaching and learning by increasing educator capacity; 4. Recruit and retain a diverse educator workforce; and 5. Ensure the fair administration of student discipline policies in ways that treat students with dignity and respect (including through system wide policy and staff development and monitoring strategies).

On May 1, 2023 the U.S. Department of Education's Office for Civil Rights (OCR) released its Annual Report to the President and the Secretary of Education for fiscal year 2022. The report includes a description of compliance reviews of three districts' use of restraint and seclusion to assess whether its use denied students with disabilities a FAPE.

In November of 2023, the U.S. Department of Justice released a School Resource Officers, 2019-2020 report. This report provides details on demographics and certification of school resource officers (SROs) by the type of law enforcement agency that employs them. It also describes law enforcement, mentoring, and teaching activities performed by the officers. The report discusses equipment typically carried and training received by the officers.

Also, in November 2023, the U.S. Department of Education's Office for Civil Rights (OCR) released New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic. The 2020-21 school year data showed "stark inequities in students' educational access throughout the nation and across civil rights indicators, including regarding courses and programs, school staff, and student discipline." Given OCR paused the collection of data due to the pandemic, the 2020-21 civil rights data collection (CRDR) is the first published since the 2017-18 collection which was related in 2020. The 2020-21 data contains information collected from over 17,000 school districts and 97,000 schools.

The 2020-21 CRDC details the following pertaining to restraint and seclusion:

- Approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion at schools.
- Boys, Black students, students of two or more races, and students with disabilities who received services under the Individuals with Disabilities Education Act (IDEA) were subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments.
    - Boys represented 51% of K-12 student enrollment, but 83% of students physically restrained, 82% of students mechanically restrained, and 82% of students secluded.
    - Black students represented 15% of the K-12 student enrollment, but 21% of students physically restrained, 42% of students mechanically restrained, and 19% of students secluded.
    - Students of two or more races were 4% of K-12 student enrollment yet accounted for 7% of students physically restrained and 7% of students secluded.
    - Students with disabilities who received services under IDEA represented 14% of K-12 student enrollment but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.

In an effort to combat the Improper Use of Seclusion in Schools the Educational Opportunities Section of the Civil Rights Division of the Department of Justice (DOJ) initiated investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the Americans with Disabilities Act, 42.U.S.C §§ 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Pt. 35. Title II provides that no "individuals with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by an such entity." In recent investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program, see 28 C.F.R. § 35.130(b)(1)(i); using eligibility criteria that effectively subjects students with disabilities to discrimination, see 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid discrimination in the school districts' program, see 28 C.F.R. § 130(b)(7). Specifically, the DOJ concluded that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.

The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities. For more information about the DOJ's work to combat improper seclusion of students with disabilities in public schools, read summaries of recent investigations, including press releases, notice letters, and settlement agreements. A summary of the *Action Steps from Settlement Agreements between the U.S. Department of Justice and School Districts Ending the Use of Seclusion* may be found on MDE's website Restrictive Procedures.

Potential Legislation Impacting the Use of Restraint and Seclusion in Schools

The *Keeping All Students Safe Act* has been annually introduced into the U.S. Congress since 2007.

Most recently, the Keeping All Students Safe Act was introduced into the 118th Congress S.1750 - 118th Congress (2023-2024): Keeping All Students Safe Act | Congress.gov | Library of Congress. This bill prohibits the use of seclusion and limits the use of physical restraint in schools and Head Start programs that receive federal funding. The bill prohibits the use of mechanical or chemical restraints or physical restraints that restrict breathing or are life threatening. The bill outlines the requirements for the use of physical restraint, including that the student's behavior must pose an imminent danger of serious physical injury to the student or other individual. Each state must ensure that a sufficient number of program personnel are trained and certified by a state-approved crisis intervention training program. Additionally, each program must establish procedures to follow after an incident involving physical restraint. Further, the bill establishes enforcement provisions, including a private right of action for a student who has been subjected to unlawful seclusion or restraint. The Department of Education and the Department of Health and Human Services must withhold payments from a program for unlawful seclusion or restraint. Finally, the bill requires state educational agencies to establish, implement, and enforce policies and procedures required by the bill. It also creates a grant program to assist state educational agencies with these activities.

State Resources on Restrictive Procedures Legal Standards

Restrictive Procedures Use in Schools: MDE provides training and model forms to assist Minnesota school districts in ensuring that restrictive procedures used in emergency situations are implemented safely and in accordance with the standards for using restrictive procedures found in Minnesota Statutes, sections 125A.0941 and 125A.0942. You can find more information on the use of restrictive procedures, including data collection, recent legislation, and other resources on the MDE Restrictive Procedures webpage.

- **MDE training sessions**. MDE offers interactive training sessions to school districts and other interested groups throughout the state. These sessions can be provided as online sessions or in person at no cost to participants. For more information or to request a training, please contact MDE's Division of Assistance and Compliance.
    - MDE's restrictive procedures training provides an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations, along with strategies that support reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionality in the use of restrictive procedures.
    - MDE offers a variety of training sessions on special education due process and the legal standards outlining the use of discipline in schools that support the reduction in use of restrictive procedures and can be customized to meet the needs of participants.

- **MDE model forms**. MDE posts model forms related to the use of restrictive procedures. The model forms outline the minimum compliance standards in a format that school districts can modify to meet their needs.

Partners in Policy Making: Thirty-five years ago, the Minnesota Governor's Council on Developmental Disabilities in the Department of Administration created Partners in Policymaking, a groundbreaking advocacy and leadership training program to give people with disabilities and their families the resources and skills to communicate effectively with elected officials. In today's political climate of radical change, we must work harder than ever to prevent the loss of basic rights for people with disabilities. The goal of *Partners in Policymaking* is to educate participants to be active partners with those who make policy. The idea is to develop partnerships that are based on positive relationships.

The Partners in Policymaking e-learning site gives participants the opportunity to increase knowledge and understanding of best practices in the disability field, and learn how to communicate effectively with their elected officials. Six online courses are now available at **PartnersOnlineCourses.com** to anyone who would like to increase their knowledge and skills.

Strategies Reported by School Districts in Narrative Responses

Beginning in the 2020-21 school year, as part of reporting annual physical holding data, school districts are asked to respond to two questions: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities? and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools?

The emerging strategies reported by school districts used to reduce the use of restrictive procedures in July 2022 included:[37]

- Staff training
    - Crisis Prevention Institute (CPI) and other similar training programs
    - Trainings focusing on de-escalation techniques
    - Trainings focusing on specific school and student behavior concerns

[37] Although this information is not currently paired with quantitative data from school districts, MDE does expect to be able to add this information to its analysis moving forward. MDE is currently able to report broad information regarding what districts reported has worked in their district, but in the future may be able to report whether districts that used a specific strategy actually experienced an increase or decrease in their reported restrictive procedures use. Likewise, because this information is new, it cannot be compared to previous years to identify patterns or determine pre-COVID-19 baselines. Further, because the information is summarized, overview information about district strategies and initiatives, it may not provide the more detailed information necessary to successfully replicate these strategies in other districts. For example, a district may have reported that providing time for staff collaboration was an important strategy the district employed that year, but the details of which staff attended meetings, the timing and agenda of the meetings, and the training staff received surrounding these meetings is not provided.

    - Benefit of onsite trainers, continued coaching, or other on-going training opportunities for staff
- Providing student supports
    - Functional behavioral assessments
    - Proactive and positive behavioral support plans
    - Behavioral intervention plans
    - Addressing sensory needs
    - Adding special education services
    - Adjusting schedules or programming
    - Developing relationships with staff
    - Incorporating social-emotional learning
    - Utilizing trauma-informed practices
    - Supporting mental health
- Staff collaboration and/or team meetings
    - Allowing for collaboration and/or troubleshooting a particular student's needs
    - Developing a consistent process for staff to debrief together following behavioral incidents
    - Involving parents, oversight committees, and IEP team members
- Strategic staffing
    - Using specific staff positions to address behaviors (i.e., behavior specialists, crisis teams)
    - Maintaining particular expertise on staff (i.e., contracting with a board-certified behavior analysist, social worker, or school counselor, behavior teams or crisis teams trained to respond to student behaviors)

Compilation of School Districts' Narrative Responses: 2022-23 School Year

In July 2023, 449 school districts and charter schools provided information on strategies they used to reduce the use of restrictive procedures within their district during the 2022-23 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.

Although some districts (about a third) did not provide information about the specific training they use, most districts provided more detailed information about their training curriculums. Of the districts that did provide specific information, about half of them indicated that they use Crisis Prevention Institute (CPI) to provide training. https://www.crisisprevention.com/. Some districts explicitly identified CPI's Verbal Intervention Training as an effective resource for their staff.

The use of programs other than CPI appears to be growing, with about 15 percent of schools reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or Professional Crisis Management (PCM), as compared to the 2021-22 school year. Districts reported using the following programs to provide training for their staff: ○

- Handle With Care - https://www.handlewithcare.com/
- Ukeru - https://www.ukerusystems.com/how-we-can-help/training/
- Professional Crisis Management (PCM) - https://crisisintervention.com/
- Life Space Crisis Intervention (LCSI) - https://www.lsci.org/
- Safety Care - https://qbs.com/safety-care-crisis-prevention-training/

Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysts, and mental health supports on their use of restrictive procedures.

Other Trainings and Resources Mentioned by Districts

BARR Program - https://barrcenter.org/
Coaching for Equity - https://www.brightmorningteam.com/
Reclaiming Youth at Risk (book) - https://reclaimingyouthatrisk.org/
Brih Design - http://www.brihdesign.com/
Catalyst Training - https://www.thecatalystapproach.com/
Nurtured Heart - https://nurturedheartinstitute.com/
Larry Thompson/Innovative Schools - https://innovativeschoolssummit.com/
Cradle to Career Education Summit - https://c2cmn.com/
Envoy - https://michaelgrinder.com/envoy/
Conscious Discipline - https://consciousdiscipline.com/
Move Mindfully – https://move-mindfully.com/
Boys Town - https://liftwithboystown.org/
Registered Behavior Technician (RBT Training) - https://autismpartnershipfoundation.org/product/rbt/
Safe Schools Platform - https://www.safeschools.com/
Brightworks - https://brightworksmn.org/index.html
PREPaRE Training - https://www.nasponline.org/professional-development/prepare-training-curriculum
Teach To Heal - https://www.daniellетheisconsulting.com/
Tough Kid Workshop - http://www.toughkid.com/
Dialectical Behavior Therapy training - https://www.aptmentalhealthtraining.com/
Zones of Regulation - https://zonesofregulation.com/training/
Olweus Bullying Prevention Program - https://olweus.sites.clemson.edu/
Top 20 Training - https://top20training.com/
Developmental Designs - https://originsonline.org/
Responsive classroom - https://www.responsiveclassroom.org/
Incredible Flexible You - https://www.socialthinking.com/
Prevent-Teach-Reinforce/Pyramid Model Training - https://challengingbehavior.org/
Multi-Tiered System of Supports Implementation Reviews - https://carei.umn.edu/

Utilize Trauma-Informed Practices

Trauma-informed training and practices emphasize physical, psychological, and emotional safety for students, families, and staff, and helps trauma survivors rebuild a sense of control and empowerment. Becoming "trauma-informed" means recognizing that people often have many different types of trauma in their lives. People who have been traumatized need support and understanding from those around them. Trauma-informed resources and practices used by school districts include Conscious Discipline, Trauma-Informed Care, Boys Town training, the Nurtured Heart Approach, Life Space Crisis Intervention (LSCI), information on Adverse Childhood Experiences (ACEs), and culturally-sensitive trainings.

- Districts continue to report that training staff to approach crises with empathy has had a meaningful

impact on students and staff, including decreases in the use of restrictive procedures and increases in staff retention.

- MDE also offers Responding to Tragedy and Trauma, a collection of resources for schools, families, and students on responding to crises and traumatic events.

Offer Consistent, Widespread Training and Support from Onsite Staff

In narrative responses collected by MDE, school districts frequently mentioned staff training as a strategy they used to reduce the use of restrictive procedures during the 2020-21, 2021-22, and 2022-23 school years. About three-quarters of districts mentioned training staff, with many specifically mentioning CPI and/or other trainings focused on de-escalation.

Districts also reported that maintaining specific expertise on their staff is critical to ensuring they have well-trained staff and consistent implementation of programs, particularly through targeted training and other ongoing learning opportunities for staff. Districts have reported that using Board Certified Behavior Analysts (BCBAs) or other on-staff trainers to assess skills, provide best practices, and target key areas of skill development for students and staff generally led to students spending more time receiving instruction as well as decreases in challenging student behavior and staff injuries. These districts reported that training all staff, including paraprofessionals, to implement tools consistently and creating time for teams to plan and problem-solve has been critical to successful implementation of programs.

Emphasize Social Emotional Learning for Students

Social emotional learning (SEL) is "the process through which young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions."[38] According to the Collaborative for Academic, Social, and Emotional Learning (CASEL), "SEL advances educational equity and excellence through authentic school-family-community partnerships to establish learning environments and experiences that feature trusting and collaborative relationships, rigorous and meaningful curriculum and instruction, and ongoing evaluation" and "can help address various forms of inequity and empower young people and adults to co-create thriving schools and contribute to safe, healthy, and just communities." Developing such competencies in students fosters positive social skills, reduces conduct problems, diminishes emotional stress, and improves academic performance.[39]

- Districts report that focusing on programs that explicitly teach students prosocial behaviors and

[38] CASEL. Fundamentals of SEL – CASEL (Dec. 2021) (last accessed Jan. 3, 2023).

[39] Greenberg, Weissberg, O'Brien, Zins, Fredericks, Resnik, Elias. "Enhancing school-based prevention and youth development through coordinated social, emotional, and academic learning" (2003) American Psychologist: 58, 466-474; Durlak. "The impact of enhancing students' social and emotional learning: A meta-analysis of school based universal interventions" (2011). Child Development, 872 (1), 1-29.

emotional regulation has strengthened positive staff and student relationships, contributed to reductions in the use of restrictive procedures, and increased student capacity for academics. Further, several districts reported that compensating staff for intentionally integrating SEL into core academic curriculum has furthered staff's depth of understanding and ability to confidently implement the skills learned in staff development trainings.

- Connecting Social and Emotional Learning (SEL) to Professional Growth
  Developed in partnership with the Midwest Comprehensive Center at American Institutes for Research (AIR), this webinar reviews SEL, why it is important and practices that promote SEL. During the webinar, Nicholas Yoder, researcher and technical assistance consultant at AIR, describes the important connection between SEL and school climate, and helps the audience develop an understanding of the coordinated school climate and SEL effort to implement in schools and districts.

- Social and Emotional Learning Implementation Guidance is meant to help schools integrate SEL into school-wide teaching and learning practices so that students will learn, practice, and model essential personal life skills that contribute to academic, vocational, and personal success. Integrating SEL into school helps students learn to be caring and civil, make healthy decisions, problem-solve effectively, value excellence, be respectful and responsible, be good citizens, and be empathic and ethical individuals.

- Integrating Social Emotional Learning into Academics
  This webinar focuses on integrating SEL into academic content. SEL is an evidence-based school climate improvement practice. During this webinar, school staff, superintendents and district and school leaders will receive information on how they can best lead and support integration of SEL into the school day.

Improve Referral Processes, Debriefing Meetings and Individualized Data Reviews

In narrative responses, about a third of districts explicitly mentioned time for staff collaboration and/or team meetings as an effective tool to reduce the use of restrictive procedures. Many districts reported the importance of regular team meetings, to allow for collaboration and/or troubleshooting a particular student's needs, as well as developing a consistent process for staff to debrief together following behavioral incidents.

- Districts report that the development and implementation of new procedures to address student behaviors, including procedures for office referrals and more formal debriefing meetings following incidents, have contributed to a reduction in the use of restrictive procedures. Some districts implemented a more formal process to refer a student to a behavior interventionist or other specialist, while other districts successfully implemented a team meeting process to address individual student behavior and allow opportunities for staff to process their emotions concerning a recent behavior event. Further, districts report that better data collection tools and processes have increased their ability to support students and have reduced their use of restrictive procedures.

- The Oversight Committee Model Agenda and Companion Guide are offered as support for program, school, and district oversight committee meetings to increase efficiency and effectiveness in collaborative discussion and decision-making on the use of restrictive procedures with the goal of reducing the use of restrictive procedures. These documents are meant to be revised and adjusted to meet the needs of the district. They are a work in progress and we encourage users to offer feedback

and suggest improvements. Please submit feedback to MDE's Division of Assistance and Compliance or by calling 651-582-8689.

- Minnesota Multi-tiered System of Supports Framework
  This document provides a description of the essential systemic components of MnMTSS and how these interact, including universal screening, data-based decision-making, evidence-based, tiered instruction and interventions, progress monitoring, leadership behaviors, beliefs and dispositions of educators and staff, community involvement, and culture/climate context.

    - MnMTSS Overview Part I (PPT)
      This webinar slide deck will provide an overview of the MnMTSS as a systemic foundation for addressing inequity and improving outcomes for all students in Minnesota and for reaching the Collaborative Minnesota Partnerships to Advance Student Success (COMPASS) goal of accelerating student learning by meeting academic, social-emotional, and school climate needs. Content will include the Minnesota context for development of this framework, the rationale for implementing MnMTSS, and some of the typical implementation challenges.

    - MnMTSS Overview Part II (PPT)
      This session will introduce the subcomponents of the MnMTSS framework that serve as the essential foundations necessary for implementing the COMPASS academic, social-emotional and school climate work. Participants will also be provided with Level I of the District and School Self-Assessment tools that will be used to measure current level of district or school implementation in the essential foundations.

Focus on Relationship Building

Strong relationships with teachers and school staff can enhance students' level of motivation and promote learning. Students who have access to strong relationships are more academically engaged, have stronger social skills, and experience more positive behavior.

- Restorative practices are drawn from the traditions of Indigenous people and communities of color around the world. They are grounded in a belief that people are profoundly relational, interconnected and inherently good. Restorative practices include ways of creating community that honor the importance of relationships amongst all members in the community, as well as practices to repair relationships when harm has been caused. Restorative practices address the needs of all people impacted by the harm. By using restorative practices in the school, people get to know one another and build relationships with each other, which are key elements to learning, bullying prevention, and creating a positive school climate for students and adults. Key principles guide the practices.

- The BARR (Building Assets, Reducing Risks) Center Model
  In this webinar, presenters discuss Building Assets, Reducing Risks (BARR). BARR is a strengths-based model that provides schools with a comprehensive approach to meeting the academic, social, and emotional needs of all students. BARR uses eight interlocking strategies that facilitate real, meaningful relationships between adults and students. The BARR model allows teachers to focus on building relationships with students to access their strengths and areas for growth.

- Person-Centered Practices

  Person-centered practices are a continuum of strategies and activities that support the informed choice of students and families to make or have input into both major transitions and everyday life decisions. Person-centered practices focus on the interests and needs of the person receiving instruction or support. They emphasize each person's strengths and dreams rather than weaknesses or deficits. Person-centered principles and practices can help assure that people with disabilities have the same rights and responsibilities as other people, including having control over their lives, making their own choices and contributing to the community in a way that makes sense to the person.

  Ten Suggestions for Adding Person-Centered Features in IEPs AND Person-centered Interagency Individualized Education Program (IEP) sample facilitator actions

  These documents provide recommendations of good practices that are not required, but can be helpful to increase student and family engagement in the IEP planning process. Use this document to add person-centered features that may support students to:

  - Have more control over their lives.
  - Make more of their own choices.
  - Contribute to their school and community in a way that makes sense to them

- Person-Centered Thinking®
  For people supported with services, it is not person-centered planning that matters as much as the pervasive presence of Person-Centered Thinking® (PCT®). PCT® begins with learning *both* what is "important to" a person and what is "important for" a person and the balance between them. PCT® skills help people describe both how they want to live, and a reasonable balance between the components of "important to" and "important for" in their lives. As the core PCT® concept, this balance is at the center of both planning and practice.

  Person-Centered Thinking® training has been made available to educators in Minnesota since April 2018. For more information contact the Person-Centered Practices in Education Leadership Team (MDE.Person-Centered@state.mn.us).

- Teacher-Child Interaction Training – Universal (TCIT –U) is a professional development, train-the-trainer-model, designed to strengthen teacher-child relationship skills.

Implement Positive Behavioral Interventions and Supports

Positive behavioral intervention and supports as defined in Minnesota Statutes, section 125A.0941 are interventions and strategies to improve the school environment and teach children the skills to behave appropriately. The State of Minnesota has had a longstanding policy encouraging the use of positive approaches to behavioral interventions. Specifically, Minnesota Rules, part 3525.0850 provides: "The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities."

- In narrative responses, about half of the districts reported using strategic supports to meet student needs and reduce the use of restrictive procedures. Many referenced supports that are required by state and federal special education law, like functional behavioral assessments (FBAs), positive behavior support plans (PBSPs), BIPs, or similar proactive, positive behavioral supports for students. Other student supports that districts reported included planning for sensory needs and developing relationships with staff.

- Online training from MDE includes three online training modules for statewide use that provide positive strategies for school district staff to use with students with disabilities, including students with ASD, complex emotional or behavioral disorders, and complex learning needs. These stand-alone modules and supplementary documents are designed for school districts to use in independent staff training.

- PBIS implementation is a state-initiated project that provides districts and individual schools throughout Minnesota with the necessary training, coaching, technical support and evaluation to promote improvement in student behavior across the entire school, especially for students with challenging social behaviors. PBIS school teams establish clearly defined outcomes that relate to students' academic and social behavior, systems that support staff efforts, practices that support student success and data to guide decision-making. Information is also available about the federal implementation of PBIS.

    - Restraint and Seclusion (R/S) Alternatives in All States and Territories: A Review of Legislation and Policies, August 2021.

    - Systematic Literature Review of Tier 1 PBIS Implementation in Alternative Education Setting.

    - Center on PBIS "5-Point Intervention Approach for Enhancing Equity in School Discipline" outlining a 5-point multicomponent approach to reduce discipline disproportionality in schools: 1) collect, use, and report disaggregated discipline data; 2) implement a behavior framework that is preventive, multi-tiered, and culturally responsive; 3) use engaging instruction to reduce the opportunity (achievement) gap; 4) develop policies with accountability for disciplinary equity; and 5) teach strategies for neutralizing implicit bias in discipline decisions.

    - Additional materials on the topic of PBIS and equity outlining how equity-focused strategies in action plans achieve more equitable outcomes for all student groups using a multi-component approach.

    - "Establishing Preliminary Evidence for Culturally Responsive PBIS: The Personal Matrix Activity" recording.

    - Additional information about PBIS and aligned initiatives recording.

    - Additional information on PBIS to support students with disabilities.

- **Behavioral intervention plans (BIPs)** are typically developed following a FBA. An FBA can identify the combination of antecedents (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the problem behavior and guide the development of a BIP. A complete BIP should describe

strategies for: 1) addressing the characteristics ofthe setting and events, 2) removing antecedents that trigger the problem behavior, 3) adding antecedents that maintain appropriate behavior, 4) removing consequences that maintain or escalate the problem behavior, 5) adding consequences that maintain appropriate behavior, and 6) teaching alternative appropriate behaviors, including self-regulation techniques, to replace the problem behaviors.

    - Behavior Specific Praise: Implementing, Coaching, and Measuring the Impact of this Simple yet Specific Strategy: Dr. Benjamin Riden, Ph.D., BCBA-D, James Madison University, and Dr. Andy Markelz, Ph.D., Ball State University; implementing and measuring behavior specific praise for specificity, contingency, and variety.

- **Collaborative & Proactive Solutions (CPS)** is the model of care Dr. Greene originated and describes in his various books. The CPS model is based on the premise that challenging behavior occurs when the demands and expectations being placed on a kid exceed the kid's capacity to respond adaptively.

Use Effective De-escalation Techniques

Adult responses to student behavior can serve to either escalate or de-escalate a student's behavior. Adults may not always be aware of how their own behavior may inadvertently escalate the behavior of a student they are trying to support, even as they do their best to ensure student safety and uphold classroom and school expectations. When adults use effective de-escalation techniques as a student's behavior is becoming more intense, they have a unique opportunity to prevent intense behavioral responses or other student behavior that can lead negative consequences, including the use of restrictive procedures on students.

- Strategies for De-escalating Student Behavior in the Classroom provides practical, research-based strategies educators can use to de-escalate challenging student behavior in the classroom. Despite the development of supportive, safe, and predictable school environments, students may, at times, become agitated, and their behavior may escalate to unsafe levels. With some advance planning, educators can reduce reliance on reactive strategies, such as punitive or exclusionary practices (e.g., restraint, seclusion, suspension, expulsion) in favor of safer, more instructive, and inclusive approaches.

- Prevention and De-escalation of Intense Behavior Responses: What Adults Can Do from the Wisconsin Department of Public Instruction provides strategies and resources for understanding effective ways to de-escalate student behavior and support prosocial replacement behavior that is critical skill for adults to understand and consistently use.

Support Mental Health

- Children's Mental Health Division of the Minnesota Department of Human Services (DHS) administers policy and practice to ensure effective and accessible mental health services and supports for children and families in Minnesota. The division works together with many public and private partners across the state so that children and youth with mental health needs can develop and function as fully as possible in all areas of their lives. DHS is committed to making sure the right services are available at the right time for children with mental health needs and their families.

    - School-Linked Mental Health Services

- Children's Mental Health Crisis Response Services (CRS)
    - Crisis Text Line offers free help for those who are having a mental health crisis or are contemplating suicide. Services are available 24/7 across Minnesota. **Text "MN" to 741741.**
    - **Call **CRISIS (**274747)** from a cell phone to talk to a team of professionals who can help you.

- Mental Health Education in Schools
  From the National Alliance on Mental Illness (NAMI), this document includes age-appropriate model learning activities, best practices in mental health education, and resources for planning and implementing of age appropriate mental health curriculum and instruction (per Minn. Stat. 120b.21 [2022]).

- Responding to Tragedy and Trauma is an MDE webpage that identifies many resources to help educators respond to racism, violence, and trauma in ways that support students.

- Coping with Crisis Website: The Minnesota Department of Human Services offers Minnesotans resources for dealing with crisis and maintaining mental and physical health.

Other Resources

- COMPASS (Collaborative Minnesota Partnerships to Advance Student Success) is a statewide education system created through a collaboration between MDE, Minnesota Service Cooperatives and Regional Centers for Excellence. COMPASS Pathways are now available for six topics. COMPASS Pathways offer a variety of resources, evidence-based practices and facilitated guidance in formats that work best for schools. Types of pathways will vary by the topic, but may include on-demand learning, cohort learning groups or a hybrid of on-demand resources and cohort learning groups. Learn more about the topics below:

- Student Maltreatment Program at MDE assesses and investigates reports of alleged physical abuse, neglect, or sexual abuse of students that occurs in Minnesota public schools and charter schools. This includes allegations of maltreatment involving students 18-21 years of age, including students receiving special education services, up to and until graduation and the issuance of a secondary diploma.

- Minnesota Ombudsman for Mental Health and Developmental Disabilities (OMHDD) promotes the highest attainable standards of treatment, competence, efficiency, and justice for persons receiving services for mental illness, developmental disabilities, chemical dependency, or emotional disturbance. The OMHDD is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials, who investigates, and if the complaints are justified, takes action to remedy the complaints. Visit its website for more information, or to file a complaint by contacting your regional ombudsman.

- The Hexagon Tool can be used by communities and organizations to better understand how a new or existing program or practice fits into an implementing site's existing work and context.

Attachment 3. Engagement Efforts with Stakeholders.

In summer 2023, MDE identified methods to effectively engage with the various perspectives outlined in the legislation. MDE staff met with existing advisory groups and conducted a survey to gather insights and input.

Opinions on use of seclusion range widely. As further described in this summary, some individuals are in favor of ending the practice immediately for all ages and settings, and some are concerned that ending seclusion will have negative consequences.

MDE's methods were designed to gather relevant information in a relatively short amount of time. The information presented in this summary should not be viewed as being representative of all individuals in the various perspectives and disciplines outlined in the legislation. Additionally, it is possible that specific individuals provided input more than once via the different engagement modes (in the survey, for example, several response patterns were remarkably similar). Even with these caveats, MDE can reasonably use this information to understand current issues and perspectives.

The table below summarizes MDE's engagement of the required perspectives, by mode: the Special Education Advisory Panel (SEAP), the Restrictive Procedures Workgroup (workgroup), and an open survey. Categories with an "X" participated in discussions or surveys. (The workgroup includes representatives of school boards and county social services, but those members did not directly provide input as part of this process.)

Stakeholder perspective	SEAP	Workgroup	Survey
Parents of students who have been secluded or restrained	X		X
Advocacy organizations	X	X	X
Legal services providers		X	X
Special education directors	X	X	X
Teachers	X	X	X
Paraprofessionals		X	X
Intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2		X	X
School boards		represented, did not provide specific input	X
Day treatment providers		X	X
County social services		represented, did not provide specific input	
State human services department staff	X	X	
Mental health professionals		X	X
Autism experts		X	X

Stakeholder perspective	SEAP	Workgroup	Survey
Representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities	X	X	X

1. SEAP Engagement

As described on MDE's website, "The Minnesota Special Education Advisory Panel (SEAP) provides guidance to the Minnesota Department of Education (MDE) with respect to policies on special education and related services for children and youth with disabilities in Minnesota. The federal Individuals with Disabilities Education Act (IDEA) establishes SEAP and outlines its duties. Members are appointed by the governor's office through the commissioner of education. Advisory panel members include parents/guardians, individuals with disabilities, educators, teacher trainers, advocates, special education administrators, and staff from our agency and other state agencies to bring diverse perspectives together to make recommendations on special education issues."

At the September 2023 SEAP meeting, MDE shared an overview of existing law and data on use of seclusion and other restrictive procedures, and SEAP members asked questions and shared observations. Members asked questions and discussed their observations about the data, including surprise that data is not collected for students without disabilities, surprise about data for 6-10 year olds, and curiosity about how data is used within districts.

MDE asked the group to respond to several questions in small groups via an online whiteboard. MDE left the whiteboard open for additional comments for several days after the meeting. The information below is a summary of the notes from the whiteboard.

Where and how can Minnesota build upon its success in reducing the use of restrictive procedures and eliminating seclusion? Member ideas and input included:

- Training and development for general education teachers, including de-escalation strategies, crisis prevention, alternatives to restrictive procedures and seclusion, special education field experience, and empowerment to teach students with disabilities.
- More inclusive services and classrooms, more dual trained general education and special education professionals.
- More training and resources for special education paraprofessionals and teachers; pay increases for these positions.
- Specific topics for training and development, such as how trauma impacts behaviors, greater emphasis on fostering belonging, and the history of disability.
- Full education team buy-in to prevention and de-escalation approaches (including general education teachers, special education, paraprofessionals, psychologists, leadership).
- Use of behavior analysts to develop behavior interventions for students experiencing seclusion.
- Easier access for children to have aids from external agencies in schools to assist with their day-to-day needs.

What barriers are there to implementing that expansion? Member ideas and input included:

- Need for resources in the classroom to de-escalate and be proactive.
- Workforce issues, such as staff turnover, staff shortages, need for additional teacher support, and challenges with paperwork.
- General education teachers' belief that they are not qualified to teach students with an IEP.
- Funding in general, and funding philosophy in particular (funding special education as a place instead of a service)

What new resources are necessary for increasing staff capacity, staff training, children's supports, child mental health services, and school-wide collaborative effects would you recommend for urgently ending seclusion in Minnesota schools? Member ideas and input included:

- Sufficient trained staff to proactively anticipate and react to what is happening with the student.
- Broad-based training in trauma-informed care for teachers and teacher aides.
- More specialized staff to meet student needs, including BCBAs, Check & Connect staff, school social workers, and school-based mental health service providers.
- More capacity building, more outreach to a diverse workforce.
- More direct funding to schools to support increasing teachers pay, training, and mental health services within schools.
- Identify systemic ways to help schools capture parent wisdom to eliminate seclusion for their child.

What recommendation would you give for specific dates for ending seclusion by grade or facility? Member responses to this question:

- Today
- Mandate all staff training and eliminate immediately after

2. Restrictive Procedures Workgroup Engagement

As described on MDE's website, "The Restrictive Procedures Workgroup is an advisory workgroup established as a way for MDE to consult with interested stakeholders in developing a statewide plan to reduce the use of restrictive procedures and to provide an annual report to the legislature…Interested stakeholders are statutorily identified to include representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts."

MDE engaged with workgroup members in several ways in fall 2023: a discussion at the September 2023 workgroup meeting, a follow-up survey, a December drop-in office hour, and email discussions. Workgroup members shared their perspectives and expertise, summarized here.

The summary below is based on notes from the workgroup meeting and responses to the follow-up survey. Example comments are from the survey. Readers should not infer proportionality or intensity of sentiment based on the order or presentation of groupings below—information is presented so that readers can review the range of perspectives from the experts and advocates involved in the workgroup. These do not represent consensus views of the Workgroup—MDE sought the full range of opinions from members.

Setting-specific concerns: Members described the different challenges and needs within federal settings, with some noting that setting is more relevant than grade-level when considering a transition plan to end seclusion. Some members from setting IV programs expressed concerns with ending seclusion, or ending seclusion in the near term. Students in setting IV programs have more intense needs, they noted. An example:

> *I do agree that we should not be using seclusion in our traditional school sites. I do think there times that within our setting 4 sites this is the only option to ensure safety of both the student and staff. We often find our* setting *4 sites serving students that have been denied programming at higher levels of care because of their intense needs. School do not have the option to deny service. We must serve ALL students. Many times these students come with extensive history of trauma and abuse. There are times using a restrictive procedure is what is needed. There are other times we create a more unsafe situation by touching the child and they need a safe secure place to work through the behavior or emotional response they are having.*

Clarity needed: Members discussed areas where clarity would be useful in the definition and interpretation of "seclusion," with some noting that there are specifics and nuances to what is/isn't "seclusion" and that there may be different interpretations of law and practice. Specific issues included the use of pads, personal protective equipment, and breakout spaces.

Time and resources to implement: Members discussed the need for time and resources to end seclusion, particularly for training staff and providing additional supports for students (specific areas are described further below).

Student-focus/voice: Members discussed the importance of student and family voices, with some emphasizing that listening and engagement needs to be a real a real part of the process, not just a compliance check. Some described the importance of learning from adults with disabilities as part of the process. An example comment:

> *I feel like I have mentioned this many times, but there is so much to be learned from adults with disabilities about co-regulation, about spoon theory, about cup-theory, about how to support students with sensory differences, about collaborative problem solving, but yet that is rarely, if ever, part of the conversation.*

Workforce issues: Members discussed workforce issues related to ending seclusion such as ongoing staffing shortages, time and resources needed for training, and supports needed for staff safety and well-being. Specific ideas or issues included:

- More paraprofessionals are needed, and certificate or credential programs would be valuable.
- Mentoring, training, adult mental social well-being and supports are needed so that students and kids and adults can reset and repair.
- Ability to sustain practices is impeded by staff shortages and difficulty bringing people up to speed due to high turnover rates.
- Staff that work with students who exhibit aggressions towards others should be paid more than others, due to the risk they face when they go to work every day.

- Class sizes in center-based programs should be smaller so that students with special needs can get more individualized support and attention.

An example comment:

> *Schools are currently experiencing a staff shortage and do not have staff with adequate training. Staff mental health and the ability to offer needed services are challenges. There are currently many students who require a setting IV program but are not receiving educational services at a school due to staffing shortages. Students are being served via home-based options or as part-time students. If we are not purposeful in how we work to end seclusion, I fear that more students will not be able to safely have their educational needs met within a school setting.*

Mental health services: Members discussed lack of mental health services as a challenge to ending seclusion. Some noted the waitlist for mental health services, and that there are "significant lack of mental health supports for students outside of the school system (schools can't do it all)." Some urged MDE to advocate for additional mental health services beyond school systems, and some noted the complicating factor of DHS requirements regarding day treatment programs (leading to closure, they report).

Unintended consequences: Members discussed potential unintended consequences for ending seclusion entirely, such as the potential for increased physical holding/restraints or calls to law enforcement, which could in turn lead to additional injuries to staff or students and potential trauma for students and staff. Some indicated that ending seclusion could result in shortened or lost school days, placement in a more restrictive setting or homebound schooling, or out of state placement. Some described potential solutions and mitigations would take time to plan and implement. An example comment:

> *Students may need to be in a more restrictive setting if seclusion is not an option, or have their days shortened. School staff may need to access community crisis supports (police, mental health crisis teams) sooner, and those community resources will need to shore up their available staffing/resources.*

Culture change: Members described the culture change that will be required to end seclusion, with some noting that training and development should go beyond legal compliance and should focus on relationship building and culture change. Example comments:

> *I think what we really need to talk about is not the change in the law, but a change in culture that has to happen in order to view secluding and restraining students as something schools simply should not do. So many of our conversations focus on how not to get sued. So few of our conversations focus on how to avoid situations where students are melting down and losing control in the first place.*
>
> *If we want to eliminate the use of seclusion successfully and not have it replaced by more restraints or more calls to law enforcement, then we need to focus the discussion on how to support students so they are not finding themselves in situations where seclusion or restraint are deemed necessary. - our district has already ended seclusion- I think school leaders supporting*

this change is critical, more training to show these procedures are ineffective, can be dangerous, and are another predictable pattern of disproportionality is needed.

Other specific approaches or issues: During discussions, some members highlighted specific approaches that could be valuable:

- Training regarding trauma and mental health.
- Ukeru helps keep staff calmer as they feel safer.
- Disability awareness training for staff.
- Focus on strong planning – IEPs, intervention plans.
- ABA therapies in schools [but note divergent perspectives on what might be beneficial or harmful].
- Use of a weekly debrief with administrators—in general education as well as special education.
- Additional expertise at the state level to provide support to districts in working toward this legislative requirement.
- Suggestion for MDE to do site visits to schools using seclusion due to size or aggression of students so that MDE can partner in developing solutions.
- Suggestion for MDE to report on more districts that have lower restrictive procedures so that similar districts can learn from each other (beyond written review of results).

3. Open-link Survey

MDE designed a brief survey to gather input from interested individuals. MDE distributed the survey link in MDE's Special Education Updates in November and December 2023. MDE also distributed the survey to PACER (Minnesota's parent training and information center) and the Minnesota Disability Law Center (Minnesota's designated Protection and Advocacy System) even though both organizations are represented on the workgroup. MDE encouraged workgroup members, PACER, and the Minnesota Disability Law Center to distribute the survey as well. In all, MDE received 176 responses to the survey. Since the survey link was open to anyone, MDE cannot say with certainty that there are no repeat responses in this data set (indeed, several responses were remarkably similar, suggesting either individual repeats or organized responses).

Survey Responses: The survey asked respondents to self-identify their perspective from the list outline in legislation. Respondents could select more than one option from the list. The majority of survey respondents were school district employees. The list below is ordered by the relative number of respondents who self-identified as one of the offered categories.

- Teacher
- Intermediate school district employee
- Special Education Director
- Parent of a student
- Special Education Cooperative employee
- Paraprofessional
- Autism expert
- Mental health professional
- Person with a disability

- Parent of a student who has been secluded/restrained at school
- Member of an advocacy group
- Person of Color
- Legal services provider
- School board member
- Day treatment provider

Some respondents offered specific roles in the "other" category offered by the survey. These included, in alphabetical order:

- ABS- ASD case manager
- Administrator
- Assistant Director of Special Education
- BCBA
- BCBA, MA in Counseling, employed by both an Intermediate district as well as single district
- Behavior Analyst
- Board Certified Behavior Analyst
- Building Administrator
- Certified Medical Assistant
- CNA health office
- District School Psychologist
- EBD Special Education Teacher
- Elementary School Principal
- Setting 3 in elementary
- Immediate family member of intermediate special educator
- Licensed EBD, ASD & Certified Traumatic Stress Studies
- Occupational Therapy Assistant
- Parent of a student of color
- PCA
- Principal
- Professor of Criminology
- School psychologist
- School social worker
- Setting 4 Building Principal
- Site Administrator for a setting 4 program
- Special Education Assistant Director
- Special Education Coach
- Special Education Coordinator
- Special Education Program Supervisor
- Special Education Teacher
- Supervisor of a Federal Setting IV program

Survey Summary: This summary provides an overview of responses to the survey. MDE continues to review the detailed responses to identify valuable information for future efforts. Information is summarized qualitatively, without counts or specific proportions—this is especially appropriate in this survey because of the possible duplication of responses.

Perspectives on urgently ending seclusion: The survey asked respondents: *The use of seclusion on children from birth through grade 3 will be prohibited in schools as of September 1, 2024. As we continue to move forward in urgently ending the use of all seclusion in schools, what ideas do you have for a timeline for ending seclusion by grade level? By type of facility (eg. federal setting, type of school)? Please include information that supports your recommendation.* Broadly, response patterns are:

- The largest proportion of respondents had setting specific recommendations, typically that seclusion should **not** be eliminated in setting 3 and 4.
- The next largest proportion of respondents expressed opposition to ending seclusion, typically strong opposition.
- Some respondents urged MDE to delay ending seclusion until more information or resources are available.
- Some respondents indicated that seclusion should be eliminated immediately at all levels.

Common themes included:

- Support for seclusion as an option in high-intensity behaviors (federal setting 3 and 4): Advocacy for maintaining seclusion in setting 3 and 4 programs due to the complex needs and safety considerations for students and staff, especially in cases of high-intensity behaviors.
- Specific concerns for level 4 programs and grade-level exceptions**:** Emphasis on unique challenges in setting level 4 programs, recommendations for exceptions for specific grade levels, and considerations for the complexity of behaviors in older students.
- Concerns and opposition to ending seclusion**:** Expressions of concern and opposition to completely ending seclusion, citing safety risks, especially in settings with intense externalizing behaviors. Some proposed alternatives and training instead.
- Trauma and mental health impact concerns: Concerns about the potential trauma and mental health impact on students if seclusion is abruptly ended, emphasizing the need for careful consideration, alternative strategies, and trauma-informed approaches.
- Need for gradual phase-out with comprehensive training and support: Recommendations for a gradual phase-out with a well-planned timeline based on comprehensive training programs and additional resources to support staff in managing students' behavioral challenges effectively.
- Advocacy for nuanced approach, evaluation, and disability/trauma education**:** Proposals for a nuanced approach, case-by-case evaluation, and the importance of disability and trauma education for teachers. Highlighting the need for flexibility based on individual behavior plans.
- Concerns about staff turnover and burnout: Worries about potential staff turnover, burnout, and challenges in maintaining a safe learning and work environment. Calls for careful consideration and monitoring of indicators like staff injuries, physical holding, and police calls.

Illustrative comments: The comments below highlight some of the specific perspectives shared by survey respondents. They should not be viewed as representative.

The use of seclusion in general education schools should end. BUT the use of seclusion in federal setting 4 programs should be re-evaluated. I work in a intermediate district, a self-contained school, with students with diagnoses of ASD and DCD. Although a high school/transition school, the developmental level of our students is between 2 years old-3rd grade. The behavioral levels of these students paired with the size of the students, makes behavior response a large part of the job. We are already using all the proactive measures, TCIT, relationship building, and we still see physically aggressive behaviors that injure at least 2 staff each year. These staff do not get replaced because hiring in education is at an all time low. If you remove seclusion as a last resort for our school to use when imminent harm is obvious, our students will then move to home bound schooling.

I believe MDE should at least consider exclusions. Special education means we provide every student with individualized plans to support their education. Why would we think a blanketed legislation is effective when talking about special education as a whole. Our level 4 program exists because we have to be even more individualized with how we work with our students. At the very least, we should be an exception to the legislation and allowed to continue to utilize seclusion as a tool to effectively support of student and promote safety for all.

My son was secluded in a closet when he could not regulate his emotions. This only served to cause him to become much more deregulated. When he was placed in alternative settings - the seclusion completely ended because they had more of the resources needed to deal with disregulation. Mainstream schools do not have the space, the professional skills, the empathy, the raw availability needed to deal with this so seclusion becomes the easy near term band aid that only caused the problem to grow. My experiences are from the Hopkins school district in 2007-2013 timeframe.

I work in Rochester Public Schools. Only our Setting 3 and 4 classrooms have seclusion rooms. I would love for the people who are making this decision to come and work in these settings for 5 days, so see the need for seclusion. We are not taking seclusion lightly in Rochester, and I would like you to see that for yourselves. We have young students who are hurting staff and students EVERY DAY. What would you like us to do with them? Do you want to be the one to call the parents of the students who are being hurt every day and explain this to them?

I would like to see it ended for all grades at all schools immediately. There is excellent research on how children/people with emotional regulation issues NEED CO-regulation which means they need a person with them to help them regulate and seclusion means no people and restraint triggers fight/flight more. It is also punitive and more leads to the school to prison pipeline as these situations escalate students, not calm them down, not educate them, not teach them how to regulate in a healthy manner.

[T]he data on the number of disabled students that end up in juvenile and adult detention because they are targeted early and often (research shows it begins in preschool) and especially if they are also students of color. Yes, some may be more likely to be impulsive and some may have lower thresholds for frustration and lack emotional regulation skills, but they are faced daily with being behind their classmates and unable to keep up with the other kids, so they continually face degradation ceremonies at school where they are called out, punished, etc. I remember one time going to my son's school party and other moms telling me that they had all heard about my son and things the teachers had said about my son. One teacher mocked his stutter in front of the whole class and faced no disciplinary action and my son was harassed by those peer for two years more until he left there. That teacher also purposely pushed him past his tolerance level so that he would flip out so she could get rid of him for the rest of that day or other days. He wasn't even being disruptive, he just wasn't participating and would just read his books because he was ashamed he couldn't do the math. This type of shaming and then exclusion needs to end. And she tried to restrain him when he went to escape and then and only then did he get physical and then this escalated his punishment. This school was determined to get him hospitalized and punished severely. Amazingly, he goes to another school and has none of those issues and is considered a good kid. There they sent kids to work on their emotional regulation and problem solved the issue with a trained person and then they went back to class. Guess what? It worked! We have the knowledge, we need to make every school and every teacher and every para and every administrator learn the current research.

I believe ending seclusion needs to be re-evaluated due to the concern for staff and student safety when engaging in a child hold during a crisis situation. Becoming hands-on is always a last resort after several interventions and practices have been utilized and fail. In my experience as a Setting 3, EBD teacher, putting student's in team control holds or individual holds is very challenging and feels more detrimental to staff and students' mental health. In many cases, an adult putting their hands on a child is more triggering and traumatizing versus being in a separate, safe, space such as seclusion. I truly believe it all comes down to building strong relationships with students and knowing them and their triggers. I have had students who respond well to seclusion and de-escalate quickly and other students who hate it and will elevate their behaviors. In those cases, my team avoids seclusion as much as we can. I am ultimately worried about the safety of staff and students when using other restrictive procedures during a crisis. How will a school and the state support SPED teachers and staff who become injured? How do we prevent turnover and burnout? I feel this whole amendment needs to be reassessed.

While I do not have further recommendations on the timeline for ending seclusion, but it is my hope that the MDE and the state of Minnesota have considered that there are many, many school districts in Minnesota that simply lack county and community supports to provide safety to students and staff when there are students engaging in behaviors that constitute an emergency situation. A solution to this challenge is not as simple as "hiring staff," or "starting programs to...". While employed by a service cooperative, there are not nearly enough resources to support the students in our region at residential or setting IV facilities to support students with

significant mental health and behavioral needs. Many of our students who are birth-grade 3 that restrictive procedures have been utilized for are self-harming and/or the function of their behavior has been determined attention and when put into a physical holding maneuver they continue to escalate versus de-escalate. There are far more considerations to be made than to provide a blanket solution to districts and students across the state, many of which have little to nothing in common in regard to resources, personnel and other unique characteristics.

We recommend developing a timeline for termination of seclusion use in schools that is based upon available data. Recent legislation prohibiting the use of seclusion for students aged birth to grade 3 provides an opportunity to measure the effects of termination of the practice on other relevant, potentially detrimental indicators. These other indicators include but are not limited to the use of physical holding, shortened school days, in-school and out-of-school suspensions, and police calls with these students. Once the side effects of seclusion termination are better understood, a data-informed timeline for other age groups can more appropriately be developed. Timeline development particular to various settings, i.e., federal settings, types of schools, etc., will also benefit from the data available before and after the use of seclusion among students aged birth to grade 3. Systems to collect data related to side effects of seclusion termination should be developed.

I support first implementing with fidelity other less restrictive interventions. This will require funds to address the high amount of training and support that staff will need to implement with fidelity, in addition to professional development on topics such as categorical disabilities, behavioral manifestations of disability, de-escalation, etc. I strongly do not agree with the proposal to end seclusion in all schools (esp Fed 4) and especially with students who have a long-documented history of high-magnitude aggression that has been resistant to previous interventions and has resulted in staff injury. MHP, BCBA, School Psych, etc. are all qualified to work with teams to identify students for whom seclusion is actually the safest and least restrictive intervention to maintain safety in an emergency. For example, a student who has experienced physical abuse or neglect may be more traumatized by the use of a physical hold than seclusion. This should be an IEP team decision that includes an MHP, BCBA, school psych, etc.

I equate seclusion to punishment. Both give a consequence without supporting, modeling and teaching our students they have control of their bodies, words, thoughts, etc.

There needs to be a focus on general education- kids are being pushed to special education too quickly because they need the attention. Focus on general education, small classes, more adults. This alone gives a child more academics because they focus more.

I understand the principle and philosophy and I completely disagree with their use, especially in working with children who have experienced trauma. Unfortunately, as a teacher in a behavior program, I understand the need for them from a safety component as there are times when a

severely mentally ill student needs to, for safety reasons, be isolated until more capable staff are able to respond.

There are staff and students being harmed each and everyday by students who are dysregulated. Students who are enrolled in a federal setting IV program have exhausted all other options within a typical school district. Federal setting IV programs are being innovative and creative with programming, staff training, parent supports etc. so if in the event a seclusion is warranted, it's only being used as a last resort. We have staffing shortages in all of our federal setting IV programs as staff don't want to come to work and get assaulted by students. We know that 99.9% of the time the behavior has a communicative intent, students don't "want" to harm others but in some cases it's their only means to get their needs and wants met. Staff should have tools they could use in the event a situation isn't safe for the student, other students or themselves if all other options have been exhausted. I would fully support MDE staff or legislative staff to come and work in a building for 1 week and see what is being done each day as 99.9% of the time it's AMAZING and the other .01% of the time it requires the use of a seclusion to keep everyone safe.

I think it is important to consider within counties what resources are reasonably available. In NW MN we do not have access to higher structured settings or adequate mental health support or facilities that can support the needs of physically aggressive, distraught students, or students with significant mental health deterioration (i.e., schizoaffective disorder).

While I absolutely support implementing practices and standards to ensure that restrictive procedures (in this case specifically, seclusion) are being utilized appropriately and only in emergency situations, there are instances that the district(s) I serve will be adversely effected should the option no longer be available when considering staffing, the physical toll that long-term physical holds may have on our staff when student's continue to escalate, students that have medical disabilities that would not allow the use of a physical holding skill thus leaving no safe alternatives for students or staff to turn to to regain a safe level of control over an emergency situation, the severity of student behavior(s) we are beginning to see more and more frequently, all paired with the severely limited community, county and regional resources to support behavior and mental health. I am not an advocate for the use of restrictive procedures or physical holding; however, I trust school districts to make informed decisions and provide staff training as to how to safely and appropriately utilize them to maintain safety for students engaging in risk behavior(s), students in the vicinity of a student engaging in severe risk behavior(s) and the staff there to support children engaging in risk behavior(s) back to a place of calm. I hope, that as the MDE is making legislative recommendations there is consideration of schools in greater Minnesota as the needs and resources available to meet those needs are significantly discrepant to those available in the Metro area, Duluth or Rochester area(s). Thank you.

Strategies and resources: The survey also asked respondents to identify existing resources and/or new resources you believe are necessary in several topic areas**.** In some cases, respondents simply endorsed that the resource

or topic area is important (for example, answering “YES” under Staff training). The summary below highlights themes in each topic area offered by the survey. MDE incorporated specific resources into the legislative report, Appendix D, as appropriate.

- Building staff capacity for addressing behavioral needs of students: additional funding, increased staff, additional behavioral expertise and credentialing, increased mental health staff involvement, additional resources and time for training, improved student to staff ratios, specific training and approaches.
- Staff training: need for additional training for all staff, training on proactive/preventative approaches, training on alternatives to restrictive procedures, de-escalation training, trauma-informed training, safety training, specific training approaches or curriculum.
- Children's supports: need for safe educational environments, need for community supports and improved regional/local resources, additional supports for families and parents, access to specialized education and therapies, need for mental health and medical services, additional financial and other supports.
- Child mental health services: need for more access, more funding, school-based social workers and mental health professionals, community-based mental health services (particularly for high-need students), availability of crisis response teams and paramedics in schools, sensory spaces and resources in schools, mental health training for all staff, wrap-around supports for families and students, additional research on medicines and therapies.
- Schoolwide collaborative efforts: MTSS/PBIS implementation, professional development, social-emotional skills development, school-wide coordination, collaboration with medical providers, culture/systemic approaches.

DEPARTMENT OF EDUCATION

School Districts' Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools

Report to the Legislature

As required by Minnesota Statutes 2024, section 125A.0942

For more information:

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As requested by Minnesota Statutes 2024, section 3.197: This report cost approximately $20,000 to prepare, including staff time, printing and mailing expenses.

Upon request, this material will be made available in an alternative format such as large print, braille or audio recording. Printed on recycled paper.

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Legislative Charge

In accordance with Minnesota Statutes 2024, section 125A.0942, subdivision 3(b):

By February 2015, and annually thereafter, stakeholders may, as necessary, recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures, and the commissioner must submit to the Legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and recommendations to clarify and improve the law governing districts' use of restrictive procedures. The commissioner must consult with interested stakeholders when preparing the report, including representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. Beginning with the 2016-17 school year, in a form and manner determined by the commissioner, districts must report data quarterly to the Minnesota Department of Education (MDE) by January 15, April 15, July 15, and October 15 about individual students who have been secluded. By July 15 each year, districts must report summary data on their use of restrictive procedures to MDE for the prior school year, July 1 through June 30, in a form and manner determined by the commissioner. The summary data must include information about the use of restrictive procedures, including use of reasonable force under section 121A.582.

The 2023-24 Restrictive Procedures Stakeholders' Workgroup (workgroup) included representation from the following legislatively mandated participants: advocacy organizations, special education directors, teachers, intermediate school districts, school boards, county social services, state human services department staff, mental health professionals, and autism experts.

A list of workgroup participants may be found in Appendix A of this report.

Introduction

To govern the use of restrictive procedures for children with disabilities, Minnesota's restrictive procedures legislation–Minnesota Statutes 2024, sections 125A.094, 125A.0941, and 125A.0942 – were initially passed in 2009 and made effective in 2011. In 2013, following subsequent statutory revisions, the Legislature tasked MDE and interested stakeholders with developing a statewide plan to reduce districts' use of restrictive procedures, which as of 2013, must include "specific measurable implementation and outcome goals for reducing the use of restrictive procedures".[1] along with the following components:

[1] Minn. Stat. 125A.0942, subd. 3(b) (2013).

- The resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and
- Recommendations to clarify and improve the law governing districts' use of restrictive procedures.[2]

During the 2016 legislative session, prone restraint[3] was added to the list of actions or procedures prohibited in the school setting.[4] Further in 2016, the restrictive procedures statute was amended to add "eliminate the use of seclusion"[5] as part of the legislative charge outlined in Minnesota Statutes 2016, section 125A.0942, subdivision 3(b).

During the 2023 legislative session, standards for the use of restrictive procedures were revised to:[6]

- clarify that the restrictive procedures statutory provisions apply to children with disabilities from birth until the child with a disability becomes 22 years old;
- add an additional responsibility to the oversight committee to quarterly review the use of restrictive procedures based on patterns or problems indicated by any disproportionate use of restrictive procedures based on race, gender, or disability status, the role of the school resource officer (SRO) or police in emergencies and the use of restrictive procedures, and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met;
- add a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion to the information required to be documented each time physical holding or seclusion is used;
- prohibit the use of seclusion on children from birth through grade 3 by September 1, 2024; and
- clarify the restrictive procedures reporting requirement for districts by stating that any reasonable force used under sections 121A.582, 609.06, subdivision 1, and 609.379, which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedures, including physical holding or seclusion used by an unauthorized or untrained staff person.

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[2] Minnesota Statutes 125A.0942, subdivision 3(b) (2016).
[3] "Prone restraint" means placing a child in a face down position. Minnesota Statutes 125A.0941(e) (2024).
[4] Minnesota Statutes 125A.0942, subdivision 4(10) (2024). The elimination of prone restraint was a result of building district capacity supported by a 2015 legislative appropriation totaling $150,000 disbursed from November 2015 through June 30, 2016, to six entities (three intermediate school districts and three independent school districts) to develop work plans to address their specific needs.
[5] "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion. Minnesota Statutes 125A.0941(g) (2024).
[6] Minnesota Session Laws 2023, Chapter 55.

Further, during the 2023 legislative session, Minnesota Statutes 2023, section 125A.0942, subdivision 6(c) was added:

By February 1, 2024, the commissioner, in cooperation with stakeholders, must make recommendations to the Legislature for urgently ending seclusion in Minnesota schools. The commissioner must consult with interested stakeholders, including parents of students who have been secluded or restrained; advocacy organizations; legal services providers; special education directors; teachers; paraprofessionals; intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2; school boards; day treatment providers; county social services; state human services department staff; mental health professionals; autism experts; and representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities. The recommendations must include specific dates for ending seclusion by grade or facility. The recommendations must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.

MDE's recommendations were based on: Minnesota's cumulative efforts working to end the use of seclusion since 2016; the U.S. Department of Justice (DOJ) findings that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs, using eligibility criteria that effectively subject students with disabilities to discrimination, and failing to make reasonable modifications to avoid discrimination in school programs; the Americans with Disabilities Act of 1990's (ADA's) integration mandate, the Individuals with Disabilities Education Act's (IDEA's) least restrictive environment mandate; and stakeholder engagement. MDE's recommendations for urgently ending seclusion were sent to the 2023 legislative session education chairs and included:

- MDE recommends prohibiting the use of seclusion on all children by September 1, 2026. MDE recommends revising Minnesota Statutes, section 125A.0942, subdivision 4, by adding the following prohibition: (12) the use of seclusion on all children by September 1, 2026.
- In addition to the strategies and resources outlined in Appendix D, MDE will continue efforts, based on future resources and staffing capacity, to consider the following:
    - Training for general education staff consistent with Minnesota Statutes, section 125A.0942, subdivision 5.
    - MDE collaborating with higher education to develop coursework for students preparing to become teachers consistent Minnesota Statutes, section 125A.0942, subdivision 5.
    - MDE working with the professional educators licensing and standards board (PELSB) to refine the positive behavior intervention requirement for professional licensure to include elements outlined in Minnesota Statutes, section 125A.0942, subdivision 5.
    - Developing a process where MDE staff are available to consult with school districts on specific students that exhibit extreme behaviors.
    - Expanding school districts' access to PBIS and other research-based behavior intervention programs.
    - Expanding mental health services.
    - MDE producing an online training course on the legal framework for using restrictive procedures in schools to increase availability of the training session currently offered by MDE.
    - MDE advocating for resources to support special education workforce needs.

A copy of MDE's Letter to Education Chairs (2023) may be found in Appendix F of this report.

Additionally, during the 2023 legislative session, Minnesota Statutes 2023, section 121A.582, added a new reporting requirement for school districts pertaining to general education students: Beginning with the 2024-25 school year, districts must report annually by July 15, in a form and manner determined by the commissioner, data from the prior school year about any reasonable force used on a general education student to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125.0941, paragraph (c). This data is collected through MDE's Disciplinary Incident Reporting System (DIRS).[7]

Since fall 2012, MDE has convened a workgroup as its primary means of consulting with interested stakeholders on the statewide plan and legislative report (though a workgroup is not specifically required by Minnesota Statutes 2024, section 125A.0942, subdivision 3(b)). In 2024, with input from the workgroup, MDE reviewed opportunities for improved and broader strategic engagement and consultation to reduce the use of restrictive procedures in public schools. Reflecting on current opportunities and past efforts, MDE plans to use the structure of the Olmstead Plan for restrictive procedures engagement, moving from a small workgroup to a broader strategic effort. This will expand engagement efforts (especially for youth with disabilities), improve implementation partnerships with other state agencies, and coordinate goals and efforts with related goals for related factors. MDE's restrictive procedures work is already part of the Minnesota Olmstead Plan (Olmstead Plan):[8] MDE uses the Olmstead Plan for the restrictive procedures work under Minnesota Statutes 2024, sections 125A.091 and 125A.0942 because the Olmstead Plan is intentionally designed by Executive Order 19-13 to be publicly visible and accessible in its structure, content, and implementation.[9]

A copy of Governor Walz's Executive Order 19-13 is found in Appendix G of this report.

This legislative report includes: key data points on districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2023-24 school year; recommended strategies and resources to assist districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures; recommended clarification and improvement of the law, the consultation process, the progress made on the February 2023 Two-Year Statewide Plan, and an introduction to the 2025 statewide plan. The statewide plans outline goals to support the continued submission of this legislative report; the compilation of strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of

[7] MDE's DIRS website may be accessed Disciplinary Incident Reporting System.
[8] An Olmstead Plan is a "public entity's plan for implementing its obligation to provide individuals with disabilities opportunities to live, work, and be served in integrated settings." Statement of the DOJ on Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.*, U.S. DOJ, Civil Rights Division, June 22, 2011, Question 12, page 4 (DOJ Statement), last visited January 3, 2023. It is named after a United States Supreme Court decision: *Olmstead v. L.C.*, 527 U.S. 581 (1999).
[9] *See* Putting the Promise of Olmstead into Practice: Minnesota's Olmstead Plan (mn.gov), for the 2021 Minnesota Olmstead Plan Revision (goal 4 and goal 5 pertaining to restrictive procedures in the school setting).

restrictive procedures; and the reduction of restrictive procedures. The statewide plans also outline specific actions to meet the goals.

The 2025 Statewide Plan may be found in Appendix B of this report.

Progress on the February 2023 Two-Year Statewide Plan may be found in Appendix E of this report.

Analysis

Overview

The next sections of this report provide summary analyses of key data points, recommended strategies and resources, recommended clarification and improvement to the law related to urgently ending seclusion, and consultation process. Appendices contain further information and analyses. In brief:

- Key data points from the 2023-24 school year show:[10]
    - An increase in restrictive procedures and a decrease in the number of students with disabilities experiencing restrictive procedures as compared to the 2022-23 school year; however, a decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - A decrease in seclusions and the number of students with disabilities experiencing seclusions as compared to the 2022-23 school year; a continued decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - An increase in physical holds and a very slight increase in the number of students with disabilities experiencing physical holds as compared to the 2022-23 school year; a decline in both measurements as compared to the 2018-19 school year (pre-COVID-19).
    - Continued disproportionalities in seclusions and physical holds, with students with disabilities who identify as Black or African American, two or more races, or American Indian or Alaska Native (physical holding only), experiencing a disproportionate amount of restrictive procedures.

[10] Readers should use caution interpreting the trends noted here. The COVID-19 pandemic and the resulting impacts related to school environments have certainly affected the use of restrictive procedures over the last three school years.

- Recommended strategies and resources:
    - Through the annual submission of restrictive procedure data, school districts continued to report strategies they used to reduce the use of restrictive procedures in their district. For most districts, staff training was a frequently used strategy, with many districts providing specific information regarding the training programs they used. MDE has compiled information about the trainings recommended by school districts, and this information is available as part of Appendix D.
    - Through MDE actions and the workgroups actions, the compilation of strategies include resources outlining and guiding trauma-informed practices; consistent, widespread training and support from onsite staff; social-emotional learning; evaluations of the use of SROs in schools; improvements to referral processes, debriefing meetings and individualized data reviews; relationship building; implementation of positive behavioral interventions and supports (PBIS); approaches to prevent and de-escalate behaviors; and mental health support.

- Consultation processes:
    - During the implementation of the February 2023 Two-Year Statewide Plan, MDE utilized the workgroup as the means to consult with interested stakeholders when preparing this legislative report and recommending to the commissioner specific and measurable outcome goals for reducing restrictive procedures and eliminating seclusion.
    - Starting with the implementation of the 2025 Statewide Plan, MDE will engage with interested stakeholders utilizing inter-agency and intra-agency structures to ensure consultation with interested stakeholders as outlined in Minnesota Statues, section 125A.0942, subdivision 3(b).
    - MDE continues to utilize a consultant from Minnesota Management and Budget's (MMB's) Management Analysis and Development (MAD) to assist with planning, facilitation, evaluation, and analysis.
- Statewide plans:
    - MDE reports on the progress made on the goals outlined in the February 2023 Two-Year Statewide Plan, including the MDE actions and workgroup actions taken to meet the goals.
    - MDE introduces the 2025 Statewide Plan.

Key Data Points from the 2023-24 School Year

Statewide, during the 2023-24 school year, districts reported a total of 17,464 restrictive procedures, including 3,451 seclusions and 14,013 physical holds. Overall, the use of restrictive procedures increased during the 2023-24 school year from the 2022-23 school year. However, as shown in Table 1 below, as compared to the 2018-19 school year, the pre-COVID-19 baseline, restrictive procedures use has continued to decline across all measurements. For example, the overall number of restrictive procedures in the 2023-24 school

year (17,464) represents an increase of 7% from the 2022-23 school year; however, this is a 23% decrease from the 2018-19 school year, the pre-COVID-19 baseline.[11]

Table 1. Annual Physical Holds, Seclusion, and Total Restrictive Procedures, 2018-19 through 2023-24 school years.[12]

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2018-19	17,157	5,596	22,753
2019-20*	12,679	3,983	16,662
2020-21*	6,666	1,850	8,516
2021-22*	12,784	4,702	17,486
2022-23	12,405	3,990	16,395
2023-24	14,013	3,451	17,464

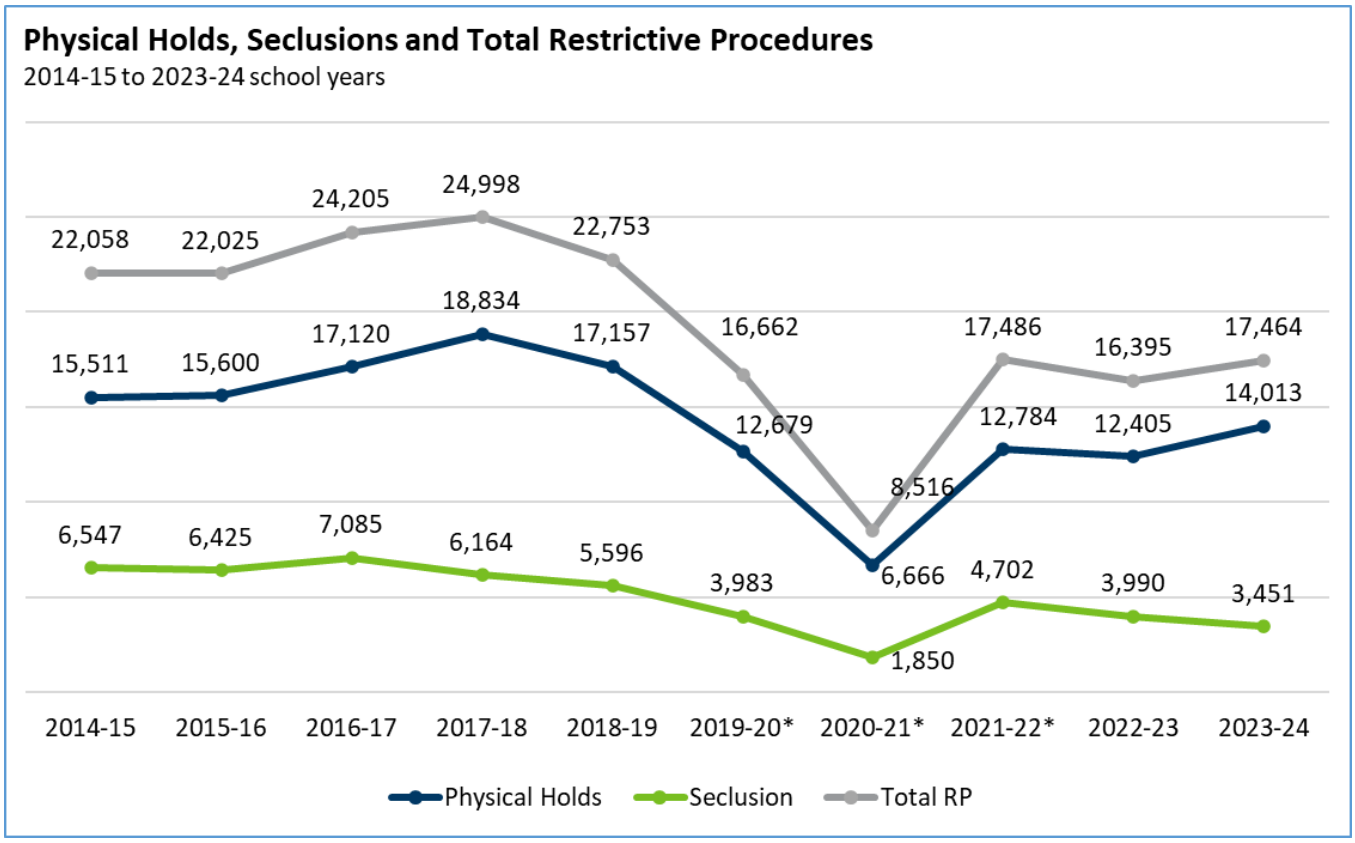
Please note: given the 2019-20 and 2020-21 school years were heavily impacted by school closures and variations in learning models, contributing to a significant decline in the overall use of restrictive procedures as compared to the 2018-19 school year, MDE uses the 2018-19 school year as the pre-COVID-19 baseline. In tables and charts throughout this report, asterisks have been used to identify school years heavily affected by the COVID-19 pandemic.

Fewer students with disabilities experienced restrictive procedures during the 2023-24 school year than in 2022-23. Districts reported that 2,932 students with disabilities experienced one or more restrictive procedure during the 2023-24 school year, a decrease from 2,958 during the 2022-23 school year.

Figure A (below) shows the trend in the number of restrictive procedures, as well as seclusions and physical holds, reported by districts since the 2014-15 school year. As shown in Figure A, the number of seclusions started decreasing in the 2016-17 school year, with an accelerated decline in the 2019-20 and 2020-21 school years due to the COVID-19 pandemic, and the number of physical holds begun to decrease in the 2018-19 school year, with an accelerated rate of decrease starting in the 2019-20 school year, due largely to the COVID-19 pandemic (asterisk denotes years affected by the COVID-19 pandemic and statewide implementation of distance learning). Although 2023-24 school year data indicates an increase in restrictive procedures over the previous year, rates continue to remain below the 2018-19 school year, the pre-COVID-19 baseline.

[11] Caution should be used when comparing data from recent years to similar data from other years, due to the continued effect of the COVID-19 pandemic on school environments.
[12] Due to ongoing correction of data errors and an analysis with updated software, total counts of restrictive procedures reported in previous legislative reports has been revised and updated in this report.

Figure A. Annual Physical Holds, Seclusions, and Total Restrictive Procedures, 2014-15 through 2023-24 school years.



During the 2023-24 school year, districts reported a total of 3,451 seclusions and 553 students with disabilities experiencing seclusion. As compared to the 2022-23 school year, this represents a decrease of 14% in seclusions and a decrease of 25% of students with disabilities experiencing seclusion. As compared to the pre-COVID-19 baseline, the 2023-24 school year data indicates a continued decrease: a reduction of 38% in seclusions, and a decrease of 36% of students with disabilities experiencing seclusion, as compared to the 2018-19 school year, the pre-COVID-19 baseline.

Annual data indicates an overall increase in the number of physical holds during the 2023-24 school year. When comparing the total number of physical holds (14,013) as well as the total number of students with disabilities experiencing physical holds (2,777), both numbers increased from the 2022-23 school year (13% and 1%, respectively). However, both the number of physical holds and number of students with disabilities experiencing physical holds remain below the 2018-19 school year, the pre-COVID-19 baseline, of 17,157 physical holds and 3,347 students with disabilities experiencing physical holds (a decrease of 18% and 17% respectively).

Restrictive procedures data from the last several years has shown a pattern of disproportionalities in the use of restrictive procedures. Typically, students with disabilities who identify as Black or African American, two or more races, or American Indian or Alaska Native experienced a disproportionate number of restrictive

procedures, with slight variation from year to year. In the 2023-24 school year, American Indian or Alaska Native Students experienced a disproportionate number of physical holds, but not seclusions.

Disproportionality continued to be present during the 2023-24 school year in other areas as well, with little change in the trends from year to year. Restrictive procedures continue to be most prevalent in elementary grades. As in previous years, students who receive services under the Emotional or Behavioral Disorders (EBD) and Autism Spectrum Disorders (ASD) categories were more likely to experience seclusions and physical holds. In addition, students with disabilities receiving services in federal setting four (setting 4), meaning the students receive special education and related services outside at separate school facilities for more than 50% of the school day, comprise about 3% of the special education population but 47% of secluded students. Finally, even though the special education population is disproportionately male (about 65%), male students experienced a disproportionate share of seclusions and physical holds (about 81%).

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2023-24 school year may be found in Appendix C of this report.

Recommended Strategies and Resources

MDE and interested stakeholders continue to compile strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. These strategies and resources include the increased use of positive behavior interventions and supports (PBIS) and other positive strategies to address behaviors, the distribution of the Olmstead Local Improvement (OLI) Grant funding for districts to reduce the rates of restrictive procedures, and MDE training and other technical assistance sessions to enhance school districts' understanding of restrictive procedures laws and strategies to reduce the use of restrictive procedures.

Further recommendations include federal resources discussing civil rights, potential discrimination, and disproportionalities in the use of restrictive procedures on students with disabilities and students of color with disabilities. These federal resources urge districts to focus on preventing the need for restrictive procedures, using only behavioral interventions that are consistent with a student's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all students and staff. Further, the resources warn districts that the use of restrictive procedures may result in discrimination against students with disabilities and reiterate that there is no evidence that using restrictive procedures is effective in reducing problem behaviors. Finally, these resources highlight disproportional use of restrictive procedures on students with disabilities and students of color with disabilities. Federal guidance has long emphasized that individualized education programs (IEPs) should support educational, social, emotional, behavioral, and related needs with high-quality and evidence-based support and utilize functional behavioral assessments (FBAs) to develop individualized behavioral intervention plans (BIPs) for students whose behaviors interfere with their ability to access and benefit from the education program.

In recent years, in an effort to combat the improper use of seclusion, the DOJ conducted investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the ADA. In recent

investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program and improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions. The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities.

Based on information collected by MDE, school districts continue to recommend staff training on de-escalation techniques; using strategic supports to meet student needs (e.g., FBAs, proactive and positive behavioral supports, addressing sensory needs, adjusting programming and/or special education services, social-emotional learning, and trauma-informed practices); staff collaboration and/or team meetings to troubleshoot student needs and providing a consistent process for staff to debrief together following behavioral incidents; and strategically using staff by creating specific positions to address behaviors or maintain particular expertise on their staff. In the 2023-24 school year, most districts reported a reliance on staff training regarding de-escalation strategies and the legal standards relating to the emergency use of restrictive procedures, using a variety of different training programs, as reported in Appendix D. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysists, and mental health supports on their use of restrictive procedures.

A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures (2023-24 school year) may be found in Appendix D of this report.

Consultation Process

MDE continues working with a consultant from MMB's MAD to facilitate consultation with interested stakeholders when preparing the legislative report and recommending to the commissioner specific and measurable implementation and outcome goals for reducing restrictive procedures and eliminating seclusion. After the submission of the February 1, 2024, Legislative Report, the workgroup met in March, June, September, and December 2024. The workgroup worked on the action items outlined in the February 2023 Two-Year Statewide Plan to achieve the identified goals and provided input and advice on engagement which resulted in the 2025 statewide plan. Workgroup members expressed a range of perspectives on the change in engagement strategy, with some disagreeing with MDE's planned approach. Invited workgroup representatives were consistent with the interested stakeholders outlined in Minnesota Statutes 2023, section 125A.0942, subdivision 3(b).

February 2023 Two-Year Statewide Plan Progress

The February 2023 Two-Year Statewide Plan includes three measurable goals along with five MDE actions and four workgroup actions to support the goals. Progress on the goals is provided below, and progress on the goals, along with the progress on MDE actions and workgroup actions, may be found in Appendix E of this report.

The goals and progress on the goals outlined in the February 2023 Two-Year Statewide Plan:

Legislative Report

Goal 1: MDE will annually submit a report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures. The report will also summarize MDE's strategies and the workgroup's progress on actions in the statewide plan.

Goal 1 progress: Under Minnesota Statutes 2023, section 125A.0942, subdivision 3(b), MDE submits the annual legislative report on school districts' progress in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The statewide plan, submitted along with the legislative report, recommends to MDE measurable goals for reducing the use of restrictive procedures and strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. Components of the statewide plan include: resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce school districts' use of seclusion.

This legislative report, including the appendices, serves as the February 1, 2025, annual report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures.

Recommend Strategies and Resources

Goal 2: By December 31, 2024, the workgroup will compile and recommend to MDE, strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

Goal 2 progress: Under Minnesota Statutes 2023, section 125A.0942, subdivision 3(b), MDE must consult with interested stakeholders when preparing the legislative report and MDE utilized the workgroup as the means to consult with interested stakeholders when preparing this report.

The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with multiple districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, and updating the oversight committee agenda and companion guide, to assist districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1), and reviewing MDE's 2024 legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2).

A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures may be found in Appendix D of this report.

Reduce Seclusion

Goal 3: Through the combined efforts of all those involved in this work, there will be at least a 10% reduction in seclusion annually using the 2018-19 school year data as a baseline.[13] During the 2018-19 school year, school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion.

a. By the end of the 2022-23 school year, the number of seclusions will be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 5,038 seclusions and at most 774 students with disabilities experiencing seclusion.

b. By the end of the 2023-24 school year, the number of seclusions will again be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 4,478 seclusions and at most 688 students with disabilities experiencing seclusion.

Goal 3 progress: Under Minnesota Statutes 2023, section 125A.0942, subdivision 3(b), school districts must report data quarterly to MDE by January 15, April 15, July 15, and October 15 about individual students who have been secluded. The quarters are broken down in dates as follows: Quarter 1: July 1–September 30, 2021; Quarter 2: October 1–December 31, 2021; Quarter 3: January 1–March 31, 2022; and Quarter 4: April 1–June 30, 2022.

a. Restrictive procedures data from the 2022-23 school year demonstrates an increase in the use of restrictive procedures, including an increase in the use of physical holding and a decrease in the uses of seclusion, as compared to the 2021-22 school year. Minnesota school districts reported 3,938 seclusions during the 2022-23 school year, a decrease of 14% from the 2021-22 school year. Minnesota school districts also reported that 730 students with disabilities experienced seclusion, an increase of two % from the previous school year.

   Seclusion data regarding the 2018-19 school year was collected prior to the COVID-19 pandemic. Minnesota school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion during the 2018-19 school year. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2022-23 school year represents a 30 %

[13] The previous statewide plan also used the 2018-19 school year as the baseline which reported 5,596 seclusions and 860 students with disabilities experiencing seclusion. This statewide plan adopts the same baseline instead of developing a new baseline because of the impact of the COVID-19 pandemic and related disruptions. Data in recent years shows positive trends, but it is unclear if these are due to changes in practice or due to changes in learning modes and staffing challenges related to the pandemic.

decrease in seclusions and a 15% decrease in the number of students with disabilities experiencing seclusion. However, as school districts continue to be affected by lasting impacts of COVID-19, it is likely to be some time before conclusions can be drawn about long-term trends in the use of seclusions.

b. Restrictive procedures data from the 2023-24 school year demonstrates an increase in the use of restrictive procedures, including an increase in the use of physical holding and a decrease in the use of seclusion, as compared to the 2022-23 school year. Minnesota school districts reported 3,451 seclusions during the 2023-24 school year, a decrease of 14% from the 2022-23 school year. Minnesota school districts also reported that 553 students with disabilities experienced seclusion, a 25% decrease from the previous school year.

   Seclusion data regarding the 2018-19 school year was collected prior to the COVID-19 pandemic. Minnesota school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion during the 2018-19 school year. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2023-24 school year represents a 38% decrease in seclusions and a 36% decrease in the number of students with disabilities experiencing seclusion.

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2023-24 school year may be found in Appendix C of this report.

Conclusion

The report details school districts' progress on reducing the use of restrictive procedures and eliminating seclusion along with strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. During the 2023-24 school year, the data reported by school districts, although an increase from previous COVID-19-impacted school years in some measures, continued a downward departure from the 2018-19 school year, the pre-COVID-19 baseline. Programs and interventions such as training on de-escalation techniques and the legal standards relating to the emergency use of restrictive procedures, positive behavioral strategies, trauma-informed training and practices, restorative practices, social-emotional learning, and extended grant opportunities continue to be recommended to assist school districts in reducing the use of restrictive procedures.

MDE anticipates this report will result in informed decision-making, promoting safe educational environments. MDE appreciates the opportunity to inform the Legislature about this important issue and commends the Legislature for its continued commitment to this task.

Appendix A – List of Restrictive Procedures Workgroup Participants

Stakeholder Organizations that Participate in the Workgroup

Anoka-Hennepin Public School District 011

AspireMN

Autism Society of Minnesota

Edina Public School District 273

Grand Rapids Public School District 318

Intermediate School District 287

Intermediate School District 917

Minnesota Association of County Social Service Administrators – Hennepin County

Minnesota Administrators for Special Education

Minnesota Department of Human Services

Minnesota Disability Law Center

Minnesota School Boards Association

National Alliance on Mental Illness Minnesota

Northeast Metro Intermediate District 916

Northern Pines Mental Health Center

Olmsted County Child & Family Services

PACER Center, Inc.

Richfield Public Schools 280

Rosemount-Apple Valley-Eagan District 196

Roseville Public School District 623

Shakopee Public School District 720

Southwest Metro Intermediate District 288

Southwest West Central Service Cooperative

The Arc Minnesota

Wayzata Public School District 284

MDE Participants

Office of General Counsel – Dispute Resolution

Division of Special Education

Appendix B – 2025 Statewide Plan

Statutory Context

For MDE, in consultation with interested stakeholders, to report school districts' progress on reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures under Minnesota Statutes 2024, section 125A.0942, subdivision 3(b).

For MDE, in consultation with interested stakeholders, to recommend strategies for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. Components include the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion and recommendations to clarify and improve the law governing districts' use of restrictive procedures under Minnesota Statutes 2024, section 125A.0942, subdivision 3(b).

This statewide plan outlines actions MDE will take to assist school districts in reducing the use of restrictive procedures and eliminating seclusion.

Measurable Goals

Goal 1: By February 1, 2026, and annually thereafter, MDE will submit a report to the Minnesota Legislature summarizing school districts' progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and compiling strategies and resources to assist school districts in reducing the use of restrictive procedures.

Goal 2: MDE will review the Statewide Plan annually, seek consultation with interested stakeholders, and revise the Statewide Plan as necessary.

Goal 3: Further measurable goals regarding school districts' progress on reducing the use of restrictive procedures are incorporated in Minnesota's Olmstead Plan.

MDE's Actions in Support of the Goals

MDE Action 1: MDE will collect, analyze and report school districts' use of quarterly seclusion data and physical holding summary data, including data on disproportionalities and trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures.

MDE Action 2: MDE will report on the measurable goals relating to school districts' progress on reducing the use of restrictive procedures found in Minnesota's Olmstead Plan.

MDE Action 3: MDE will offer training sessions to school districts and other interested stakeholder groups throughout the state. The training will include an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures and eliminating seclusion.

MDE Action 4: MDE, in consultation with interested stakeholders, will update the list of MDE resources and federal resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

MDE Action 5: MDE, in collaboration with Minnesota's Olmstead Implementation Office, will ensure consultation with interested stakeholders regarding reducing restrictive procedures and eliminating seclusion, by ensuring information is available on MDE's website, forming ad hoc restrictive procedure groups regarding emergency issues, and forming implementation group(s) working on alternatives to seclusion.

Appendix C – Data on School Districts' Progress on Reducing the Use of Restrictive Procedures and Eliminating Seclusion During the 2023-24 School Year

Background on Data Collection

Beginning in the 2011-12 school year, public school districts began submitting annual summary data to MDE on the use of restrictive procedures. After legislative changes in 2016, districts were also required, on a quarterly basis, to submit detailed data regarding individual seclusion uses to MDE through a secure website. Starting in April 2019, MDE clarified that all districts were required to complete quarterly seclusion reporting, either through completing the previously mentioned form or emailing to confirm zero seclusion uses. In July 2021, MDE released a new data collection tool, Stepwell MN, to collect restrictive procedures data.

Currently, school districts, including intermediate school districts and charter schools, are required to submit annual data regarding the overall use of restrictive procedures and physical holds and quarterly data regarding seclusion use. This section of the legislative report provides a summary of all restrictive procedures use and demographic information about students with disabilities who experienced a restrictive procedure.

Collection Methods and Limitations

The data elements, tools, and strategies to measure the progress on reducing the use of restrictive procedures and eliminating the use of seclusion, as statutorily mandated, have evolved over time. As all public school districts are required to complete restrictive procedures reporting, whether or not they have used seclusion or physical holding, data collection efforts must consider the reporting burden to districts and the integrity of the data reported.

The data collection system in place prior to July 2021 presented significant challenges for districts in reporting data, as well as for MDE staff in collecting and analyzing the data. Seclusion data, which was recorded on a spreadsheet and uploaded to MDE via a secure server, was particularly challenging for districts, and the spreadsheet provided to MDE often contained substantial errors. Identifying and correcting errors in the data was particularly challenging and required extensive staffing resources and time.

Between March and December 2021, MDE developed a new data collection and analysis tool, Stepwell MN. Stepwell MN is a web-based tool that allows districts to enter restrictive procedures data based on each student's Minnesota Automated Reporting Student System (MARSS) data, which is compared, in real time, to pre-loaded MARSS numbers for students within that district. This process reduces errors in the reporting of MARSS numbers and demographic information, making it easier for districts to report accurate data and easier for MDE to collect and analyze this data. Physical holding data was first collected via Stepwell MN in July 2021 (for data from the 2020-21 school year), and quarterly seclusion data collection began at the start of the 2021-22 school year.

As the 2022-23 school year was the fourth year using the Stepwell MN system, there were fewer challenges regarding data collection than in previous school years. District staff continued to demonstrate increased familiarity with the Stepwell MN reporting system and provide positive feedback regarding the ease of reporting and reviewing their district's data. MDE staff continued to work with the Stepwell MN vendor to make improvements to the Stepwell MN system, many suggested by district users.

The Stepwell MN data collection system has reduced reporting errors and minimized the limitations inherent to MDE's previous data collection system. However, some limitations persist. Most notable is the challenge of moving between systems and reconciling new data collection processes with historic data collected using previous processes. Although MDE now has several school years of both physical holding and seclusion data, variations between how this data was collected, analyzed and reported over time suggests that care should be taken when examining longitudinal data. Another limitation is that demographic data in Stepwell MN is based on student data that is provided by districts, via MARSS, and verified by MDE on an annual schedule, and then uploaded into the Stepwell MN system on a quarterly basis. The nature of this process, and the legislatively mandated seclusion reporting periods, means that up-to-date student data is not always available via Stepwell MN, and can lead to some inaccuracies in the restrictive procedures data. This limitation is particularly evident with regard to age and grade data reported via seclusion.

During the 2020-21 school year, MDE began collecting information from districts about: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities?; and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools? These questions were developed in consultation with the workgroup, and districts were asked to provide narrative responses to these qualitative questions for the first time in July 2021, and then again in July 2022 and July 2023. MDE, with input from the workgroup, has continued to develop systems to review and analyze this data. For example, during the 2022-23 school year, the workgroup piloted a case study approach to obtain additional information from participating districts, and additional case study interviews were planned for the 2024-25 school year.[14]

Effect of the COVID-19 Pandemic

[14] Two districts were identified and agreed to participate in the case study during the 2022-23 school year. For further information, please see Case Study: Intermediate School District 917 and Case Study: Rum River Special Education Cooperative; both are available on the Restrictive Procedures Workgroup website.

2019-20 School Year

Due to the global COVID-19 pandemic, Minnesota schools were closed March 18 through 27, 2020, to prepare for distance learning, then buildings were closed for typical in-person instruction March 30, 2020, through the end of the 2019-20 school year. During summer 2020, districts offered summer programs and extended school year services through either a distance learning model or a hybrid model that employed both distance learning and in-person learning.[15]

The impact of school closures due to COVID-19 can be observed in the restrictive procedures data from the 2019-20 school year. In the 2019-20 school year, quarter three contained approximately 10 fewer school days than in previous years. As no districts or charter schools provided in-person learning during the remainder of the 2019-20 school year, there were zero reported seclusions for the fourth quarter of the 2019-20 school year. These changes affected annual summary numbers for both physical holding and seclusion, with the effect that the 2019-20 data demonstrated a significant reduction in the use of seclusions, physical holds, and total restrictive procedures as compared to previous years.

2020-21 School Year

In summer 2020, Minnesota schools were directed to prepare to develop plans for three learning models at the start of the 2020-21 school year, specifically, an in-person model, distance learning model, and a hybrid model.[16] MDE and the Minnesota Department of Health (MDH) developed the Safe Learning Plan guidance document[17] explaining how to determine the appropriate instructional model in each district across the state. Further, Minnesota schools were tasked with providing an equitable distance learning option for all families, regardless of the instructional model the district was using.

Throughout the 2020-21 school year, Minnesota school districts used a variety of different learning models at different times, switching between learning models based on public health guidelines and local COVID-19 case counts, in accordance with the Safe Learning Plan. While some districts operated in distance learning for the majority of the school year, other districts were in-person for most or all of the year. In many cases, different grades operated in different learning models than the remainder of the district, with high school students being more likely to remain in distance learning for longer periods of time. In addition, in some districts, specific schools and/or programs operated in different learning models than the remainder of the district for portions of the school year, with some districts prioritizing in-person learning for students with disabilities.

Learning model data reported to MDE throughout the 2020-21 school year indicates that 78.3% of Minnesota districts reported using a distance or hybrid model for at least some of their students, for at least a portion of the time between July 1 and September 30, 2020. This percentage increased during quarter two and three, such that 95% of districts reported using a distance or hybrid model for at least some of their students for some portion of the time frame between October 1 to December 31, 2020, and January 1 through March 31, 2021. By

[15] Minn. Exec. Order No. 20-02 (March 15, 2020); Minn. Exec. Order No. 20-19 (March 25, 2020); and Minn. Exec. Order No. 20-41 (April 24, 2020).
[16] Minn. Exec. Order No. 20-82 (July 30, 2020) (last accessed Jan. 3, 2023).
[17] Minnesota's Safe Learning Plan for the 2020-21 School Year (July 30, 2020) (last accessed Jan. 3, 2023).

quarter four, more districts were operating fully in person – only 46% of districts used a hybrid or distance learning model during this time period. However, because all districts were required to provide an equitable distance learning option for all families, some families elected to have their students remain in distance learning for the full 2020-21 school year.

Because of the variation described above, it is challenging to understand the impact of COVID-19 on restrictive procedures use during the 2020-21 school year. Data from 2020-21 shows a marked decrease in the use of both seclusion and physical holds among Minnesota students with disabilities. This can be attributed, in part, to the fact that many districts had fewer in-person learning days during the 2020-21 school year than in previous years. Some districts reported that social distancing requirements and smaller class sizes reduced the likelihood of physical altercations within their buildings, which in turn led to a decrease in the use of restrictive procedures. However, anecdotal information from some districts indicates that the frequent movement between learning models was disruptive to students and may have contributed to increased use of restrictive procedures. It is likely that, beyond learning models, a complex set of factors affected restrictive procedures use during the 2020-21 school year, including the specific COVID-19-related mitigation factors in place in each building, the particular families that chose to keep their students in distance learning, the mental health and trauma-related needs of students and staff, the ability of districts to maintain training and coaching for staff during the COVID-19 pandemic, and other factors.

2021-22 School Year

During the 2021-22 school year, Minnesota schools and communities continued to be affected by the COVID-19 pandemic. The MDH and the Centers for Disease control continued to provide recommendations to ensure the health and safety of all students, and school districts made local decisions based on this guidance and other factors. Although MDE did not systemically collect information on COVID-19-related learning model decisions or school closures during the 2021-22 school year, anecdotal evidence suggests that at least some Minnesota schools continued to be affected by COVID-19, including interruptions due to quarantines, staff shortages, and the continuing effect of learning loss, mental health, and trauma experienced by students in recent years.

2022-23 School Year

During the 2022-23 school year, at least some Minnesota schools and communities continued to be affected by COVID-19, including ongoing staff shortages and the continuing effect of learning loss, mental health, and trauma experienced by students in recent years. These impacts remain difficult to measure and affected each community differently, but statewide assessment results released in August 2023 reinforce that students, families, school communities, and educators are continuing to recover from the COVID-19 pandemic.[18]

[18] Statewide assessment results released in August 2023 remain below pre-pandemic levels, and schools report ongoing attendance concerns. Minnesota test scores stagnant as COVID-'s effects linger on students, schools, MPR News August 24, 2023; Minnesota Department of Education News Release, August 24, 2023.

2023-24 School Year

Similar to the previous school year, the long-term effects of COVID-19 continue to impact at least some Minnesota schools and communities, including continued staff shortages and the ongoing effects of learning loss, and mental health- and trauma-related needs. Although these impacts remain difficult to measure, statewide assessment results and accountability released in August 2024 indicate that attendance rates have increased and test scores have stabilized.[19]

Over the last several years, data has demonstrated a downward trend in the use of restrictive procedures, indicating that Minnesota school districts have been making progress in reducing the use of seclusion and physical holding. Although these rates were already trending downwards prior to the COVID-19 pandemic, school closures during the spring of the 2019-20 school year and the use of hybrid and distance learning models during the 2020-21 school year contributed to an accelerated decrease in rates. Although the effect of COVID-19 and staff shortages during subsequent school years is harder to interpret, it is possible that this data remains affected by COVID-19 and its continued effects.

In general, caution should be used when comparing 2019-20, 2020-21, and 2021-22 data to similar data from other years, due to the effect of COVID-19. Because of the varying and potentially unknown effect of COVID-19, 2022-23 restrictive procedures data is compared both to data from the previous year and to data from 2018-19. As the last full school year prior to the COVID-19 pandemic, the 2018-19 school year is considered the pre-COVID-19 baseline.

Total Restrictive Procedures

Prior to COVID-19, the use of restrictive procedures, as outlined in Table 1 (below), was decreasing since a peak in the 2017-18 school year. This trend was accelerated during the 2019-20 and 2020-21 school years due to effects of the COVID-19 pandemic. In the 2021-22 school year, for the first time since the start of the COVID-19 pandemic, data showed an increase in the use of restrictive procedures. Although the 2022-23 school year showed a slight decrease (6%) in the use of restrictive procedures, the use of restrictive procedures in Minnesota schools increased during the 2023-24 school year. This overall measure includes both an increase in the use of physical holds and a decrease in the use of seclusions during the past year. Restrictive procedures during the 2023-24 school year continues to be significantly below the 2018-19 school year, the pre-COVID-19 baseline. This may be due to the continued effect of the COVID-19 pandemic or the successful efforts of districts to reduce their use of restrictive procedures, or both. It will likely be some time until the effect of COVID-19 on this data is fully understandable.

Statewide, during the 2023-24 school year, districts reported a total of 17,464 restrictive procedures, including 3,451 seclusions and 14,013 physical holds, as described in Table 1 (below).

[19] Statewide assessment and accountability results released in August 2024 revealed that attendance rates are up in Minnesota schools, and test scores overall remain steady for all students. Minnesota school test scores stabilize but COVID's effects linger, MPR news August 29, 2024. Minnesota Department of Education News Release, August 29, 2024.

Table 1. Annual Physical Holds, Seclusion, and Total Restrictive Procedures, 2014-15 through 2023-24 school years.[20]

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2014-15	15,511	6,547	22,058
2015-16	15,600	6,425	22,025
2016-17	17,120	7,085	24,205
2017-18	18,834	6,164	24,998
2018-19	17,157	5,596	22,753
2019-20*	12,679	3,983	16,662
2020-21*	6,666	1,850	8,516
2021-22*	12,784	4,702	17,486
2022-23	12,405	3,990	16,395
2023-24	14,013	3,451	17,464

During the 2023-24 school year, the number of restrictive procedures increased from the 2022-23 school year by 7%, as described in Table 2 (below). As further described by Table 2, below, districts reported 3,451 seclusions during the 2023-24 school year, a decrease of 14% during from the 2022-23 school year, and 14,013 physical holds during the 2023-24 school year, an increase of 13% from the 2022-23 school year.

Table 2. Percentage Change in the Number of Restrictive Procedures, 2021-22 to 2023-24 school years.

Year	Physical Holds	% Change	Seclusion	% Change	Total Restrictive Procedures	% Change
2022-23	12,405		3,990		16,395	
2023-24	14,013	+13%	3,451	-14%	17,464	+7%

However, during the 2023-24 school year, total restrictive procedures continued to decrease as compared to the 2018-19 school year, the pre-COVID-19 baseline, by 23%, as described in Table 3 (below). As further described by Table 3, below, districts reported 3,451 seclusions during the 2023-24 school year, a 38% decrease from the 2018-19 school year, the pre-COVID baseline, and 14,013 physical holds during the 2023-24 school year, a decrease of 18% from the 2018-19 school year, pre-COVID-19 baseline.

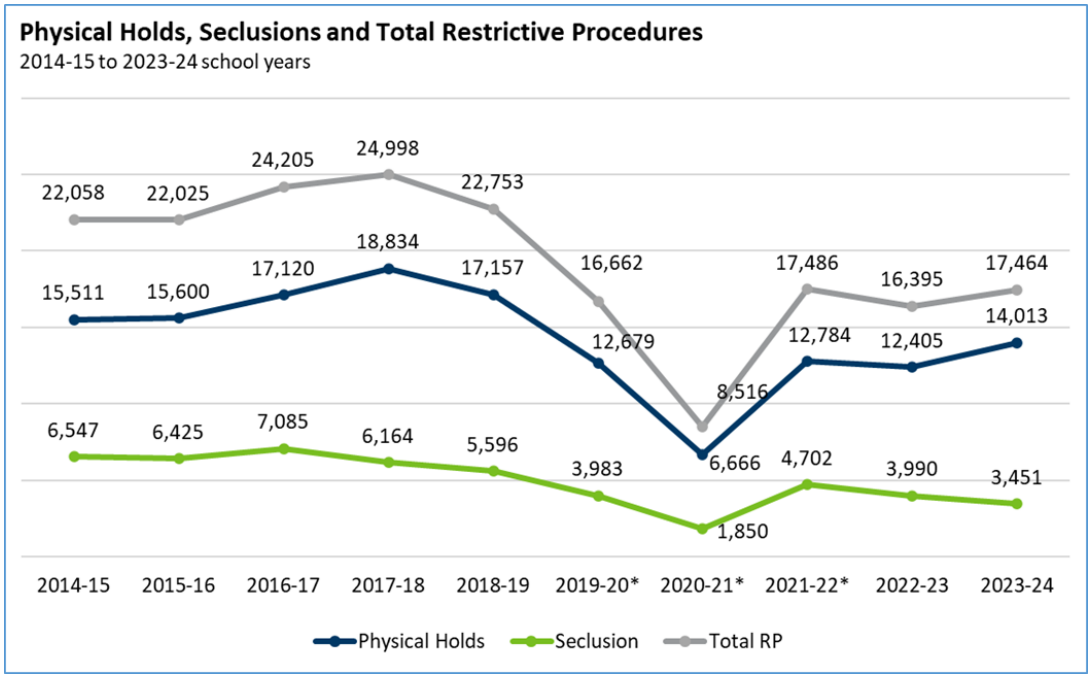
[20] Due to ongoing correction of data errors and an analysis with updated software, total counts of restrictive procedures reported in previous legislative reports has been revised and updated in this report.

Table 3. Percentage Change in the Number of Restrictive Procedures, 2018-19, the pre-COVID-19 baseline, to 2023-24 school years.

Year	Physical Holds	% Change	Seclusion	% Change	Total Restrictive Procedures	% Change
2018-19	17,157		5,596		22,753	
2023-24	14,013	- 18%	3,451	- 38%	17,464	- 23%

Figure B (below) shows the trend in the number of restrictive procedures, as well as seclusions and physical holds, reported by districts since the 2014-15 school year. As shown in Figure B, the number of seclusions started decreasing in the 2016-17 school year, with an accelerated decline in the 2019-20 and 2020-21 school years due to the COVID-19 pandemic, and the number of physical holds begun to decrease in the 2018-19 school year, with an accelerated rate of decrease starting in the 2019-20 school year, due largely to the COVID-19 pandemic. Although 2023-24 school year data indicates an increase in restrictive procedures over the previous year, rates continue to remain below the 2018-19 school year, the pre-COVID-19 baseline.

Figure B. Annual Physical Holds, Seclusions, and Total Restrictive Procedures, 2014-15 through 2023-24 school years.



Fewer students with disabilities experienced restrictive procedures during the 2023-24 school year than the 2022-23 school year, as shown in Table 4 (below). Districts reported that 2,932 students with disabilities experienced one or more restrictive procedures during the 2023-24 school year, a 1% decrease from the 2,958 students with disabilities experiencing restrictive procedures in 2022-23, though a 19% decrease from the 2018-19 school year, the pre-COVID-19 baseline.

Table 4. Annual Number of Students with Disabilities Experiencing Restrictive Procedures, 2016-17 through 2023-24 school years.

Year	Number of Students with Disabilities Experiencing Restrictive Procedures
2016-17	3,476
2017-18	3,546
2018-19	3,603
2019-20*	3,052
2020-21*	1,685
2021-22*	2,569
2022-23	2,958
2023-24	2,932

Seclusion

MDE now has detailed data of individual seclusions for eight school years. The number of school days in each reporting quarter varies, leading to a wide variance in the total number of seclusions and the number of students with disabilities secluded during each quarter. Therefore, quarterly data should only be compared for the same reporting quarter across school years. The following data presents a longitudinal analysis of the seclusion data received through the 2023-24 school year, as well as a comparison of each reporting quarter across school years.

As discussed above, school closures due to the COVID-19 pandemic affected quarter three and four of the 2019-20 school year, as well as summary data for the 2019-20 school year. Likewise, the 2020-21 school year was characterized by frequently shifting learning models, as each district used public health guidelines and local data to determine its response to COVID-19. COVID-19 continued to impact schools and communities differently during the 2021-22 school year, and its effects continue to have a varied impact on Minnesota schools and communities. Because of variation in number of learning days, variety of learning models use across districts, and varying effects of learning loss, trauma, and ongoing impacts of COVID-19, seclusion data from recent years should be interpreted with caution, particularly with regard to making comparisons from year-to-year data. It is likely to be one or more additional school years until further conclusions can be drawn about long-term trends regarding restrictive procedures use in Minnesota.

Overall Seclusions

Annual statistics indicate a decrease in the number of seclusions during the 2023-24 school year from the previous school year. During the 2023-24 school year, districts reported a total of 3,451 seclusions and 553 students with disabilities experiencing seclusion, a decrease of 14% and 25% respectively, compared to the previous school year. Data from 2023-24 continues to remain well below the 2018-19 school year, the pre-COVID-19 baseline, with a 38% reduction in seclusions and a 36% decrease in students with disabilities experiencing seclusion since that year. Data regarding the change in the number of students with disabilities experiencing seclusion is presented below in Table 5.

Table 5. Annual Number of Students with Disabilities Experiencing Seclusion, 2016-17 through 2023-24 school years.

Year	Number of Students with Disabilities Experiencing Seclusion
2016-17	1,044
2017-18	855
2018-19	860
2019-20*	710
2020-21*	463
2021-22*	724
2022-23	737
2023-24	553

Figure C (below) highlights the overall trends in the number of seclusions since the 2017-18 school year. In typical years, variation is seen from quarter-to-quarter, as each quarter contains a different number of school days. Fewer seclusions are generally seen in quarter one each year, as this time period (July 1 through September 30) typically includes fewer school days, and higher rates of seclusion are reported for quarters two, three and four (typically with a peak in quarter two or three).

Figure C, below, also demonstrates the slight decrease in seclusions in quarter three of the 2019-20 school year, which may have been due to both a general downward trend in the use of seclusion as well as COVID-19 school closures. Due to statewide school closures during the spring of the 2019-20 school year, there were no seclusions reported during quarter four of the 2019-20 school year. The 2020-21 school year showed a slow increase in the use of seclusions across each quarter, with the highest number of seclusions occurring in the fourth quarter, although seclusions continued to be significantly below pre-COVID-19-era totals.

As further demonstrated by Figure C, below, as compared to 2019-20 and 2020-21, which were heavily affected by COVID-19, quarterly data for the 2022-23 and 2023-24 school years more closely represent the pattern in 2018-19 and previous years: a relatively low number of seclusions in quarter one, increased numbers in quarter two and three, which include more school days, and a decline in quarter four. The 2023-24 school year, however, shows a pattern of decrease not just since 2018-19, the pre-COVID baseline, but also compared to the corresponding quarter in the 2022-23 school year. The current year's decrease in the use of seclusions, while likely still related to COVID-19, may also show the effectiveness of the strategies and resources used in Minnesota schools to reduce the use of seclusions, but it is likely that additional time and data will be needed before the patterns in this data can be fully understood.

Figure C. Seclusions by School Year and Quarter, 2017-18 through 2023-24 school years.

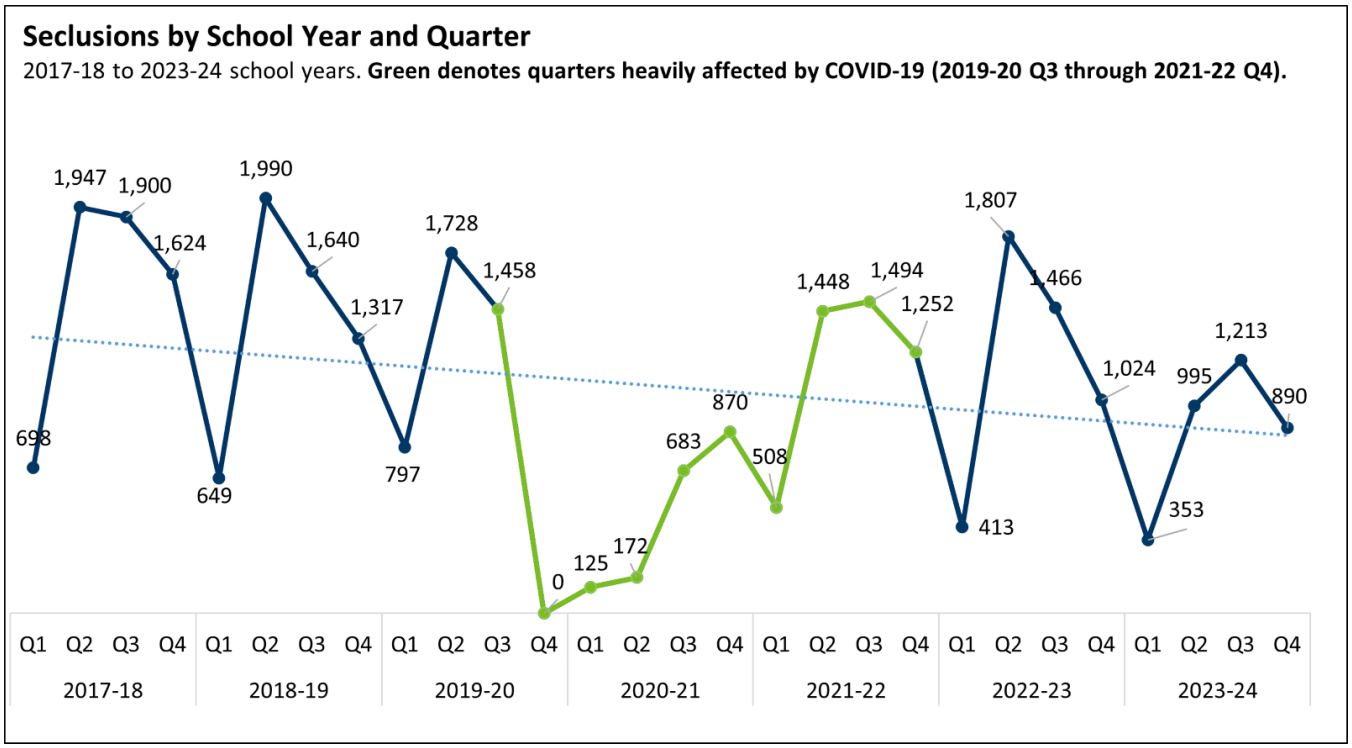


Table 6. Seclusions by School Year and Quarter, 2017-18 through 2023-24.

School Year	Seclusions Q1	Seclusions Q2	Seclusions Q3	Seclusions Q4
2017-18	698	1,947	1,900	1,624
2018-19	649	1,990	1,640	1,317
2019-20	797	1,728	1,458	0
2020-21	125	172	683	870
2021-22	508	1,448	1,494	1,252
2022-23	413	1,807	1,466	1,024
2023-24	353	995	1,213	890

Similar to the pattern shown in total seclusions, quarterly data for the number of students with disabilities secluded during the 2023-24 year demonstrates a relatively low number of students with disabilities secluded in quarter one, increased numbers in quarter two and three, and a decline in quarter four, a typical pattern for years that were not heavily affected by COVID-19.

Figure D (below) highlights the overall trends in the number of students with disabilities experiencing seclusion since the 2017-18 school year. The 2018-19 school year remains the pre-COVID-19 baseline. Across all quarters, the number of students with disabilities experiencing seclusions reported in the 2023-24 school year remains lower than the corresponding quarter in the 2018-19 school year, the pre-COVID-19 baseline. Given the overall downward trend in the number of students with disabilities experiencing seclusion over time, it is possible that a decrease in the number of students with disabilities experiencing seclusion would have continued to occur during 2019-20 and 2020-21 school years in the absence of the COVID-19 pandemic, though to a lesser extent. Data from future years is likely necessary before any conclusions can be drawn regarding whether the continued decline since 2018-19 is due to the continuing effect of COVID-19 or other factors.

Figure D. Students with Disabilities Secluded by School Year and Quarter, 2018-19 through 2023-24 school years.

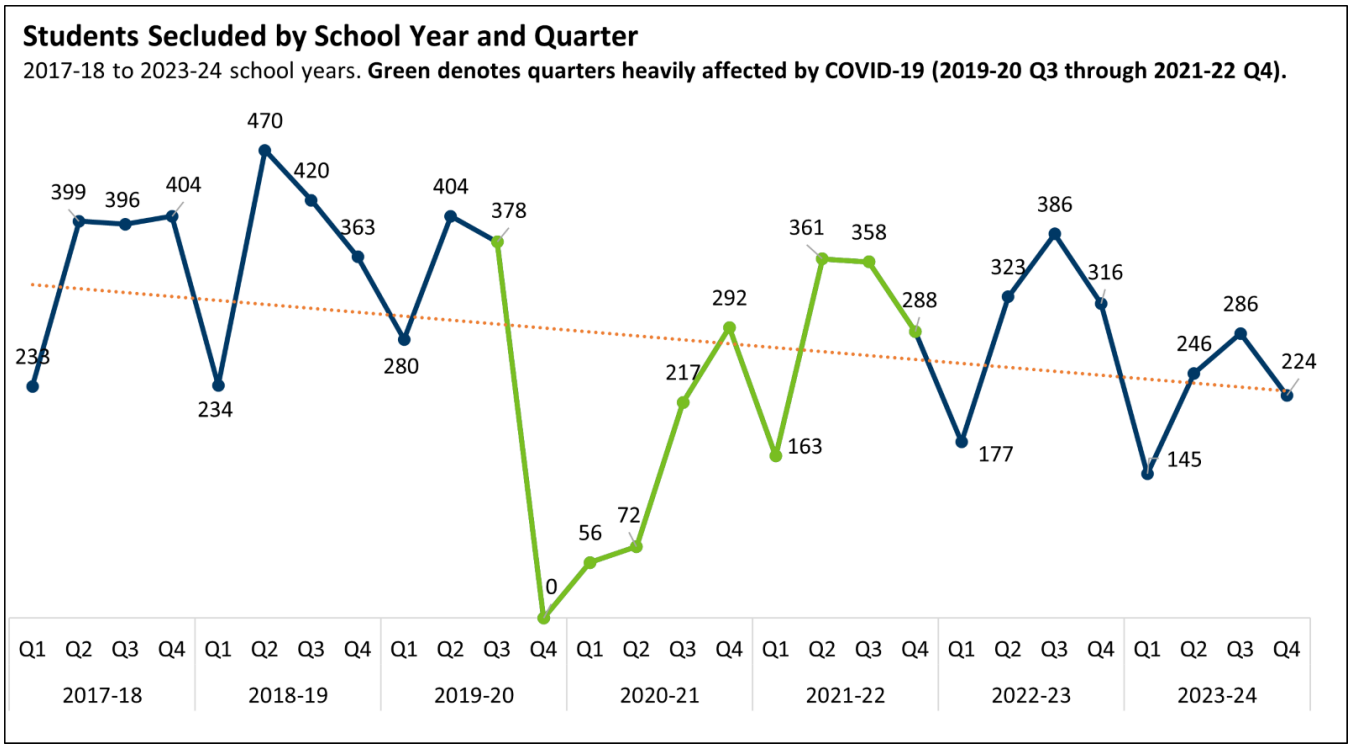


Table 7. Students Secluded by School Year and Quarter, 2017-18 through 2023-24.

School Year	Seclusions Q1	Seclusions Q2	Seclusions Q3	Seclusions Q4
2017-18	233	399	396	404
2018-19	234	470	420	363
2019-20	280	404	378	0
2020-21	56	72	217	292
2021-22	163	361	358	288
2022-23	177	323	386	316
2023-24	145	246	286	224

Student Demographics

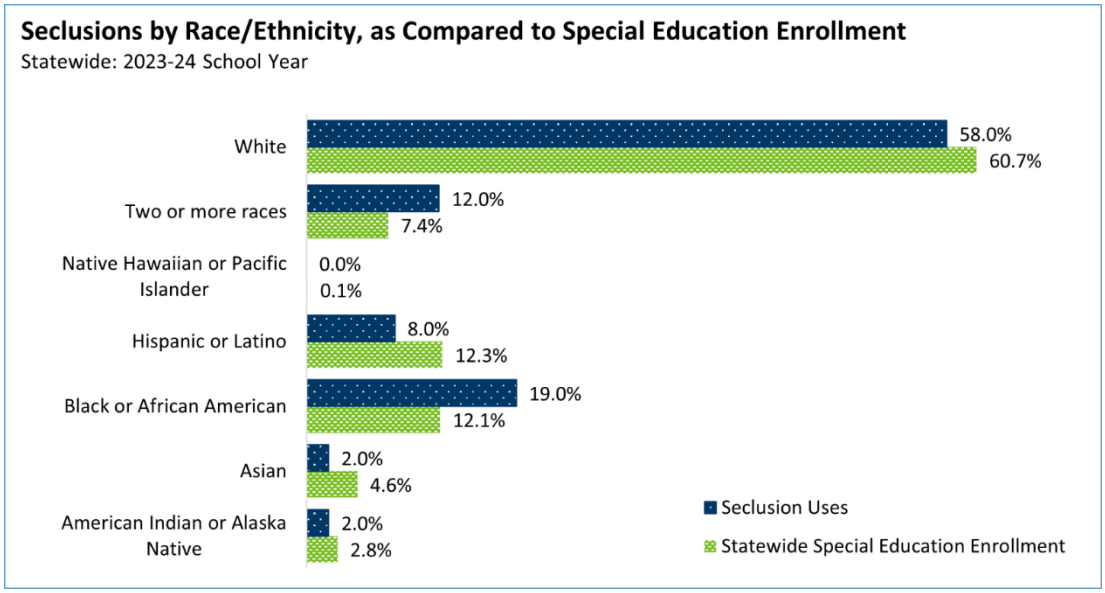
Race/Ethnicity

Since at least the 2016-17 school year, students with disabilities identified as Black or African American or two or more races, and, in some years, American Indian or Alaska Native students, tend to be overrepresented in the total number of students with disabilities secluded. This pattern is consistent with physical holding data. In contrast, students with disabilities identified as Hispanic or Latino and Asian students are underrepresented with regard to seclusions. White students with disabilities experience seclusion at a generally proportional rate in most years. In the 2023-24 school year, 58% of students with disabilities experiencing seclusion were white, and white students with disabilities comprised 60.7% of the special education population.

In the 2023-24 school year, 19% of the secluded students with disabilities were Black or African American, although they comprise 12.1% of the special education population. Students with disabilities identified as two or more races accounted for 12% of secluded students, although they comprise 7.4% of the special education population. In the 2023-24 school year, American Indian or Alaska Native Students, at 2.8% of the special education population, were 2% of the secluded students with disabilities, though in other years, they have disproportionately experienced seclusion.

Figure E (below) compares the percentage of students with disabilities who experienced seclusion in each race/ethnicity category to the percentage of students enrolled in special education services in each category for the 2023-24 school year.

Figure E. Students with Disabilities Secluded by Race/Ethnicity, as compared to Special Education Enrollment, 2023-24 school year.



Age

Legislative reports prior to 2021 reported the age of students who were secluded, rather than the grade level, due to the reporting system in place at that time. Starting in 2021, MDE began including information regarding the grade level of secluded students in the legislative report, and in the 2022 legislative report, data was provided with regard to both the age and grade of students with disabilities experiencing seclusion. Although data consistently shows similar trends with regard to both age and grade from year to year, MDE has identified inaccuracies in grade data reported through the current Stepwell MN system. In the 2023 legislative report, MDE notified the Legislature that future legislative reports would include data regarding the age, but not the grade, of students with disabilities experiencing seclusion.

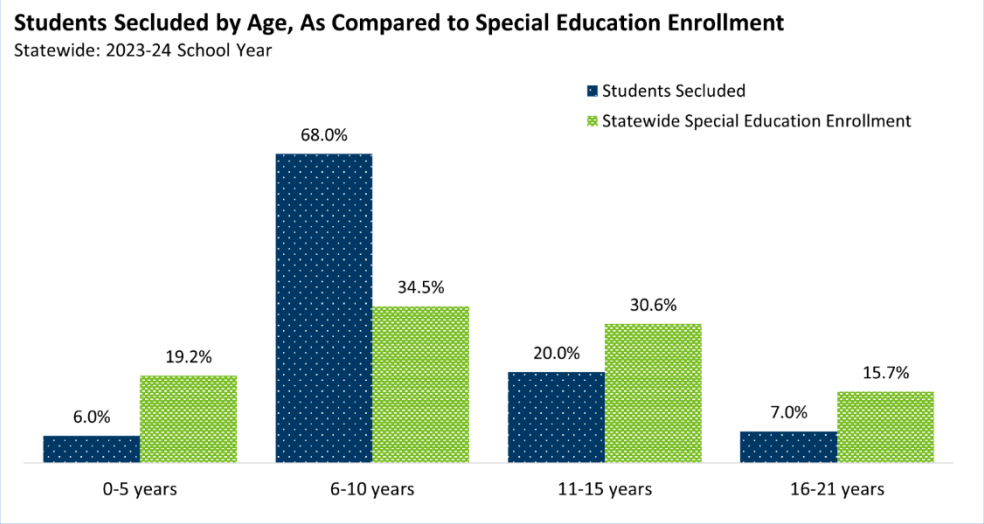
At this time, MDE is not able to collect, or report, accurate quarterly data regarding the grade of students with disabilities experiencing seclusion, particularly for the first two quarters of each school year. Minnesota statute requires that MDE collect quarter one seclusion data by October 15 annually, which is before most Minnesota school districts have provided updated, complete fall student data. Given this conflict, the grade reported for most students through Stepwell MN is inaccurate for the first quarter of each school year under MDE's current legislative mandate. MDE is considering options to improve the accuracy of grade data for future reporting. In

the meantime, as age and grade data do show similar trends from year to year, information regarding the age of students provides similar information.[21]

During the 2023-24 school year, the majority of students with disabilities experiencing seclusion were in the 6-10-year age range: 68%. Students with disabilities in this age range are 34.5% of the total special education population. Twenty percent of students with disabilities experiencing seclusion were in the 11-15-year age range. This pattern is consistent with both age and grade data from previous years. As in previous years, a relatively small percentage of students with disabilities under 5 or over the age of 16 experienced seclusion.

Figure F (below) compares the ages of students with disabilities who experienced seclusion to the percentage of students in the total special education population for the 2023-24 school year.

Figure F. Students with Disabilities Secluded by Age, as compared to Special Education Enrollment, 2023-24 school year.



Setting

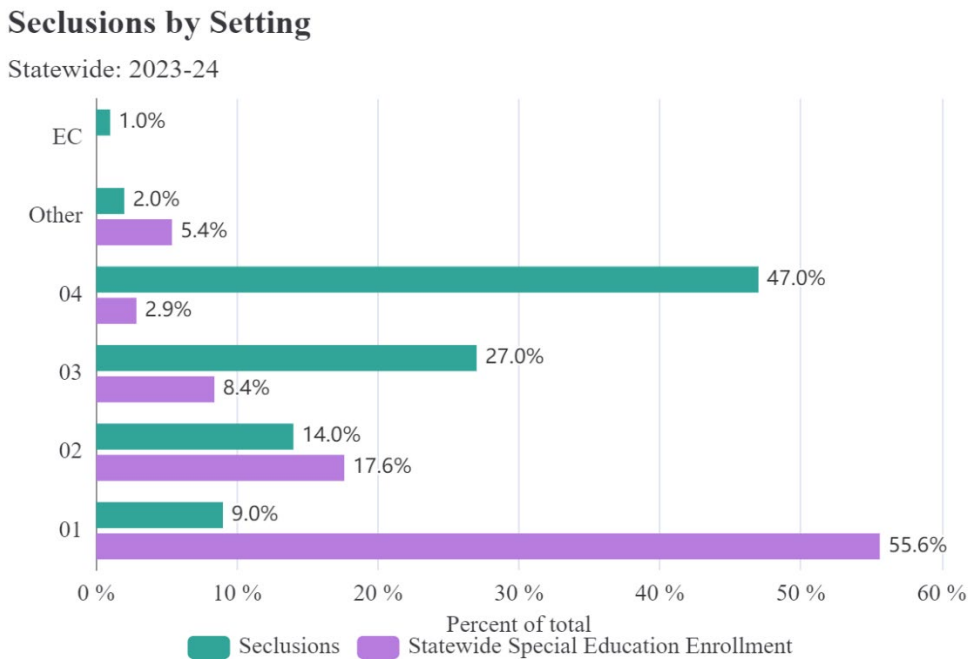
Districts reported using seclusion most often for students with disabilities receiving services in federal setting four (setting 4), meaning the student receives special education and related services at a separate school facility for more than 50% of the school day. This includes setting 4 programs operated by independent school districts, intermediate school districts, and special education cooperatives.

[21] Starting on September 1, 2024, the use of seclusion on children from birth through grade three is prohibited. In Minnesota, most students tend to turn 9 during third grade, so the 6-10 year age range includes some fourth-grade students. Because of this, MDE's data regarding students aged 6-10 provides only approximate information regarding students in this grade range. Legislative changes and/or changes to the Stepwell MN system may be necessary if more detailed information regarding the age and/or grade of students is required.

During the 2023-24 school year, 2.9% of the special education population received services in setting 4 programs. However, students with disabilities receiving services in setting 4 programs were 47% of the students with disabilities experiencing seclusion, as shown below in Figure F. This percentage has remained relatively stable over the past two years, when 46% (2022-23) and 47% (2021-22) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs. In previous years, 57% (2020-21) and 60% (2019-20) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs.

In contrast, the majority of students with disabilities receive special education and related services outside the general education classroom for less than 21% of the school day and are considered setting 1 students. Setting 1 students with disabilities make up 55.6% of the special education population and are much less likely to experience seclusion. During the 2023-24 school year, 9% of secluded students with disabilities were receiving services in setting 1. This is a decrease from the 2022-23 school year, when 13% of secluded students with disabilities were receiving services in setting 1.

Figure G. Students with Disabilities Secluded by Setting, as Compared to Special Education Enrollment, 2023-24 school year.

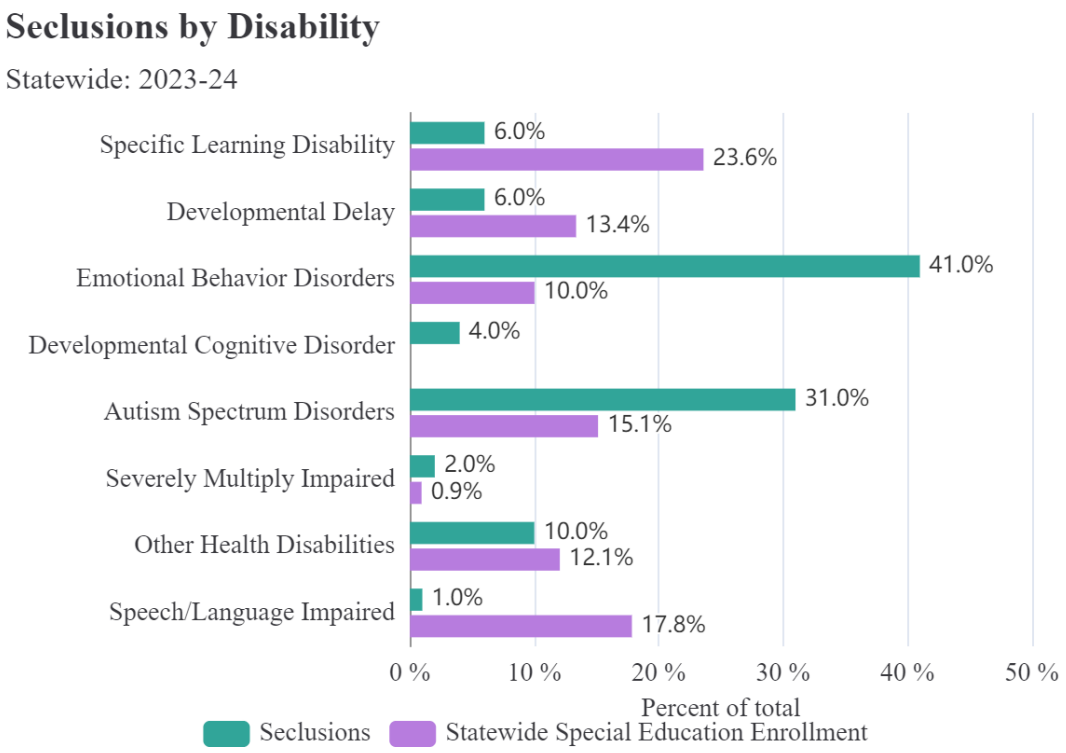


Disability Category

Figure H (below) provides information regarding the disability category of students with disabilities who experienced seclusion during the 2023-24 school year. Consistent with the previous school year, as well as physical holding data, the majority of students with disabilities experiencing seclusion receive services under the emotional and behavioral disorders (EBD) and ASD categories. Although EBD students comprise 10% of the special education population, they were 41% of the students with disabilities that experienced seclusion during

the 2023-24 school year. ASD students, who comprise 15% of the special education population, were 31% of students with disabilities who experienced seclusion during the 2023-24 school year.

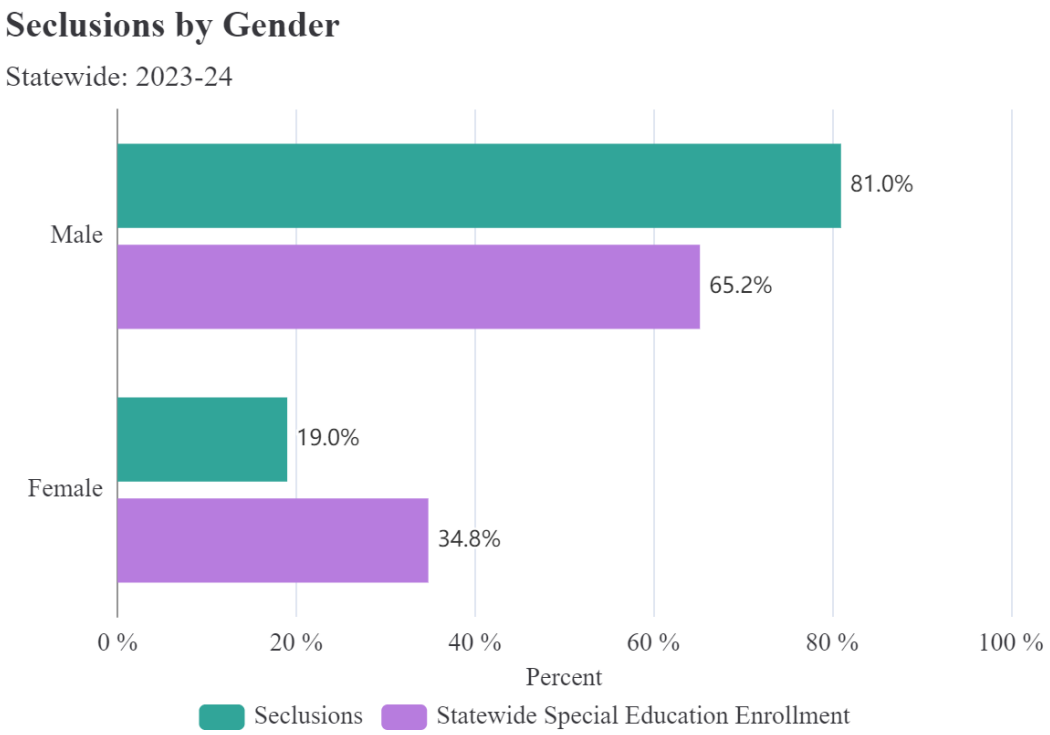
Figure H. Students with Disabilities Secluded by Disability Category, as Compared to Special Education Enrollment, 2023-24 school year.



Gender

Male students have comprised a greater proportion of students receiving special education services, and a greater proportion of students with disabilities experiencing seclusion, since at least the 2011-12 school year. As in previous years, male students continue to be overrepresented in the special education population, at 65.2%, with female students comprising just 34.8% of the total special education population. Even considering this overrepresentation in the special education population, male students with disabilities are disproportionately secluded. As shown in Figure I (below), 81% of the students with disabilities who experienced seclusion in the 2023-24 school year were male. This is similar to the percentages reported in previous years: students with disabilities experiencing seclusion in 2022-23 were 84%, and this measure was 85% in 2021-22, 88% in 2020-21, and 90% male in 2019-20.

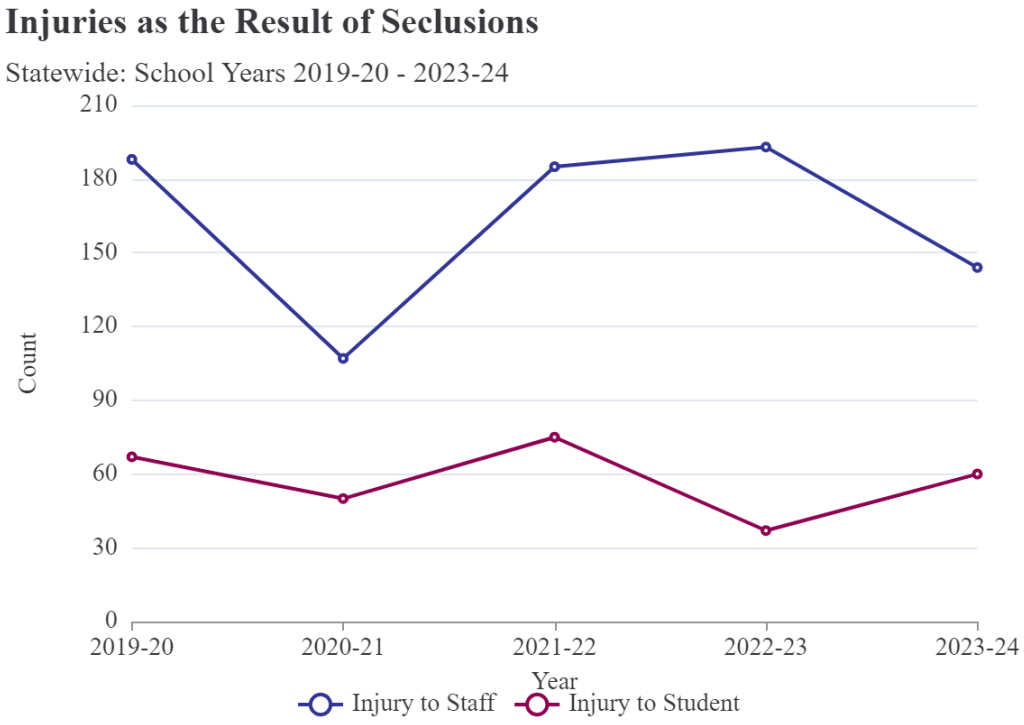
Figure I. Students with Disabilities Secluded by Gender, as Compared to Special Education Population, 2023-24 school year.



Staff and Student Injuries Reported by Districts Resulting from Seclusions

Figure J (below) shows staff and student injuries from the 2019-20 through 2023-24 school years. There was a decrease in staff injuries during the 2023-24 school year, and an increase in student injuries. For the 2023-24 school year, districts reported 144 staff injuries and 60 student injuries as a result of seclusion, as compared to 193 and 37 injuries, respectively, in the 2022-23 school year.

Figure J. Student and Staff Injuries Resulting from Seclusions, 2017-18 through 2023-24 school years.



Physical Holding

This section provides data about reporting districts and overall physical holding numbers and trends as reported by districts annually.

Overall Physical Holds

Annual data indicates an overall increase in the number of physical holds during the 2023-24 school year. During the 2023-24 school year, districts reported a total of 14,013 physical holds and 2,777 students with disabilities experiencing physical holds, an increase of 13% in physical holds and an increase of 1% in the number of students with disabilities experiencing physical holds. However, 2023-24 data remains well below the 2018-19 school year, the pre-COVID-19 baseline of 17,157 physical holds and 3,347 students with disabilities experiencing physical holds (a decrease of 18% and 17%, respectively). During the 2023-24 school year, the average number of physical holds per physically held student was 5.0, an increase from 2022-23 (4.5) but the same as the average in 2021-22. This is also a slight decrease from pre-COVID-19-era years: the average number of physical holds per physically held student was 5.1 in 2018-19 and 5.4 in 2017-18.

Districts reported using physical holds with 2,777 students during the 2023-24 school year, which is an increase of 1% from the previous year. Compared to the 2018-19 school year, the pre-COVID-19 baseline, this is a decrease of 17%. The lower numbers of physical holds during the 2019-20 and 2020-21 school years is likely due, at least in part, to the COVID-19 pandemic. However, the comparative increase during the 2021-22 and 2022-23 school years, while remaining significantly under pre-COVID baselines, indicates that a continued decrease in the

use of physical holding may have been observed even in the absence of the global pandemic. The percentage of students with disabilities experiencing physical holds remained the same as the previous school year: 1.7% in both the 2023-24 and 2022-23 school years, as compared to 1.3% in the 2021-22 school year. However, this continues to be a decrease in the percentage of students with disabilities experiencing physical holds as compared to earlier years: 1.9% during the 2019-20 school year and 2.3% in the 2018-19 school year, the pre-COVID-19 baseline.

Data regarding the change in the number of students with disabilities experiencing physical holding from the 2017-18 through 2023-24 school years is presented below in Table 8.

Table 8. Annual Number of Students with Disabilities Experiencing Physical Holds, 2017-18 through 2023-24 school years.

Year	Number of Students with Disabilities Experiencing Physical Holds
2017-18	3,465
2018-19	3,347
2019-20*	2,828
2020-21*	1,571
2021-22*	2,371
2022-23	2,750
2023-24	2,777

Student Demographics

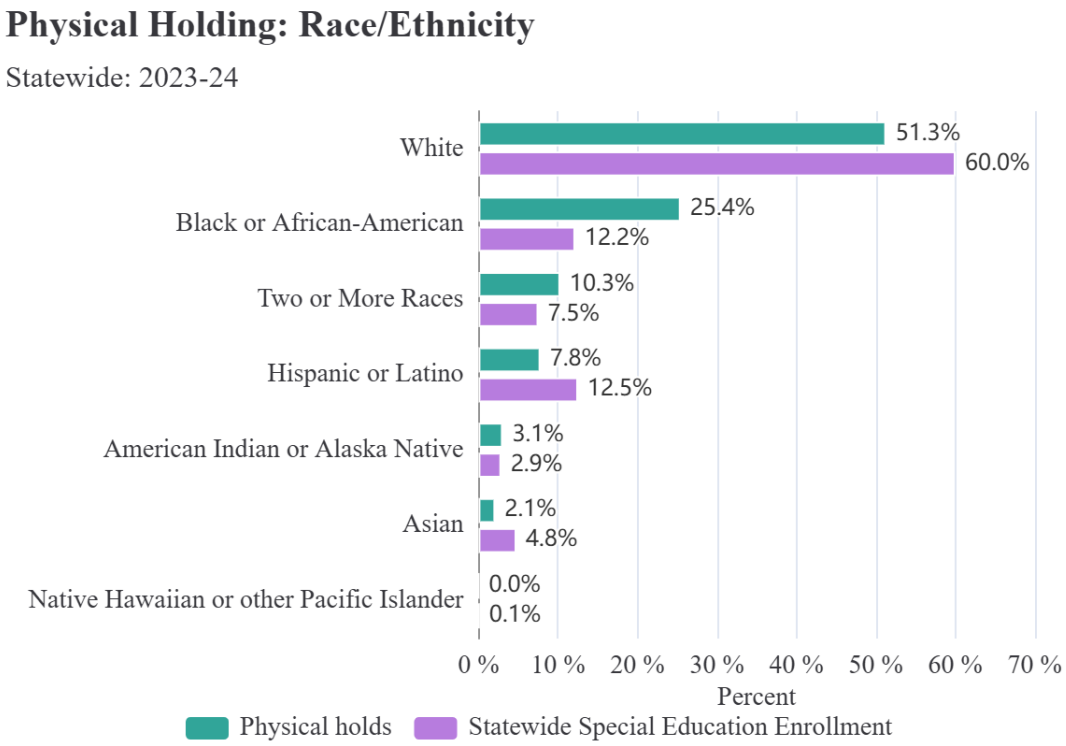
Race/Ethnicity

Students with disabilities identified as Black or African American students, American Indian or Alaska Native students, and students reported under the category of two or more races continue to be overrepresented in the use of physical holds. Conversely, categories of white, Hispanic or Latino, and Asian students with disabilities continue to be considerably underrepresented.

In the 2023-24 school year, 25.4% of the physically held students with disabilities were Black or African American, although they comprise 12.2% of the special education population. Students with disabilities identified as two or more races accounted for 10.3% of physically held students with disabilities, although they comprise 7.5% of the special education population. American Indian or Alaska Native Students, at 2.9% of the population, were 3.1% of the physically held students with disabilities. Since the 2020-21 school year, this disproportionality has remained relatively consistent. The percentage of physically held students with disabilities in these race/ethnicity categories has stayed relatively similar–with minor fluctuations in both the percentage of physically held students in these race/ethnicity groups–for a number of years.

Figure K (below) compares the race/ethnicity of students with disabilities who experienced physical holds during the 2023-24 school year to the race/ethnicity of students receiving special education services.

Figure K. Students with Disabilities Physically Held by Race/Ethnicity, as Compared to Special Education Enrollment, 2023-24 school year.

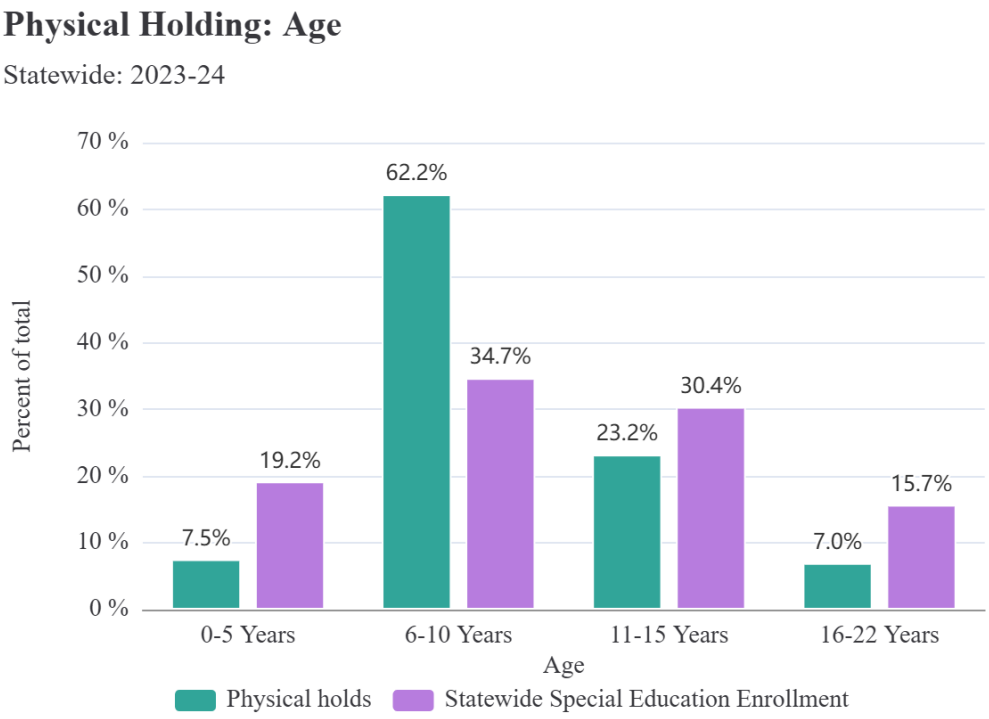


Age

During the 2023-24 school year, the majority of students with disabilities experiencing physical holds were in the 6-10 age range: 62.2% of the physically held students with disabilities were aged 6-10 years old, although students in this age range comprised just 34.7% of the special education population. This pattern is consistent with the age range data from previous years. In contrast, 23.2% of the physically held students with disabilities were in the 11-15-year age range, although students in this range comprise 30.4% of the special education population. As in previous years, a relatively small percentage of physical holds were used on students with disabilities under 5 or older than the age of 16, just 7.5% and 7.0%, respectively.

Figure L (below) compares the age of students with disabilities who experienced physical holds in the 2023-24 school year to the age of students in the total special education population.

Figure L. Students with Disabilities Physically Held by Age, as Compared to Special Education Enrollment, 2023-24 school year.

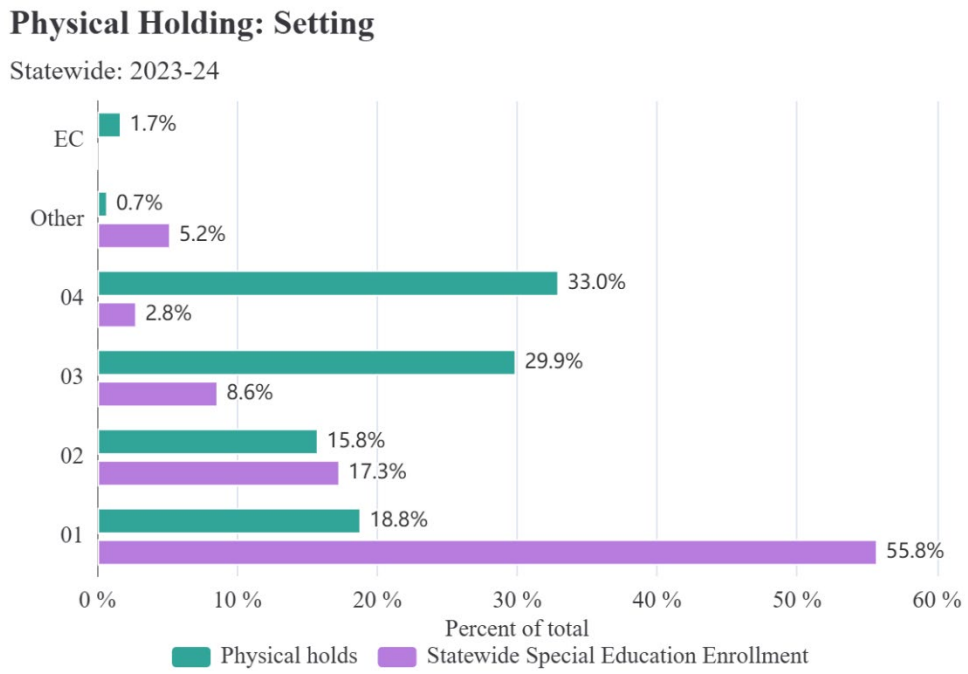


Setting

In 2014-15, MDE began collecting demographic data related to the federal setting of physically held students with disabilities. Since then, the pattern of physical holding use across students in different instructional settings has been generally consistent. Relative to the proportion of all students in setting 4 programs, a disproportionate number of students with disabilities experiencing physically holds are in setting 4 programs, a trend that is consistent with data from the past four school years and with seclusion data.

During the 2023-24 school year, 2.8% of the special education population received services in setting 4 programs. However, students with disabilities receiving services in setting 4 programs were 33% of students with disabilities experiencing physical holds. As shown in Figure L (below) most of the physically held students with disabilities in 2023-24 received services in setting 4 programs (32.0%) or setting 3 programs (29.9%), although these students comprise a relatively small percentage of the total special education population (2.8% and 8.6%, respectively). In contrast, only 34.6% of students who were physically held received services in settings 1 or 2, although these students comprised 73.1% of students with disabilities in the 2023-24 school year.

Figure M. Students with Disabilities Physically Held by Setting, as Compared to Special Education Enrollment, 2023-24 school year.

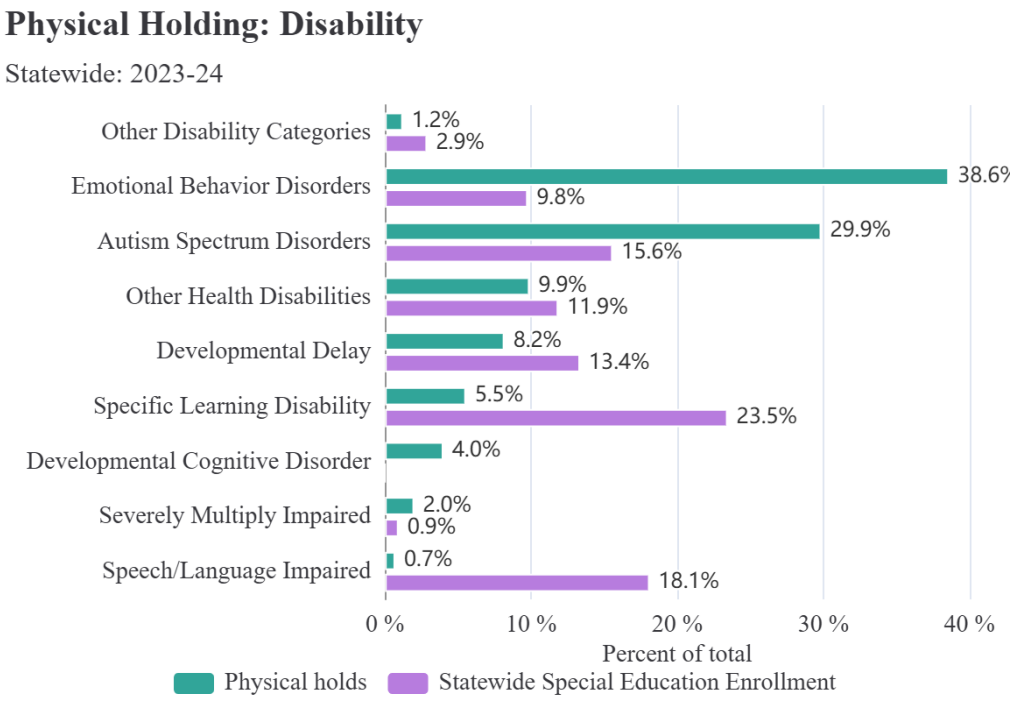


Disability Category

As in previous years, students who received services under the disability category of EBD or ASD experienced the majority of physical holds during the 2023-24 school year. Together, students from those two categories comprised 68.5% of the students who experienced physical holds. Students in both categories experienced physical holds at a rate disproportionate to their representation in the special education population. EBD students, who were 38.5% of physically held students, comprised just 9.8% of the special education population. ASD students, who were 29.9% of physically held students, comprised 15.6% of the special education population.

Figure N (below) provides information regarding the disability of categories of students who experienced physical holding during the 2023-24 school year.

Figure N. Students Physically held by Disability Category, as Compared to Special Education Enrollment, 2023-24 school year.

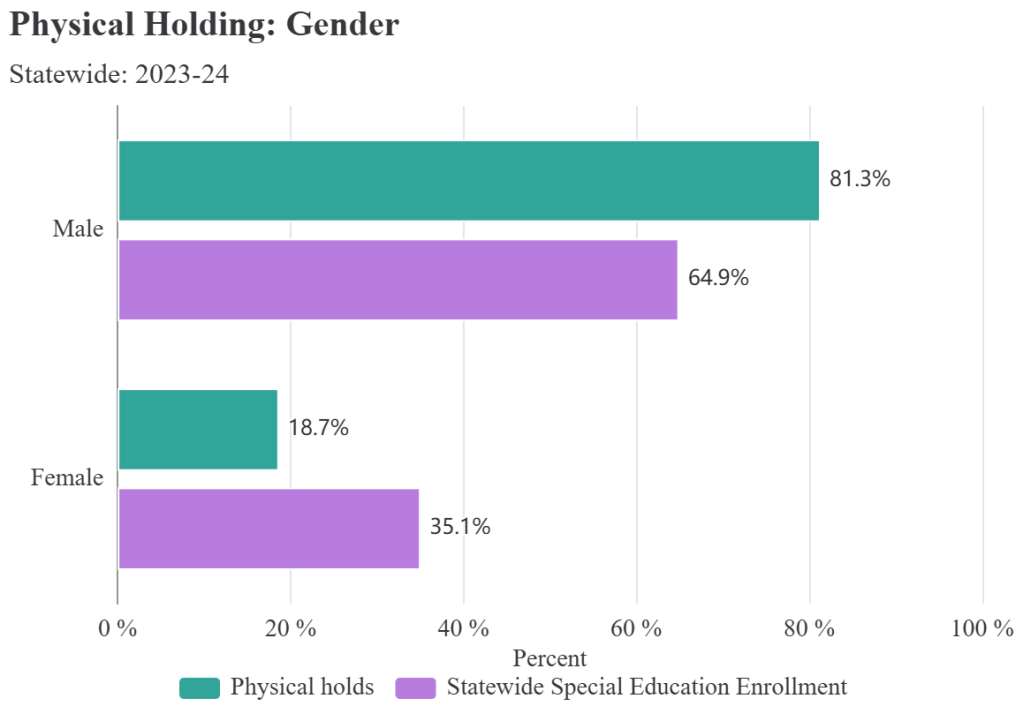


Gender

Consistent with previous years, male students comprised a greater percentage of students receiving special education services as well as a greater percentage of students with disabilities experiencing physical holding. This pattern is also consistent with seclusion data. During the 2023-24 school year, 64.9% of students receiving special education services were male and 35.1% of students were female, a ratio of approximately two male students to each female student. During the same time period, 81.3% of the students experiencing physical holds were male, and 18.7% were female.

Figure O (below) provides information regarding the gender of students with disabilities who experienced physical holds during the 2023-24 school year.

Figure O. Students with Disabilities Physically Held by Gender, as Compared to Special Education Enrollment, 2023-24 school year.

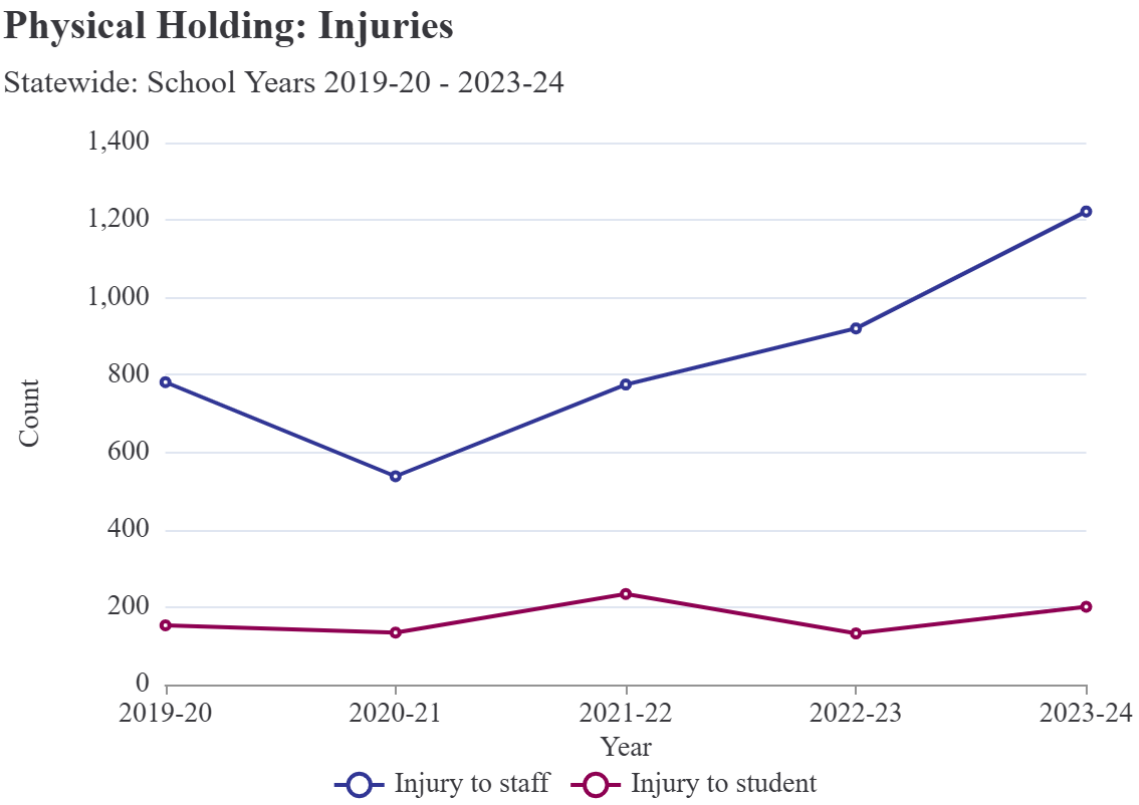


Staff and Student Injuries Reported by Districts Resulting from Physical Holding

During the 2023-24 school year, districts reported 1,222 staff injuries directly related to physical holding, an increase of 24.7% since the 2022-23 school year and an approximate rate of one staff injury for every 11.5 physical holds. During the same time period, districts reported 201 student injuries directly related to physical holding, a decrease of 34% since the 2022-23 school year, and a rate of one student injury for every 67 physical holds.

A factor that may confound the number of injuries reported is the subjectivity in defining an injury and determining whether it was directly related to physical hold use. Given the lack of a consistent definition of injury, districts locally determine a threshold for the level of injury and how close in time it must occur to the physical hold when deciding whether to include an injury in their yearly counts.

Figure P. Staff and Student Injuries Resulting from Physical Holding, 2018-19 through 2023-24 school years.



Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2023-24 School Year)

This appendix includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Federal Resources on Civil Rights Law and Disproportionality in the use of Restraint and Seclusion

In 2012, the U.S. Department of Education issued the Restraint and Seclusion: Resource Document outlining 15 principles to consider when examining the use of restraint and seclusion in schools, with an emphasis on preventing the need for restraint and seclusion, using only behavioral interventions that are consistent with a child's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all children and adults.

In 2016, the U.S. Department of Education, Office for Civil Rights (OCR), issued a Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities warning school districts that the use of restraint and seclusion may result in discrimination against students with disabilities and reiterating that there is no evidence that using restraint or seclusion is effective in reducing problem behaviors, noting that instead, research supports a positive approach that incorporates positive behavioral interventions, evidence-based positive classroom strategies, and trauma-informed care.

In January 2019, the U.S. Department of Education announced an initiative to examine the use of restraint and seclusion in the school setting, with a focus on providing technical assistance to support schools in understanding how Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the ADA, and the Individuals with Disabilities Education Act (IDEA) inform the development and implementation of policies regarding restraint and seclusion and in January 2020, as part of this initiative, the Department released a webinar to explain how federal laws apply to the use of restraint and seclusion.

In July 2019, the U.S. Commission on Civil Rights issued Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, a report focusing on exclusionary discipline policies and addressing nationwide data showing the disproportionate use of restraint

and seclusion on students with disabilities, which may have an unlawful discriminatory effect on students of color with disabilities.

In April 2020, the U.S. Government Accountability Office released a Report to Congressional Committees: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data finding that the U.S. Department of Education's quality control processes for data it collects on incidents of restraint and seclusion are "largely ineffective" and recommending several changes to better detect problematic data in the Civil Rights Data Collection (CRDC), including that the Department expand its CRDC business rules to cover all school districts, identify and address factors underlying misreporting, and refine and clarify its definitions of restraint and seclusion.

In July 2020, the Children's Equity Project and the Bipartisan Policy Center issued a policy agenda titled Start with Equity: From the Early Years to the Early Grades that included data and research on "harsh discipline," including seclusion and inappropriately used restraint, and its disproportionate effect on Black children and children with disabilities. The agenda recommended policy changes for all levels – Congress, federal agencies, states and school districts – including recommending that districts ban harsh discipline, ensure that young children never have negative interactions with SROs, and invest in systems supporting positive discipline and anti-bias approaches.

In October 2021, the U.S. Department of Education released a supplement to its ED COVID-19 Handbook on Strategies for Safely Reopening Elementary and Secondary Schools titled Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs. The guidance emphasized that IEPs should "support children and students in each area of unique need—including educational, social, emotional, behavioral, and related areas—with high-quality and evidenced-based support" and "employ [FBAs] to develop individualized BIPs for students whose behaviors interfere with their ability to access and benefit from the education program" instead of relying on "inappropriate disciplinary practices, such as corporal punishment, seclusion, and restraint that disproportionately impact children of color and children with disabilities" and programs with "little or no research to support their effectiveness."

On July 19, 2022, the U.S. Department of Education's Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs (OSEP) issued guidance on addressing disparities in the use of discipline for children with disabilities and the implementation of IDEA's discipline provisions in a Dear Colleague Letter on Implementation of IDEA Discipline Provisions. In addition, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision and Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders were issued to support state educational agencies' and local educational agencies' efforts to fulfill their obligations to appropriately meet the needs of children with disabilities.

On July 19, 2022, the U.S. Department of Education also released Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973, guidance describing schools' responsibilities under Section 504 to ensure nondiscrimination against students based on disability when imposing student discipline. Specifically, the guidance explains how compliance with Section 504's requirement to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and

that could lead to student discipline. By using Section 504's procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline. As the guidance explains, when schools do choose to administer discipline for students with disabilities, they must do so in a nondiscriminatory manner.

On March 23, 2023, the U.S. Secretary of Education, Miguel Cardona, released a guidance letter regarding the use of corporal punishment in schools in the United States. Included in the release was an infographic describing the current use of corporal punishment in schools. Secretary Cardona urged states that permit or practice corporal punishment in schools and educational settings to move swiftly toward condemning and eliminating it.

In March 2023, The U.S. Department of Education also released Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates. This resource identifies five guiding principles and suggests actions schools and school districts can take to create inclusive, safe, supportive, and fair learning environments and lists federal resources to support these efforts. The five guiding principles are: 1. Foster a sense of belonging through a positive, safe, welcoming, and inclusive school environment; 2. Support the social, emotional, physical, and mental health needs of all students through evidence-based strategies; 3. Adequately support high-quality teaching and learning by increasing educator capacity; 4. Recruit and retain a diverse educator workforce; and 5. Ensure the fair administration of student discipline policies in ways that treat students with dignity and respect (including through system-wide policy and staff development and monitoring strategies).

On May 1, 2023, the U.S. Department of Education's OCR released its Annual Report to the President and the Secretary of Education for fiscal year 2022. The report includes a description of compliance reviews of three districts' use of restraint and seclusion to assess whether its use denied students with disabilities a FAPE.

In November 2023, the U.S. DOJ released a School Resource Officers, 2019-2020 report. This report provides details on demographics and certification of SROs by the type of law enforcement agency that employs them. It also describes law enforcement, mentoring, and teaching activities performed by the officers. The report discusses equipment typically carried and training received by the officers.

Also, in November 2023, the U.S. Department of Education's OCR released New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic. The 2020-21 school year data showed "stark inequities in students' educational access throughout the nation and across civil rights indicators, including regarding courses and programs, school staff, and student discipline." Given OCR paused the collection of data due to the pandemic, the 2020-21 CRDC is the first published since the 2017-18 collection which was related in 2020. The 2020-21 data contains information collected from over 17,000 school districts and 97,000 schools.

The 2020-21 CRDC details the following pertaining to restraint and seclusion:

- Approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion at schools.
- Boys, Black students, students of two or more races, and students with disabilities who received services under the IDEA were subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments.
    - Boys represented 51% of K-12 student enrollment, but 83% of students physically restrained, 82% of students mechanically restrained, and 82% of students secluded.

- Black students represented 15% of the K-12 student enrollment, but 21% of students physically restrained, 42% of students mechanically restrained, and 19% of students secluded.
- Students of two or more races were 4% of K-12 student enrollment yet accounted for 7% of students physically restrained and 7% of students secluded.
- Students with disabilities who received services under IDEA represented 14% of K-12 student enrollment but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.

In an effort to combat the Improper Use of Seclusion in Schools the Educational Opportunities Section of the Civil Rights Division of the DOJ initiated investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the ADA, 42.U.S.C §§ 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Pt. 35. Title II provides that no "individuals with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." In recent investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program, see 28 C.F.R. § 35.130(b)(1)(i); using eligibility criteria that effectively subjects students with disabilities to discrimination, see 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid discrimination in the school districts' program, see 28 C.F.R. § 130(b)(7). Specifically, the DOJ concluded that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.

The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities. For more information about the DOJ's work to combat improper seclusion of students with disabilities in public schools, read summaries of recent investigations, including press releases, notice letters, and settlement agreements. A summary of the *Action Steps from Settlement Agreements between the U.S. Department of Justice and School Districts Ending the Use of Seclusion* may be found on MDE's website Restrictive Procedures.

Potential Legislation Impacting the Use of Restraint and Seclusion in Schools

The *Keeping All Students Safe Act* has been annually introduced into the U.S. Congress since 2007.

Most recently, the Keeping All Students Safe Act was introduced into the 118th Congress S.1750 - 118th Congress (2023-2024): Keeping All Students Safe Act | Congress.gov | Library of Congress. This bill prohibits the use of seclusion and limits the use of physical restraint in schools and Head Start programs that receive federal funding. The bill prohibits the use of mechanical or chemical restraints or physical restraints that restrict breathing or are life threatening. The bill outlines the requirements for the use of physical restraint, including that the student's behavior must pose an imminent danger of serious physical injury to the student or other individual. Each state must ensure that a sufficient number of program personnel are trained and certified by a state-approved crisis intervention training program. Additionally, each program must establish procedures to follow after an incident involving physical restraint. Further, the bill establishes enforcement provisions, including a private right of action for a student who has been subjected to unlawful seclusion or restraint. The Department of Education and the Department of Health and Human Services must withhold payments from a program for unlawful seclusion or restraint. Finally, the bill requires state educational agencies to establish, implement, and enforce policies and procedures required by the bill. It also creates a grant program to assist state educational agencies with these activities.

State Resources on Restrictive Procedures Legal Standards

Restrictive Procedures Use in Schools: MDE provides training and model forms to assist Minnesota school districts in ensuring that restrictive procedures used in emergency situations are implemented safely and in accordance with the standards for using restrictive procedures found in Minnesota Statutes 2024, sections 125A.0941 and 125A.0942. You can find more information on the use of restrictive procedures, including data collection, recent legislation, and other resources on the MDE Restrictive Procedures webpage.

- **MDE training sessions**. MDE offers interactive training sessions to school districts and other interested groups throughout the state. These sessions can be provided as online sessions or in person at no cost to participants. For more information or to request a training, please contact MDE's Division of Assistance and Compliance.
    - MDE's restrictive procedures training provides an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations, along with strategies that support reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionality in the use of restrictive procedures.
    - MDE offers a variety of training sessions on special education due process and the legal standards outlining the use of discipline in schools that support the reduction in use of restrictive procedures and can be customized to meet the needs of participants.

- **MDE model forms**. MDE posts model forms related to the use of restrictive procedures. The model forms outline the minimum compliance standards in a format that school districts can modify to meet their needs.

Partners in Policy Making: Thirty-five years ago, the Minnesota Governor's Council on Developmental Disabilities in the Department of Administration created Partners in Policymaking, a groundbreaking advocacy and leadership training program to give people with disabilities and their families the resources and skills to communicate effectively with elected officials. In today's political climate of radical change, we must work harder than ever to prevent the loss of basic rights for people with disabilities. The goal of *Partners in Policymaking* is to educate participants to be active partners with those who make policy. The idea is to develop partnerships that are based on positive relationships.

The Partners in Policymaking e-learning site gives participants the opportunity to increase knowledge and understanding of best practices in the disability field and learn how to communicate effectively with their elected officials. Six online courses are now available at **PartnersOnlineCourses.com** to anyone who would like to increase their knowledge and skills.

Strategies Reported by School Districts in Narrative Responses

Beginning in the 2020-21 school year, as part of reporting annual physical holding data, school districts are asked to respond to two questions: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities? and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools?

The emerging strategies reported by school districts used to reduce the use of restrictive procedures in July 2022 included:[22]

- Staff training
- Crisis Prevention Institute (CPI) and other similar training programs
- Trainings focusing on de-escalation techniques
- Trainings focusing on specific school and student behavior concerns
- Benefit of on-site trainers, continued coaching, or other on-going training opportunities for staff

[22] Although this information is not currently paired with quantitative data from school districts, MDE does expect to be able to add this information to its analysis moving forward. MDE is currently able to report broad information regarding what districts reported has worked in their district, but in the future may be able to report whether districts that used a specific strategy actually experienced an increase or decrease in their reported restrictive procedures use. Likewise, because this information is new, it cannot be compared to previous years to identify patterns or determine pre-COVID-19 baselines. Further, because the information is summarized, overview information about district strategies and initiatives, it may not provide the more detailed information necessary to successfully replicate these strategies in other districts. For example, a district may have reported that providing time for staff collaboration was an important strategy the district employed that year, but the details of which staff attended meetings, the timing and agenda of the meetings, and the training staff received surrounding these meetings is not provided.

- Providing student supports
- FBAs
- Proactive and positive behavioral support plans
- BIPs
- Addressing sensory needs
- Adding special education services
- Adjusting schedules or programming
- Developing relationships with staff
- Incorporating social-emotional learning
- Utilizing trauma-informed practices
- Supporting mental health
- Staff collaboration and/or team meetings
- Allowing for collaboration and/or troubleshooting a particular student's needs
- Developing a consistent process for staff to debrief together following behavioral incidents
- Involving parents, oversight committees, and IEP team members
- Strategic staffing
- Using specific staff positions to address behaviors (i.e., behavior specialists, crisis teams)
- Maintaining particular expertise on staff (i.e., contracting with a board-certified behavior analysist, social worker, or school counselor, behavior teams or crisis teams trained to respond to student behaviors)

Compilation of School Districts' Narrative Responses: 2022-23 School Year

In July 2023, 449 school districts and charter schools provided information on strategies they used to reduce the use of restrictive procedures within their district during the 2022-23 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.

Although some districts (about a third) did not provide information about the specific training they use, most districts provided more detailed information about their training curriculums. Of the districts that did provide specific information, about half of them indicated that they use Crisis Prevention Institute (CPI) to provide training. Some districts explicitly identified CPI's Verbal Intervention Training as an effective resource for their staff.

The use of programs other than CPI appears to be growing, with about 15% of schools reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or Professional Crisis Management (PCM), as compared to the 2021-22 school year. Districts reported using the following programs to provide training for their staff: ○

- Handle With Care
- Ukeru
- PCM
- Life Space Crisis Intervention (LCSI)
- Safety Care

Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important

role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysts, and mental health supports on their use of restrictive procedures.

Other Trainings and Resources Mentioned by Districts

BARR Program
Coaching for Equity
Reclaiming Youth at Risk (book)
Brih Design
Catalyst Training
Nurtured Heart
Larry Thompson/Innovative Schools
Cradle to Career Education Summit
Envoy
Conscious Discipline
Move Mindfully
Boys Town
Registered Behavior Technician training
Safe Schools Platform
Brightworks
PREPaRE Training
Teach To Heal
Tough Kid Workshop
Dialectical Behavior Therapy training
Zones of Regulation
Olweus Bullying Prevention Program
Top 20 Training
Developmental Designs
Responsive Classroom
Incredible Flexible You
Prevent-Teach-Reinforce/Pyramid Model Training
Multi-Tiered System of Supports Implementation Reviews

Utilize Trauma-Informed Practices

Trauma-informed training and practices emphasize physical, psychological, and emotional safety for students, families, and staff, and helps trauma survivors rebuild a sense of control and empowerment. Becoming "trauma-informed" means recognizing that people often have many different types of trauma in their lives. People who have been traumatized need support and understanding from those around them. Trauma-informed resources and practices used by school districts include Conscious Discipline, Trauma-Informed Care, Boys Town training, the Nurtured Heart Approach, Life Space Crisis Intervention (LSCI), information on Adverse Childhood Experiences, and culturally sensitive trainings.

- Districts continue to report that training staff to approach crises with empathy has had a meaningful impact on students and staff, including decreases in the use of restrictive procedures and increases in staff retention.

- MDE also offers Responding to Tragedy and Trauma, a collection of resources for schools, families, and students on responding to crises and traumatic events.

Offer Consistent, Widespread Training and Support from Onsite Staff

In narrative responses collected by MDE, school districts frequently mentioned staff training as a strategy they used to reduce the use of restrictive procedures during the 2020-21, 2021-22, and 2022-23 school years. About three-quarters of districts mentioned training staff, with many specifically mentioning CPI and/or other trainings focused on de-escalation.

Districts also reported that maintaining specific expertise on their staff is critical to ensuring they have well-trained staff and consistent implementation of programs, particularly through targeted training and other ongoing learning opportunities for staff. Districts have reported that using Board Certified Behavior Analysts (BCBAs) or other on-staff trainers to assess skills, provide best practices, and target key areas of skill development for students and staff generally led to students spending more time receiving instruction as well as decreases in challenging student behavior and staff injuries. These districts reported that training all staff, including paraprofessionals, to implement tools consistently and creating time for teams to plan and problem-solve has been critical to successful implementation of programs.

Emphasize Social Emotional Learning (SEL) for Students

SEL is "the process through which young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions."[23] According to the Collaborative for Academic, Social, and Emotional Learning (CASEL), "SEL advances educational equity and excellence through authentic school-family-community partnerships to establish learning environments and experiences that feature trusting and collaborative relationships, rigorous and meaningful curriculum and instruction, and ongoing evaluation" and "can help address various forms of inequity and empower young people and adults to co-create thriving schools and contribute to safe, healthy, and just communities." Developing such competencies in students fosters positive social skills, reduces conduct problems, diminishes emotional stress, and improves academic performance.[24]

- Districts report that focusing on programs that explicitly teach students prosocial behaviors and emotional regulation has strengthened positive staff and student relationships, contributed to reductions in the use of restrictive procedures, and increased student capacity for academics. Further, several districts reported that compensating staff for intentionally integrating SEL into core academic curriculum has furthered staff's depth of understanding and ability to confidently implement the skills

[23] CASEL. Fundamentals of SEL – CASEL (Dec. 2021) (last accessed Jan. 3, 2023).
[24] Greenberg, Weissberg, O'Brien, Zins, Fredericks, Resnik, Elias. "Enhancing school-based prevention and youth development through coordinated social, emotional, and academic learning" (2003) American Psychologist: 58, 466-474; Durlak. "The impact of enhancing students' social and emotional learning: A meta-analysis of school-based universal interventions" (2011). Child Development, 872 (1), 1-29.

learned in staff development trainings.

- Connecting Social and Emotional Learning (SEL) to Professional Growth
  Developed in partnership with the Midwest Comprehensive Center at American Institutes for Research (AIR), this webinar reviews SEL, why it is important and practices that promote SEL. During the webinar, Nicholas Yoder, researcher and technical assistance consultant at AIR, describes the important connection between SEL and school climate, and helps the audience develop an understanding of the coordinated school climate and SEL effort to implement in schools and districts.

- Social and Emotional Learning Implementation Guidance is meant to help schools integrate SEL into school-wide teaching and learning practices so that students will learn, practice, and model essential personal life skills that contribute to academic, vocational, and personal success. Integrating SEL into school helps students learn to be caring and civil, make healthy decisions, problem-solve effectively, value excellence, be respectful and responsible, be good citizens, and be empathic and ethical individuals.

- Integrating Social Emotional Learning into Academics
  This webinar focuses on integrating SEL into academic content. SEL is an evidence-based school climate improvement practice. During this webinar, school staff, superintendents and district and school leaders will receive information on how they can best lead and support integration of SEL into the school day.

Improve Referral Processes, Debriefing Meetings, and Individualized Data Reviews

In narrative responses, about a third of districts explicitly mentioned time for staff collaboration and/or team meetings as an effective tool to reduce the use of restrictive procedures. Many districts reported the importance of regular team meetings, to allow for collaboration and/or troubleshooting a particular student's needs, as well as developing a consistent process for staff to debrief together following behavioral incidents.

- Districts report that the development and implementation of new procedures to address student behaviors, including procedures for office referrals and more formal debriefing meetings following incidents, have contributed to a reduction in the use of restrictive procedures. Some districts implemented a more formal process to refer a student to a behavior interventionist or other specialist, while other districts successfully implemented a team meeting process to address individual student behavior and allow opportunities for staff to process their emotions concerning a recent behavior event. Further, districts report that better data collection tools and processes have increased their ability to support students and have reduced their use of restrictive procedures.

- The Oversight Committee Model Agenda and Companion Guide are offered as support for program, school, and district oversight committee meetings to increase efficiency and effectiveness in collaborative discussion and decision-making on the use of restrictive procedures with the goal of reducing the use of restrictive procedures. These documents are meant to be revised and adjusted to meet the needs of the district. They are a work in progress and we encourage users to offer feedback and suggest improvements. Please submit feedback to MDE's Division of Assistance and Compliance or by calling 651-582-8689.

- Minnesota Multi-tiered System of Supports Framework (MnMTSS)
  This document provides a description of the essential systemic components of MnMTSS and how these

interact, including universal screening, data-based decision-making, evidence-based, tiered instruction and interventions, progress monitoring, leadership behaviors, beliefs and dispositions of educators and staff, community involvement, and culture/climate context.

- MnMTSS Overview Part I
  This webinar slide deck will provide an overview of the MnMTSS as a systemic foundation for addressing inequity and improving outcomes for all students in Minnesota and for reaching the Collaborative Minnesota Partnerships to Advance Student Success (COMPASS) goal of accelerating student learning by meeting academic, social-emotional, and school climate needs. Content will include the Minnesota context for development of this framework, the rationale for implementing MnMTSS, and some of the typical implementation challenges.
- MnMTSS Overview Part II
  This session will introduce the subcomponents of the MnMTSS framework that serve as the essential foundations necessary for implementing the COMPASS academic, social-emotional and school climate work. Participants will also be provided with Level I of the District and School Self-Assessment tools that will be used to measure current level of district or school implementation in the essential foundations.

Focus on Relationship Building

Strong relationships with teachers and school staff can enhance students' level of motivation and promote learning. Students who have access to strong relationships are more academically engaged, have stronger social skills, and experience more positive behavior.

- Restorative practices are drawn from the traditions of Indigenous people and communities of color around the world. They are grounded in a belief that people are profoundly relational, interconnected and inherently good. Restorative practices include ways of creating community that honor the importance of relationships amongst all members in the community, as well as practices to repair relationships when harm has been caused. Restorative practices address the needs of all people impacted by the harm. By using restorative practices in the school, people get to know one another and build relationships with each other, which are key elements to learning, bullying prevention, and creating a positive school climate for students and adults. Key principles guide the practices.
  - The BARR (Building Assets, Reducing Risks) Center Model
    In this webinar, presenters discuss BARR. BARR is a strengths-based model that provides schools with a comprehensive approach to meeting the academic, social, and emotional needs of all students. BARR uses eight interlocking strategies that facilitate real, meaningful relationships between adults and students. The BARR model allows teachers to focus on building relationships with students to access their strengths and areas for growth.
- Person-Centered Practices
  Person-centered practices are a continuum of strategies and activities that support the informed choice of students and families to make or have input into both major transitions and everyday life decisions. Person-centered practices focus on the interests and needs of the person receiving instruction or support. They emphasize each person's strengths and dreams rather than weaknesses or deficits. Person-centered principles and practices can help assure that people with disabilities have the same

rights and responsibilities as other people, including having control over their lives, making their own choices and contributing to the community in a way that makes sense to the person.

Ten Suggestions for Adding Person-Centered Features in IEPs AND Person-centered Interagency Individualized Education Program (IEP) sample facilitator actions

These documents provide recommendations of good practices that are not required but can be helpful to increase student and family engagement in the IEP planning process. Use this document to add person-centered features that may support students to:

- Have more control over their lives.
- Make more of their own choices.
- Contribute to their school and community in a way that makes sense to them

- Person-Centered Thinking®

For people supported with services, it is not person-centered planning that matters as much as the pervasive presence of PCT®. PCT® begins with learning *both* what is "important to" a person and what is "important for" a person and the balance between them. PCT® skills help people describe both how they want to live, and a reasonable balance between the components of "important to" and "important for" in their lives. As the core PCT® concept, this balance is at the center of both planning and practice.

PCT® training has been made available to educators in Minnesota since April 2018. For more information, contact the Person-Centered Practices in Education Leadership Team (MDE) (Person-Centered.MDE@state.mn.us).

- Teacher-Child Interaction Training – Universal (TCIT –U) is a professional development, train-the-trainer-model, designed to strengthen teacher-child relationship skills.

Implement PBIS

PBIS as defined in Minnesota Statutes 2024, section 125A.0941, are interventions and strategies to improve the school environment and teach children the skills to behave appropriately. The State of Minnesota has had a longstanding policy encouraging the use of positive approaches to behavioral interventions. Specifically, Minnesota Rules, part 3525.0850, provides: "The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities."

- In narrative responses, about half of the districts reported using strategic supports to meet student needs and reduce the use of restrictive procedures. Many referenced supports that are required by state and federal special education law, like FBAs, positive behavior support plans, BIPs, or similar proactive, positive behavioral supports for students. Other student supports that districts reported included planning for sensory needs and developing relationships with staff.

- Online training from MDE includes three online training modules for statewide use that provide positive

strategies for school district staff to use with students with disabilities, including students with ASD, complex EBD, and complex learning needs. These stand-alone modules and supplementary documents are designed for school districts to use in independent staff training.

- PBIS implementation is a state-initiated project that provides districts and individual schools throughout Minnesota with the necessary training, coaching, technical support and evaluation to promote improvement in student behavior across the entire school, especially for students with challenging social behaviors. PBIS school teams establish clearly defined outcomes that relate to students' academic and social behavior, systems that support staff efforts, practices that support student success and data to guide decision-making. Information is also available about the federal implementation of PBIS.

    - Restraint and Seclusion (R/S) Alternatives in All States and Territories: A Review of Legislation and Policies, August 2021.

    - Systematic Literature Review of Tier 1 PBIS Implementation in Alternative Education Setting.

    - Center on PBIS "5-Point Intervention Approach for Enhancing Equity in School Discipline" outlining a 5-point multicomponent approach to reduce discipline disproportionality in schools: 1) collect, use, and report disaggregated discipline data; 2) implement a behavior framework that is preventive, multi-tiered, and culturally responsive; 3) use engaging instruction to reduce the opportunity (achievement) gap; 4) develop policies with accountability for disciplinary equity; and 5) teach strategies for neutralizing implicit bias in discipline decisions.

    - Additional materials on the topic of PBIS and equity outlining how equity-focused strategies in action plans achieve more equitable outcomes for all student groups using a multi-component approach.

    - "Establishing Preliminary Evidence for Culturally Responsive PBIS: The Personal Matrix Activity" recording.

    - Additional information about PBIS and aligned initiatives recording.

    - Additional information on PBIS to support students with disabilities.

- BIPs are typically developed following an FBA. An FBA can identify the combination of antecedents (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the problem behavior and guide the development of a BIP. A complete BIP should describe strategies for: 1) addressing the characteristics of the setting and events, 2) removing antecedents that trigger the problem behavior, 3) adding antecedents that maintain appropriate behavior, 4) removing consequences that maintain or escalate the problem behavior, 5) adding consequences that maintain appropriate behavior, and 6) teaching alternative appropriate behaviors, including self-regulation techniques, to replace the problem behaviors.

    - Behavior Specific Praise: Implementing, Coaching, and Measuring the Impact of this Simple yet Specific Strategy: Dr. Benjamin Riden, Ph.D., BCBA-D, James Madison University, and Dr. Andy Markelz, Ph.D., Ball State University; implementing and measuring behavior specific praise for specificity, contingency, and variety.

    - **Collaborative & Proactive Solutions (CPS)** is the model of care Dr. Greene originated and describes in his various books. The CPS model is based on the premise that challenging behavior occurs when the demands and expectations being placed on a kid exceed the kid's capacity to respond adaptively.

- In November 2024 the U.S. Department of Education released *Using Functional Behavioral Assessments to Create Supportive Learning Environments*, guidance to help schools and early childhood programs better support students' behavioral needs. This guidance focuses on evidence-based practices to support students, with or without disabilities, whose behavior interferes with learning.

Use Effective De-escalation Techniques

Adult responses to student behavior can serve to either escalate or de-escalate a student's behavior. Adults may not always be aware of how their own behavior may inadvertently escalate the behavior of a student they are trying to support, even as they do their best to ensure student safety and uphold classroom and school expectations. When adults use effective de-escalation techniques as a student's behavior is becoming more intense, they have a unique opportunity to prevent intense behavioral responses or other student behavior that can lead to negative consequences, including the use of restrictive procedures on students.

- Strategies for De-escalating Student Behavior in the Classroom provides practical, research-based strategies educators can use to de-escalate challenging student behavior in the classroom. Despite the development of supportive, safe, and predictable school environments, students may, at times, become agitated, and their behavior may escalate to unsafe levels. With some advance planning, educators can reduce reliance on reactive strategies, such as punitive or exclusionary practices (e.g., restraint, seclusion, suspension, expulsion) in favor of safer, more instructive, and inclusive approaches.
- Prevention and De-escalation of Intense Behavior Responses: What Adults Can Do from the Wisconsin Department of Public Instruction provides strategies and resources for understanding effective ways to de-escalate student behavior and support prosocial replacement behavior that is a critical skill for adults to understand and consistently use.

Support Mental Health

- Children's Mental Health Division of the Minnesota Department of Human Services (DHS) administers policy and practice to ensure effective and accessible mental health services and supports for children and families in Minnesota. The division works together with many public and private partners across the state so that children and youth with mental health needs can develop and function as fully as possible in all areas of their lives. DHS is committed to making sure the right services are available at the right time for children with mental health needs and their families.
    - School-Linked Mental Health Services
    - Children's Mental Health Crisis Response Services
        - Crisis Text Line offers free help for those who are having a mental health crisis or are contemplating suicide. Services are available 24/7 across Minnesota. **Text "MN"**

to 741741.

- **Call **CRISIS (**274747)** from a cell phone to talk to a team of professionals who can help you.

- Mental Health Education in Schools
  From the National Alliance on Mental Illness, this document includes age-appropriate model learning activities, best practices in mental health education, and resources for planning and implementing of age-appropriate mental health curriculum and instruction (per Minn. Stat. 120b.21 [2022]).

- Responding to Tragedy and Trauma is an MDE webpage that identifies many resources to help educators respond to racism, violence, and trauma in ways that support students.

- Coping with Crisis Website: The Minnesota DHS offers Minnesotans resources for dealing with crisis and maintaining mental and physical health.

Other Resources

- COMPASS (Collaborative Minnesota Partnerships to Advance Student Success) is a statewide education system created through a collaboration between MDE, Minnesota Service Cooperatives and Regional Centers for Excellence. COMPASS Pathways are now available for six topics. COMPASS Pathways offer a variety of resources, evidence-based practices and facilitated guidance in formats that work best for schools. Types of pathways will vary by the topic, but may include on-demand learning, cohort learning groups or a hybrid of on-demand resources and cohort learning groups. Learn more about the topics below:
- Student Maltreatment Program at MDE assesses and investigates reports of alleged physical abuse, neglect, or sexual abuse of students that occurs in Minnesota public schools and charter schools. This includes allegations of maltreatment involving students 18-21 years of age, including students receiving special education services, up to and until graduation and the issuance of a secondary diploma.
- Minnesota Ombudsman for Mental Health and Developmental Disabilities (OMHDD) promotes the highest attainable standards of treatment, competence, efficiency, and justice for persons receiving services for mental illness, developmental disabilities, chemical dependency, or emotional disturbance. The OMHDD is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials, who investigates, and if the complaints are justified, takes action to remedy the complaints. Visit its website for more information, or to file a complaint by contacting your regional ombudsman.
- The Hexagon Tool can be used by communities and organizations to better understand how a new or existing program or practice fits into an implementing site's existing work and context.

Appendix E – February 2023 Two-Year Statewide Plan: Progress

The February 2023 Two-Year Statewide Plan includes three measurable goals along with five MDE actions to support the goals and four workgroup actions to support the goals. Progress on the first year of implementation of the February 2023 Two-Year Statewide Plan is outlined below.

Measurable Goals and Progress

Legislative Report

Goal 1: MDE will annually submit a report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures. The report will also summarize MDE's and the workgroup's progress on actions in the statewide plan.

> **Goal 1 progress**: Under Minnesota Statutes 2023, section 125A.0942, subdivision 3(b), MDE submits the annual legislative report on school districts' progress in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The statewide plan, submitted along with the legislative report, recommends to MDE measurable goals for reducing the use of restrictive procedures and strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. Components of the statewide plan include: resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce school districts' use of seclusion.
>
> This legislative report, including the appendices, serves as the February 1, 2025, annual report to the Minnesota Legislature summarizing the state's progress on reducing the use of restrictive procedures, working toward the elimination of seclusion, and identifying disproportionalities in the use of restrictive procedures.

Recommended Strategies and Resources

Goal 2: By December 31, 2024, the workgroup will compile and recommend to MDE, strategies and resources to assist school districts in reducing the use of restrictive procedures, working toward eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

> **Goal 2 progress**: The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with multiple districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, and updating the oversight committee agenda and companion guide, to assist districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1), and reviewing MDE's 2023 legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2).
>
> A compilation of strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures may be found in Appendix D of this report.

Reduce Seclusion

Goal 3: Through the combined efforts of all those involved in this work, there will be at least a 10% reduction in seclusion annually using the 2018-19 school year data as a baseline.[25] During the 2018-19 school year, school districts reported 5,596 seclusions and 860 students with disabilities experiencing seclusion.

a. By the end of the 2022-23 school year, the number of seclusions will be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 5,038 seclusions and at most 774 students with disabilities experiencing seclusion.

b. By the end of the 2023-24 school year, the number of seclusions will again be reduced by at least 560 and the number of students with disabilities experiencing seclusion will be reduced by at least 86 as reported to MDE by Minnesota school districts, for a total of at most 4,478 seclusions and at most 688 students with disabilities experiencing seclusion.

Goal 3 progress: Under Minnesota Statutes 2023, section 125A.0942, subdivision 3(b), school districts must report data quarterly to MDE by January 15, April 15, July 15, and October 15 about individual students who have been secluded. The quarters are broken down in dates as follows: Quarter 1: July 1–September 30, 2021; Quarter 2: October 1–December 31, 2021; Quarter 3: January 1–March 31, 2022; and Quarter 4: April 1–June 30, 2022.

a. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2022-23 school year represents a 30 percent decrease in seclusions (from 5,596 to 3,938) and a 15 percent decrease in the number of students with disabilities experiencing seclusion (from 860 to 730).

b. Using pre-COVID-19 data from the 2018-19 school year as the baseline, the data from the 2023-24 school year represents a 38 percent decrease in seclusions (from 5,596 to 3,451) and a 36 percent decrease in the number of students with disabilities experiencing seclusion (from 860 to 553).

Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2023-24 school year may be found in Appendix C of this report.

MDE's Actions in Support of the Goals

MDE Action 1: MDE will collect, analyze and report school districts' use of quarterly seclusion data and physical holding summary data, including data on disproportionalities, for each school year. MDE will also report

[25] The previous statewide plan also used the 2018-19 school year as the baseline which reported 5,596 seclusions and 860 students with disabilities experiencing seclusion. This statewide plan adopts the same baseline instead of developing a new baseline because of the impact of the COVID-19 pandemic and related disruptions. Data in recent years show positive trends, but it is unclear if these are due to changes in practice or due to changes in learning modes and staffing challenges related to the pandemic.

annually on trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures.

> **MDE Action 1 progress**: MDE collected, analyzed and reported school district use of quarterly seclusion data and physical holding summary data, including data on disproportionalities, for the 2023-24 school year. MDE also reported trends identified through qualitative analysis of school districts' reported strategies for reducing the use of restrictive procedures for the 2023-24 school year.
>
> Restrictive procedures data continues to demonstrate disproportionalities, in similar patterns as previous years. Students with disabilities who identify as Black or African American, two or more races and American Indian or Alaska Native (for physical holding only); EBD and ASD students; elementary age students; students who receive services in setting 4 programs; and male students typically experience a disproportionate number of restrictive procedures in Minnesota school districts.
>
> Additional data on school districts' progress on reducing the use of restrictive procedures and eliminating seclusion during the 2023-24 school year may be found in Appendix C of this report.
>
> School districts continued to provide information on strategies they used to reduce the use of restrictive procedures within their district during the 2023-24 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.
>
> The use of programs other than CPI appears to be growing, with about 15% of districts reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or PCM, as compared to the 2021-22 school year. Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysists, and mental health supports on their use of restrictive procedures.
>
> Please see Appendix D of this report for more information about the compilation of narrative responses.

MDE Action 2: MDE will convene quarterly workgroup meetings to consult with interested stakeholders, facilitate stakeholder recommendations to MDE, develop and implement the two-year statewide plan, and prepare the legislative report.

> **MDE Action 2 progress**: The workgroup met quarterly to facilitate the implementation of the February 2023 Two-Year Statewide Plan. Meetings during 2023 were held on February 22, June 21 (due to an unexpected low response to RSVPs, MDE determined to seek feedback from the stakeholders in an asynchronous manner, using a combination of email updates and survey input), September 27, and an office hour December 13, 2023. Meetings during 2024 were held on March 22, February 21, June 26, September 25, and December 11, 2024.

MDE Action 3: MDE will report at least annually on activities that are potentially connected to school districts' efforts to reduce the use of restrictive procedures and eliminate seclusion, such as: school district use of PBIS each school year, including the number of new and reconnecting schools participating in cohort training; the

status and provisions of the OLI Grants awarded to school districts for the duration of the grants; and school district use of suspension and expulsions (from disciplinary incident reporting).

MDE Action 3 progress:

PBIS: MDE reported school districts' use of PBIS for the 2023-24 school year. PBIS is a multi-tiered framework to support schools to be more effective places by establishing a social culture and the behavior supports needed to improve social, emotional, behavioral and academic outcomes for all students (students with and without disabilities) and is flexible enough to support student, family, and community needs. The use of PBIS continued to increase with 57% of Minnesota school districts, 40% of Minnesota schools, and 47 % of Minnesota students participating.

OLI Grants: The funding for the OLI grants was awarded to three school districts – including one metro, one in Greater Minnesota, and one intermediate school district encompassing at least 1,000 students with IEPs – and goals were set to reduce the rates of restrictive procedures. Districts that received OLI grants reported focusing on students with disabilities served in special education instructional settings three, four, and separate sites. Districts identified students with EBD as a group in need of additional supports, and especially students with disabilities who are Black, male, and under the age of 15. Districts are also focusing on supporting students with multiple life stress factors, including students with disabilities that have high absenteeism, are living in economically challenged families, or who have experienced trauma. The programs identified for implementation by the districts include Love and Logic, LCSI, and CPI Peer Coaching. The hexagon tool assisted districts and schools to systematically evaluate new and existing interventions by needs, fit, capacity, evidence, usability, and supports. The three districts have implemented the selected programs since the 2020-21 school year. By the fourth year of the grant, the percentage of students with disabilities experiencing restrictive procedures was reduced by 5%, from 28% of students with disabilities experiencing restrictive procedures to 23% of students with disabilities.

Discipline Data: Public school districts self-report disciplinary data through MDE's electronic disciplinary incident reporting system. Reports are available that summarize the disciplinary incident data as well as student demographic data (grade, gender, race/ethnicity) for disciplinary actions (out of school suspensions for one day or more, exclusions and expulsions) by district and state totals for the most current school years. The 2021-22 state trend report reported 48,735 disciplinary actions in Minnesota. This is the most recent published data as of the date of this report. This number is a slight decrease from the 2018-19 pre COVID-19 school year, which reported 49,437 disciplinary incidents statewide.

MDE Action 4: MDE will offer training sessions to school districts and other interested stakeholder groups throughout the state. The training will include an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures and eliminating seclusion. The Assistance and Compliance Division will collaborate with the Equity, Diversity and Inclusion (EDI) Center to incorporate elements in the training to assist school districts in identifying and addressing disproportionalities in the use of restrictive procedures, and to advise school districts on engaging families and students.

MDE Action 4 progress: MDE continues to collaborate internally among divisions in developing and improving training and continues to offer training sessions to school districts and other interested stakeholder groups throughout the state. The restrictive procedures training includes an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations and recommended strategies for reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

MDE provided four restrictive procedures training sessions during FY23 to approximately 60 participants. MDE also provided nine discipline training sessions during FY23 to over 200 participants and provided information about its dispute resolution programs in six forums for parents, advocates, and people with disabilities, with over 300 participants. In April and May 2023, MDE provided opportunities for workgroup participants to provide feedback to assist school districts in identifying and addressing disproportionalities in the use of restrictive procedures, and to advise school districts on engaging families and students.

MDE provided seven restrictive procedures training sessions during FY24 to nearly 275 participants. MDE also provided 16 discipline training sessions during FY24 to over 750 participants and provided information about its dispute resolution programs in three forums for parents, advocates, and people with disabilities, with over 100 participants.

MDE Action 5: MDE will compile a list of MDE resources and federal resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

MDE Action 5 progress: MDE continues to compile resources that align with effective strategies to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. The compilation includes resources, training, technical assistance, mental health services, and collaborative efforts taken to reduce the use of restrictive procedures and work toward eliminating the use of seclusion. Appendix D of this report includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources and references regarding efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Workgroup's Actions in Support of the Goals

Workgroup Action 1: The workgroup will identify, develop, and recommend to MDE strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures. The workgroup will focus on areas such as:

- Developing a resource for school districts on engaging families and students (particularly in school districts' efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures);
- Collaborating with MDE on a restrictive-procedures-focused resource for school districts using or considering police liaison officers/SROs;
- Providing feedback on a list of training programs developed by MDE after consultation with the Minnesota DHS that may meet requirements for the skill and knowledge areas outlined in Minnesota Statutes 2024, section 125A.0942, subdivision 5, for staff who use restrictive procedures; and
- Providing feedback and recommendations on a list of experts developed by MDE to help IEP teams reduce the use of restrictive procedures.

The workgroup may also identify emergent issues and develop and recommend strategies and resources to assist school districts in reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionalities in the use of restrictive procedures.

Workgroup Action 2: The workgroup will review MDE's 2023 and 2024 legislative reports required under Minnesota Statutes 2024, section 125A.0942, to identify, develop, and recommend to MDE ways to use and share the information presented. In particular, the workgroup will review the sections and appendices on *Data on School Districts' Progress on Reducing the Use of Restrictive Procedures and Eliminating Seclusion* and *Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion, and Address Disproportionalities in the Use of Restrictive Procedures.*

Workgroup Action 3: The workgroup will review strategies provided by school districts in response to annual summary information questions and identify, develop, and recommend to MDE ways to use that information to support school districts in their efforts to reduce restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures.

Workgroup Action 4: The workgroup will review other state advisory groups focusing on education, students' behavioral health, students with disabilities, and other related topics to identify possibilities for workgroup collaboration on recommendations to MDE regarding changes to guidance, practice, or legislation related to reducing the use of restrictive procedures.

> **Workgroup Action 1-4 progress**: The workgroup engaged in activities to recommend to the commissioner strategies and resources to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities by: identifying emergent issues (workgroup action 1) related to urgently ending seclusion; developing case studies with multiple districts stemming from the annual summary information gathered from school districts via the annual reporting (workgroup action 3); identifying and reviewing person-centered planning resources, to assist school districts in engaging families and students and updating the oversight committee agenda and companion guide, to assist

school districts in increasing family and student engagement (workgroup action 1); providing feedback on MDE's restrictive procedures training (workgroup action 1); providing feedback and recommendations on experts to help IEP teams reduce the use of restrictive procedures (workgroup action 1); and, reviewing MDE's 2023 legislative report to identify, develop, and recommend to MDE ways to use and share the information presented (workgroup action 2) and identifying other state advisory groups for workgroup collaboration on recommendations to MDE regarding changes to guidance, practice, or legislation related to reducing the use of restrictive procedures (workgroup action 4). The conversation about collaboration opportunities is what prompted MDE to consider refreshing the approach to engagement and opportunities with the Olmstead Plan.

Appendix F – Letter to Education Chairs (2023)

Dear Legislators:

As part of amendments enacted during the 2023 legislative session, the Legislature tasked the Minnesota Department of Education (MDE), in cooperation with stakeholders, with making recommendations for urgently ending seclusion in Minnesota schools. Minn. Stat. 125A.0942, subd. 6(c) (2024). The recommendations include specific dates for ending seclusion by grade or facility and must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts. The 2023 amendments also prohibit "the use of seclusion on children from birth through grade 3 by September 1, 2024." Minn. Stat. 125A.0942, subd. 4(11) (2024).

1. Recommendation for Specific Dates for Ending Seclusion

MDE Recommends Prohibiting the Use of Seclusion on All Children by September 1, 2026

MDE recommends revising Minnesota Statutes 2024, section 125A.0942, subdivision 4 by adding the following prohibition: (12) the use of seclusion on all children by September 1, 2026. (Attachment 1).

2. Resources Necessary for Ending Seclusion by September 1, 2026

Policy makers could consider direct resources or funding opportunities to schools to obtain training and systemically implement evidence-based behavioral crisis prevention practices and/or alternatives to restrictive procedures for managing student behavioral crises, and to systemically install and implement the practices.

3. Feedback received from Restrictive Procedures Work Group and Special Education Advisory Panel Members

While the legislature directly charged the commissioner with developing these recommendations, MDE values the feedback and input from our partners regarding the use of restrictive procedures in schools. Therefore, these recommendations were shared with members of the Restrictive Procedures Working Group and the Special Education Advisory Panel. Below is a summary of their feedback for policy makers to consider as they review these recommendations:

- Schools are experiencing staffing shortages and well as an increased need for level IV programming
- Resources to provide annual training for use of restrictive procedures, trauma-informed care, and social-emotional strategies are essential.

- Expanding training opportunities to general education staff
- Addressing the increasing challenges of student dysregulation in early grades is apriority. Dedicated funding for trauma-informed care, responding to dysregulation, and other supportive strategies is necessary.
- Support for teacher recruitment and retention efforts, with a focus on setting four programs
- Collaboration with DHS to increase residential and other mental health placements
- A delay of two years is not necessary and delays implementation of a goal the state has held for over a decade.
- The state should emphasize more upstream solutions to avoid getting students into situations where students become dysregulated to begin with.

Existing and New Resources are Compiled in Appendix D of the FY24 Restrictive Procedures Legislative Report

MDE, in cooperation with interested stakeholders, continues to compile strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. The most recent compilation of Appendix D is included in the FY24 Restrictive Procedures Legislative Report titled *School Districts' Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools.* Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2022-23 school year) is attached (Attachment 2).

Appendix D includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. It includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. Appendix D embeds resources and strategies necessary for staff capacity, staff training, children's supports, child mental health services and schoolwide collaborative effects. This document continues to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

In addition to the strategies and resources outlined in Appendix D, MDE will continue efforts, based on future resources and staffing capacity, to consider the following:

- Training for general education staff consistent with Minnesota Statutes 2024, section 125A.0942, subdivision 5.
- MDE collaborating with higher education to develop coursework for students preparing to become teachers consistent Minnesota Statutes 2024, section 125A.0942, subdivision 5.

- MDE working with PELSB to refine the positive behavior intervention requirement for professional licensure to include elements outlined in Minnesota Statutes 2024, section 125A.0942, subdivision 5.
- Developing a process where MDE staff are available to consult with school districts on specific students that exhibit extreme behaviors.
- Expanding school districts' access to PBIS and other research-based behavior intervention programs.
- Expanding mental health services.
- MDE producing an online training course on the legal framework for using restrictive procedures in schools to increase availability of the training session currently offered by MDE.
- MDE advocating for resources to support special education workforce needs.

3. Stakeholder Engagement

Consistent with Minnesota Statutes 2024, section 125A.0942, subdivision 6(c), MDE engaged interested stakeholders by utilizing existing advisory groups, the Special Education Advisory Panel (SEAP), the Restrictive Procedures Workgroup (workgroup), and developing an open-link survey to gather insights and input. The survey link was distributed in MDE's Special Education Updates in November and December 2023 and distributed to PACER (Minnesota's parent training and information center) and the Minnesota Disability Law Center (Minnesota's designated Protection and Advocacy System). Both organizations are represented on the workgroup, however MDE conducted extra outreach given their connections with families and students. MDE encouraged workgroup members, PACER, and the Minnesota Disability Law Center to distribute the survey link as well. In all, MDE received 176 responses to the survey.

Opinions on use of seclusion range widely. Some individuals are in favor of ending the practice immediately for all ages and settings, and some are concerned that ending seclusion will have negative consequences. MDE received few grade recommendations from stakeholders. Instead, stakeholders noted that setting is more relevant than age when considering a transition plan to end seclusion, and described different challenges and needs within federal settings, especially for students receiving services in setting 4 programs, which include Minnesota's students with more intense behavioral needs.[26]

Resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts have been incorporated into Appendix D as appropriate. Detailed information about stakeholder engagement may be found in Attachment 3.

[26] Setting 1: Students receive special education and related services outside the general education classroom for less than 21 percent of the school day. Setting 2: Students receive special education and related services outside the general education classroom, typically a resource room, for 21 percent to 60 percent of the school day. Setting 3: Students are outside of the general education classroom for more than 60 percent of the school day. Setting 4: Students receive special education and related services at separate school facilities for more than 50 percent of the school day.

4. Legal and Data Driven Support for Recommendations

The U.S. Department of Justice (DOJ), through its investigatory authority, is consistently finding that school districts' seclusion and restraint practices deny students with disabilities access to school districts' programs and services in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. sections 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Part 35.[27] The DOJ finds that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs (see 28 C.F.R. section 35.130(b)(1)(i)); using eligibility criteria that effectively subject students with disabilities to discrimination (see 28 C.F.R. section 35.130(b)(8)); and failing to make reasonable modifications to avoid discrimination in school district programs (see 28 C.F.R. section 130(b)(7)). The DOJ has entered into settlement agreements with school districts after concluding that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.[28] The settlement agreements require school districts to immediately end the use of seclusion and outline action steps to assist in doing so.[29]

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[27] See Civil Rights Division | Seclusion Enforcement – Recent Investigations (justice.gov).

[28] The DOJ has reached a series of settlement agreements in which school districts have agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead putting in place appropriate interventions and supports for students with disabilities. See Kentucky (Civil Rights Division | Covington Independent Public Schools - Settlement Agreement | United States Department of Justice), Indiana (Civil Rights Division | North Gibson School Corporation - Settlement Agreement | United States Department of Justice), Maryland (Civil Rights Division | Frederick County Public School District - Settlement Agreement | United States Department of Justice), Iowa (Civil Rights Division | Cedar Rapids Community School District - Settlement Agreement | United States Department of Justice), Florida (Civil Rights Division | OKALOOSA COUNTY SCHOOL DISTRICT - SETTLEMENT AGREEMENT | United States Department of Justice), Alaska (Civil Rights Division | Anchorage School District - Settlement Agreement | United States Department of Justice), and Washington (Civil Rights Division | Spokane Public Schools - Settlement Agreement | United States Department of Justice).

[29] Under each settlement agreement, the school district agreed to immediately end the use of seclusion in its schools. Action steps included in the settlement agreements and a brief description of each may be found here Restrictive Procedures (mn.gov). Briefly, the action steps included: prohibit the use of seclusion; appoint an intervention coordinator; create classroom-wide behavior management plans; provide annual training to staff; supplement annual training with ongoing observation and in-service coaching; complete an incident report for any instance of seclusion or restraint; review all BIPs of current students who were secluded and/or restrained in the past five years; develop a complaint procedure to ensure that the school district timely responds to any complaint about the use of restraint or seclusion; send a letter to all parents and guardians of currently enrolled students who were secluded or restrained in the past five years; require each school to have a crisis prevention team with at least three staff members trained on crisis prevention and intervention and revise school district policies and practices to permit only crisis prevention team members to physically restrain students; provide counseling or psychological support to the student after physical restraint; adopt policies and procedures for suicide prevention, trauma, and toxic stress responses; ensure that school administrators lead a debrief meeting and log data after a student is restrained as well as hold a weekly meeting each week that a crisis prevention call is made; contract with consultants to provide professional development and school-level consultation to eliminate the use of seclusion as a response to student behavior; develop an individualized plan for students who, based on the documented history of the intensity of the student's past behaviors, may be anticipated to be subjected to the use of physical restraint; strengthen MTSS processes; require behavior support specialists to be Board Certified Assistant Behavior Analysts (BCaBAs); complete a written report every time school district staff requests that a School Resource Officer (SRO) or other law enforcement

Further, the U.S. Department of Education, Office for Civil Rights (OCR) continues to find stark inequities in students' educational access throughout the nation and across civil rights indicators, including the use of seclusion and restraint. Similar to Minnesota's data collection on the disproportionate use of restrictive procedures, OCR's civil rights data collection found that, nationwide, during the 2020-21 school year, boys, Black students, students of two or more races, and students with disabilities who receive services under the Individuals with Disabilities Education Act (IDEA) continue to be subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments. Students with disabilities who receive services under IDEA represented 14% of K-12 student enrollment nationwide but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.[30]

Currently, Minnesota's data only provides information about the use of seclusion with students with disabilities.[31] This data consistently shows disproportionate use of seclusion in Minnesota schools, indicating that seclusion is used disproportionally on boys, students receiving services under the categories of autism spectrum disorders (ASD) and emotional or behavioral disorders (EBD), and students who are Black, two or more races, or American Indian. In addition, seclusion is most frequently experienced by students in the 6-10 year age range and by students receiving services in setting 4 programs.

Below is a chart comparing the percent of seclusions experienced by students with disabilities with the percent of statewide special education enrollment by age for the 2022-23 school year.[32]

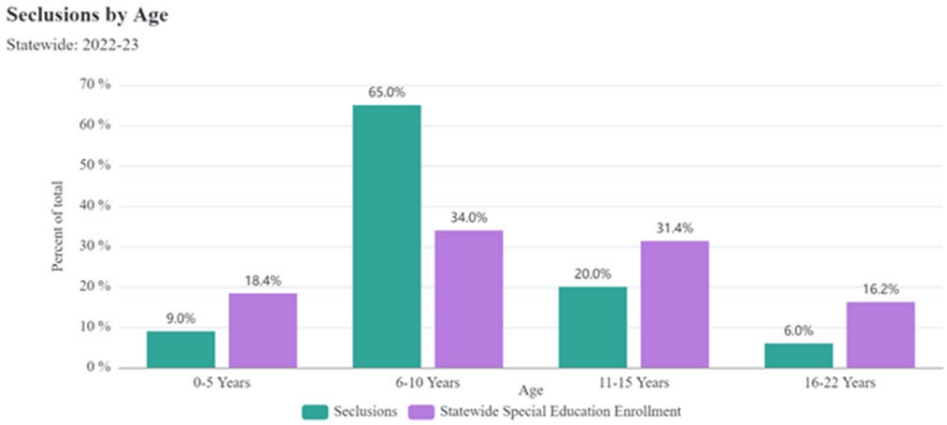
officer responds to student behavior; consult with SROs, administrators, the intervention coordinator, and parents and students, to identify ways to minimize unnecessary referrals to or reliance on SROs; and stop stationing SROs at school district elementary schools.

[30] See U.S. Education Department's Office for Civil Rights Releases New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic | U.S. Department of Education (Nov. 2023) (finding the 2020-21 school year data, the first published since the 2017-18 collection was released in 2020, that approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion). Note that Minnesota school districts are not required to report to MDE uses of mechanical restraint.

[31] During Minnesota's 2023 legislative session, Minnesota Statutes, section 121A.582 added a new reporting requirement for school districts pertaining to general education students that "[b]eginning with the 2024-2025 school year, districts must report annually by July 15, in a form and manner determined by the commissioner, data from the prior school year about any reasonable force used on a general education student to correct or restrain the student to prevent imminent bodily harm or death to the student or another that is consistent with the definition of physical holding under section 125A.0941, paragraph (c)." This data will inform the level of disproportionality in the use of physical holding between students with and without disabilities in Minnesota.

[32] In general, students in grade 3 are 8-9 years old.

Figure Q. Seclusions by Age Statewide 2022-23

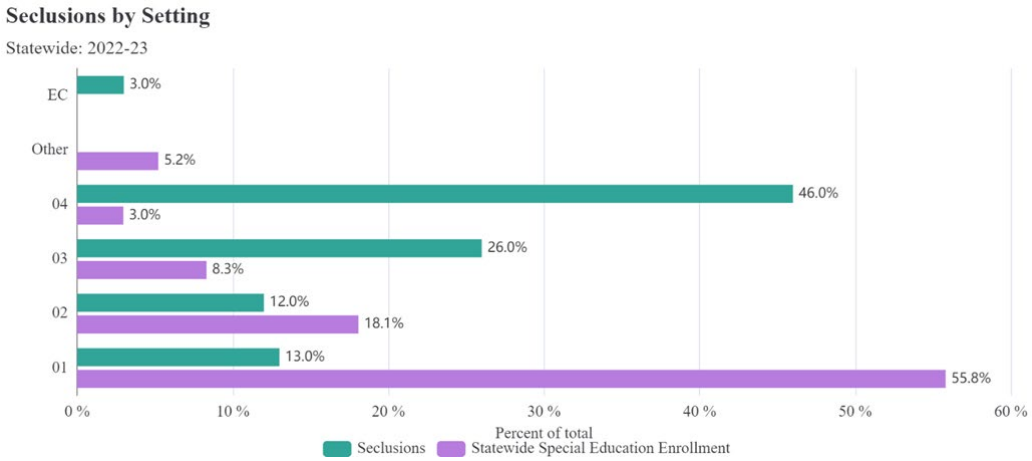


During the 2022-23 school year, 74% of students with disabilities experiencing seclusion were birth through age 10. The majority (65%) of students with disabilities experiencing seclusion were in the 6-10-year age range. Students with disabilities in this age range are 34% of the total special education population. Further, 20% of students with disabilities experiencing seclusion were in the 11-15-year age range. This pattern is consistent with both age and grade data from previous years. As in previous years, a relatively small percentage of students with disabilities under age 5 or over age 16 experienced seclusion during the 2022-23 school year.

Minnesota ends the use of seclusion on children from birth through grade 3 by September 1, 2024.[33] By September 1, 2024, Minnesota will end 74% of seclusions under the currently statutory scheme.

Below is a chart comparing the percent of total seclusions experienced by students with disabilities with the percent of total statewide special education enrollment by setting for the 2022-23 school year.

Figure R. Seclusions by Setting Statewide 2022-23



[33] The 2023 amendments prohibit "the use of seclusion on children from birth through grade 3 by September 1, 2024." Minn. Stat. 125A.0942, subd. 4(11).

During the 2022-23 school year, only 3% of the special education population received services in setting 4 programs, yet students in setting 4 programs were 46% of the students with disabilities experiencing seclusion. This has changed slightly from previous years, when 47% (2021-22), 57% (2020-21), and 60% (2019-20) of the students with disabilities experiencing seclusion were students receiving services in setting 4 programs.

On the other end of the spectrum, the majority of students with disabilities (55.8%) spend less than 20% of their time in special education settings and are considered setting 1 students. Setting 1 students with disabilities are much less likely to experience seclusion. During the 2022-23 school year, 13% of secluded students with disabilities were receiving services in setting 1.

Title II of the ADA, 42 U.S.C. § 12132, prohibits public entities (school districts) from discriminating against individuals with disabilities in the provision of public services. The ADA's implementing regulations, 28 C.F.R. § 130(d)(the "integration mandate"), requires public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." Further, DOJ has consistently interpreted the "most integrated setting appropriate" to mean one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."[34] *See also, Olmstead v. L.C.*, 527 U.S. 581 (1999) (holding, when interpreting the ADA's integration mandate, that Title II prohibits unjustified segregation of individuals with disabilities).

The IDEA, 20 U.S.C. § 1412(a)(5), ensures that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (the "LRE mandate").

The MDE considered stakeholder recommendations and concerns voiced over ending seclusion in setting 4 programs.[35] However, recommendations based on setting (i.e., eliminating seclusion in settings 1, 2, and 3 prior to eliminating seclusion in setting 4), interferes with Title II of the ADA's integration mandate and IDEA's LRE mandate.

Finally, Minnesota has taken steps to reduce the use of restrictive procedures, eliminate seclusion, and identify disproportionate use of restrictive procedures.

Below is a table illustrating the number of physical holds, seclusions, and total restrictive procedures students with disabilities experienced from the 2014-15 school year through the 2022-23 school year.

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[34] See Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services, 28 C.F.R. pt. 35, app. B (addressing 28 C.F.R. § 35.130).

[35] Stakeholders noted that setting is more relevant than age or grade-level when considering a transition plan to end seclusion, and described different challenges and needs within federal settings, especially for students receiving services in setting 4 programs, which include Minnesota's students with more intense behavioral needs.

Table 9. Physical Holds, Seclusions and Total Restrictive Procedures by Year 23014-15 Through 2022-23

Year	Physical Holds	Seclusion	Total Restrictive Procedures
2014-15	15,511	6,547	22,058
2015-16	15,600	6,425	22,025
2016-17	17,120	7,085	24,205
2017-18	18,834	6,164	24,998
2018-19	17,157	5,596	22,755
2019-20*	12,679	3,983	16,662
2020-21*	6,666	1,850	8,516
2021-22*	10,091	4,593	14,689
2022-23	12,405	3,938	16,343

Since 2012: MDE has collected annual data from school districts on the use of seclusion and physical holding; MDE has provided training throughout the state regarding the standards for using restrictive procedures, including statutory responsibilities and reporting requirements; and state legislation has required school districts to:[36]

- develop a restrictive procedures plan if they intend to use seclusion or physical holding;
- implement a range of positive behavior strategies;
- provide training on de-escalation techniques and additional skills and knowledge areas to reduce the use of restrictive procedures and ensure the safety of the child and staff;
- monitor and review the use of restrictive procedures by conducting post-use debriefings and convening quarterly oversight committee meetings;
- document the use of restrictive procedures;
- limit the school personnel that my use a restrictive procedure based on their licensure;
- timely notify parents when a restrictive procedure is used on their child;
- hold a team meeting within 10 calendar days after a restrictive procedure is used on two separate school days within 30 calendar days or a pattern of use emerges, or at the request of a parent or the district, to: conduct or review a FBA; review data; consider developing additional or revised positive behavioral interventions and supports; consider actions to reduce the use of restrictive procedures; modify the child's education plan or BIP as appropriate; and review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that

[36] Minnesota has eliminated the use of other restrictive procedures. Specifically, prone restraint was phased out over a three year period (2012-2015). During the 2016 legislative session, beginning FY17, Minnesota provided additional monies to entities that serve students with the highest needs to address challenging behaviors to prevent and/or reduce the use of restrictive procedures. Intermediate school districts and special education cooperative units that provide level four or higher settings, received funding (state legislative appropriation in the amount of $4,500,000) for FY17, FY18 and FY19 specifically to use for activities related to enhancing services to students who have challenging behaviors or mental health issues or suffering from trauma.

contraindicate the use of a restrictive procedures, consider whether to prohibit that restrictive procedure, and document such in the education plan or BIP;

- consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child, if the district uses restrictive procedures on a child on ten or more school days during the same school year;
- only use restrictive procedures if: there is an emergency; it is the least intrusive intervention that effectively responds to the emergency; it is not used to discipline a noncompliant child; it ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity; staff directly observes the child when a restrictive procedure is used; and staff documents the use as soon as possible after the incident concludes.

Furthermore, since 2016 MDE has been charged with working to eliminate the use of seclusion. Effective the 2016-17 school year, MDE has collected seclusion data from school districts on a quarterly basis. Effective the 2019-20 school year, three school districts received grants funded by MDE's federal IDEA funds, each receiving approximately $15,000 annually, to implement evidence-based practices to reduce the use of restrictive procedures (commonly referred to as the Olmstead Local Improvement Grants).

Since 2021, via Stepwell MN, MDE has collected specific information from each school district on what is working for school districts to reduce the use of restrictive procedures and to address disproportionalities in the use of restrictive procedures and MDE compiles this qualitative data and includes it in the annual legislative report; and MDE has compiled and reported out strategies and resources for school districts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionalities in the use of restrictive procedures. This information may be found in the legislative reports, Appendix D. Legislative Reports (mn.gov) This information is also shared during restrictive procedures trainings conducted by MDE and is available on MDE's website Restrictive Procedures (mn.gov).

Finally, during the 2023 legislative session, Laws of Minnesota 2023, chapter 55, article 7, section 8, standards for the use of restrictive procedures were revised to:

- clarify that the restrictive procedures statutory provisions apply to children with disabilities from birth until the child with a disability becomes 22 years old;
- add an additional responsibility to the oversight committee to quarterly review the use of restrictive procedures based on patterns or problems indicated by any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met;
- add a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion to the information required to be documented each time physical holding or seclusion is used;
- prohibit the use of seclusion on children from birth through grade 3 by September 1, 2024;

- clarify the restrictive procedures reporting requirement for districts by stating that any reasonable force used under sections 121A.582, 609.06, subdivision 1, and 609.379 which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion used by an unauthorized or untrained staff person; and
- urgently end the use of seclusion.

5. Conclusion

Based on Minnesota's cumulative efforts working to end the use of seclusion since 2016, the DOJ findings that seclusion and restraint practices discriminate against students on the basis of disability by denying them equal opportunity to participate in or benefit from school district education programs; using eligibility criteria that effectively subject students with disabilities to discrimination; and failing to make reasonable modifications to avoid discrimination in school district programs; the ADA's integration mandate, and the IDEA's LRE mandate; and stakeholder engagement, MDE recommends Minnesota prohibits the use of seclusion on all children by September 1, 2026. A compilation of strategies and resources to assist school districts in reducing the use of restrictive procedures, may be found in Appendix D.

Attachment 1. Proposed change to Minnesota Statutes, section 125A.0942, subdivision 4:

MDE proposes the Minnesota legislature strike "and" after "prone restraint" in subdivision (4)(10), add "and" to subdivision (4)(11), and add " the use of seclusion on all children by September 1, 2026" to subdivision (4)(12), as follows:

Subd. 4. **Prohibitions.**

The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under chapter 260E;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso;

(10) prone restraint; and

(11) the use of seclusion on children from birth through grade 3 by September 1, 2024; and

(12) the use of seclusion on all children by September 1, 2026.

Attachment 2. Appendix D of Legislative Report

Appendix D – Strategies and Resources for School Districts to Reduce the Use of Restrictive Procedures, Eliminate Seclusion and Address Disproportionalities in the Use of Restrictive Procedures (2022-23 school year)

This appendix includes an overview of research and guidance at the national level, information about proposed legislation regarding the use of restrictive procedures, and resources to support school districts' efforts to reduce the use of restrictive procedures, eliminate seclusion, and address disproportionality in the use of restrictive procedures. This non-exhaustive compilation of strategies and resources includes information gathered from federal and state guidance and from reports by Minnesota school districts collected through MDE-administered grants and programming as well as the practices, strategies, and initiatives school districts report using and recommending to reduce the use of restrictive procedures through MDE's annual restrictive procedures reporting. This document will continue to expand and develop as education partners continue to work together to ensure the safety of students and staff while reducing the use of restrictive procedures in Minnesota schools.

Federal Resources on Civil Rights Law and Disproportionality in the use of Restraint and Seclusion

In 2012, the U.S. Department of Education issued the Restraint and Seclusion: Resource Document outlining 15 principles to consider when examining the use of restraint and seclusion in schools, with an emphasis on preventing the need for restraint and seclusion, using only behavioral interventions that are consistent with a child's rights to be treated with dignity and free from abuse, and ensuring that all schools are safe for all children and adults.

In 2016, the U.S. Department of Education, Office for Civil Rights (OCR), issued a Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities warning school districts that the use of restraint and seclusion may result in discrimination against students with disabilities and reiterating that there is no evidence that using restraint or seclusion is effective in reducing problem behaviors, noting that instead, research supports a positive approach that incorporates positive behavioral interventions, evidence-based positive classroom strategies, and trauma-informed care.

In January 2019, the U.S. Department of Education announced an initiative to examine the use of restraint and seclusion in the school setting, with a focus on providing technical assistance to support schools in understanding how Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA) inform the development and implementation of policies regarding restraint and seclusion and in January 2020, as part of this initiative, the Department released a webinar to explain how federal laws apply to the use of restraint and seclusion.

In July 2019, the U.S. Commission on Civil Rights issued Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, a report focusing on exclusionary discipline policies and addressing nationwide data showing the disproportionate use of restraint

and seclusion on students with disabilities, which may have an unlawful discriminatory effect on students of color with disabilities.

In April 2020, the U.S. Government Accountability Office (GAO) released a Report to Congressional Committees: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data report finding that the U.S. Department of Education's quality control processes for data it collects on incidents of restraint and seclusion are "largely ineffective" and recommending several changes to better detect problematic data in the Civil Rights Data Collection (CRDC), including that the Department expand its CRDC business rules to cover all school districts, identify and address factors underlying misreporting, and refine and clarify its definitions of restraint and seclusion.

In July 2020, the Children's Equity Project and the Bipartisan Policy Center issued a policy agenda titled Start with Equity: From the Early Years to the Early Grades that included data and research on "harsh discipline," including seclusion and inappropriately-used restraint, and its disproportionate effect on Black children and children with disabilities. The agenda recommended policy changes for all levels – Congress, federal agencies, states and school districts – including recommending that districts ban harsh discipline, ensure that young children never have negative interactions with SROs, and invest in systems supporting positive discipline and anti-bias approaches.

In October 2021, the U.S. Department of Education released a supplement to its ED COVID-19 Handbook on Strategies for Safely Reopening Elementary and Secondary Schools entitled Supporting Child and Student Social, Emotional, Behavioral, and Mental Health Needs. The guidance emphasized that IEPs should "support children and students in each area of unique need—including educational, social, emotional, behavioral, and related areas—with high-quality and evidenced-based support" and "employ functional behavioral assessments to develop individualized BIPs for students whose behaviors interfere with their ability to access and benefit from the education program" instead of relying on "inappropriate disciplinary practices, such as corporal punishment, seclusion, and restraint that disproportionately impact children of color and children with disabilities" and programs with "little or no research to support their effectiveness."

On July 19, 2022, the U.S. Department of Education's Office of Special Education and Rehabilitative Services and the Office of Special Education Programs issued guidance on addressing disparities in the use of discipline for children with disabilities and the implementation of IDEA's discipline provisions in a Dear Colleague Letter on Implementation of IDEA Discipline Provisions. In addition, Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provision and Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders were issued to support state educational agencies' and local educational agencies' efforts to fulfill their obligations to appropriately meet the needs of children with disabilities.

On July 19, 2022, the U.S. Department of Education also released Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973, guidance describing schools' responsibilities under Section 504 to ensure nondiscrimination against students based on disability when imposing student discipline. Specifically, the guidance explains how compliance with Section 504's requirement to provide a free appropriate public education (FAPE) to students with disabilities can assist schools in effectively supporting and responding to behavior that is based on a student's disability and

that could lead to student discipline. By using Section 504's procedures to identify and meet the behavioral, social, emotional, and academic needs of students with disabilities as required for FAPE, schools can help prevent or reduce behaviors that might otherwise result in discipline. As the guidance explains, when schools do choose to administer discipline for students with disabilities, they must do so in a nondiscriminatory manner.

On March 23, 2023 the U.S. Secretary of Education, Miguel Cardona, released a guidance letter regarding the use of corporal punishment in schools in the United States. Included in the release was an infographic describing the current use of corporal punishment in schools. Secretary Cardona urged states that permit or practice corporal punishment in schools and educational settings to move swiftly toward condemning and eliminating it.

In March 2023, The US Department of Education also released Guiding Principles for Creating Safe, Inclusive, Supportive, and Fair School Climates. This resource identifies five guiding principles and suggests actions schools and school districts can take to create inclusive, safe, supportive, and fair learning environments and lists federal resources to support these efforts. The five guiding principles are: 1. Foster a sense of belonging through a positive, safe, welcoming, and inclusive school environment; 2. Support the social, emotional, physical, and mental health needs of all students through evidence-based strategies; 3. Adequately support high-quality teaching and learning by increasing educator capacity; 4. Recruit and retain a diverse educator workforce; and 5. Ensure the fair administration of student discipline policies in ways that treat students with dignity and respect (including through system wide policy and staff development and monitoring strategies).

On May 1, 2023 the U.S. Department of Education's Office for Civil Rights (OCR) released its Annual Report to the President and the Secretary of Education for fiscal year 2022. The report includes a description of compliance reviews of three districts' use of restraint and seclusion to assess whether its use denied students with disabilities a FAPE.

In November of 2023, the U.S. Department of Justice released a School Resource Officers, 2019-2020 report. This report provides details on demographics and certification of school resource officers (SROs) by the type of law enforcement agency that employs them. It also describes law enforcement, mentoring, and teaching activities performed by the officers. The report discusses equipment typically carried and training received by the officers.

Also, in November 2023, the U.S. Department of Education's Office for Civil Rights (OCR) released New Civil Rights Data on Students' Access to Educational Opportunities During the Pandemic. The 2020-21 school year data showed "stark inequities in students' educational access throughout the nation and across civil rights indicators, including regarding courses and programs, school staff, and student discipline." Given OCR paused the collection of data due to the pandemic, the 2020-21 civil rights data collection (CRDR) is the first published since the 2017-18 collection which was related in 2020. The 2020-21 data contains information collected from over 17,000 school districts and 97,000 schools.

The 2020-21 CRDC details the following pertaining to restraint and seclusion:

- Approximately 52,800 K-12 students were physically restrained, mechanically restrained, and/or placed in seclusion at schools.
- Boys, Black students, students of two or more races, and students with disabilities who received services under the Individuals with Disabilities Education Act (IDEA) were subjected to restraints and seclusion at higher percentages than their overall K-12 enrollments.
    - Boys represented 51% of K-12 student enrollment, but 83% of students physically restrained, 82% of students mechanically restrained, and 82% of students secluded.
    - Black students represented 15% of the K-12 student enrollment, but 21% of students physically restrained, 42% of students mechanically restrained, and 19% of students secluded.
    - Students of two or more races were 4% of K-12 student enrollment yet accounted for 7% of students physically restrained and 7% of students secluded.
    - Students with disabilities who received services under IDEA represented 14% of K-12 student enrollment but accounted for 81% of students physically restrained, 32% of students mechanically restrained, and 75% of students secluded.

In an effort to combat the Improper Use of Seclusion in Schools the Educational Opportunities Section of the Civil Rights Division of the Department of Justice (DOJ) initiated investigations to determine whether school districts engaged in improper seclusion and restraint practices that deny students with disabilities access to the school districts' programs and services in violation of Title II of the Americans with Disabilities Act, 42.U.S.C §§ 12132-1234 (Title II) and its implementing regulations at 28 C.F.R. Pt. 35. Title II provides that no "individuals with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by an such entity." In recent investigations, the DOJ determined that the school districts discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the school districts' education program, see 28 C.F.R. § 35.130(b)(1)(i); using eligibility criteria that effectively subjects students with disabilities to discrimination, see 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid discrimination in the school districts' program, see 28 C.F.R. § 130(b)(7). Specifically, the DOJ concluded that the school districts improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.

The DOJ reached a series of settlement agreements in which school districts agreed to remedy the improper use of seclusion by discontinuing their use of seclusion districtwide and instead put in place appropriate interventions and supports for students with disabilities. For more information about the DOJ's work to combat improper seclusion of students with disabilities in public schools, read summaries of recent investigations, including press releases, notice letters, and settlement agreements. A summary of the *Action Steps from Settlement Agreements between the U.S. Department of Justice and School Districts Ending the Use of Seclusion* may be found on MDE's website Restrictive Procedures.

Potential Legislation Impacting the Use of Restraint and Seclusion in Schools

The *Keeping All Students Safe Act* has been annually introduced into the U.S. Congress since 2007.

Most recently, the Keeping All Students Safe Act was introduced into the 118th Congress S.1750 - 118th Congress (2023-2024): Keeping All Students Safe Act | Congress.gov | Library of Congress. This bill prohibits the use of seclusion and limits the use of physical restraint in schools and Head Start programs that receive federal funding. The bill prohibits the use of mechanical or chemical restraints or physical restraints that restrict breathing or are life threatening. The bill outlines the requirements for the use of physical restraint, including that the student's behavior must pose an imminent danger of serious physical injury to the student or other individual. Each state must ensure that a sufficient number of program personnel are trained and certified by a state-approved crisis intervention training program. Additionally, each program must establish procedures to follow after an incident involving physical restraint. Further, the bill establishes enforcement provisions, including a private right of action for a student who has been subjected to unlawful seclusion or restraint. The Department of Education and the Department of Health and Human Services must withhold payments from a program for unlawful seclusion or restraint. Finally, the bill requires state educational agencies to establish, implement, and enforce policies and procedures required by the bill. It also creates a grant program to assist state educational agencies with these activities.

State Resources on Restrictive Procedures Legal Standards

Restrictive Procedures Use in Schools: MDE provides training and model forms to assist Minnesota school districts in ensuring that restrictive procedures used in emergency situations are implemented safely and in accordance with the standards for using restrictive procedures found in Minnesota Statutes 2024, sections 125A.0941 and 125A.0942. You can find more information on the use of restrictive procedures, including data collection, recent legislation, and other resources on the MDE Restrictive Procedures webpage.

- **MDE training sessions**. MDE offers interactive training sessions to school districts and other interested groups throughout the state. These sessions can be provided as online sessions or in person at no cost to participants. For more information or to request a training, please contact MDE's Division of Assistance and Compliance.
    - MDE's restrictive procedures training provides an overview of Minnesota statutes and the legal standards for using restrictive procedures in emergency situations, along with strategies that support reducing the use of restrictive procedures, eliminating seclusion, and addressing disproportionality in the use of restrictive procedures.
    - MDE offers a variety of training sessions on special education due process and the legal standards outlining the use of discipline in schools that support the reduction in use of restrictive procedures and can be customized to meet the needs of participants.
- **MDE model forms**. MDE posts model forms related to the use of restrictive procedures. The model forms outline the minimum compliance standards in a format that school districts can modify to meet their needs.

Partners in Policy Making: Thirty-five years ago, the Minnesota Governor's Council on Developmental Disabilities in the Department of Administration created Partners in Policymaking, a groundbreaking advocacy

and leadership training program to give people with disabilities and their families the resources and skills to communicate effectively with elected officials. In today's political climate of radical change, we must work harder than ever to prevent the loss of basic rights for people with disabilities. The goal of *Partners in Policymaking* is to educate participants to be active partners with those who make policy. The idea is to develop partnerships that are based on positive relationships.

The Partners in Policymaking e-learning site gives participants the opportunity to increase knowledge and understanding of best practices in the disability field and learn how to communicate effectively with their elected officials. Six online courses are now available at **PartnersOnlineCourses.com** to anyone who would like to increase their knowledge and skills.

Strategies Reported by School Districts in Narrative Responses

Beginning in the 2020-21 school year, as part of reporting annual physical holding data, school districts are asked to respond to two questions: 1) What strategies did your district try this year to reduce the number of restrictive procedures in your district, including addressing disproportionalities? and 2) Of the strategies your district tried this past year, what strategies would you recommend to other districts to reduce the use of restrictive procedures in their schools?

The emerging strategies reported by school districts used to reduce the use of restrictive procedures in July 2022 included:[37]

- Staff training
    - Crisis Prevention Institute (CPI) and other similar training programs
    - Trainings focusing on de-escalation techniques
    - Trainings focusing on specific school and student behavior concerns
    - Benefit of onsite trainers, continued coaching, or other on-going training opportunities for staff
- Providing student supports
    - Functional behavioral assessments
    - Proactive and positive behavioral support plans
    - Behavioral intervention plans
    - Addressing sensory needs
    - Adding special education services

[37] Although this information is not currently paired with quantitative data from school districts, MDE does expect to be able to add this information to its analysis moving forward. MDE is currently able to report broad information regarding what districts reported has worked in their district, but in the future may be able to report whether districts that used a specific strategy actually experienced an increase or decrease in their reported restrictive procedures use. Likewise, because this information is new, it cannot be compared to previous years to identify patterns or determine pre-COVID-19 baselines. Further, because the information is summarized, overview information about district strategies and initiatives, it may not provide the more detailed information necessary to successfully replicate these strategies in other districts. For example, a district may have reported that providing time for staff collaboration was an important strategy the district employed that year, but the details of which staff attended meetings, the timing and agenda of the meetings, and the training staff received surrounding these meetings is not provided.

    - Adjusting schedules or programming
    - Developing relationships with staff
    - Incorporating social-emotional learning
    - Utilizing trauma-informed practices
    - Supporting mental health
- Staff collaboration and/or team meetings
    - Allowing for collaboration and/or troubleshooting a particular student's needs
    - Developing a consistent process for staff to debrief together following behavioral incidents
    - Involving parents, oversight committees, and IEP team members
- Strategic staffing
    - Using specific staff positions to address behaviors (i.e., behavior specialists, crisis teams)
    - Maintaining particular expertise on staff (i.e., contracting with a board-certified behavior analysist, social worker, or school counselor, behavior teams or crisis teams trained to respond to student behaviors)

Compilation of School Districts' Narrative Responses: 2022-23 School Year

In July 2023, 449 school districts and charter schools provided information on strategies they used to reduce the use of restrictive procedures within their district during the 2022-23 school year. Almost all of these districts indicated that they used staff training as a strategy, often in addition to other strategies.

Although some districts (about a third) did not provide information about the specific training they use, most districts provided more detailed information about their training curriculums. Of the districts that did provide specific information, about half of them indicated that they use Crisis Prevention Institute (CPI) to provide training. Some districts explicitly identified CPI's Verbal Intervention Training as an effective resource for their staff.

The use of programs other than CPI appears to be growing, with about 15 percent of schools reporting using alternative programs to provide training to their staff. Twice as many districts indicated that they used Handle with Care, Ukeru, or Professional Crisis Management (PCM), as compared to the 2021-22 school year. Districts reported using the following programs to provide training for their staff:

- Handle With Care
- Ukeru
- Professional Crisis Management (PCM)
- Life Space Crisis Intervention (LCSI)
- Safety Care

Districts also reported training staff on de-escalation strategies, student and staff mental health, and race and equity, without indicating specific training programs in these areas. Many districts also indicated the important role of social-emotional learning, trauma-informed classrooms, PBIS, restorative practices, board-certified behavior analysists, and mental health supports on their use of restrictive procedures.

Other Trainings and Resources Mentioned by Districts

BARR Program
Coaching for Equity

Reclaiming Youth at Risk (book)
Brih Design
Catalyst Training
Nurtured Heart
Larry Thompson/Innovative Schools
Cradle to Career Education Summit
Envoy
Conscious Discipline
Move Mindfully
Boys Town
Registered Behavior Technician (RBT Training)
Safe Schools Platform
Brightworks
PREPaRE Training
Teach To Heal
Tough Kid Workshop
Dialectical Behavior Therapy training
Zones of Regulation
Olweus Bullying Prevention Program
Top 20 Training
Developmental Designs
Responsive classroom
Incredible Flexible You
Prevent-Teach-Reinforce/Pyramid Model Training
Multi-Tiered System of Supports Implementation Reviews

Utilize Trauma-Informed Practices

Trauma-informed training and practices emphasize physical, psychological, and emotional safety for students, families, and staff, and helps trauma survivors rebuild a sense of control and empowerment. Becoming "trauma-informed" means recognizing that people often have many different types of trauma in their lives. People who have been traumatized need support and understanding from those around them. Trauma-informed resources and practices used by school districts include Conscious Discipline, Trauma-Informed Care, Boys Town training, the Nurtured Heart Approach, Life Space Crisis Intervention (LSCI), information on Adverse Childhood Experiences (ACEs), and culturally-sensitive trainings.

- Districts continue to report that training staff to approach crises with empathy has had a meaningful impact on students and staff, including decreases in the use of restrictive procedures and increases in staff retention.

- MDE also offers Responding to Tragedy and Trauma, a collection of resources for schools, families, and students on responding to crises and traumatic events.

Offer Consistent, Widespread Training and Support from Onsite Staff

In narrative responses collected by MDE, school districts frequently mentioned staff training as a strategy they used to reduce the use of restrictive procedures during the 2020-21, 2021-22, and 2022-23 school years. About

three-quarters of districts mentioned training staff, with many specifically mentioning CPI and/or other trainings focused on de-escalation.

Districts also reported that maintaining specific expertise on their staff is critical to ensuring they have well-trained staff and consistent implementation of programs, particularly through targeted training and other ongoing learning opportunities for staff. Districts have reported that using Board Certified Behavior Analysts (BCBAs) or other on-staff trainers to assess skills, provide best practices, and target key areas of skill development for students and staff generally led to students spending more time receiving instruction as well as decreases in challenging student behavior and staff injuries. These districts reported that training all staff, including paraprofessionals, to implement tools consistently and creating time for teams to plan and problem-solve has been critical to successful implementation of programs.

Emphasize Social Emotional Learning for Students

Social emotional learning (SEL) is "the process through which young people and adults acquire and apply the knowledge, skills, and attitudes to develop healthy identities, manage emotions and achieve personal and collective goals, feel and show empathy for others, establish and maintain supportive relationships, and make responsible and caring decisions."[38] Academic, Social, and Emotional Learning (CASEL), "SEL advances educational equity and excellence through authentic school-family-community partnerships to establish learning environments and experiences that feature trusting and collaborative relationships, rigorous and meaningful curriculum and instruction, and ongoing evaluation" and "can help address various forms of inequity and empower young people and adults to co-create thriving schools and contribute to safe, healthy, and just communities." Developing such competencies in students fosters positive social skills, reduces conduct problems, diminishes emotional stress, and improves academic performance. problems, diminishes emotional stress, and improves academic performance.[39]

- Districts report that focusing on programs that explicitly teach students prosocial behaviors and emotional regulation has strengthened positive staff and student relationships, contributed to reductions in the use of restrictive procedures, and increased student capacity for academics. Further, several districts reported that compensating staff for intentionally integrating SEL into core academic curriculum has furthered staff's depth of understanding and ability to confidently implement the skills learned in staff development trainings.

[38] CASEL. Fundamentals of SEL – CASEL (Dec. 2021) (last accessed Jan. 3, 2023).
[39] Greenberg, Weissberg, O'Brien, Zins, Fredericks, Resnik, Elias. "Enhancing school-based prevention and youth development through coordinated social, emotional, and academic learning" (2003) American Psychologist: 58, 466-474; Durlak. "The impact of enhancing students' social and emotional learning: A meta-analysis of school based universal interventions" (2011). Child Development, 872 (1), 1-29.

- Connecting Social and Emotional Learning (SEL) to Professional Growth
  Developed in partnership with the Midwest Comprehensive Center at American Institutes for Research (AIR), this webinar reviews SEL, why it is important and practices that promote SEL. During the webinar, Nicholas Yoder, researcher and technical assistance consultant at AIR, describes the important connection between SEL and school climate, and helps the audience develop an understanding of the coordinated school climate and SEL effort to implement in schools and districts.

- Social and Emotional Learning Implementation Guidance is meant to help schools integrate SEL into school-wide teaching and learning practices so that students will learn, practice, and model essential personal life skills that contribute to academic, vocational, and personal success. Integrating SEL into school helps students learn to be caring and civil, make healthy decisions, problem-solve effectively, value excellence, be respectful and responsible, be good citizens, and be empathic and ethical individuals.

- Integrating Social Emotional Learning into Academics
  This webinar focuses on integrating SEL into academic content. SEL is an evidence-based school climate improvement practice. During this webinar, school staff, superintendents and district and school leaders will receive information on how they can best lead and support integration of SEL into the school day.

Improve Referral Processes, Debriefing Meetings and Individualized Data Reviews

In narrative responses, about a third of districts explicitly mentioned time for staff collaboration and/or team meetings as an effective tool to reduce the use of restrictive procedures. Many districts reported the importance of regular team meetings, to allow for collaboration and/or troubleshooting a particular student's needs, as well as developing a consistent process for staff to debrief together following behavioral incidents.

- Districts report that the development and implementation of new procedures to address student behaviors, including procedures for office referrals and more formal debriefing meetings following incidents, have contributed to a reduction in the use of restrictive procedures. Some districts implemented a more formal process to refer a student to a behavior interventionist or other specialist, while other districts successfully implemented a team meeting process to address individual student behavior and allow opportunities for staff to process their emotions concerning a recent behavior event. Further, districts report that better data collection tools and processes have increased their ability to support students and have reduced their use of restrictive procedures.

- The Oversight Committee Model Agenda and Companion Guide are offered as support for program, school, and district oversight committee meetings to increase efficiency and effectiveness in collaborative discussion and decision-making on the use of restrictive procedures with the goal of reducing the use of restrictive procedures. These documents are meant to be revised and adjusted to meet the needs of the district. They are a work in progress and we encourage users to offer feedback and suggest improvements. Please submit feedback to MDE's Division of Assistance and Compliance or by calling 651-582-8689.

- Minnesota Multi-tiered System of Supports Framework
  This document provides a description of the essential systemic components of MnMTSS and how these interact, including universal screening, data-based decision-making, evidence-based, tiered instruction

and interventions, progress monitoring, leadership behaviors, beliefs and dispositions of educators and staff, community involvement, and culture/climate context.

- MnMTSS Overview Part I (PPT)
  This webinar slide deck will provide an overview of the MnMTSS as a systemic foundation for addressing inequity and improving outcomes for all students in Minnesota and for reaching the Collaborative Minnesota Partnerships to Advance Student Success (COMPASS) goal of accelerating student learning by meeting academic, social-emotional, and school climate needs. Content will include the Minnesota context for development of this framework, the rationale for implementing MnMTSS, and some of the typical implementation challenges.

- MnMTSS Overview Part II (PPT)
  This session will introduce the subcomponents of the MnMTSS framework that serve as the essential foundations necessary for implementing the COMPASS academic, social-emotional and school climate work. Participants will also be provided with Level I of the District and School Self-Assessment tools that will be used to measure current level of district or school implementation in the essential foundations.

Focus on Relationship Building

Strong relationships with teachers and school staff can enhance students' level of motivation and promote learning. Students who have access to strong relationships are more academically engaged, have stronger social skills, and experience more positive behavior.

- Restorative practices are drawn from the traditions of Indigenous people and communities of color around the world. They are grounded in a belief that people are profoundly relational, interconnected and inherently good. Restorative practices include ways of creating community that honor the importance of relationships amongst all members in the community, as well as practices to repair relationships when harm has been caused. Restorative practices address the needs of all people impacted by the harm. By using restorative practices in the school, people get to know one another and build relationships with each other, which are key elements to learning, bullying prevention, and creating a positive school climate for students and adults. Key principles guide the practices.

  - The BARR (Building Assets, Reducing Risks) Center Model
    In this webinar, presenters discuss Building Assets, Reducing Risks (BARR). BARR is a strengths-based model that provides schools with a comprehensive approach to meeting the academic, social, and emotional needs of all students. BARR uses eight interlocking strategies that facilitate real, meaningful relationships between adults and students. The BARR model allows teachers to focus on building relationships with students to access their strengths and areas for growth.

- Person-Centered Practices (mn.gov)

  Person-centered practices are a continuum of strategies and activities that support the informed choice of students and families to make or have input into both major transitions and everyday life decisions. Person-centered practices focus on the interests and needs of the person receiving instruction or support. They emphasize each person's strengths and dreams rather than weaknesses or deficits. Person-centered principles and practices can help assure that people with disabilities have the same

rights and responsibilities as other people, including having control over their lives, making their own choices and contributing to the community in a way that makes sense to the person.

Ten Suggestions for Adding Person-Centered Features in IEPs and Person-centered Interagency Individualized Education Program (IEP) sample facilitator actions

These documents provide recommendations of good practices that are not required but can be helpful to increase student and family engagement in the IEP planning process. Use this document to add person-centered features that may support students to:

- Have more control over their lives.
- Make more of their own choices.
- Contribute to their school and community in a way that makes sense to them

- Person-Centered Thinking®

  For people supported with services, it is not person-centered planning that matters as much as the pervasive presence of Person-Centered Thinking® (PCT®). PCT® begins with learning *both* what is "important to" a person and what is "important for" a person and the balance between them. PCT® skills help people describe both how they want to live, and a reasonable balance between the components of "important to" and "important for" in their lives. As the core PCT® concept, this balance is at the center of both planning and practice.

  Person-Centered Thinking® training has been made available to educators in Minnesota since April 2018. For more information contact the Person-Centered Practices in Education Leadership Team (Person-Centered.MDE@state.mn.us).

- Teacher-Child Interaction Training – Universal (TCIT –U) is a professional development, train-the-trainer-model, designed to strengthen teacher-child relationship skills.

Implement Positive Behavioral Interventions and Supports

Positive behavioral intervention and supports as defined in Minnesota Statutes 2024, section 125A.0941 are interventions and strategies to improve the school environment and teach children the skills to behave appropriately. The State of Minnesota has had a longstanding policy encouraging the use of positive approaches to behavioral interventions. Specifically, Minnesota Rules, part 3525.0850 provides: "The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities."

- In narrative responses, about half of the districts reported using strategic supports to meet student needs and reduce the use of restrictive procedures. Many referenced supports that are required by state and federal special education law, like functional behavioral assessments (FBAs), positive behavior support plans (PBSPs), BIPs, or similar proactive, positive behavioral supports for students. Other

student supports that districts reported included planning for sensory needs and developing relationships with staff.

- Online training from MDE includes three online training modules for statewide use that provide positive strategies for school district staff to use with students with disabilities, including students with ASD, complex emotional or behavioral disorders, and complex learning needs. These stand-alone modules and supplementary documents are designed for school districts to use in independent staff training.

- PBIS implementation is a state-initiated project that provides districts and individual schools throughout Minnesota with the necessary training, coaching, technical support and evaluation to promote improvement in student behavior across the entire school, especially for students with challenging social behaviors. PBIS school teams establish clearly defined outcomes that relate to students' academic and social behavior, systems that support staff efforts, practices that support student success and data to guide decision-making. Information is also available about the federal implementation of PBIS.

    - Restraint and Seclusion (R/S) Alternatives in All States and Territories: A Review of Legislation and Policies, August 2021.

    - Systematic Literature Review of Tier 1 PBIS Implementation in Alternative Education Setting.

    - Center on PBIS "5-Point Intervention Approach for Enhancing Equity in School Discipline" outlining a 5-point multicomponent approach to reduce discipline disproportionality in schools: 1) collect, use, and report disaggregated discipline data; 2) implement a behavior framework that is preventive, multi-tiered, and culturally responsive; 3) use engaging instruction to reduce the opportunity (achievement) gap; 4) develop policies with accountability for disciplinary equity; and 5) teach strategies for neutralizing implicit bias in discipline decisions.

    - Additional materials on the topic of PBIS and equity outlining how equity-focused strategies in action plans achieve more equitable outcomes for all student groups using a multi-component approach.

    - "Establishing Preliminary Evidence for Culturally Responsive PBIS: The Personal Matrix Activity" recording.

    - Additional information about PBIS and aligned initiatives recording.

    - Additional information on PBIS to support students with disabilities.

- **Behavioral intervention plans (BIPs)** are typically developed following a FBA. An FBA can identify the combination of antecedents (factors that immediately precede behavior) and consequences (factors that immediately follow behavior) that are associated with the occurrence of inappropriate behavior. Information collected through direct observations, interviews, and record reviews help to identify the function of the problem behavior and guide the development of a BIP. A complete BIP should describe strategies for: 1) addressing the characteristics ofthe setting and events, 2) removing antecedents that trigger the problem behavior, 3) adding antecedents that maintain appropriate behavior, 4) removing consequences that maintain or escalate the problem behavior, 5) adding consequences that maintain appropriate behavior, and 6) teaching alternative appropriate behaviors, including self-regulation techniques, to replace the problem behaviors.

- Behavior Specific Praise: Implementing, Coaching, and Measuring the Impact of this Simple yet Specific Strategy: Dr. Benjamin Riden, Ph.D., BCBA-D, James Madison University, and Dr. Andy Markelz, Ph.D., Ball State University; implementing and measuring behavior specific praise for specificity, contingency, and variety.

- **Collaborative & Proactive Solutions (CPS)** is the model of care Dr. Greene originated and describes in his various books. The CPS model is based on the premise that challenging behavior occurs when the demands and expectations being placed on a kid exceed the kid's capacity to respond adaptively.

Use Effective De-escalation Techniques

Adult responses to student behavior can serve to either escalate or de-escalate a student's behavior. Adults may not always be aware of how their own behavior may inadvertently escalate the behavior of a student they are trying to support, even as they do their best to ensure student safety and uphold classroom and school expectations. When adults use effective de-escalation techniques as a student's behavior is becoming more intense, they have a unique opportunity to prevent intense behavioral responses or other student behavior that can lead negative consequences, including the use of restrictive procedures on students.

- Strategies for De-escalating Student Behavior in the Classroom provides practical, research-based strategies educators can use to de-escalate challenging student behavior in the classroom. Despite the development of supportive, safe, and predictable school environments, students may, at times, become agitated, and their behavior may escalate to unsafe levels. With some advance planning, educators can reduce reliance on reactive strategies, such as punitive or exclusionary practices (e.g., restraint, seclusion, suspension, expulsion) in favor of safer, more instructive, and inclusive approaches.
- Prevention and De-escalation of Intense Behavior Responses: What Adults Can Do from the Wisconsin Department of Public Instruction provides strategies and resources for understanding effective ways to de-escalate student behavior and support prosocial replacement behavior that is critical skill for adults to understand and consistently use.

Support Mental Health

- Children's Mental Health Division of the Minnesota Department of Human Services (DHS) administers policy and practice to ensure effective and accessible mental health services and supports for children and families in Minnesota. The division works together with many public and private partners across the state so that children and youth with mental health needs can develop and function as fully as possible in all areas of their lives. DHS is committed to making sure the right services are available at the right time for children with mental health needs and their families.
    - School-Linked Mental Health Services
    - Children's Mental Health Crisis Response Services (CRS)
        - Crisis Text Line offers free help for those who are having a mental health crisis or are contemplating suicide. Services are available 24/7 across Minnesota. **Text "MN" to 741741.**

        - **Call **CRISIS (**274747)** from a cell phone to talk to a team of professionals who can help you.

- Mental Health Education in Schools
  From the National Alliance on Mental Illness (NAMI), this document includes age-appropriate model learning activities, best practices in mental health education, and resources for planning and implementing of age-appropriate mental health curriculum and instruction (per Minn. Stat. 120b.21 [2022]).

- Responding to Tragedy and Trauma is an MDE webpage that identifies many resources to help educators respond to racism, violence, and trauma in ways that support students.

- Coping with Crisis Website: The Minnesota Department of Human Services offers Minnesotans resources for dealing with crisis and maintaining mental and physical health.

Other Resources

- COMPASS (Collaborative Minnesota Partnerships to Advance Student Success) is a statewide education system created through a collaboration between MDE, Minnesota Service Cooperatives and Regional Centers for Excellence. COMPASS Pathways are now available for six topics. COMPASS Pathways offer a variety of resources, evidence-based practices and facilitated guidance in formats that work best for schools. Types of pathways will vary by the topic, but may include on-demand learning, cohort learning groups or a hybrid of on-demand resources and cohort learning groups. Learn more about the topics below:

- Student Maltreatment Program at MDE assesses and investigates reports of alleged physical abuse, neglect, or sexual abuse of students that occurs in Minnesota public schools and charter schools. This includes allegations of maltreatment involving students 18-21 years of age, including students receiving special education services, up to and until graduation and the issuance of a secondary diploma.

- Minnesota Ombudsman for Mental Health and Developmental Disabilities (OMHDD) promotes the highest attainable standards of treatment, competence, efficiency, and justice for persons receiving services for mental illness, developmental disabilities, chemical dependency, or emotional disturbance. The OMHDD is an independent governmental official who receives complaints against government (and government regulated) agencies and/or its officials, who investigates, and if the complaints are justified, takes action to remedy the complaints. Visit its website for more information, or to file a complaint by contacting your regional ombudsman.

- The Hexagon Tool can be used by communities and organizations to better understand how a new or existing program or practice fits into an implementing site's existing work and context.

Attachment 3. Engagement Efforts with Stakeholders.

In summer 2023, MDE identified methods to effectively engage with the various perspectives outlined in the legislation. MDE staff met with existing advisory groups and conducted a survey to gather insights and input.

Opinions on use of seclusion range widely. As further described in this summary, some individuals are in favor of ending the practice immediately for all ages and settings, and some are concerned that ending seclusion will have negative consequences.

MDE's methods were designed to gather relevant information in a relatively short amount of time. The information presented in this summary should not be viewed as being representative of all individuals in the various perspectives and disciplines outlined in the legislation. Additionally, it is possible that specific individuals provided input more than once via the different engagement modes (in the survey, for example, several response patterns were remarkably similar). Even with these caveats, MDE can reasonably use this information to understand current issues and perspectives.

The table below summarizes MDE's engagement of the required perspectives, by mode: the Special Education Advisory Panel (SEAP), the Restrictive Procedures Workgroup (workgroup), and an open survey. Categories with an "X" participated in discussions or surveys. (The workgroup includes representatives of school boards and county social services, but those members did not directly provide input as part of this process.)

Table 10. MDE's Engagement of Stakeholder Perspective by Mode

Stakeholder perspective	SEAP	Workgroup	Survey
Parents of students who have been secluded or restrained	X		X
Advocacy organizations	X	X	X
Legal services providers		X	X
Special education directors	X	X	X
Teachers	X	X	X
Paraprofessionals		X	X
Intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2		X	X
School boards		represented, did not provide specific input	X
Day treatment providers		X	X
County social services		represented, did not provide specific input	
State human services department staff	X	X	
Mental health professionals		X	X
Autism experts		X	X

Stakeholder perspective	SEAP	Workgroup	Survey
Representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities	X	X	X

1. SEAP Engagement

As described on MDE's website, "The Minnesota Special Education Advisory Panel (SEAP) provides guidance to the Minnesota Department of Education (MDE) with respect to policies on special education and related services for children and youth with disabilities in Minnesota. The federal Individuals with Disabilities Education Act (IDEA) establishes SEAP and outlines its duties. Members are appointed by the governor's office through the commissioner of education. Advisory panel members include parents/guardians, individuals with disabilities, educators, teacher trainers, advocates, special education administrators, and staff from our agency and other state agencies to bring diverse perspectives together to make recommendations on special education issues."

At the September 2023 SEAP meeting, MDE shared an overview of existing law and data on use of seclusion and other restrictive procedures, and SEAP members asked questions and shared observations. Members asked questions and discussed their observations about the data, including surprise that data is not collected for students without disabilities, surprise about data for 6-10 year olds, and curiosity about how data is used within districts.

MDE asked the group to respond to several questions in small groups via an online whiteboard. MDE left the whiteboard open for additional comments for several days after the meeting. The information below is a summary of the notes from the whiteboard.

Where and how can Minnesota build upon its success in reducing the use of restrictive procedures and eliminating seclusion? Member ideas and input included:

- Training and development for general education teachers, including de-escalation strategies, crisis prevention, alternatives to restrictive procedures and seclusion, special education field experience, and empowerment to teach students with disabilities.
- More inclusive services and classrooms, more dual trained general education and special education professionals.
- More training and resources for special education paraprofessionals and teachers; pay increases for these positions.
- Specific topics for training and development, such as how trauma impacts behaviors, greater emphasis on fostering belonging, and the history of disability.
- Full education team buy-in to prevention and de-escalation approaches (including general education teachers, special education, paraprofessionals, psychologists, leadership).
- Use of behavior analysts to develop behavior interventions for students experiencing seclusion.
- Easier access for children to have aids from external agencies in schools to assist with their day-to-day needs.

What barriers are there to implementing that expansion? Member ideas and input included:

- Need for resources in the classroom to de-escalate and be proactive.
- Workforce issues, such as staff turnover, staff shortages, need for additional teacher support, and challenges with paperwork.
- General education teachers' belief that they are not qualified to teach students with an IEP.
- Funding in general, and funding philosophy in particular (funding special education as a place instead of a service)

What new resources are necessary for increasing staff capacity, staff training, children's supports, child mental health services, and school-wide collaborative effects would you recommend for urgently ending seclusion in Minnesota schools? Member ideas and input included:

- Sufficient trained staff to proactively anticipate and react to what is happening with the student.
- Broad-based training in trauma-informed care for teachers and teacher aides.
- More specialized staff to meet student needs, including BCBAs, Check & Connect staff, school social workers, and school-based mental health service providers.
- More capacity building, more outreach to a diverse workforce.
- More direct funding to schools to support increasing teachers' pay, training, and mental health services within schools.
- Identify systemic ways to help schools capture parent wisdom to eliminate seclusion for their child.

What recommendation would you give for specific dates for ending seclusion by grade or facility? Member responses to this question:

- Today
- Mandate all staff training and eliminate immediately after

2. Restrictive Procedures Workgroup Engagement

As described on MDE's website, "The Restrictive Procedures Workgroup is an advisory workgroup established as a way for MDE to consult with interested stakeholders in developing a statewide plan to reduce the use of restrictive procedures and to provide an annual report to the legislature…Interested stakeholders are statutorily identified to include representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts."

MDE engaged with workgroup members in several ways in fall 2023: a discussion at the September 2023 workgroup meeting, a follow-up survey, a December drop-in office hour, and email discussions. Workgroup members shared their perspectives and expertise, summarized here.

The summary below is based on notes from the workgroup meeting and responses to the follow-up survey. Example comments are from the survey. Readers should not infer proportionality or intensity of sentiment based on the order or presentation of groupings below—information is presented so that readers can review

the range of perspectives from the experts and advocates involved in the workgroup. These do not represent consensus views of the Workgroup—MDE sought the full range of opinions from members.

Setting-specific concerns: Members described the different challenges and needs within federal settings, with some noting that setting is more relevant than grade-level when considering a transition plan to end seclusion. Some members from setting IV programs expressed concerns with ending seclusion or ending seclusion in the near term. Students in setting IV programs have more intense needs, they noted. An example:

> *I do agree that we should not be using seclusion in our traditional school sites. I do think there times that within our setting 4 sites this is the only option to ensure safety of both the student and staff. We often find our* setting *4 sites serving students that have been denied programming at higher levels of care because of their intense needs. School do not have the option to deny service. We must serve ALL students. Many times these students come with extensive history of trauma and abuse. There are times using a restrictive procedure is what is needed. There are other times we create a more unsafe situation by touching the child and they need a safe secure place to work through the behavior or emotional response they are having.*

Clarity needed: Members discussed areas where clarity would be useful in the definition and interpretation of "seclusion," with some noting that there are specifics and nuances to what is/isn't "seclusion" and that there may be different interpretations of law and practice. Specific issues included the use of pads, personal protective equipment, and breakout spaces.

Time and resources to implement: Members discussed the need for time and resources to end seclusion, particularly for training staff and providing additional supports for students (specific areas are described further below).

Student-focus/voice: Members discussed the importance of student and family voices, with some emphasizing that listening and engagement needs to be a real a real part of the process, not just a compliance check. Some described the importance of learning from adults with disabilities as part of the process. An example comment:

> *I feel like I have mentioned this many times, but there is so much to be learned from adults with disabilities about co-regulation, about spoon theory, about cup-theory, about how to support students with sensory differences, about collaborative problem solving, but yet that is rarely, if ever, part of the conversation.*

Workforce issues: Members discussed workforce issues related to ending seclusion such as ongoing staffing shortages, time and resources needed for training and supports needed for staff safety and well-being. Specific ideas or issues included:

- More paraprofessionals are needed, and certificate or credential programs would be valuable.
- Mentoring, training, adult mental social well-being and supports are needed so that students and kids and adults can reset and repair.
- Ability to sustain practices is impeded by staff shortages and difficulty bringing people up to speed due to high turnover rates.

- Staff that work with students who exhibit aggressions towards others should be paid more than others, due to the risk they face when they go to work every day.
- Class sizes in center-based programs should be smaller so that students with special needs can get more individualized support and attention.

An example comment:

> *Schools are currently experiencing a staff shortage and do not have staff with adequate training. Staff mental health and the ability to offer needed services are challenges. There are currently many students who require a setting IV program but are not receiving educational services at a school due to staffing shortages. Students are being served via home-based options or as part-time students. If we are not purposeful in how we work to end seclusion, I fear that more students will not be able to safely have their educational needs met within a school setting.*

Mental health services: Members discussed lack of mental health services as a challenge to ending seclusion. Some noted the waitlist for mental health services, and that there are "significant lack of mental health supports for students outside of the school system (schools can't do it all)." Some urged MDE to advocate for additional mental health services beyond school systems, and some noted the complicating factor of DHS requirements regarding day treatment programs (leading to closure, they report).

Unintended consequences: Members discussed potential unintended consequences for ending seclusion entirely, such as the potential for increased physical holding/restraints or calls to law enforcement, which could in turn lead to additional injuries to staff or students and potential trauma for students and staff. Some indicated that ending seclusion could result in shortened or lost school days, placement in a more restrictive setting or homebound schooling, or out of state placement. Some described potential solutions and mitigations would take time to plan and implement. An example comment:

> *Students may need to be in a more restrictive setting if seclusion is not an option, or have their days shortened. School staff may need to access community crisis supports (police, mental health crisis teams) sooner, and those community resources will need to shore up their available staffing/resources.*

Culture change: Members described the culture change that will be required to end seclusion, with some noting that training and development should go beyond legal compliance and should focus on relationship building and culture change. Example comments:

> *I think what we really need to talk about is not the change in the law, but a change in culture that has to happen in order to view secluding and restraining students as something schools simply should not do. So many of our conversations focus on how not to get sued. So few of our conversations focus on how to avoid situations where students are melting down and losing control in the first place.*

> *If we want to eliminate the use of seclusion successfully and not have it replaced by more restraints or more calls to law enforcement, then we need to focus the discussion on how to support students so they are not finding themselves in situations where seclusion or restraint are*

deemed necessary. - our district has already ended seclusion- I think school leaders supporting this change is critical, more training to show these procedures are ineffective, can be dangerous, and are another predictable pattern of disproportionality is needed.

Other specific approaches or issues: During discussions, some members highlighted specific approaches that could be valuable:

- Training regarding trauma and mental health.
- Ukeru helps keep staff calmer as they feel safer.
- Disability awareness training for staff.
- Focus on strong planning – IEPs, intervention plans.
- ABA therapies in schools [but note divergent perspectives on what might be beneficial or harmful].
- Use of a weekly debrief with administrators—in general education as well as special education.
- Additional expertise at the state level to provide support to districts in working toward this legislative requirement.
- Suggestion for MDE to do site visits to schools using seclusion due to size or aggression of students so that MDE can partner in developing solutions.
- Suggestion for MDE to report on more districts that have lower restrictive procedures so that similar districts can learn from each other (beyond written review of results).

3. Open-link Survey

MDE designed a brief survey to gather input from interested individuals. MDE distributed the survey link in MDE's Special Education Updates in November and December 2023. MDE also distributed the survey to PACER (Minnesota's parent training and information center) and the Minnesota Disability Law Center (Minnesota's designated Protection and Advocacy System) even though both organizations are represented on the workgroup. MDE encouraged workgroup members, PACER, and the Minnesota Disability Law Center to distribute the survey as well. In all, MDE received 176 responses to the survey. Since the survey link was open to anyone, MDE cannot say with certainty that there are no repeat responses in this data set (indeed, several responses were remarkably similar, suggesting either individual repeats or organized responses).

Survey Responses: The survey asked respondents to self-identify their perspective from the list outline in legislation. Respondents could select more than one option from the list. The majority of survey respondents were school district employees. The list below is ordered by the relative number of respondents who self-identified as one of the offered categories.

- Teacher
- Intermediate school district employee
- Special Education Director
- Parent of a student
- Special Education Cooperative employee
- Paraprofessional
- Autism expert

- Mental health professional
- Person with a disability
- Parent of a student who has been secluded/restrained at school
- Member of an advocacy group
- Person of Color
- Legal services provider
- School board member
- Day treatment provider

Some respondents offered specific roles in the "other" category offered by the survey. These included, in alphabetical order:

- ABS- ASD case manager
- Administrator
- Assistant Director of Special Education
- BCBA
- BCBA, MA in Counseling, employed by both an Intermediate district as well as single district
- Behavior Analyst
- Board Certified Behavior Analyst
- Building Administrator
- Certified Medical Assistant
- CNA health office
- District School Psychologist
- EBD Special Education Teacher
- Elementary School Principal
- Setting 3 in elementary
- Immediate family member of intermediate special educator
- Licensed EBD, ASD & Certified Traumatic Stress Studies
- Occupational Therapy Assistant
- Parent of a student of color
- PCA
- Principal
- Professor of Criminology
- School psychologist
- School social worker
- Setting 4 Building Principal
- Site Administrator for a setting 4 program
- Special Education Assistant Director
- Special Education Coach
- Special Education Coordinator
- Special Education Program Supervisor
- Special Education Teacher
- Supervisor of a Federal Setting IV program

Survey Summary: This summary provides an overview of responses to the survey. MDE continues to review the detailed responses to identify valuable information for future efforts. Information is summarized qualitatively, without counts or specific proportions—this is especially appropriate in this survey because of the possible duplication of responses.

Perspectives on urgently ending seclusion: The survey asked respondents: *The use of seclusion on children from birth through grade 3 will be prohibited in schools as of September 1, 2024. As we continue to move forward in urgently ending the use of all seclusion in schools, what ideas do you have for a timeline for ending seclusion by grade level? By type of facility (eg. federal setting, type of school)? Please include information that supports your recommendation.* Broadly, response patterns are:

- The largest proportion of respondents had setting specific recommendations, typically that seclusion should **not** be eliminated in setting 3 and 4.
- The next largest proportion of respondents expressed opposition to ending seclusion, typically strong opposition.
- Some respondents urged MDE to delay ending seclusion until more information or resources are available.
- Some respondents indicated that seclusion should be eliminated immediately at all levels.

Common themes included:

- Support for seclusion as an option in high-intensity behaviors (federal setting 3 and 4): Advocacy for maintaining seclusion in setting 3 and 4 programs due to the complex needs and safety considerations for students and staff, especially in cases of high-intensity behaviors.
- Specific concerns for level 4 programs and grade-level exceptions**:** Emphasis on unique challenges in setting level 4 programs, recommendations for exceptions for specific grade levels, and considerations for the complexity of behaviors in older students.
- Concerns and opposition to ending seclusion**:** Expressions of concern and opposition to completely ending seclusion, citing safety risks, especially in settings with intense externalizing behaviors. Some proposed alternatives and training instead.
- Trauma and mental health impact concerns: Concerns about the potential trauma and mental health impact on students if seclusion is abruptly ended, emphasizing the need for careful consideration, alternative strategies, and trauma-informed approaches.
- Need for gradual phase-out with comprehensive training and support: Recommendations for a gradual phase-out with a well-planned timeline based on comprehensive training programs and additional resources to support staff in managing students' behavioral challenges effectively.
- Advocacy for nuanced approach, evaluation, and disability/trauma education**:** Proposals for a nuanced approach, case-by-case evaluation, and the importance of disability and trauma education for teachers. Highlighting the need for flexibility based on individual behavior plans.
- Concerns about staff turnover and burnout: Worries about potential staff turnover, burnout, and challenges in maintaining a safe learning and work environment. Calls for careful consideration and monitoring of indicators like staff injuries, physical holding, and police calls.

Illustrative comments: The comments below highlight some of the specific perspectives shared by survey respondents. They should not be viewed as representative.

The use of seclusion in general education schools should end. BUT the use of seclusion in federal setting 4 programs should be re-evaluated. I work in a intermediate district, a self-contained school, with students with diagnoses of ASD and DCD. Although a high school/transition school, the developmental level of our students is between 2 years old-3rd grade. The behavioral levels of these students paired with the size of the students, makes behavior response a large part of the job. We are already using all the proactive measures, TCIT, relationship building, and we still see physically aggressive behaviors that injure at least 2 staff each year. These staff do not get replaced because hiring in education is at an all time low. If you remove seclusion as a last resort for our school to use when imminent harm is obvious, our students will then move to home bound schooling.

I believe MDE should at least consider exclusions. Special education means we provide every student with individualized plans to support their education. Why would we think a blanketed legislation is effective when talking about special education as a whole. Our level 4 program exists because we have to be even more individualized with how we work with our students. At the very least, we should be an exception to the legislation and allowed to continue to utilize seclusion as a tool to effectively support of student and promote safety for all.

My son was secluded in a closet when he could not regulate his emotions. This only served to cause him to become much more deregulated. When he was placed in alternative settings - the seclusion completely ended because they had more of the resources needed to deal with disregulation. Mainstream schools do not have the space, the professional skills, the empathy, the raw availability needed to deal with this so seclusion becomes the easy near term band aid that only caused the problem to grow. My experiences are from the Hopkins school district in 2007-2013 timeframe.

I work in Rochester Public Schools. Only our Setting 3 and 4 classrooms have seclusion rooms. I would love for the people who are making this decision to come and work in these settings for 5 days, so see the need for seclusion. We are not taking seclusion lightly in Rochester, and I would like you to see that for yourselves. We have young students who are hurting staff and students EVERY DAY. What would you like us to do with them? Do you want to be the one to call the parents of the students who are being hurt every day and explain this to them?

I would like to see it ended for all grades at all schools immediately. There is excellent research on how children/people with emotional regulation issues NEED CO-regulation which means they need a person with them to help them regulate and seclusion means no people and restraint triggers fight/flight more. It is also punitive and more leads to the school to prison pipeline as these situations escalate students, not calm them down, not educate them, not teach them how to regulate in a healthy manner.

[T]he data on the number of disabled students that end up in juvenile and adult detention because they are targeted early and often (research shows it begins in preschool) and especially if they are also students of color. Yes, some may be more likely to be impulsive and some may have lower thresholds for frustration and lack emotional regulation skills, but they are faced

daily with being behind their classmates and unable to keep up with the other kids, so they continually face degradation ceremonies at school where they are called out, punished, etc. I remember one time going to my son's school party and other moms telling me that they had all heard about my son and things the teachers had said about my son. One teacher mocked his stutter in front of the whole class and faced no disciplinary action and my son was harassed by those peer for two years more until he left there. That teacher also purposely pushed him past his tolerance level so that he would flip out so she could get rid of him for the rest of that day or other days. He wasn't even being disruptive, he just wasn't participating and would just read his books because he was ashamed he couldn't do the math. This type of shaming and then exclusion needs to end. And she tried to restrain him when he went to escape and then and only then did he get physical and then this escalated his punishment. This school was determined to get him hospitalized and punished severely. Amazingly, he goes to another school and has none of those issues and is considered a good kid. There they sent kids to work on their emotional regulation and problem solved the issue with a trained person and then they went back to class. Guess what? It worked! We have the knowledge, we need to make every school and every teacher and every para and every administrator learn the current research.

I believe ending seclusion needs to be re-evaluated due to the concern for staff and student safety when engaging in a child hold during a crisis situation. Becoming hands-on is always a last resort after several interventions and practices have been utilized and fail. In my experience as a Setting 3, EBD teacher, putting student's in team control holds or individual holds is very challenging and feels more detrimental to staff and students' mental health. In many cases, an adult putting their hands on a child is more triggering and traumatizing versus being in a separate, safe, space such as seclusion. I truly believe it all comes down to building strong relationships with students and knowing them and their triggers. I have had students who respond well to seclusion and de-escalate quickly and other students who hate it and will elevate their behaviors. In those cases, my team avoids seclusion as much as we can. I am ultimately worried about the safety of staff and students when using other restrictive procedures during a crisis. How will a school and the state support SPED teachers and staff who become injured? How do we prevent turnover and burnout? I feel this whole amendment needs to be reassessed.

While I do not have further recommendations on the timeline for ending seclusion, but it is my hope that the MDE and the state of Minnesota have considered that there are many, many school districts in Minnesota that simply lack county and community supports to provide safety to students and staff when there are students engaging in behaviors that constitute an emergency situation. A solution to this challenge is not as simple as "hiring staff," or "starting programs to...". While employed by a service cooperative, there are not nearly enough resources to support the students in our region at residential or setting IV facilities to support students with significant mental health and behavioral needs. Many of our students who are birth-grade 3 that restrictive procedures have been utilized for are self-harming and/or the function of their behavior has been determined attention and when put into a physical holding maneuver they continue to escalate versus de-escalate. There are far more considerations to be made than to

provide a blanket solution to districts and students across the state, many of which have little to nothing in common in regard to resources, personnel and other unique characteristics.

We recommend developing a timeline for termination of seclusion use in schools that is based upon available data. Recent legislation prohibiting the use of seclusion for students aged birth to grade 3 provides an opportunity to measure the effects of termination of the practice on other relevant, potentially detrimental indicators. These other indicators include but are not limited to the use of physical holding, shortened school days, in-school and out-of-school suspensions, and police calls with these students. Once the side effects of seclusion termination are better understood, a data-informed timeline for other age groups can more appropriately be developed. Timeline development particular to various settings, i.e., federal settings, types of schools, etc., will also benefit from the data available before and after the use of seclusion among students aged birth to grade 3. Systems to collect data related to side effects of seclusion termination should be developed.

I support first implementing with fidelity other less restrictive interventions. This will require funds to address the high amount of training and support that staff will need to implement with fidelity, in addition to professional development on topics such as categorical disabilities, behavioral manifestations of disability, de-escalation, etc. I strongly do not agree with the proposal to end seclusion in all schools (esp Fed 4) and especially with students who have a long-documented history of high-magnitude aggression that has been resistant to previous interventions and has resulted in staff injury. MHP, BCBA, School Psych, etc. are all qualified to work with teams to identify students for whom seclusion is actually the safest and least restrictive intervention to maintain safety in an emergency. For example, a student who has experienced physical abuse or neglect may be more traumatized by the use of a physical hold than seclusion. This should be an IEP team decision that includes an MHP, BCBA, school psych, etc.

I equate seclusion to punishment. Both give a consequence without supporting, modeling and teaching our students they have control of their bodies, words, thoughts, etc.

There needs to be a focus on general education- kids are being pushed to special education too quickly because they need the attention. Focus on general education, small classes, more adults. This alone gives a child more academics because they focus more.

I understand the principle and philosophy and I completely disagree with their use, especially in working with children who have experienced trauma. Unfortunately, as a teacher in a behavior program, I understand the need for them from a safety component as there are times when a severely mentally ill student needs to, for safety reasons, be isolated until more capable staff are able to respond.

There are staff and students being harmed each and everyday by students who are dysregulated. Students who are enrolled in a federal setting IV program have exhausted all other options within a typical school district. Federal setting IV programs are being innovative

and creative with programming, staff training, parent supports etc. so if in the event a seclusion is warranted, it's only being used as a last resort. We have staffing shortages in all of our federal setting IV programs as staff don't want to come to work and get assaulted by students. We know that 99.9% of the time the behavior has a communicative intent, students don't "want" to harm others but in some cases it's their only means to get their needs and wants met. Staff should have tools they could use in the event a situation isn't safe for the student, other students or themselves if all other options have been exhausted. I would fully support MDE staff or legislative staff to come and work in a building for 1 week and see what is being done each day as 99.9% of the time it's AMAZING and the other .01% of the time it requires the use of a seclusion to keep everyone safe.

I think it is important to consider within counties what resources are reasonably available. In NW MN we do not have access to higher structured settings or adequate mental health support or facilities that can support the needs of physically aggressive, distraught students, or students with significant mental health deterioration (i.e., schizoaffective disorder).

While I absolutely support implementing practices and standards to ensure that restrictive procedures (in this case specifically, seclusion) are being utilized appropriately and only in emergency situations, there are instances that the district(s) I serve will be adversely effected should the option no longer be available when considering staffing, the physical toll that long-term physical holds may have on our staff when student's continue to escalate, students that have medical disabilities that would not allow the use of a physical holding skill thus leaving no safe alternatives for students or staff to turn to to regain a safe level of control over an emergency situation, the severity of student behavior(s) we are beginning to see more and more frequently, all paired with the severely limited community, county and regional resources to support behavior and mental health. I am not an advocate for the use of restrictive procedures or physical holding; however, I trust school districts to make informed decisions and provide staff training as to how to safely and appropriately utilize them to maintain safety for students engaging in risk behavior(s), students in the vicinity of a student engaging in severe risk behavior(s) and the staff there to support children engaging in risk behavior(s) back to a place of calm. I hope, that as the MDE is making legislative recommendations there is consideration of schools in greater Minnesota as the needs and resources available to meet those needs are significantly discrepant to those available in the Metro area, Duluth or Rochester area(s). Thank you.

Strategies and resources: The survey also asked respondents to identify existing resources and/or new resources you believe are necessary in several topic areas**.** In some cases, respondents simply endorsed that the resource or topic area is important (for example, answering "YES" under Staff training). The summary below highlights themes in each topic area offered by the survey. MDE incorporated specific resources into the legislative report, Appendix D, as appropriate.

- Building staff capacity for addressing behavioral needs of students: additional funding, increased staff, additional behavioral expertise and credentialing, increased mental health staff involvement,

additional resources and time for training, improved student to staff ratios, specific training and approaches.

- Staff training: need for additional training for all staff, training on proactive/preventative approaches, training on alternatives to restrictive procedures, de-escalation training, trauma-informed training, safety training, specific training approaches or curriculum.
- Children's supports: need for safe educational environments, need for community supports and improved regional/local resources, additional supports for families and parents, access to specialized education and therapies, need for mental health and medical services, additional financial and other supports.
- Child mental health services: need for more access, more funding, school-based social workers and mental health professionals, community-based mental health services (particularly for high-need students), availability of crisis response teams and paramedics in schools, sensory spaces and resources in schools, mental health training for all staff, wrap-around supports for families and students, additional research on medicines and therapies.
- Schoolwide collaborative efforts: MTSS/PBIS implementation, professional development, social-emotional skills development, school-wide coordination, collaboration with medical providers, culture/systemic approaches.

Appendix G

Governor Tim Walz

Executive Order 19-13; Rescinding Executive Order 15-03

Supporting Freedom of Choice and Opportunity to Live, Work, and Participate in the Most Inclusive Setting for Individuals with Disabilities through the Implementation of Minnesota's Olmstead Plan

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

Our State is committed to ensuring that inclusive, community-based services and meaningful opportunities are available to individuals with disabilities regardless of disability type, age, race, color, ethnicity, gender, sexual orientation, gender expression, gender identity, geography, national origin, religion, creed, economic status, marital status, familial status, level of education, language, and status with regard to public assistance.

We recognize that disability is not limited to particular circumstances, such as age of onset, type of disability, number of disabilities, significance of disabilities, congenital or acquired disabilities, technology dependencies, complex health conditions, and alternative communication methods. Our State recognizes that such services and meaningful opportunities advance the best interests of all Minnesotans by fostering independence, freedom of choice, productivity, and participation in community life of Minnesotans with disabilities.

The unnecessary and unjustified segregation of individuals with disabilities through institutionalization is a form of disability-based discrimination prohibited by Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 *et seq.,* which requires that states and localities administer their programs, services, and activities, in the most integrated setting appropriate to meet the needs of individuals with disabilities.

In *Olmstead v. L.C.,* 527 U.S. 581 (1999), the United States Supreme Court interpreted Title II of the ADA to require states to place individuals with disabilities in community settings, rather than institutions, whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the state can reasonably accommodate the placement, taking into account the resources available to the state and the needs of others with disabilities.

Twenty years after the Olmstead decision, barriers to affording opportunities within the most integrated setting to persons with disabilities still exist in Minnesota.

The Olmstead Subcabinet, created by Executive Order 13-01 and modified by Executive Order 15-03, was instituted to develop and implement a comprehensive Minnesota Olmstead Plan, which was approved by the U.S. District Court on September 29, 2015 and is updated regularly by the Olmstead Subcabinet.

The Olmstead Implementation Office ("010") was created as part of the Minnesota Olmstead Plan and plays an important role in facilitating the implementation of the Plan, undertaking meaningful community engagement related to the Plan, providing community input to agencies, and ensuring compliance and verification of reporting by agencies.

The work of the Olmstead Subcabinet is ongoing, and continued authority is needed by the Subcabinet to effectively implement the Minnesota Olmstead Plan to ensure that all Minnesotans have the opportunity, both now and in the future, to live close to their families and friends, to live more independently, to engage in productive employment, and to participate in community life.

For these reasons, I order that:

1. A Subcabinet, to implement Minnesota's Olmstead Plan is constituted with the following members:

a. The Ombudsman for the State of Minnesota Office of the Ombudsman for Mental Health and Developmental Disabilities

b. Executive Director of the Minnesota Governor's Council on Developmental Disabilities

The Chair, Commissioner, or Chair's or Commissioner's designee of the following agencies:

c. Department of Human Services

d. Housing Finance Agency

e. Department of Employment and Economic Development

f. Department of Transportation

g. Department of Corrections

h. Department of Health

i. Department of Human Rights

j. Department of Education

k. Department of Veterans Affairs

1. Department of Public Safety

m. Metropolitan Council

2. The Governor will designate one of the members of the Subcabinet to serve as chair.

3. The Subcabinet will allocate such resources as it deems to be reasonably necessary, including retention of expert consultants, and consult with other entities and State agencies, when appropriate, to carry out its work.

4. The duties of the Subcabinet are to:

a. Work to identify and address barriers to providing services and meaningful opportunities within the most integrated settings for persons with disabilities throughout Minnesota.

b. Work to identify and address areas of disparity in opportunities for individuals with disabilities to live, work, and engage in the most integrated settings.

c. Engage communities with the greatest disparities in health outcomes for individuals with disabilities and work to identify and address barriers to equitable health outcomes.

d. Provide oversight for and monitor the implementation and amendment of the Olmstead Plan and the impact of the Plan on the lives of people with disabilities.

e. Provide ongoing recommendations for further amendment of the Olmstead Plan.

f. Ensure interagency coordination of the Olmstead Plan implementation and amendment process.

g. Convene periodic public meetings to engage the public regarding Olmstead Plan implementation and amendments.

h. Engage persons with disabilities and other interested parties in Olmstead Plan implementation and amendment process and develop tools to keep these individuals aware of the progress on the Plan.

i. Continue to implement the Quality of Life survey process to measure the quality of life of people with disabilities over time and continue to identify and implement quality improvement strategies.

j. Convene, as appropriate, workgroups consisting of people with disabilities, families of people with disabilities, advocacy organizations, service,

3

treatment, and health care providers, and/or governmental entities of all levels that are both members, and non-members, of the Subcabinet.

1. The MO will carry out the responsibilities assigned by the Subcabinet, as directed by the Chair of the Subcabinet.

2. The Subcabinet will maintain procedures to ensure that they define a clear decision-making process, facilitate execution of the Subcabinet's duties, and appropriately define the role of the MO and revise such procedures as necessary.

3. The MO will provide staffing and administrative support to the Subcabinet.

4. Executive Order 15-03 is rescinded.

This Executive Order is effective fifteen days after publication in the State Register and filing with the Secretary of State. It will remain in effect until rescinded by proper authority or until it expires in accordance with Minnesota Statutes 2018, section 4.035, subdivision 3.

Signed on March 29, 2019.

Tim Walz
Governor Filed

According to Law:

Steve Simon
Secretary of State

4

Student Support Personnel Aid Executive Summary FY 2024

Student Support Personnel Aid Entitlement is calculated by MDE according to 2024 MN statute 124d.901. The entitlement calculation is below.

Total Entitlement Student Support Personnel Aid	**Perc of Aid**	**$**	**33,562,117.52**
District/ Charter Entitlement	63%	$	21,282,117.52
Cooperative Entitlement	37%	$	12,280,000.00
Unexpended Aid Determined by UFARS Reporting	**53%**	**$**	**17,798,034.90**

The summary data below is provided by an analysis of UFARS (Uniform Financial Accounting and Reporting Standards). Audited data is submitted by districts to MDE to identify -- in detail -- their revenues and expenditures for the purpose of financial accountability.

Expenditures identified in the table below reflect data reported by districts, charters and cooperative *member* districts. Data reported by intermediate or cooperative services organizations is *not* used due to the pass-through nature of the funds.

In FY 2024:

- A total of 508 independent, special and charter school districts were eligible for Student Support Personnel Aid. 213, or 42%, report spending no aid. Of those 508:
  - 181 charter school districts were eligible for Student Support Personnel Aid. 95 (52%) report spending no aid.
  - 327 independent and special school districts were eligible for aid. 118 (36%) report spending no aid.
- 40 intermediate or cooperative services organizations were eligible for aid. 20 (50%) are reported by member districts as spending no aid.

70 percent of the aid expended was used for the direct hiring of staff, 30 percent was used for contracting. Combined, licensed school counselors and licensed school social workers represent almost 50% of Student Support Personnel Aid expenditures (47.97%). See the table below for additional details.

			100%	70%	30%
Total Expenditures	**100%**	**$**	**15,764,082.62**	**$ 11,001,436.57**	**$ 4,762,646.05**
Description	**Percent**		**Total**	**Direct Hire**	**Contract**
School Nurse	10.44%	$	1,645,195.18	$ 1,391,558.96	$ 253,636.22
School Social Worker	22.31%	$	3,516,754.30	$ 2,846,619.15	$ 670,135.15
School Psychologist	3.85%	$	607,112.84	$ 369,099.76	$ 238,013.08
School Counselor	25.66%	$	4,044,500.06	$ 4,044,500.06	$ -
Alcohol and Chem Dep Counselor	1.25%	$	197,161.65	$ 197,161.65	$ -
Salary Adjustments	0.05%	$	8,347.63	$ 8,347.63	$ -
Services Purchased from Joint Powers	11.55%	$	1,821,167.17	$ -	$ 1,821,167.17
Salary purchased from other distrct	9.92%	$	1,564,480.19	$ -	$ 1,564,480.19
Benefits/ Benefits purchased from other districts	14.97%	$	2,359,363.60	$ 2,144,149.36	$ 215,214.24

In FY 2025, one cooperative organization identified as eligible in FY 2024 opted out of Student Support Personnel Aid and two cooperatives opted in, for a total of 41 cooperative organizations. Due to closings and mergers, of the 181 original charter district participants, 177 are eligible to receive Student Support Personnel Aid and 327 independent or special districts are eligible to receive the aid, for a total of 504 districts.

Expenditures for FY 2025 will not be available until January 2026 when UFARS reporting has been finalized.

United States Government Accountability Office

Report to Congressional Committees

April 2020

K-12 EDUCATION

Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data

GAO-20-345

April 2020

K-12 EDUCATION

Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data

GAO Highlights

Highlights of GAO-20-345, a report to congressional committees

Why GAO Did This Study

Every 2 years, Education requires nearly all school districts to report incidents of restraint and seclusion. Generally, restraint is restricting a student's ability to move, and seclusion is confining them alone in a space they cannot leave.

The House Committee on Appropriations' explanatory statement accompanying the Consolidated Appropriations Act of 2018 included a provision for GAO to evaluate the CRDC's restraint and seclusion data. This report examines (1) the effectiveness of CRDC data quality control procedures, (2) selected districts' interpretation of CRDC's restraint and seclusion definitions, and (3) selected districts' use of data. GAO analyzed CRDC's quality control processes for school year 2015-16, and interviewed officials from seven stakeholder groups and over 50 school and district officials in three states. GAO selected states, districts, and schools to obtain a range of perspectives on using restraint and seclusion data and interpreting CRDC definitions of restraint and seclusion. Selection criteria included changes in reported incidents year to year and laws requiring districts to report incidents to states.

What GAO Recommends

GAO made six recommendations, including that Education expand its CRDC business rules to cover all districts, develop additional quality controls to address misreporting, address factors underlying misreporting, and refine and clarify its definitions. Education agreed with these recommendations.

View GAO-20-345. For more information, contact Jacqueline Nowicki at (617) 788-0580 or nowickij@gao.gov.

What GAO Found

The Department of Education's (Education) quality control processes for data it collects from public school districts on incidents of restraint and seclusion are largely ineffective or do not exist, according to GAO's analysis of school year 2015-16 federal restraint and seclusion data—the most recent available. Specifically, Education's data quality control processes were insufficient to detect problematic data in its Civil Rights Data Collection (CRDC)—data Education uses in its efforts to enforce federal civil rights laws (see figure). For example, one rule Education used to check the quality of data submitted only applied to very large school districts, although GAO and Education's own analyses found erroneous reporting in districts of all sizes. Education also had no rules that flagged outliers that might warrant further exploration, such as districts reporting relatively low or high rates of restraint or seclusion. GAO tested for these outliers and found patterns in some school districts of relatively low and high rates of restraint or seclusion. Absent more effective rules to improve data quality, determining the frequency and prevalence of restraint and seclusion will remain difficult. Further, Education will continue to lack information that could help it enforce various federal civil rights laws prohibiting discrimination.

Data Quality Issues GAO Identified in Department of Education 2015-16 CRDC Restraint and Seclusion Data

Erroneous "zero" reporting
70 percent of all districts reported zero incidents, but CRDC rule requiring districts to verify zeros only applied to 30 of the nation's 17,000 districts.

Relatively low rates of incidents
No rule exists to identify potential underreporting. We identified some very large districts that reported very low rates of restraint and seclusion.

Relatively high rates of incidents
No rule exists to identify high rates of restraint or seclusion. We identified some districts with relatively high rates of restraint and seclusion. Most serve high proportions of students with disabilities.

Illogical data submitted
Almost 600 schools reported more students restrained or secluded than incidents, but the rule to identify those cases only applied to less than 1 percent of schools.

Source: GAO analysis of Department of Education's Civil Rights Data Collection (CRDC) for school year 2015-16 data. | GAO-20-345

Note: All analyses used public-use file, except illogical data, which used a restricted-use file.

Officials in the nine school districts GAO visited lacked a common understanding of the CRDC's restraint and seclusion definitions. Similarly, officials GAO interviewed in all three state educational agencies (Kentucky, Washington, and Wisconsin) and all seven stakeholder groups expressed similar concerns about the clarity of these definitions. For example, officials inconsistently interpreted the word *alone* in the definition of seclusion and, therefore, on whether to count an incident if a teacher was in the room. Absent clearer definitions, Education will continue to lack quality information on restraint and seclusion in public schools.

Officials in school districts GAO visited identified several benefits to collecting these data, including identifying patterns in student behavior and developing interventions that can reduce the need for restraint and seclusion. Officials also said that analyzing their data helped them identify needs for additional staff training and student support services.

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U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

April 21, 2020

The Honorable Roy Blunt
Chairman
The Honorable Patty Murray
Ranking Member
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Rosa DeLauro
Chairwoman
The Honorable Tom Cole
Ranking Member
Subcommittee on Labor, Health and Human Services, Education, and Related Agencies
Committee on Appropriations
House of Representatives

Although Department of Education (Education) data show that the number of incidents of restraint and seclusion of students in K-12 public schools is small, data analyzed for our June 2019 report showed that the true nationwide extent of these practices cannot be determined because the data do not reflect all incidents of restraint and seclusion.[1] This is particularly concerning because, as we reported earlier, some of the most vulnerable public school students—students with disabilities—are disproportionately affected. Our June 2019 report found that many of the nation's largest school districts erroneously reported to Education that they had zero incidents of restraint or seclusion during the 2015-16 school year. In all, 70 percent of school districts nationwide reported having zero incidents during that school year. As a stop-gap measure to improve the quality of the 2017-18 school year data before it was published, we made several recommendations to improve the accuracy and completeness of that data. Education has taken some steps to address them. At the same time, school districts around the country have been in the spotlight for misreporting and underreporting incidents of

[1]GAO, K-12 *Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data,* GAO-19-551R (Washington, D.C.: June 18, 2019).

restraint and seclusion, further undermining confidence in the accuracy of the data.

In broad terms, Education defines restraint as restricting a student's ability to freely move their torso, arms, legs, or head, and defines seclusion as involuntarily confining a student alone in a room or area from which the student is physically prevented from leaving.[2] Education's most recent general resource document on the use of restraint and seclusion states that restraint or seclusion should never be used except when a child's behavior poses imminent danger of serious physical harm to self or others.[3]

As part of its Civil Rights Data Collection (CRDC), Education collects and publicly reports a range of data from nearly all public school districts, including data on the use of restraint and seclusion.[4] Education's Office for Civil Rights (OCR) uses CRDC data in its enforcement of various federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability, making its accuracy of paramount importance.

The explanatory statement from the House Committee on Appropriations accompanying the Consolidated Appropriations Act of 2018 includes a provision for us to study the CRDC's restraint and seclusion data and provide examples of practices schools are adopting to reduce the

[2]According to Education, the CRDC definitions for restraint and seclusion have remained unchanged since the 2009-10 CRDC.

[3]U.S. Department of Education, *Restraint and Seclusion: Resource Document* (Washington, D.C.: May 15, 2012). According to Education, this document is a resource for states, localities, and school districts to consider when developing policies and procedures on restraint and seclusion. In 2016, Education also issued a "Dear Colleague Letter" which addresses how the use of restraint and seclusion may result in discrimination against students with disabilities, thereby violating Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) (both as amended). U.S. Department of Education, Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities (December 28, 2016). https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf

[4]According to Education, school districts in U.S. territories are not required to collect and submit data for the CRDC at this time. However, Puerto Rico chose to submit data for the 2017-18 school year. Similarly, tribal schools operated by the Department of the Interior's Bureau of Indian Education and schools operated by the Department of Defense Education Activity are also not required to collect and submit data, according to Education.

incidence of restraint and seclusion.[5] This report examines (1) the effectiveness of CRDC data quality control procedures for its restraint and seclusion data, (2) how selected districts interpret the CRDC definitions of restraint and seclusion, and (3) how selected districts use data on restraint and seclusion and encourage staff to report incidents.

To gather information on the extent to which Education ensures the quality of federally reported data, we analyzed Education's CRDC for the 2015-16 and 2013-14 school years. (The CRDC is administered every two years; these were the most recent available during our review.) To assess the effectiveness of Education's procedures in identifying inaccuracies, we reviewed the data quality control procedures Education had in place for both the 2015-16 and 2017-18 school years, including automated system checks, which Education refers to as "business rules." We reviewed the CRDC contractor's post-collection data quality report for the 2015-16 school year. Education did not identify any quality issues related to restraint and seclusion data during its 2015-16 review.[6] We also reviewed documentation related to Education's efforts to follow up with school districts that had reported potentially inaccurate data, such as correspondence between Education and school districts concerning data quality issues.

To gather information on how selected districts use the restraint and seclusion data and interpret federal restraint and seclusion definitions, we visited nine school districts and 11 schools in Kentucky, Washington, and Wisconsin. We interviewed over 50 school and district officials and teachers. We selected states, districts, and schools to obtain a range of perspectives on federal reporting of restraint and seclusion data and to account for other criteria. Examples of selection criteria included districts that had significant changes—an increase or decrease—in the number of incidents of restraint and seclusion they reported to the CRDC across reporting periods and states that had laws that require school districts to

[5]164 Cong. Rec. H2706 (daily ed. March 22, 2018).

[6]Education has collected information for 2017-18, but as of April 2020, the 2017-18 CRDC data is not yet publicly available. After we completed our audit work for this engagement, Education provided us with an excerpt of its post-collection data quality report for school year 2017-18. When it transmitted the excerpt to us at that time, and when it provided technical comments on a draft of this report, Education stated that it considers its 2017-18 data quality review to be confidential. Further, as of March 23, 2020 Education stated the 2017-18 data quality review was not yet complete. Therefore, we are generally unable to include information about the 2017-18 data quality review in this report. In its formal comments on a draft of this report, Education provided a high-level description of analyses it reportedly conducted on the 2017-18 CRDC data (see Appendix II.)

report incidents of restraint and seclusion to the state. Information we collected from our nine selected districts and 11 selected schools, while not generalizable to all districts and schools, offers insights into how some districts use their data and interpret the CRDC definitions of restraint and seclusion. We also interviewed representatives from several nonfederal advocacy organizations, including some that represent parents and families of individuals with disabilities, and others that represent relevant professional associations.

Finally, to inform all our objectives, we interviewed federal agency officials and examined relevant federal statutes, regulations, guidance, and selected state statutes. For more information on our methodology, see appendix I.

We conducted this performance audit from November 2018 to April 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

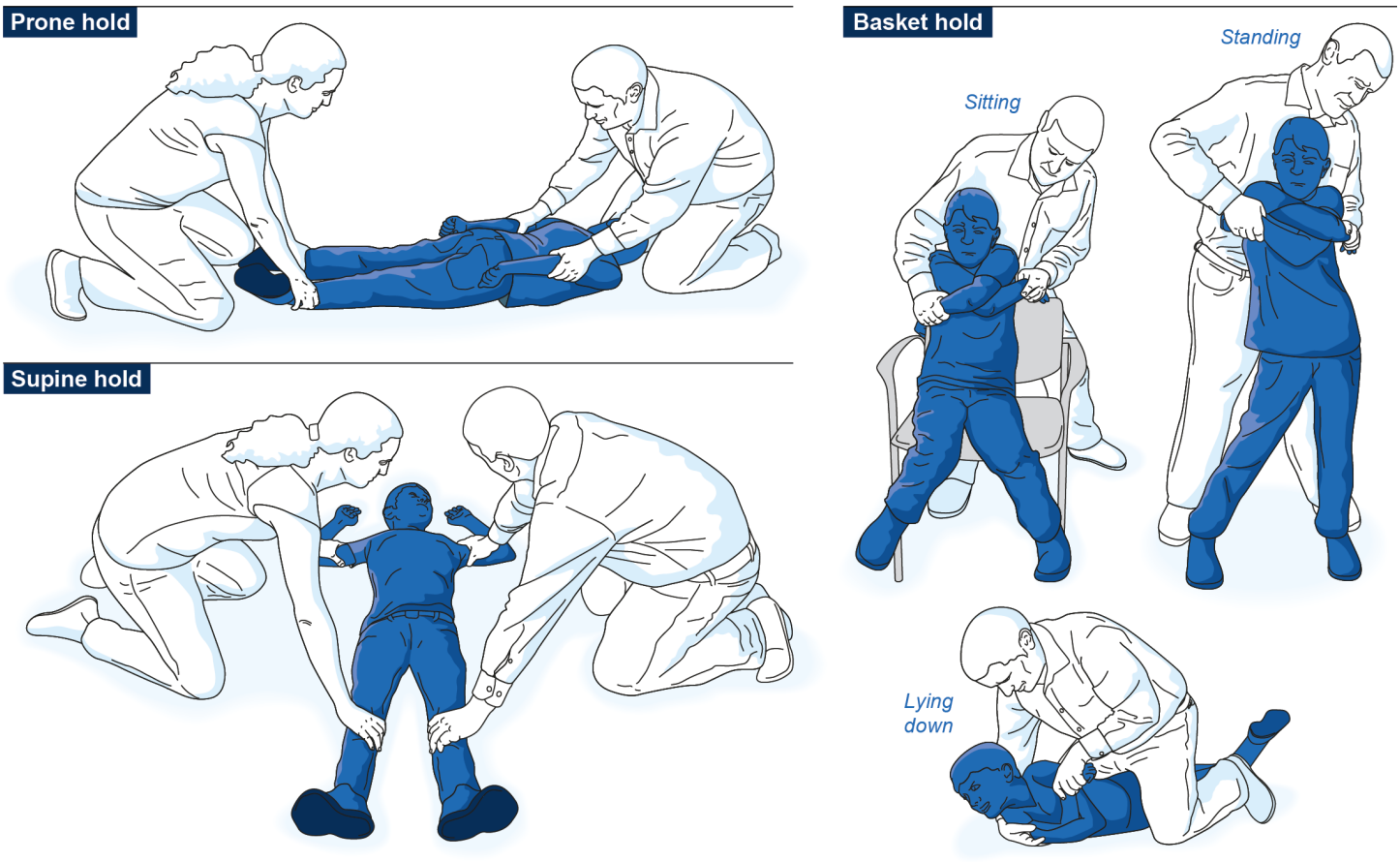
Schools generally report incidents of restraint and seclusion to their district, and districts are responsible for reporting incidents of restraint and seclusion to Education's CRDC. Districts are expected to report the number of incidents and the number of students affected for all schools in their district and to use Education's definitions of restraint and seclusion to determine whether an incident occurred. Education defines two types of restraint: physical and mechanical (see table 1). Education's definition of a physical restraint makes a distinction between a restraint and a physical escort. Similarly, Education's definition of seclusion makes a distinction between seclusion and a timeout (see figures 1 and 2).

Table 1: Restraint and Seclusion of K-12 Students as Defined in the Department of Education's Civil Rights Data Collection

	CRDC Definition
Mechanical Restraint	The use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as: • Adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; • Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; • Restraints for medical immobilization; or • Orthopedically prescribed devices that permit a student to participate in activities without risk of harm. When a student is handcuffed by law enforcement personnel but no arrest is made, it is to be reported as a mechanical restraint. However, if the student is subsequently arrested, it is not to be reported.
Physical Restraint	A personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.
Seclusion	The involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Source: U.S. Department of Education https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf. | GAO-20-345

Figure 1: Examples of Physical Restraint Holds



Source: Alberto Cairo, ProPublica. | GAO-20-345

Note: These are examples of restraint holds that might be used. This is not an exhaustive list.

Figure 2: Seclusion Room in a Classroom

Source: GAO. | GAO-20-345

Every two years, OCR administers the CRDC to nearly every public school district in the country. In turn, districts self-report information on a wide variety of topics, including course offerings, discipline, and restraint and seclusion. Education collects these data through an online submission tool. CRDC activities, such as data collection and quality, are managed by a company under contract with Education.[7] The data submission period for the 2017-18 school year ended June 21, 2019. School districts have one year from the end of the submission period to make a request to amend submitted data. As of March 2020, Education had not announced when it will publicly release these data.

Education's primary data quality checks for the CRDC data, including the restraint and seclusion data, are built into the CRDC submission tool. The online CRDC submission tool automatically performs checks that flag

[7]The contractor also provides technical assistance to assist school districts with their reporting obligations.

data errors or potential errors. These “business rules” occur in real time as districts enter data or after they upload files. The 2015-16 submission tool used three business rules related to restraint and seclusion; for the purpose of this report, we focused on the two rules most relevant to our work.[8]

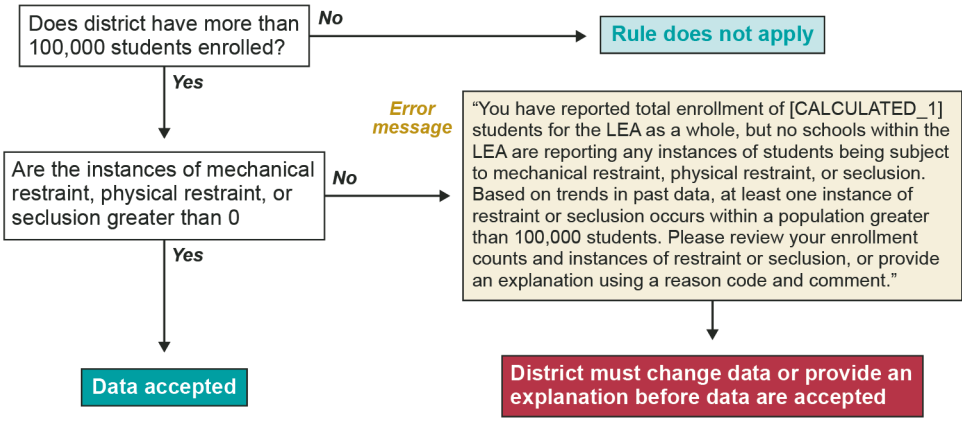
- The first business rule pertains to the reporting of zeros for very large districts only—that is, those districts with 100,000 or more enrolled students (see fig. 3). If a very large school district enters zero incidents of restraint and seclusion, it receives a message prompting it to review its enrollment counts and reported incidents, or provide an explanation using a reason code and comment. Importantly, if districts have not collected the data required for the CRDC—or if the data are unavailable for some other reason—districts are to leave relevant data cells blank. A zero in a data cell should represent an actual count—that is, the district restrained or secluded zero students.
- The second rule applies to schools that both report more than 100 incidents of restraint or seclusion and enter a greater number of students affected by restraint or seclusion than the number of incidents reported (see fig.4).[9] Districts are asked to resolve this error by adjusting their counts so the number of students subjected to restraint or seclusion is less than the number of incidents of restraint or seclusion, or to provide an explanation using a reason code and comment.

[8]The third business rule ensures that if a district reports that a certain subgroup of students grouped by disability status is affected by restraint or seclusion, there must also be incidents reported for that subgroup.

[9]In a past iteration of the rule, the tool flagged schools with 100 incidents or more where the number of incidents and the number of students affected were equal because Education made a policy decision that when the number of incidents exceeds 100, it is unlikely that the number of students affected is the same as the number of incidents.

Figure 3: Education's Business Rule Identifying School Districts Reporting Zero Incidents of Restraint or Seclusion

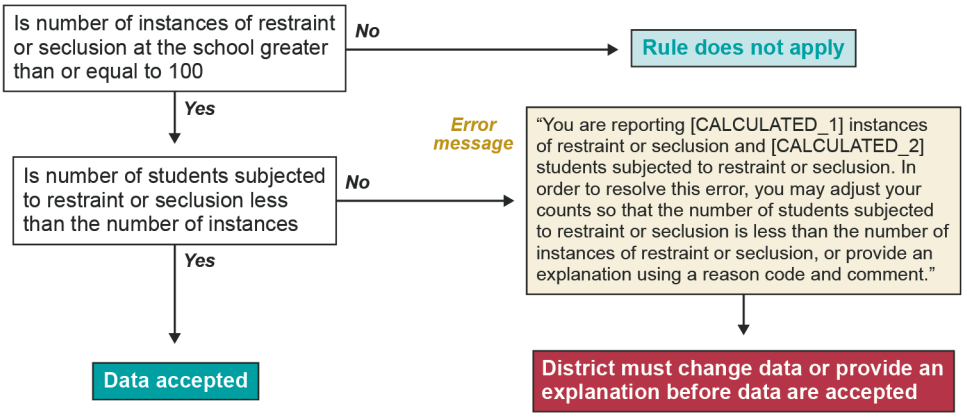
Rule: If LEA enrollment is greater than 100,000 students, then instances of mechanical restraint, physical restraint, or seclusion should be greater than 0.



Source: GAO analysis of Department of Education's Civil Rights Data Collection business rule. | GAO-20-345

Figure 4: Education's Business Rule Identifying Schools Reporting Inconsistent Data on Instances of and Number of Students Affected by Restraint or Seclusion

Rule: If the number of instances of restraint or seclusion is greater than or equal to 100, then the number of students subjected to restraint or seclusion should be less than the number of instance of restraint or seclusion.



Source: GAO analysis of Department of Education's Civil Rights Data Collection business rule. | GAO-20-345

The last step in the data submission process is the district certification. To complete this step, the district superintendent or an authorized designee must indicate agreement with a statement that acknowledges that they are responsible for verifying the data, the information provided is "true and correct," and a willfully false statement is punishable by law. The

CRDC submission tool is designed so that it should not allow a district to certify its submission unless all required data pass the system validation checks, or all errors are explained.

Education also reviews CRDC data quality during other phases of data collection to identify potential data quality issues to improve future collections. For school year 2015-16, Education's contractor reviewed data quality during and after the collection phase. Education's contractor contacted school districts about potential errors that Education determined were easily adjustable and asked them to review and correct data or provide an explanation if no corrections were determined to be necessary.

Further, some states and school districts have laws, regulations, and/or policies regarding restraint and seclusion. These laws vary from state to state, and sometimes require schools or districts to annually report incidents of restraint and seclusion to either the state or local education agency.

In January 2019, Education announced an initiative to address inappropriate use of restraint and seclusion on children with disabilities. As part of this initiative, OCR announced plans to conduct 50 data quality reviews of the 2015-16 restraint and seclusion CRDC data submitted across each of OCR's 12 enforcement regions. This review had not been completed at the time of our review.

In August 2019, Education announced plans for OCR to work collaboratively with Education's National Center for Education Statistics (NCES). Education stated that the collaboration would help ensure that CRDC data are reliable and authenticated in a manner that provides a more accurate picture of key civil rights issues in education. According to the announcement, under a new agreement, NCES and OCR will work together to improve the quality of the CRDC data by providing school districts with technical assistance, and by reviewing and revising data quality procedures. NCES is the primary federal entity responsible for collecting and analyzing statistical data related to education.

Key Quality Control Processes for Restraint and Seclusion Are Ineffective or Do Not Exist

We identified four key issues for which Education's quality control processes for its CRDC restraint and seclusion data are largely ineffective or do not exist (see table 2).

Table 2: Summary of Data Quality Issues GAO Identified in Department of Education 2015-16 Civil Rights Data Collection (CRDC) Restraint and Seclusion Data

CRDC data quality issue	Situation	CRDC business rule	Issue with CRDC business rule
Erroneous reporting of zeros	Seventy percent of school districts reported zero incidents of restraint and seclusion. Both Education's data quality review and GAO's own analysis have shown significant inaccuracies with these data.	For districts with at least 100,000 students enrolled instances of mechanical restraint, physical restraint, and seclusion should be greater than 0.	CRDC business rule only applied to districts with at least 100,000 students enrolled. Only 30 of the more than 17,000 districts nationwide met this criterion.
Relatively low rates of incidents	Some of the largest districts (more than 100,000 students) reported much lower than average rates of restraint or seclusion, with incidents often clustered in very few schools.	N/A	No business rule exists.
Relatively high rates of incidents	Some districts reported much higher than average incidents of physical restraint.	N/A	No business rule exists.
Illogical data	Over 590 schools reported more students affected by restraint or seclusion than incidents of restraint or seclusion.	For schools with at least 100 instances of restraint or seclusion, the number of students affected should be less than the number of incidents.	CRDC business rule only applied when a schools has at least 100 incidents. Only 462 of the approximately 100,000 schools nationwide met this criterion.

Source: GAO analysis of Department of Education's Civil Rights Data Collection (CRDC) for school year 2015-16 data. | GAO-20-345

Note: To test for schools with illogical data, we analyzed the restricted-use restraint and seclusion data file instead of the public-use file. We used the restricted-use file to avoid errors caused by data privacy rules Education applied to the public-use file. We used the public-use data file for other analyses.

CRDC Business Rule Targeting Zero Reporting Is Largely Ineffective

Education's business rule to detect potentially erroneous reporting of zero incidents applied to only 30 of the more than 17,000 school districts nationwide, rendering it largely ineffective for checking the 70 percent of districts that reported zero incidents of restraint or seclusion. This is because the rule only applied to districts with over 100,000 enrolled students. However, in its January 2019 data quality review of 50 districts' restraint and seclusion data, OCR found erroneous reporting of zeros in districts of all sizes.[10] Of the 50 districts OCR contacted, OCR determined that 40 districts should amend their original 2015-16 submissions.

When we analyzed the 2015-16 CRDC restraint and seclusion data, we found that almost three-quarters of small districts reported zeros, while about one-third of large and one-fourth of very large districts reported zero incidents (see table 3). The findings from Education's data quality review, along with those from our analysis, suggest that misreporting is a problem among districts of all sizes.

Table 3: School Districts Reporting Zero Incidents of Restraint and Zero Incidents of Seclusion by Size, School Year 2015-16

		Total	Small (fewer than 5,000 students)	Medium (5,000 to 24,999 students)	Large (25,000 to 99,999 students)	Very Large (100,000 or more students)
Total number of districts	**Number**	**17,337**	**15,353**	**1,699**	**255**	**30**
Districts reporting all zeros	**Number**	12,085	11,292	702	84	7
	Percent	69.7	73.6	41.3	32.9	23.3

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: Some districts reported a mix of zeros and missing data.

For the 2017-18 CRDC data collection, Education lowered the threshold for the rule to detect potentially erroneous reporting of zeros to include districts with 50,000 enrolled students, rather than only districts with more than 100,000. However, the new rule counts students with disabilities and students without disabilities separately. To trigger the rule, a district would have to have at least 50,000 students with disabilities and report zero incidents for them, or have at least 50,000 students without disabilities and report zero incidents for them. Of the nation's more than 17,000 school districts, only 3 (Chicago, Los Angeles, and New York) have at

[10]As part of a new initiative to improve data quality, in January 2019 Education sent letters to 50 school districts. All but two had reported zero incidents for the 2015-16 school year.

least 50,000 students with disabilities; only 95 have at least 50,000 students without disabilities.

Education's CRDC data show that restraint and seclusion disproportionately affect students with disabilities and its data quality review showed that substantial portions of districts of all sizes inaccurately reported zeros. However, Education could not provide a data-driven basis for the 100,000 or 50,000 student enrollment thresholds or for creating separate thresholds for students with and without disabilities. Rather, Education stated that the thresholds were a management policy decision inherited from previous administrations.

Because Education's business rule targeting districts that report zeros was inadequate, in June 2019, GAO recommended, among other things, that for the 2017-18 data collection Education contact districts that reported all zeros for restraint and seclusion to ask them to ensure that the zeros actually represented zero incidents, and Education did so after the data collection closed.[11] Absent a business rule targeting all districts reporting zeros during data submission, inaccuracies in future data collections will likely be missed, and Education risks expending more time and resources with repeated manual follow up after the fact. Federal standards for internal control state that management should evaluate both internal and external sources of data for reliability.[12] Absent reliable and accurate data, the public's confidence in the CRDC restraint and seclusion data may be further undermined, and the utility of a dataset intended to assist with federal civil rights monitoring, enforcement, and oversight will remain limited.

While it is clear that some school districts have reported inaccurate restraint and seclusion data, Education officials do not fully understand why this is occurring.[13] In technical comments on a draft of this report, Education stated that it is committed to learning more about why this is occurring. While we do not know all of the reasons districts fail to report accurate data, our interviews with over 50 school and district officials

[11]GAO-19-551R.

[12]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

[13]As a result of our June 2019 report, Education's contractor identified some system issues that may have contributed to inaccurate zeros. To date, Education has not shared the contractor's findings with us.

provide some insight. School officials in the nine districts we visited cited a variety of reasons districts might not report, including that they were not collecting the data because their state did not require reporting, and that their school district only required them to collect data for students with Individualized Education Programs (IEPs).[14] More fully understanding why districts report inaccurate data is key to correcting the issue. Federal standards for internal control also state that managers should use quality information to achieve the entity's objectives, assess the risks facing the entity as it seeks to achieve its objectives, and use this assessment to develop appropriate risk responses. By not identifying school districts' reasons for reporting zero incidents of restraint and seclusion, Education will not know how to best support districts in improving the accuracy of their reported data. Future CRDC data will remain inaccurate, significantly limiting the utility of a key tool on which OCR relies to help it enforce federal civil rights laws.

CRDC Lacks Business Rules to Detect Very Low or Very High Rates of Restraint or Seclusion

Education has no business rules that flag school districts reporting very low or very high rates of restraint or seclusion, nor has it completed initial efforts to determine a range of rates that might warrant further exploration.[15] Given widespread concerns about misreporting, we devised two possible ways to test for these types of outliers.

First, we looked beneath the district level to examine school-level reporting patterns within districts. When we tested the nation's 30 largest school districts (those with more than 100,000 students), we found patterns that may suggest underreporting in at least 13 of them, in addition to the 10 that reported zeros for the 2015-16 school year. In

[14]An Individualized Education Program (IEP) is a written statement developed by a team composed of a student's teachers, parents, school district officials, the student (if appropriate), and, at the discretion of the parent or district, other individuals who have knowledge or special expertise regarding the student. The IEP includes, among other information, a statement of the child's present levels of academic achievement and functional performance, annual goals, and a statement of the special education and related services and supplementary aids and services needed to attain those goals. 20 U.S.C. § 1414(d). IEPs are required under the Individuals with Disabilities Education Act, which is administered by Education's Office of Special Education Programs—Office of Special Education and Rehabilitative Services.

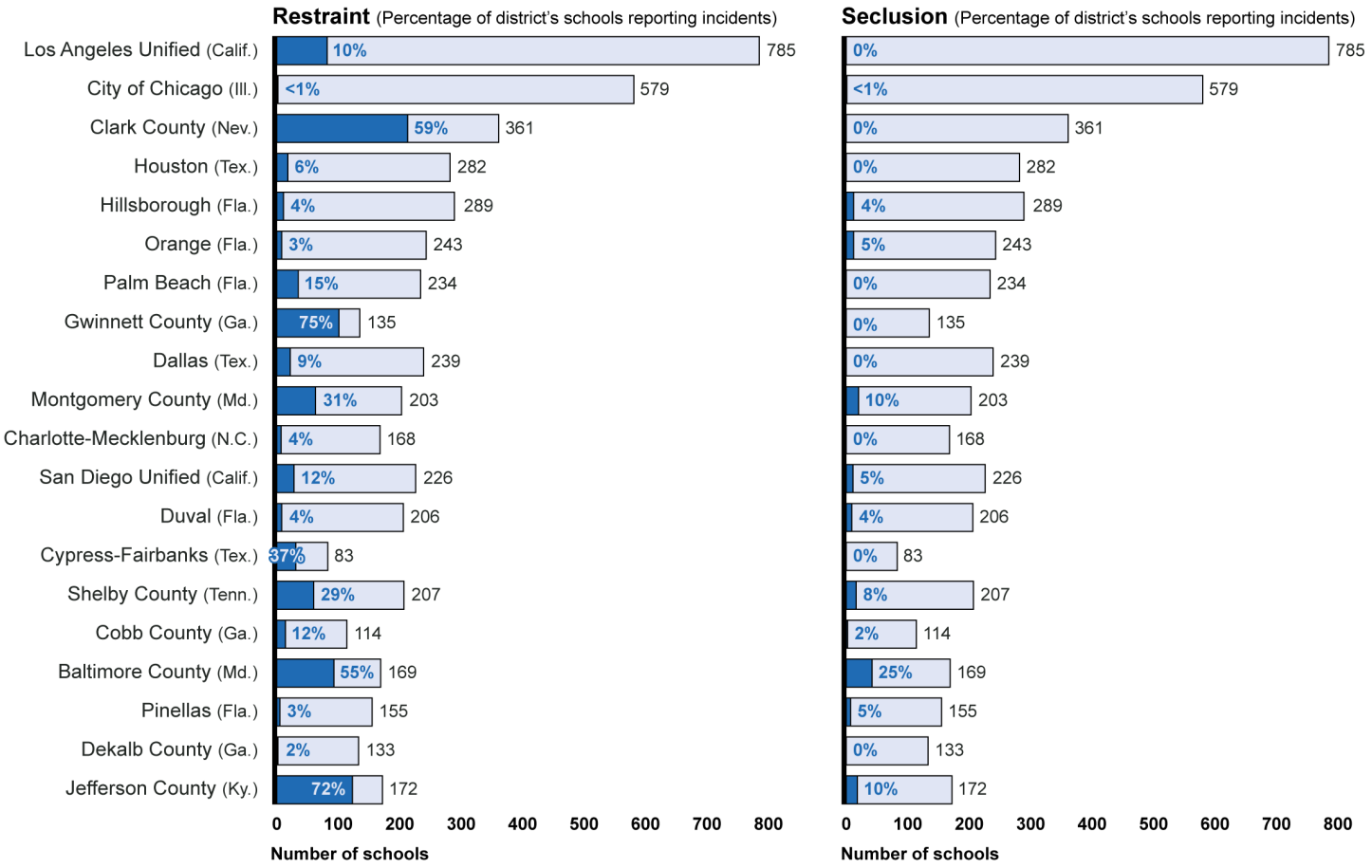
[15]For the 2017-18 data collection, Education's contractor pilot tested some post-collection data quality checks to detect outliers. However, because the 2017-18 data collection is still not public, we were unable to review how these quality checks were applied. In addition, Education has designated the contractor's report confidential until the data collection is publicly available. Due to these factors, we can neither determine the efficacy of these efforts nor comment on the methodology.

these 13 districts, we found that all of the incidents of restraint reported occurred in no more than 15 percent of a district's schools; the rest of the schools in those districts reported zero incidents. (See fig. 5.) For example, the Chicago Public School District—the third largest school district in the country, with nearly 400,000 students enrolled—reported a total of 47 incidents of restraint for school year 2015-16. All of these incidents were reported by just two of its 579 schools. The district's six incidents of seclusion were clustered in one school. In the Los Angeles Unified school district, the second largest school district in the country, 82 of its 785 schools reported a total of 108 incidents of restraint, with 65 schools reporting exactly one incident each. The district reported no incidents of seclusion.[16]

Education has a business rule that targets large districts (for 2017-18, those with over 50,000 students), but only when all schools in a district report zeros. Thus, as long as a large district reports at least one incident of either restraint or seclusion, the business rule would not be triggered. Education's post-collection data quality reviews for school year 2015-16 did not test below the district level to look for potential underreporting within a district.

[16]Los Angeles Unified School District permits seclusion but bans schools from locking the doors while students are secluded.

Figure 5: Percent of Schools in Districts with Over 100,000 Enrolled Students Reporting Any Incidents of Restraint and Seclusion, School Year 2015-16.



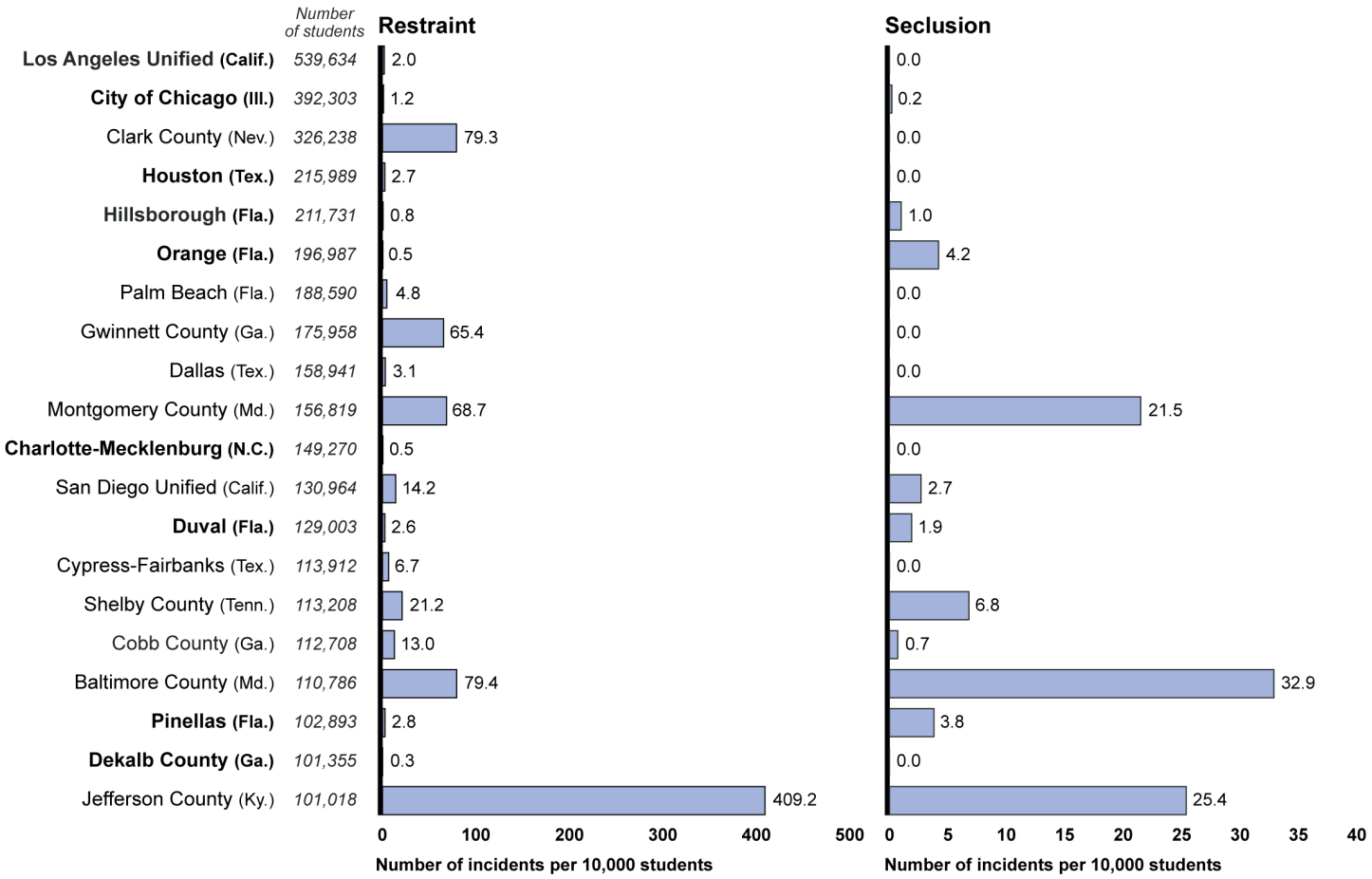
Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: Of the 30 school districts nationwide with over 100,000 students enrolled, 20 reported at least one incident of seclusion or restraint. Please see GAO-19-551R for analysis of those districts that did not report any incidents.

Second, we tested for outliers by comparing per capita rates of restraint or seclusion in the 30 very largest districts (over 100,000 students enrolled) to average rates in all school districts. In the 30 districts, we found that in addition to the 10 districts that reported zeros, nine districts reported fewer than three incidents of physical restraint per 10,000 students, which is lower than 95 percent of all districts reporting incidents. (See fig. 6.) For example, DeKalb County school district in Georgia reported 0.3 incidents per 10,000 students, and Charlotte Mecklenburg

school district in North Carolina reported 0.5 incidents per 10,000 students.

Figure 6: Number of Incidents of Restraint and Seclusion per 10,000 Students in School Districts with Over 100,000 Enrolled Students That Reported Incidents, School Year 2015-16



Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: This figure does not include the 10 districts that reported zeros. Please see GAO-19-551R for analysis of those districts. Districts in bold are those with fewer than three incidents of restraint per 10,000 students.

We also tested for districts with very high rates of physical restraint. For the 2015-16 school year, we found 52 districts that were outliers, most of which served comparatively large populations of students with disabilities. Forty-nine of these 52 districts had rates of physical restraint per enrolled student higher than 99 percent of all districts that reported incidents of

physical restraint.[17] Almost half reported an average of 10 or more incidents per student affected, and almost two-thirds of the districts reported restraining from 25 to100 percent of their students. The Learning Tree preschools in Alabama, which enrolled a combined 135 preschool students ages 3 to 5, reported that it restrained nearly two-thirds of its students in school year 2015-16.[18] Further, Learning Tree reported 5,963 incidents of physical restraint affecting 84 students, or an average of 71 incidents of physical restraint per preschooler. The Morris-Union Jointure Commission School District in New Jersey, where almost all of its 281 students were identified as having a disability, reported restraining over one-third of its students.[19] These students were restrained an average of 20 times in school year 2015-16. (See table 4.)

Table 4: Fifty-two School Districts with Highest Rates of Physical Restraint by Incidents per Enrolled Student in School Year 2015-16

District Name	State	Grades served	Total enrolled students	Incidents of physical restraint	Incidents per enrolled student	Students affected	Share of students affected	Average incidents per student affected
Learning Tree Inc.	AL	PK	**135**	5,963	44.2	84	62%	71
Morris-Union Jointure Commission School District	NJ	PK-12	**281**	2,186	7.8	107	38%	20
Northeast Wyoming BOCES	WY	No data	**41**	314	7.7	23	56%	14

[17]Fifty-two districts had more incidents of restraint than students enrolled and 36 districts had more incidents of seclusion than students enrolled. Some districts had more incidents of both restraint and seclusion than students enrolled. The majority are special districts that specifically include only schools serving students receiving special educational services. Many of these districts are cooperatives or organizations that provide special education services to students within a certain region that encompass multiple traditional school districts. The 52 districts also included six districts with juvenile justice facilities, two districts with only alternative schools, and two traditional school districts. Districts can logically have more incidents of restraint or seclusion than students enrolled; this may be indicative of high rates of restraint.

[18]The Learning Tree is a nonprofit organization providing educational, residential, and support services for children and adolescents with developmental disabilities, including autism. The preschools operated by this organization serve children with developmental challenges alongside their typically developing peers in Anniston, Auburn, and Mobile, Alabama.

[19]The Morris-Union Jointure Commission (MUJC) is a regional collaborative public school district that provides services and programs to 30 constituent school districts. MUJC provides public school programs for students with autism or autistic-like behavior at the two developmental learning centers it operates in New Providence and Warren, New Jersey.

District Name	State	Grades served	Total enrolled students	Incidents of physical restraint	Incidents per enrolled student	Students affected	Share of students affected	Average incidents per student affected
Northwest Regional ESD	OR	1-12	**211**	1,332	6.3	29	14%	46
S Will Co Coop For Spec Ed	IL	K-12	**72**	441	6.1	28	39%	16
Chi Health Immanuel Residential Treatment Center	NE	1-12	**24**	145	6.0	10	42%	15
Woodside Juvenile Rehabilitation Center	VT	7-12	**17**	93	5.5	13	76%	7
Brewer-Porch Children's Center	AL	PK-10	**162**	820	5.1	66	41%	12
Montgomery County Esc	OH	K-12	**270**	1,304	4.8	154	57%	8
Kendall Co Spec Educ. Coop	IL	K-12	**128**	595	4.6	25	20%	24
Coop Assoc. For Spec. Educ.	IL	1-12	**36**	165	4.6	11	31%	15
Yellowstone Academy Elem	MT	1-8	**19**	75	3.9	7	37%	11
Southside Sp. Srvs. of Marion Co	IN	K-12	**125**	453	3.6	49	39%	9
North Dupage Sp. Ed Cooperative	IL	2-12	**53**	181	3.4	11	21%	16
Intermediate School District 917	MN	PK-12	**649**	2,175	3.4	77	12%	28
Monroe 1 BOCES	NY	K-12	**499**	1,470	2.9	150	30%	10
A E R O Spec Educ. Coop	IL	PK-12	**186**	518	2.8	71	38%	7
Sangamon Area Spec Ed Dist.	IL	1-12	**74**	196	2.6	16	22%	12
Henry-Stark County Spec Ed Dist.	IL	K-12	**65**	172	2.6	17	26%	10
Northwest Indiana Spec Ed Coop	IN	K-12	**101**	265	2.6	31	31%	9
Rum River Special Education Coop	MN	1-12	**115**	288	2.5	42	37%	7
Clinton-Essex-Warren-Washington BOCES	NY	K-12	**220**	536	2.4	55	25%	10
Northern Suburban Spec Ed Dist.	IL	PK-12	**263**	615	2.3	75	29%	8
Southeastern Coop Ed Pgm.	VA	K-12	**356**	822	2.3	150	42%	5
Boyd School	AL	3-10	**15**	33	2.2	11	73%	3
Multnomah ESD	OR	K-12	**278**	601	2.2	84	30%	7
South Bergen Jointure Commission School District	NJ	PK-12	**343**	707	2.1	53	15%	13
Gloucester County Special Services School District	NJ	PK-12	**685**	1,392	2.0	166	24%	8
Cooperative Ed Serv. Agcy. 06	WI	1-12	**54**	99	1.8	26	48%	4
Meeker And Wright Special Education	MN	1-12	**126**	226	1.8	23	18%	10
Otsego-Delaware-Schoharie-Greene BOCES	NY	1-12	**108**	180	1.7	7	6%	26

District Name	State	Grades served	Total enrolled students	Incidents of physical restraint	Incidents per enrolled student	Students affected	Share of students affected	Average incidents per student affected
Tennessee Department of Children's Services	TN	7-12	**454**	665	1.5	42	9%	16
Regn. 6 And 8-Sw/Wc Srv. Cooperative	MN	1-12	**240**	347	1.4	32	13%	11
Northwest Educational Service District 189	WA	1-12	**168**	241	1.4	72	43%	3
NW Suburban Spec Educ. Org	IL	PK-12	**424**	591	1.4	118	28%	5
Montcalm Area ISD	MI	PK-12	**220**	305	1.4	26	12%	12
Division of Youth Services	CO	8-12	**184**	241	1.3	139	76%	2
Eisenhower Cooperative	IL	PK-8	**210**	260	1.2	37	18%	7
Salem County Special Services School District	NJ	PK-12	**249**	305	1.2	54	22%	6
Bnd/Chrstn/Effngh/Fytt/Mntgmr ROE	IL	6-12	**151**	183	1.2	42	28%	4
Roger Amos McMurtry Adm.	MS	7-12	**48**	58	1.2	34	71%	2
Hunterdon County Educational Services Commission	NJ	2-12	**59**	71	1.2	22	37%	3
ESC Of Lake Erie West	OH	K-12	**37**	44	1.2	12	32%	4
New York State School For The Blind	NY	No data	**61**	71	1.2	8	13%	9
Red Top Meadows – Administration Office	WY	8-11	**9**	10	1.1	6	67%	2
The Autism Academy Of Learning	OH	K-12	**56**	62	1.1	4	7%	16
Buckeye United School District	OH	8-12	**327**	359	1.1	356	109%	1
Piedmont Regional Ed.	VA	K-12	**83**	90	1.1	23	28%	4
Shiawassee Regional ESD	MI	K-12	**212**	220	1.0	19	9%	12
Brownfield ISD	TX	PK-12	**1,868**	1,924	1.0	496	27%	4
Centralia School District	WA	PK-12	**3,608**	3,702	1.0	893	25%	4
West Central Education District	MN	4-12	**49**	50	1.0	5	10%	10

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: The CRDC does not contain information about whether the specific incidents of physical restraint reported by districts were appropriate uses of physical restraint. Percent of students affected may be higher than 100 percent, because enrollment is measured at a point in time whereas the count of students affected is cumulative and because some data elements have been rounded or suppressed in the public-use dataset to protect the individually identifiable information.

We found a similar pattern in the 2015-16 seclusion data, identifying 36 outlier school districts. For 22 of the 36 districts, the rates of seclusion were higher than 99 percent of districts reporting. (See appendix IV for

more information.) For example, CRDC data for the Sangamon Area Special Education District in Illinois, which enrolled 74 students in grades 1 through 12, showed the district secluded one-third of its students an average of 27 times each in school year 2015-16. Similarly, data for the Bi-County Special Education Cooperative, also in Illinois, showed the district secluded over two-thirds of its 48 enrolled students an average of 13 times each in school year 2015-16.

Federal standards for internal control state that management is to determine if controls individually and in combination with other controls are capable of achieving an objective and addressing related risks. An internal control design may be deficient when a control necessary to meet an objective is missing. Without business rules or similar analytical processes to flag these outliers, they may continue to go undetected by Education and other stakeholders. Education may be missing an opportunity to identify districts with disproportionately low or high incidents of restraint and seclusion to determine where technical assistance or other intervention may be warranted. Such information is particularly critical given widespread concerns about underreporting and misreporting, and its stated interest in protecting students' civil rights.

CRDC Business Rule Targeting Illogical Data Is Largely Ineffective

Education has a business rule that identifies illogical data; that is, when schools report more students affected than incidents of either restraint or seclusion. However, the rule is largely ineffective because it was not designed in a way that would detect logical inconsistencies in the majority of cases, as the rule would have only applied to schools with at least 100 incidents. When we tested Education's rule on the 462 schools that reported at least 100 incidents in 2015-16, we found no logical inconsistencies in the data. However, when we tested the rule on all schools, we found logical inconsistencies in the data reported by 592 schools with fewer than 100 incidents.[20] For example, a school in Indiana reported that it restrained 156 students, but only reported 80 incidents. (See table 5.) Education could not provide any data-driven basis for its threshold of 100 incidents for this business rule. Education officials said that the threshold was inherited from previous administrations' business rules.

[20]For the illogical data analysis only, we used the CRDC restricted-use file so that we could accurately determine if schools reported more students affected than incidents. Because the CRDC public-use data file uses rounded numbers and suppresses individually identifiable information, it cannot be used to accurately determine if the number of students affected exceeded the number of incidents.

Table 5: Number and Percentage of Schools with Restraint and Seclusion Incidents That Reported Illogical Data, in School Year 2015-16

Some schools reporting incidents reported a number of students affected by restraint or seclusion that exceeded the number of incidents reported.

	Number of schools reporting an incident	Number of schools where affected students exceeded incidents	Percent of schools where affected students exceeded incidents
At least one category (Physical Restraint, Mechanical Restraint, or Seclusion)	16,987	592	3.49
Mechanical Restraint	1,188	73	6.14
Physical Restraint	15,415	406	2.63
Seclusion	5,167	180	3.48

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: Some schools had illogical data in more than one category.

Collecting accurate data is key to the Office for Civil Rights' (OCR) mission to ensure equal access to education and to promote educational excellence throughout the nation. In addition, federal standards for internal control state that when evaluating the design of internal controls, such as business rules, management should determine if controls are capable of achieving an objective and addressing related risks. An internal control design is deficient if, even though it operates as designed, it does not meet the control objectives. Our analysis shows that the business rule is not effective in its current form, because 592 schools were able to report illogical, and therefore incorrect, data.

School and School District Officials Lacked a Common Understanding of Federal Restraint and Seclusion Definitions

We talked to more than 50 officials in nine school districts in Kentucky, Washington, and Wisconsin about their interpretations of the CRDC's definitions of restraint and seclusion. These school districts all reported incidents of restraint and seclusion in 2015-16, but officials we interviewed differed in their interpretations of terms used in the CRDC definitions, such as *alone* and *escort.* As a result, districts varied in how they counted incidents of restraint and seclusion. Further, officials we spoke with in the three state educational agencies and all seven stakeholder groups with expertise on the use of restraint and seclusion in public schools also said there was ambiguity regarding terms used in the definitions. For example, an official from one stakeholder group that represents some of the nation's largest school districts said that its constituents provided feedback that restraint and seclusion terms were ambiguous, open to interpretation, and do not provide enough clarity.

Civil Rights Data Collection Definition of Seclusion:

Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.

Source: Department of Education's Civil Rights Data Collection form. | GAO-20-345

With respect to the definition of seclusion, district and school officials varied in their interpretations of the word alone, and consequently, whether the incident should be counted as seclusion. Officials in three districts said that an incident was not seclusion as long as a teacher was in the room with the student, while officials in several other districts said that even if a teacher was present, it could still be seclusion if the student was prevented from leaving. (See sidebar.)

Officials in the nine districts we visited also varied in their interpretation of the word *area.* Because the CRDC's definition of seclusion states that seclusion can occur in an area, officials from one stakeholder group representing thousands of school administrators wondered whether it should be considered seclusion if a child is in a classroom with 20 other students and is required to stay alone in the corner of the room. Officials from a district in Wisconsin said that if a student is taken away from peers and placed in one area of the same room, but cannot leave that area, it still might be seclusion, even if the student and peers are in the same room. Officials in another district in Wisconsin said that sending a student to a corner does not count as seclusion. However, they said that the use of mobile partitions to close off an area of a room could constitute seclusion.

The phrase physically *prevented from leaving* also elicited differing interpretations. Officials from the stakeholder group representing administrators said the definition is not clear about what counts as "prevented from leaving": a barrier, such as a door; the presence of another adult watching the child; or both. School officials we spoke with had differing interpretations of this phrase, which affected how they counted and reported incidents of seclusion. School officials in a district in Kentucky said that the phrase means closing the door and keeping it closed. However, officials in another school in the same district did not specify the use of a door, stating instead that "physically prevented from leaving" means the student cannot walk out of the room. A school official in Washington said that it would count as seclusion if staff put a student in a motorized wheelchair in a room and deactivated the wheelchair's power.

Civil Rights Data Collection Definition of Physical Restraint:

Physical restraint is a personal restriction that immobilizes or reduces the ability of a student to freely move their torso, arms, legs, or head. The term does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.

Source: Department of Education's Civil Rights Data Collection form. | GAO-20-345

With respect to the definition of physical restraint, school district officials we interviewed varied in their interpretations of the term escort, which the CRDC definition specifies is not a physical restraint. (See sidebar.) While officials in three districts said that an escort meant providing a physical prompt to a student who was not resisting relocation, officials in four districts said that moving a student who was resisting staff still counted as an escort. For example, officials in a school in Wisconsin said that if the student who is resisting is "carried away" from a location, that action would not meet the definition of escort and would count as restraint. Yet a district in Kentucky counted moving students against their will—including by carrying them—as escorts and did not report them as restraints. Further demonstrating differing interpretations of these terms, officials in four districts said they reported all escorts as restraints in the CRDC.

Education does not provide schools or school districts with any information that could help clarify its definitions or provide examples on how schools and school districts should apply the definitions of restraint and seclusion to common classroom situations. For example, while Education's "Restraint and Seclusion: Resource Document" includes the CRDC definitions of restraint and seclusion, it does not include clarifying information or examples about how to apply the definitions.[21]

Officials in the schools and districts we visited inconsistently interpreted the definitions for restraint and seclusion; moreover, officials from the seven stakeholder groups we interviewed said the definitions were unclear. These findings raise concern about whether restraint and seclusion data reported by school districts to the CRDC are being reported in a way that is consistent with the CRDC definitions. Federal guidance on data reliability states that data should be well defined enough to yield similar results in similar analyses.[22] In addition, federal standards for internal control state that agency management should use quality information to achieve the entity's objectives, noting that such data should be reasonably free from error and bias and faithfully represent what they purport to represent.[23] Absent data on restraint and seclusion that is what it purports to be, Education will continue to lack quality

[21]U.S. Department of Education, *Restraint and Seclusion: Resource Document*, (Washington, D.C.: May 2012).

[22]GAO, *Assessing Data Reliability,* GAO-20-283G (Washington, D.C.: December 2019).

[23]GAO-14-704G.

information key to fulfilling its mission of ensuring equal access to education nationwide.

All Nine School Districts We Visited Used Data to Reduce Incidence of Restraint and Seclusion and Developed Strategies for Improved Reporting

All Nine Districts Used their Data on Restraint and Seclusion to Reduce Use of Restraint and Seclusion

Officials in all nine school districts we visited said they used their data on restraint and seclusion to help reduce its use. In addition to collecting data for CRDC reporting purposes, these districts also collected and used more current and more detailed data to help reduce the use of restraint and seclusion. Officials in seven of the nine districts said they began collecting the data when their state passed a law requiring reporting.[24] District officials identified several benefits to collecting data and using it to develop strategies to reduce use of restraint and seclusion. Specifically, officials said that the data helped them identify the following:

Behavior patterns. Officials in several districts told us that collecting and reviewing data on restraint and seclusion helps them identify patterns in staff and student behavior that may contribute to use of these practices. Specifically, by identifying the circumstances under which a student's behavior tends to escalate, staff can strategize how to more effectively respond so as to prevent the need to use restraint or seclusion. For example, one official in an elementary school in Wisconsin said that if staff notice more incidents occur on particular weekdays, they can examine those days to understand what may be affecting students' behavior. Similarly, a teacher of students with autism in a middle school in

[24]Of the remaining two districts, officials from one said that they were already collecting this data prior to when the state law was passed. Officials in the other district said that the district began collecting data on restraint and seclusion in 2015, however they did not know why the district began collecting this data because they were not employed at the district at that time.

Washington said that reviewing data helps staff, such as teachers, paraprofessionals, and administrators, determine what triggered a student's behavior and then determine what to do differently to avoid triggering the student. In all three states, we visited districts that required staff to participate in a debriefing after each incident in an effort to understand what might have triggered the event and to discuss strategies to deescalate future incidents. For example, officials in Washington said that the building administrator and all staff involved discuss every incident. District officials consider this an important step for reducing use of restraint and seclusion, and said holding the discussions was a "game-changer."

Need for training. Officials in several districts said they examine data on restraint and seclusion at the classroom and school level to determine if staff need additional training, including on how to manage student behavior, or appropriately use restraint or seclusion. For example, a behavior coach for a Kentucky school district said that the data on restraint and seclusion helps her determine if certain teachers could benefit from more training on de-escalation techniques. A director of student services in Washington said that he was concerned about the rates of restraint and seclusion in the district, and after implementing more training for teachers, the rates declined. Officials in another Washington district said that after the district began collecting data in response to state law, they discovered that staff were using restraint and seclusion as punishment.[25] As a result, district officials said that they coached teachers on how to manage behavior differently and emphasized that restraint and seclusion should not be an everyday occurrence. Officials at an elementary school in Wisconsin said that de-escalation training helps staff understand that students are trying to communicate with their behaviors. They said that when staff adopt the perspective that students are trying to communicate, staff also see the value of collecting data to improve how they respond to the students' behaviors.

Need for student supports. Officials in five of the nine districts we visited spoke about using restraint and seclusion data to assess when a student required additional support services to be successful in the classroom. For example, officials in one district in Kentucky said their

[25]Pursuant to Washington statute, any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must, among other things, submit a written report of the incident to the district office. Wash. Rev. Code § 28A.600.485(5).

data provides evidence for obtaining additional staff or social emotional learning resources for students. Similarly, officials in one Wisconsin district said the data can be used to allocate funding for school-based services to help address underlying causes of behavior. Officials in another Wisconsin district said that a jump in restraints or seclusions of a particular student could indicate that the student's individualized education program needs to be adjusted.

All Selected Districts Developed Strategies to Encourage Reporting of Incidents

Officials in all the districts we visited also shared strategies on how they improved their CRDC data reporting, including communicating with staff about how data are used, training on how to report, and developing processes that encourage reporting. Specifically:

Communication and culture. Officials in the majority of school districts said they routinely reviewed their data with school staff and emphasized the value of collecting data on restraint and seclusion. Officials in a district in Wisconsin said that they monitor data on restraint and seclusion on a monthly basis for students with and without disabilities, which increases interest among school staff about what causes the incidents. Officials in three districts we visited said that they explain to staff that documenting incidents of restraint or seclusion ensures that students obtain the support services they need. In a Wisconsin district, officials said they emphasize that reporting helps the students and keeps the school safe by making the district aware that more supports are needed. Officials at a school in Wisconsin said that some staff might worry that the data reflect poorly on them or might fear repercussions, but district officials have worked to shift the culture of reporting to focus on continuous improvement and problem solving. Similarly, officials in another Wisconsin district said that schools might be concerned about the data being used against them; therefore, district officials try to create a culture of curiosity around the data, rather than a culture of punishment.

Accountability. To encourage staff to report incidents, officials in some districts developed processes that increased accountability for reporting. For example, school officials at an elementary school in Wisconsin said an administrative assistant in the main office immediately logs calls from classroom teachers requesting help managing a student's behavior. Officials said this process provides accountability. Two districts said that they used a team approach for restraint or seclusion, which included someone to observe and someone to record details of the intervention, such as the time it began or the events that preceded it. Having multiple people involved increased the likelihood that relevant facts were recorded. Officials in a district in Washington said that keeping teachers

and staff honest about reporting requires reiterating the process and procedures, reviewing the forms with staff, and following up with schools that fail to submit reports. Officials in a district in Wisconsin said they have advised staff to write the incident down on paper until staff are able to enter it in the district's electronic reporting system.

Training. Officials from all nine districts said they encourage reporting by provided training on how to report incidents. Generally, this information was incorporated into trainings on when to use restraint and seclusion and how to deescalate a student's behavior.[26] Officials from five stakeholder groups we interviewed, all of whom have expertise related to the use of restraint and seclusion in public schools, stated that training was necessary to both raise awareness of the requirement to report incidents and to ensure that incidents were reported accurately. For example, in de-escalation training for teachers in a Washington district, the trainer provides examples of restraint and seclusion; presents a variety of scenarios, including ambiguous ones, for discussion; and reviews the appropriate staff response.

Conclusions

The Civil Rights Data Collection (CRDC) is a longstanding and critical aspect of Education's Office for Civil Rights' overall enforcement and monitoring strategy. Collecting accurate data through the CRDC can help Education in its mission to ensure equal access to education, promote educational excellence for all, and enforce various federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability. However, the significant data quality problems that both Education and we identified with the CRDC data on restraint and seclusion, combined with the significant weaknesses we found in Education's data quality control processes, cast serious doubt on the accuracy of these data. As a result, it is impossible to accurately determine the frequency and prevalence of restraint and seclusion among K-12 public school students. The four recommendations in our June 2019 report urged Education to take immediate steps to address the widespread potential misreporting of zeros for its 2017-18 CRDC. Education took some steps to address the issues we raised, but has not yet fully addressed them. Moreover, those recommendations were intended as stop-gap measures to improve the quality of the 2017-18

[26]In most districts only certain staff were allowed to perform a restraint and these staff received training on how to conduct restraints. The staff that received training generally included special education teachers, principals, and paraprofessionals. However, some of the districts we visited trained all staff on de-escalation and other tactics that potentially reduce the need to use restraint and seclusion.

data being collected in real time precisely *because* the CRDC's business rules related to restraint and seclusion are inadequate. Therefore, addressing our recommendations would not solve the issues that are the subject of this report. Our work makes it clear that an overhaul of the quality control processes is needed to correct fundamental problems with federal restraint and seclusion data collected through the CRDC.

Two of the CRDC's key business rules meant to check data quality and flag potential errors in restraint and seclusion data are poorly designed and the thresholds that trigger these rules have no data-driven basis. Further, Education does not have business rules designed to flag outlier schools and school districts that report relatively low or high rates of restraint and seclusion, nor has it determined a range of rates that might warrant further exploration. Until Education more fully understands why so many school districts are underreporting and misreporting federal restraint and seclusion data, it will likely not be able to help districts improve their reporting, thereby improving the accuracy and utility of the data.

There were widely varied interpretations of federal restraint and seclusion definitions among the 50 school and district officials with whom we spoke and officials from the seven key stakeholder groups we interviewed echoed these concerns. As a result, we have concerns that school districts may be inconsistently counting and reporting instances of restraint and seclusion for federal reporting purposes. Clarifying the definitions, for example by explaining to districts how they can be applied to common classroom scenarios, could help produce more consistency in reporting.

Ultimately, the issues we found with Education's restraint and seclusion data have consequences for the students who are restrained or secluded in school and whose restraint or seclusion goes un-reported. When federal data are misreported to the public, it undermines confidence in that data and fails to provide decision makers with reliable information on which to make informed policy decisions to protect students. In addition, Education lacks information that could help it determine whether schools' use of these practices may be excessive, discriminatory, or both.

Recommendations for Executive Action

GAO is making six recommendations on restraint and seclusion to the Department of Education's Office for Civil Rights.

The Assistant Secretary for the Office for Civil Rights should revise its CRDC business rule to require that every school district reporting zeros, regardless of district size or numbers of students with disabilities, affirm the zeros are correct during the CRDC data submission process. (Recommendation 1)

The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and school districts that report very low numbers of incidents and set data-driven thresholds to detect such incidents. (Recommendation 2)

The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and schools districts that report very high number of incidents and set data-driven thresholds to detect such incidents. (Recommendation 3)

The Assistant Secretary for the Office for Civil Rights should apply the CRDC business rule targeting illogical data at the school level to all schools, regardless of the number of incidents reported. (Recommendation 4)

The Assistant Secretary for the Office for Civil Rights should identify the factors that cause underreporting and misreporting of restraint and seclusion and take steps to help school districts overcome these issues. (Recommendation 5)

The Assistant Secretary for the Office for Civil Rights should further refine and clarify federal restraint and seclusion definitions and take steps to ensure that this information is conveyed to school districts. This could include providing common classroom scenarios that highlight the differences between a restraint and an escort, and a time out and a seclusion. (Recommendation 6)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Education for review and comment. In its formal comments, which are reproduced in appendix II, Education agreed with all six recommendations. Education also provided technical comments, which we incorporated, as appropriate.

In agreeing with GAO's six recommendations, Education stated that it would determine the best means to implement them. Education also stated that it is fully committed to working with public schools, state

educational agencies, and school districts to help ensure accurate reporting of federal restraint and seclusion data, and to improve the quality of the information for all users of CRDC data. We appreciate Education's willingness to address the serious data quality issues affecting the CRDC restraint and seclusion data.

In its response, Education stated that the agency has already made significant improvements to the CRDC in general and has made specific improvements with respect to restraint and seclusion data, especially in response to the four recommendations we made in our June 2019 correspondence. Education asked that we acknowledge the progress it feels it has made in this regard, and we have done so. Importantly, however, our June 2019 recommendations were intended as stop-gap measures to improve the quality of the 2017-18 data that was already being collected in real time precisely because the CRDC's business rules related to restraint and seclusion were inadequate. Therefore, steps Education has taken toward addressing them do not address the underlying data quality issues that are the subject of this report. In other words, the recommendations in this report urge Education to address data quality problems at the front-end by applying adequate business rules at the time districts submit their data. This could reduce the need for follow-up with districts to correct potentially inaccurate data. More information about our assessment of the steps Education has taken to address the four recommendations from the June 2019 report are available on our website.

Education also stated that because our draft report did not mention the methodological improvements OCR made to address the quality of restraint and seclusion data for the 2017-18 CRDC data collection, our draft report overstates the relevance of the data issues from the 2015-16 collection. Education also stated that it provided us with information about the methodological improvements in December 2019, and, in its formal response, requested that we reflect the information in this report. We disagree with this perspective. After we completed our audit work for this engagement, Education provided us an excerpt from its post-collection data quality report for school year 2017-18. At that time and again in its technical comments on this report, Education stated that "information shared with GAO about the results of the 2017-18 data quality review process and what might be addressed is still confidential." As of March 23, 2020 Education described the 2017-18 data quality control process as "incomplete." Lastly, the 2017-18 CRDC data, which are the topic of the excerpt Education provided to us, are not yet available. Under our auditing standards, we cannot opine on the quality of data we could not

independently assess or on the efficacy of process improvements associated with those data.

Education also raised concerns about how we weighted our interviews with school officials, and it questioned the relevance of our discussions about selected school districts' use of restraint and seclusion data not reported for CRDC purposes. We disagree.

- Education was concerned about the weight GAO placed on information obtained from 50 officials in 11 school districts across 3 states whom we interviewed during the course of our audit work. As stated in the report, this information cannot be generalized to all districts. However, we believe it provides useful insights into how some districts use their restraint and seclusion data to reduce the incidence of these practices and improve the accuracy of their data. The widespread disagreement among the 50 school officials with whom we spoke also highlights confusion about how to accurately and consistently apply CRDC definitions of restraint and seclusion. This finding is supported by the views of seven nonfederal advocacy organizations that represent parents and families; individuals with disabilities; and other stakeholders, such as representatives of relevant school and special education professional associations.

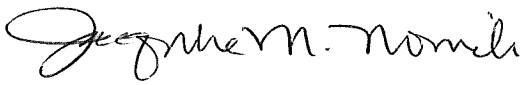
- Education questioned the relevance of discussing the benefits that selected school districts said they derive from using restraint and seclusion data not reported for CRDC purposes. Education stated that "attempting to generalize comments about how these nine school districts use restraint and seclusion data" seems inconsistent with Governmental Accounting Standards Board (GASB) statistical principles. We believe that describing selected school districts' use of their restraint and seclusion data is within the scope of our stated audit objectives. In addition, the explanatory statement from the House Committee on Appropriations accompanying the Consolidated Appropriations Act of 2018 includes a provision for us to provide examples of how schools are adopting effective alternatives to these practices and reducing the incidence of seclusion and restraint, among other things. Further, Education mistakenly asserts that none of the data and analyses that the school districts collected, performed, or used are part of the CRDC and none could be feasibly collected by the CRDC. We have further clarified in the final report that portions of the data these school districts collect are used for CRDC reporting purposes. For example, some of the data elements are the same ones that districts use to calculate aggregate incident counts, which

are required by the CRDC. We do not recommend that Education collect such detailed data or perform such analyses. Regarding Education's concern about "GASB statistical principles" and case selection, all GAO performance audits are subject to Generally Accepted Government Auditing Standards (GAGAS); in contrast, GASB's Generally Accepted Accounting Principles apply to financial audits of public entities. The applicable methodological guidance we followed -- Selecting a Sample of Nongeneralizable Cases for Review in GAO Engagements -- is designed to ensure that GAO policies on evidence and GAGAS are met, and conforms to the generally accepted principles and practices of the appropriate disciplines. When providing illustrative examples, it is neither necessary nor appropriate to use statistical methods to analyze and interpret evidence.

Finally, in its comments, Education stated that it is critical that we emphasize that the CRDC is an aggregate of self-collected and self-reported data from school districts and that the district superintendent or an authorized designee certifies that the data they submit are "true and correct." We agree, and acknowledged this in several places in both the draft and final reports. At the same time, we believe that self-certified data does not absolve Education of its responsibility to ensure the quality of the data it collects and publicly reports – especially given the CRDC's longstanding role in Education's overall enforcement of various federal civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, and disability. Self-reported data by nature are subject to error, making the need for effective quality control measures before, during, and after collection a necessity.

We are sending copies to the appropriate congressional committees, the Secretary of Education, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Jacqueline M. Nowicki,
Director, Education, Workforce,
and Income Security Issues

Appendix I: Objectives, Scope, and Methodology

This report examines (1) the effectiveness of CRDC data quality control procedures for its restraint and seclusion data, (2) how selected districts interpret the CRDC definitions of restraint and seclusion and (3) how selected districts use data on restraint and seclusion and encourage staff to report incidents. Below are the details of our analysis to determine the extent to which Education ensures the quality of restraint and seclusion data reported by school districts, and of our interviews with officials in selected districts about how they apply Civil Rights Data Collection (CRDC) definitions of restraint and seclusion and use restraint and seclusion data.

To inform all of our objectives, we interviewed federal agency officials, representatives from several nonfederal advocacy organizations that represent parents and families, individuals with disabilities, and other stakeholders, such as representatives of professional associations. We also reviewed agency documentation, relevant federal laws, regulations and policies, and selected state laws.

Analysis of National Restraint and Seclusion Data

To determine the extent to which Education ensures the quality of restraint and seclusion data reported by school districts, we analyzed Education's Civil Rights Data Collection (CRDC) for school year 2015-16. Specifically, we analyzed the CRDC to determine the extent to which districts reported zero incidents of restraint and seclusion, to identify outliers (districts that reported a high or low incidence of restraint and seclusion), and to identify illogical data. CRDC is a biennial survey that is mandatory for nearly every public school and school district in the United States and is conducted by Education's Office for Civil Rights.[1] The CRDC collects data on the nation's public schools (pre-K through 12th grade) that includes the use of restraint and seclusion, student demographics and enrollment numbers, educational and course offerings, and disciplinary actions. In school years 2013-14 and 2015-16, the CRDC

[1]The Assistant Secretary for Civil Rights in the Department of Education is authorized "to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights [OCR]." 20 U.S.C. § 3413(c)(1). OCR has been collecting this data since 1968. See https://ocrdata.ed.gov/.School districts in U.S. territories are not required to collect and submit data for the CRDC at this time. However, Puerto Rico chose to submit data for the 2017-18 school year. Similarly, tribal schools operated by the Department of the Interior's Bureau of Indian Education and schools operated by the Department of Defense Education Activity are also not required to collect and submit data, according to Education.

collected data from nearly every public school in the nation (approximately 96,000 schools in 17,000 school districts in school year 2015-16).[2]

CRDC data are self-reported by districts and schools, and consequently there is potential for misreporting of information. After reviewing their CRDC data, school districts can submit revised data to Education. The public-use data file of the CRDC for school year 2015-16 was the primary source of data for our analyses and the most recent data available at the time.[3] We also used restraint and seclusion data from school year 2013-14 primarily to analyze how use of restraint and seclusion may have changed between the two time periods.

The CRDC collected data on (1) mechanical restraint, (2) physical restraint, and (3) seclusion. Using these data, we performed the following analyses to determine potential inaccuracies or underreporting in the CRDC.

Analysis of Extent of Districts Reporting Zeros

To examine the extent to which school districts reported zeros, we calculated the percentage of districts and schools reporting zeros for restraint (both mechanical and physical) and for seclusion. We performed this calculation for both districts and schools nationally and by state, district size, and school type (e.g., charter, traditional, and special education schools). Although Education has a business rule that targets very large districts that report zero incidents of restraint or seclusion, we calculated the number of all districts and schools that reported zeros to understand the prevalence of zeros in the reported data.

Analysis of Relatively Low Rates of Restraint and Seclusion Incidents

To test for potential underreporting, we first limited our analysis to the restraint and seclusion data reported by the 30 largest school districts in the nation (districts with over 100,000 students enrolled). Because of these districts' size, we reasoned that they would be more likely to have

[2]These were the most recent CRDC data available at the time of our analysis. The response rates for this mandatory data collection were 99.5 percent for school year 2013-14 and 99.8 percent for school year 2015-16.

[3]The data collection phase for school year 2017-18 had closed at the time of our review.

incidents of restraint and seclusion to report. Our analysis found that 20 of the 30 largest school districts reported incidents, and thus we focused our analysis of underreporting on the 20 largest districts that reported incidents. For each of the 20 districts, we calculated the percentage of schools that reported incidents. To compare the 20 largest districts that reported incidents with all 5,252 districts that reported incidents, we calculated the rates of restraint and seclusion per enrolled student and calculated percentile ranges. (See table 6.) We determined that nine of the 20 districts had incidents of physical restraint per enrolled student that were below the 5th percentile of all districts reporting incidents of physical restraint.

Table 6: School District Rates of Restraint and Seclusion per Student by Percentile for Districts Reporting Incidents in the 2015-16 School Year

	Mechanical restraint	Physical restraint	Seclusion
	Rate per student	Rate per student	Rate per student
1st Percentile	0.0000	0.0001	0.0001
5th Percentile	0.0001	0.0003	0.0002
10th Percentile	0.0001	0.0005	0.0004
25th Percentile	0.0002	0.0014	0.0014
75th Percentile	0.0030	0.0126	0.0211
90th Percentile	0.0200	0.0422	0.0762
95th Percentile	0.0635	0.1098	0.2200
99th Percentile	0.6601	1.0377	1.8522

Source: GAO Analysis of the Department of Education's Civil Rights Data Collection. | GAO-20-345

Analysis of Relatively High Rates of Restraint and Seclusion Incidents

To identify school districts with relatively high rates of restraint and seclusion, we examined districts that reported having more incidents than students enrolled. This analysis potentially indicates that some students may have been restrained or secluded multiple times. To illustrate, if a school district reported that it had 24 students enrolled, and also reported that it had 100 incidents of restraint, these reported data would indicate that the reporting was erroneous or that some students were restrained multiple times. Based on this analysis, we then calculated the average number of incidents (of restraint and seclusion) per student affected.

Analysis of Extent of Illogical Data

To test for illogical data, we analyzed the restricted-use restraint and seclusion data file for schools that reported more students affected than incidents.[4] To illustrate, if a district reported that a school had restrained 80 students, and also reported that the school had 40 incidents of restraint, these reported data are illogical. Education has a business rule to detect illogical data at the school level, but the rule applies only to schools with more than 100 incidents. For our analysis, we looked for all schools with illogical data to determine the prevalence.

School District Interviews on Interpreting CRDC Definitions of Restraint and Seclusion

To determine how selected school districts interpret the CRDC definitions of restraint and seclusion, we selected 11 schools and nine school districts in three states to serve as illustrative examples. In total, we interviewed about 50 school officials. Information we collected from our 11 selected schools and nine districts cannot be generalized to all districts and schools nationwide.

We selected states, districts, and schools to obtain a range of perspectives on federal reporting of restraint and seclusion data. Our selection also accounted for other criteria, such as selecting states that had laws requiring reporting; high or low rates of reporting zeros among districts; relatively high or low rates of restraint or seclusion per capita; grade levels served (e.g., K-6 or 9-12); school type (e.g., traditional or charter); and significant changes—increase or decrease—in incidents across reporting periods. We also selected districts that had reported incidents. As a result, we selected nine school districts to visit: two in Kentucky, three in Washington, three in Wisconsin, and a charter district in Wisconsin (see table 7).

[4]For this analysis only, we used the restricted-use file of the CRDC so that we could accurately determine if schools reported more students affected than incidents. Because the public data file of the CRDC, rounds and suppresses individually identifiable information, it could not be used to determine if the number of students affected exceeded the number of incidents.

Table 7: Descriptive Information on Selected Public School Districts, School Year 2015-16

Districts	Approximate total district enrollment (to nearest 5,000)	Locale	Selected school type
Dist. 1	10,000 students	Town	Elementary Alternative Middle and High
Dist. 2	20,000 students	Suburb (Large)	2 Elementary
Dist. 3	5,000 students	Suburb (Large)	Middle
Dist. 4	5,000 students	Suburb (Small)	Elementary
Dist. 5	10,000 students	Suburb (Large)	High
Dist. 6	25,000 students	City (Large)	Elementary
Dist. 7	75,000 students	City (Large)	Middle
Dist. 8	10,000 students	Suburb (Large)	Elementary
Charter district	5,000 students	City (Large)	Charter (PK-12)

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC) and Common Core of Data. | GAO-20:345

To determine how district and school officials, such as assistant superintendents, program managers, department directors, principals, and teachers, were interpreting the CRDC definitions of restraint and seclusion, we made the following statements and asked the following questions in our interviews.

1. We are going to talk to you about the definitions of restraint and seclusion that appear in the CRDC. We have heard that these definitions are not always clear to educators, so we want to get your feedback.
    - ***Mechanical Restraint****: the use of any device or equipment to restrict a student's freedom of movement.*
        - Do you think this definition is clear or does it leave room for ambiguity?
    - ***Physical Restraint:*** *a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location*
        - Do you think this definition is clear or does it leave room for ambiguity?

- How do you differentiate between physical escort and physical restraint?
- Does breaking up a fight constitute a restraint?

- ***Seclusion:*** *the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming.*
  - Do you think this definition is clear or does it leave room for ambiguity?
  - How do you differentiate between timeout and seclusion?
  - What does physically prevented (from leaving) mean?
  - In what types of physical spaces can seclusion occur?
  - Does your district have dedicated spaces for seclusion rooms? Can you describe where they are generally located, e.g., which types of schools or classrooms?

2. How do staff determine when an incident needs to be recorded as a restraint?
3. How do staff determine when an incident needs to be recorded as a seclusion?

We conducted this performance audit from November 2018 to April 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ASSISTANT SECRETARY

March 23, 2020

Ms. Jacqueline Nowicki, Director
Education, Workforce,
and Income Security Issues
Government Accountability Office
Washington, D.C. 20548

Dear Director Nowicki:

On behalf of the U.S. Department of Education (Department), I am pleased to know that the Government Accountability Office (GAO) recognizes the importance of the Office for Civil Rights' (OCR) Civil Rights Data Collection (CRDC). Your June 2019 report[1] on the data collection for the 2015-16 school year regarding restraint and seclusion data coincided with our ongoing reform efforts and provided helpful recommendations for improvement. The Department agrees with your February 2020 draft report's[2] (February Draft Report) recommendations on restraint and seclusion and will implement them as part of our broader efforts to strengthen civil rights data quality. In the past two years since I have been the Assistant Secretary for Civil Rights, OCR has already made significant improvements to the CRDC in general and specifically with respect to restraint and seclusion.

Your February Draft Report's analysis of CRDC data focuses exclusively on the 2015-16 restraint and seclusion (R&S) data in the CRDC, which preceded this administration's reform efforts. The CRDC covers broad categories pertaining to student enrollment and educational programs and services, most of which are disaggregated by race/ethnicity, sex, disability, and English Learner status – collected from more than 17,000 school districts on a biennial basis. This vast data collection requires each school district to provide more than 1,700 individual responses. The R&S section alone has about 100 required responses. With respect to the R&S data quality improvements, OCR has made consistent improvements since R&S data were first collected in the 2009-10 collection. More recently, for the 2017-18 collection, OCR, in partnership with the Institute of Education Sciences' National Center for Education Statistics (NCES), has implemented more rigorous data review methods to improve the data as well as enhance our outreach efforts, many of which occurred prior to the release of the June 2019 GAO Report. I will highlight some of these actions more specifically below. Further, we are already taking action to improve data quality for the 2019-20 collection.

[1] *K-12 Education: Education Should Take Immediate Action to Address Inaccuracies in Federal Restraint and Seclusion Data*, GAO-19-551R, June 2019, available at https://www.gao.gov/assets/700/699847.pdf; Department's December 2019 reply letter, available at https://www2.ed.gov/about/offices/list/ocr/correspondence/federal-entities/20191219-gao-response.pdf.
[2] *K-12 Education: Education Needs to Address Significant Quality Issues with its Restraint and Seclusion Data.*

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Your February Draft Report contains useful data and analyses. At the same time, we find that some of the data are presented in a way that could be misleading and that some of the analyses are incomplete or flawed. We also note that some of the study addresses data and information that is beyond the scope of the CRDC. I will address these issues below, and I am also attaching to this letter a separate document detailing technical edits for GAO's consideration.

As you know, we have undertaken many important steps over the last few years in the course of continuing efforts to improve the quality of the R&S data submitted by school districts. For the 2017-18 CRDC, OCR has utilized new tools in working with school districts with perceived reporting errors to encourage corrections; conducted greater outreach to school districts with potentially anomalous R&S data submissions; allocated additional technical support resources; clarified proper understandings of reporting requirements; where needed, worked with school districts to ensure detailed written corrective action plans were put into place; and increased collaboration with NCES. While these actions appear in greater detail in my December 2019 reply letter, several others are new, and I would like to mention some of them below.

For example, OCR recently posted various R&S technical assistance presentations[3] on-line to further assist state education agencies (SEA) and local education agencies (LEA) or school districts to better understand their reporting obligations, including the appropriate use of nulls and zeros. In addition, on January 9, 2020, OCR and the Office of Special Education and Rehabilitative Services posted a webinar on-line, *Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools*, as technical assistance to support both students with disabilities and school systems serving those students.[4] For the first time, OCR will implement, as necessary, a reporting methodology to remove anomalous (or outlier) R&S data from the 2017-18 collection, in advance of its public release. This methodology is utilized by other Departmental data collections to ensure that questionable data are not reported to, or relied on, by researchers or other members of the public. Any removal of anomalous R&S data from the final 2017-18 file will be described in the CRDC Data Notes.[5] These are simply a few examples of our recent efforts.

As noted above, OCR has already implemented several of GAO's June 2019 recommendations, but these actions are missing from the February Draft Report. I believe it is appropriate and important that you include this information in the final report. GAO's first recommendation requested that the Assistant Secretary for Civil Rights immediately remind and clarify for all school districts that they are only to report zero incidents of R&S when there are none and that they are to leave cells blank to indicate when data are not collected or completed. On August 14, 2019, I sent a letter to all school districts and communicated both of these important points.[6] The second of GAO's recommendations, as part of the 2017–18 CRDC quality assurance process, was for OCR to follow up with school districts that submitted reports of zero incidents of R&S to obtain assurances that such reports of zero incidents were, in fact, accurate, or else ask

[3] *See* https://www2.ed.gov/about/offices/list/ocr/data.html.
[4] *See* https://sites.ed.gov/idea/education-department-releases-webinar-use-restraint-seclusion/, and https://www.youtube.com/watch?v=EZ9Yx0LC8TI&feature=youtu.be.
[5] Data notes provide the general public with an overview of each collection. For instance, data notes most typically include information covering such categories as response rate, privacy protection, data anomalies, data errors corrected, and data errors that are not corrected (*e.g.,* the request is incomplete or is made past the corrections deadline). *See* https://ocrdata.ed.gov/DataNotes.
[6] *See Supra* at 1.

the districts to submit corrected data. This recommendation was met, when on August 1, 2019, as part of the 2017-18 CRDC data quality review outreach period, an electronic message was sent to all LEAs that had reported zero incidents of R&S in the 2017-18 CRDC and to SEAs that closely collaborated with their LEAs for the 2017-18 CRDC reporting.

The third recommendation from GAO requested that OCR monitor compliance with OCR's action plan requirements and ensure that such plans address all missing data elements. Even prior to the release of GAO's report, OCR had taken steps to bolster the process by which it reviews and accepts action plans. For instance, OCR communicates with each school district that has an action plan to seek confirmation that it will take the needed steps to collect and report the data for the upcoming collection. Going forward, OCR will also contact each LEA that has an action plan before the start of each new collection and re-confirm that the LEA will take the needed steps to collect and report the data.

GAO's fourth and final recommendation asked OCR to "prominently disclose for past collections the potential problems with using R&S data given the known misreporting issues." OCR informed GAO that it will implement this recommendation by updating the 2015-16 data notes.[7]

By not including this information, the February Draft Report paints an incomplete and misleading portrayal of this issue. Indeed, it could be read to suggest, quite erroneously, that OCR is indifferent to the ways a data collection can be improved. Before I address the specifics of GAO's six recommendations, it is necessary to respond to significant problems in the February Draft Report and recommend changes so that it properly and fairly portrays the CRDC and OCR's handling of the R&S data.

The Draft February Report Omits R&S Data Quality Improvements Made for the 2017-18 Collection.

GAO's February Draft Report does not mention the methodological improvements OCR made to address the quality of R&S data for the 2017-18 collection. In this way, GAO's February Draft Report overstates the current relevance of the data issues from the 2015-16 collection, because OCR has already taken steps with school districts to correct the problems both OCR and GAO discovered. As I shared in my December 18, 2019, letter to GAO, OCR has already implemented data quality improvement measures with respect to the 2017-18 CRDC. I set forth a summary of those improvements below, which were shared with your office on December 19, 2019.

For the 2017-18 CRDC[8], OCR's contractor performed a three-phase data quality check before, during, and after data were submitted by school districts. There were two types of analyses conducted: general and specific. General analyses focused on outliers detected for individual data elements (univariate), for entire modules (systematic), and for significant changes in data elements between the 2015-16 and 2017-18 data collections (year-to-year). Specific analyses were ad hoc data quality checks focused mostly on issues of internal consistency and data reasonableness (e.g., duplicate data, summation to totals, comparisons with other data sources).

[7] *See Supra* at 5.
[8] This is a high level summary and not a comprehensive accounting of all 2017-18 data quality efforts.

There were nine specific quality issues that were analyzed as part of the data quality review for the 2017-18 collection, all of which were new for 2017-18. Of the nine specific quality issues, four evaluated the data for duplicative entries; two checked the data for internal inconsistencies; and three evaluated the reasonableness of the data entered given the size of the school.

Importantly, each of the nine specific quality issues for the R&S module addressed one of four overarching quality issues:

- duplicative counts across mechanical restraint, physical restraint, and seclusion for non-IDEA and IDEA students[9];
- reports of identical data entries for each of the following data items: mechanical restraint, physical restraint, and seclusion for non-IDEA and IDEA students (*e.g.,* if each entry were "25");
- instances where overall enrollment by sex and race/ethnicity is smaller than students subjected to mechanical restraint, physical restraint, and seclusion by sex and race/ethnicity for non-IDEA and IDEA students; and
- LEAs with zero instances of mechanical restraint, physical restraint, or seclusion with enrollment that is greater than or equal to 25,000 students.

In addition to the foregoing specific data quality checks, general data quality checks were conducted on all R&S data elements. These post-collection data quality checks focused on detecting (a) outliers for individual data elements, (b) significant value changes in individual data elements between the 2015-16 and 2017-18 data collections, and (c) outliers within the entire R&S module. All general checks used the data-driven thresholds for identifying outliers and were included in subsequent outreach to the school districts.

The post-collection outreach to school districts was also conducted via email and, in some cases, phone calls. The main goal of outreach was to identify a subset of data quality issues across the data elements collected by the CRDC that were apparent errors and, if confirmed as errors by the school district, would be easily correctable, so that the outreach activities conducted by the Partner Support Center (PSC)[10] would have the greatest likelihood of improving the data. R&S outreach messaging focused on the use of nulls and zeros, in addition to targeted outreach about the general and specific checks described above. In total, the CRDC's PSC conducted outreach to 15,526 LEAs, a marked increase from 4,386 LEAs contacted for the 2015-16 outreach period. As a result of OCR's proactive outreach efforts, 952 LEAs amended their original 2017-18 R&S data submissions from June 2019 to August 2019. During the extended data corrections, which ran from September to December 2019, another 196 LEAs corrected their 2017-18 R&S data submissions. GAO should include or reference the forgoing in its final report in order to present an accurate picture regarding the CRDC's overall data quality improvement efforts.

[9] *See* definitions appearing on the 2017-18 CRDC School Form, page 11, available at https://www2.ed.gov/about/offices/list/ocr/docs/2017-18-crdc-school-form.pdf.

[10] The CRDC's Partner Support Center provides technical assistance to LEAs that submit data through the CRDC submission system. The Partner Support Center is run by OCR's contractor. *See* https://crdc.grads360.org/#program.

The February Draft Report Relies on a Limited Number of Interviews to Make Sweeping R&S Data Generalizations.

Another area of concern is the weight GAO places on the feedback provided by a very limited number of LEAs and school officials. GAO recognizes this contradiction, when it writes: "Information we collected from our 11 selected schools and nine districts cannot be generalized to all districts and schools nationwide."[11] Further, the final report should emphasize that OCR has repeatedly informed SEAs and LEAs that they can reach out to OCR for technical assistance on the CRDC. This was made clear, for example, in my letter to all LEAs, sent on August 14, 2019.

The Report Should Emphasize the CRDC is Comprised of Self-Reported Certified Data.

It is critical to emphasize that the CRDC is an aggregate of self-collected and self-reported data. Almost all reporting entities are school districts, and the district superintendent or an authorized designee certifies that the data they submit are "true and correct." As each certifies, they agree to the following information:

> Your LEA's certification of its CRDC data includes verifying the accuracy of the data that your LEA submitted to the state education agency. I certify that the information provided is true and correct to the best of knowledge and belief. A willfully false statement is punishable by law. (18 U.S.C. § 1001).

For more than 40 years, the certification statement has included the last two sentences presented in the certification statement above. Therefore, school districts are fully aware and acknowledge they are required to submit accurate data to the CRDC. This is an important part of assuring data quality.

The February Draft Report Misleadingly Describes Certain Data.

Page 22[12] of the February Draft Report contains a section commencing with "All Nine School Districts." That section discusses how the nine school districts GAO visited use R&S data. While we acknowledge that the discussion in this section is interesting for the field, the data introduced and discussed in this section are not data the Department collects in the CRDC. This section references the benefits certain unidentified school districts have received from their usage of certain data which do not come from the CRDC. The February Draft Report references that the *unidentified* school districts used (i) information about one or more observation(s) by teacher(s) of specific student behavior triggering the use of R&S; (ii) data on *the day of the week* on which incidents of R&S occurred; (iii) information on incidents involving autistic children specifically; (iv) the benefits of post-incident teacher debriefing; (v) the benefits of coaching teachers; (vi) incidents with respect to a specific student; and (vii) one district's monthly internal reporting of R&S data. None of the data and analyses that the various school districts collected, performed, and used is part of the CRDC, and none of it could be feasibly collected by the CRDC.

[11] GAO's February Draft Report, Page 32.
[12] *See* February Draft Report, section titled: "*All Nine School Districts We Visited Used Data to Reduce Incidence of Restraint and Seclusion and Developed Strategies for Improved Reporting,* at p. 22.

The February Draft Report's attempt to generalize these comments seems inconsistent with the Governmental Accounting Standards Board (GASB) statistical principles which govern the February Draft Report. See GASB Section 8.100.[13]

OCR Will Implement GAO's Recommendations.

For background to OCR's formal response to the February Draft Report's recommendations, as I shared as part of my December 18, 2019, letter to GAO, the CRDC is a biennial survey of public schools and school districts in the United States. The CRDC measures student access to courses, programs, staff, and resources that relate to OCR's jurisdiction. The CRDC also is a resource for other federal agencies, policymakers, researchers, educators, school officials, parents/guardians, students, other stakeholders, and members of the public. OCR is committed to continuous data improvement measures, including working to better enable SEAs and LEAs to accurately and completely report data. Accordingly, OCR will implement all of GAO's recommendations, within an appropriate timeframe, and OCR's formal responses to GAO's draft recommendations appear below.

GAO's First Recommendation:
The Assistant Secretary for the Office for Civil Rights should revise its CRDC business rule to require that every district reporting zeros, regardless of district size or numbers of students with disabilities, affirm the zeros are correct during the CRDC data submission process.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

GAO's Second Recommendation:
The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and districts that report very low numbers of incidents and set data-driven thresholds to detect such incidents.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

GAO's Third Recommendation:
The Assistant Secretary for the Office for Civil Rights should develop and implement a CRDC business rule that targets schools and districts that report very high number of incidents and set data-driven thresholds to detect such incidents.

OCR will determine the best means to implement this recommendation and expects to do so in connection with the 2019-20 collection.

[13] "When appropriate, auditors may use statistical methods to analyze and interpret evidence to assess its sufficiency." GASB 8.100.

GAO's Fourth Recommendation:
The Assistant Secretary for the Office for Civil Rights should apply the CRDC business rule targeting logical inconsistencies at the school level to all schools regardless of the number of incidents reported.

The CRDC currently uses this business rule in a limited fashion. For the 2015-16 and 2017-18 collections, it was triggered whenever an LEA had 100 incidents of restraints or seclusions. However, for the 2019-20 collection, OCR expects to apply it to all such logical inconsistencies referenced in the February Draft Report.

GAO's Fifth Recommendation:
The Assistant Secretary for the Office for Civil Rights should identify the factors underlying underreporting and misreporting of restraint and seclusion and take steps to help school districts overcome these issues.

OCR has already begun this effort. Over the past year as OCR has reached out to 50 LEAs which were reporting anomalous R&S data,[14] it asked the LEAs to explain the cause of the reporting errors.[15] An example of one of OCR's inquires is "please include a description of the steps that you intend to take to improve quality of the data for the 2017-18 CRDC and all other future collections." OCR has received answers from multiple LEAs which will help in gathering correct data. OCR is also working on other legally permissible ways to identify these factors, such as using the aforementioned PSC to contact LEAs.

GAO's Sixth Recommendation:
The Assistant Secretary for the Office for Civil Rights should further refine and clarify federal restraint and seclusion definitions and take steps to ensure that this information is conveyed to school districts. This could include providing common classroom scenarios that highlight the differences between a restraint and an escort, and a time out and a seclusion.

OCR agrees with this recommendation. The Assistant Secretary will refine and clarify the restraint and seclusion definitions. In doing so, OCR will consult with counsel on appropriate ways of doing so consistent with applicable legal authorities.

OCR is fully committed to work with public schools, SEAs, and LEAs to help ensure accurate reporting of all CRDC data, including data on R&S, and to improve the quality of the information for use by all users of CRDC data. I hope that GAO will take into account the concerns expressed in this letter, as well as the Department's technical edits, as it further refines its draft report. I appreciate GAO's work on this area and its recommendations, which will help improve future collections.

[14] As part of Initiative to Address the Inappropriate Use of Restraint and Seclusion, DQR letters.
[15] Reflective of a request GAO made in December of 2019.

Sincerely,

Kenneth L. Marcus
Assistant Secretary for Civil Rights

Enclosure

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Appendix III: Restraint and Seclusion Data for 20 Largest School Districts Reporting Incidents

Table 8: Restraint and Seclusion Data for the 20 Largest School Districts That Reported Incidents in School Year 2015-16, with Potential Underreporting Highlighted

Rank by Size	Name of District	State	No. of Schools	No. of Students Enrolled	Physical Restraint Incidents	Physical restraint incidents per 10,000 students	Schools Reporting Physical Restraint		Seclusion Incidents	Seclusion incidents per 10,000 students	Schools Reporting Seclusion	
							No.	Percent			No.	Percent
2	Los Angeles Unified	CA	785	539,634	108	2	82	10%	0	0	0	0%
3	City of Chicago	IL	579	392,303	47	1.2	2	0%	6	0.2	1	0%
5	Clark County	NV	361	326,238	2,588	79.3	213	59%	0	0	0	0%
7	Houston	TX	282	215,989	58	2.7	18	6%	0	0	0	0%
8	Hillsborough	FL	289	211,731	17	0.8	11	4%	21	1	12	4%
9	Orange	FL	243	196,987	10	0.5	8	3%	82	4.2	12	5%
10	Palm Beach	FL	234	188,590	91	4.8	35	15%	0	0	0	0%
13	Gwinnett County	GA	135	175,958	1,150	65.4	101	75%	0	0	0	0%
15	Dallas	TX	239	158,941	49	3.1	22	9%	0	0	0	0%
16	Montgomery County	MD	203	156,819	1,078	68.7	63	31%	337	21.5	20	10%
17	Charlotte-Mecklenburg	NC	168	149,270	8	0.5	7	4%	0	0	0	0%
20	San Diego Unified	CA	226	130,964	186	14.2	28	12%	35	2.7	11	5%
21	Duval	FL	206	129,003	34	2.6	8	4%	24	1.9	9	4%
22	Cypress-Fairbanks	TX	83	113,912	76	6.7	31	37%	0	0	0	0%
23	Shelby County	TN	207	113,208	240	21.2	60	29%	77	6.8	16	8%
24	Cobb County	GA	114	112,708	147	13.0	14	12%	8	0.7	2	2%
25	Baltimore County	MD	169	110,786	880	79.4	93	55%	365	32.9	42	25%
27	Pinellas	FL	155	102,893	29	2.8	5	3%	39	3.8	7	5%
29	DeKalb County	GA	133	101,355	3	0.3	2	2%	0	0	0	0%
30	Jefferson County	KY	172	101,018	4,134	409.2	123	72%	257	25.4	18	11%

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: Shaded areas indicate potential underreporting—districts in which 15 percent or fewer schools reported any incidents and districts in which the incidents per 10,000 students were lower than 95 percent of districts. This figure does not include the 10 districts that reported zeros. Please see GAO-19-551R for analysis of those districts.

Appendix IV: School Districts with Relatively High Rates of Reported Seclusion

Table 9: School Districts with Relatively High Rates of Reported Seclusion in School Year 2015-16

District Name	State	Grades served	Total enrolled students	Incidents of seclusion	Incidents per student enrolled	Students affected	Share of students affected	Average incidents per student affected
Sangamon Area Spec Ed Dist.	IL	1-12	**74**	676	9.1	25	34%	27
Bi-County Special Educ. Coop	IL	K-12	**48**	436	9.1	34	71%	13
Woodside Juvenile Rehabilitation Center	VT	7-12	**17**	116	6.8	19	112%	6
Montgomery County ESC	OH	K-12	**270**	1,740	6.4	181	67%	10
Coop Assoc. For Spec Educ.	IL	1-12	**36**	204	5.7	8	22%	26
Piedmont Regional Ed.	VA	K-12	**83**	438	5.3	46	55%	10
Chi Health Immanuel Residential Treatment Center	NE	1-12	**24**	123	5.1	10	42%	12
Autism Model School	OH	K-12	**124**	494	4.0	15	12%	33
Southside Sp. Srvs. Of Marion Co	IN	K-12	**125**	472	3.8	47	38%	10
Henry-Stark County Spec Ed Dist.	IL	K-12	**65**	224	3.4	54	83%	4
North Dupage Sp. Ed Cooperative	IL	2-12	**53**	181	3.4	11	21%	16
Northeast Wyoming BOCES	WY		**41**	137	3.3	21	51%	7
Department Of Juvenile Justice	GA	6-12	**1,022**	3,119	3.1	181	18%	17
Northwest Indiana Spec Ed Coop	IN	K-12	**101**	265	2.6	31	31%	9
Southeastern Coop Ed Pgm.	VA	K-12	**356**	912	2.6	159	45%	6
Brewer-Porch Children's Center	AL	PK-10	**162**	391	2.4	51	31%	8
Boyd School	AL	3-10	**15**	33	2.2	11	73%	3
New Horizons Regional Educ. Ctr.-Spec. Ed	VA	1-12	**287**	623	2.2	131	46%	5
Van Buren ISD	MI	PK-12	**502**	1,007	2.0	26	5%	39
Cooperative Ed Serv. Agcy. 06	WI	1-12	**54**	108	2.0	26	48%	4

District Name	State	Grades served	Total enrolled students	Incidents of seclusion	Incidents per student enrolled	Students affected	Share of students affected	Average incidents per student affected
Northwest Educational Service District 189	WA	1-12	**168**	322	1.9	75	45%	4
Rum River Special Education Coop	MN	1-12	**115**	213	1.9	25	22%	9
Multnomah ESD	OR	K-12	**278**	513	1.8	95	34%	5
Traverse Bay Area ISD	MI	PK-12	**400**	714	1.8	60	15%	12
Montcalm Area ISD	MI	PK-12	**220**	369	1.7	35	16%	11
Hunterdon County Educational Services Commission	NJ	2-12	**59**	91	1.5	22	37%	4
Intermediate School District 917	MN	PK-12	**649**	934	1.4	67	10%	14
Monroe 2-Orleans BOCES	NY	PK-12	**531**	728	1.4	280	53%	3
Red Top Meadows - Administration Office	WY	8-11	**9**	12	1.3	4	44%	3
Meeker And Wright Special Education	MN	1-12	**126**	164	1.3	19	15%	9
Northwest Regional ESD	OR	1-12	**211**	259	1.2	26	12%	10
Manistee ISD	MI	PK-12	**65**	75	1.2	9	14%	8
Idaho Dept. Juvenile Correction	ID	8-12	**343**	394	1.1	86	25%	5
Mid State Education District	MN	1-12	**66**	70	1.1	17	26%	4
Regn. 6 And 8-Sw/Wc Srv. Cooperative	MN	1-12	**240**	252	1.1	23	10%	11
Centralia School District	WA	PK-12	**3,608**	3,702	1.0	893	25%	4

Source: GAO analysis of school year 2015-16 data in the U.S. Department of Education's Civil Rights Data Collection (CRDC). | GAO-20-345

Note: The CRDC does not contain information about whether the specific incidents of seclusion reported by school districts were appropriate uses of seclusion. Percent of students affected may be higher than 100 percent because enrollment is measured at a point in time whereas the count of students affected is cumulative and because some data elements have been rounded or suppressed in the public-use dataset to protect the individually identifiable information.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov

Staff Acknowledgments

In addition to the contact named above, Sherri Doughty (Assistant Director), Lara Laufer (Analyst-in-Charge), Morgan Jones, and Kristin Petroff, made key contributions to this report. Also contributing were James Bennett, Deborah Bland, Tonnye Conner-White, Holly Dye, Gretta Goodwin, Sheila R. McCoy, Jean McSween, John Mingus, James Rebbe, and Manuel Valverde.

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December 8, 2025

Chairperson and Members of the Legislative Working Group on Seclusion Rooms

Dear Chairperson and Members of the Working Group:

Thank you for the opportunity to provide written testimony regarding the work of the Legislative Working Group on Seclusion Rooms. I appreciate your commitment to examining this issue, and I would like to share both my personal experience and the broader story of Grafton—an organization that has undergone profound transformation in this area.

About Grafton

Grafton School Incorporated (Grafton) has been providing person-centered services for more than 60 years. Founded in Clarke County, Virginia, by Ruth Birch, Grafton began when Mrs. Birch recognized that the local public school system could not meet the needs of her son. She began educating him at home—using his strengths, interests, and abilities as the foundation for his learning.

What began at her kitchen table grew into a residential school, and ultimately into a multi-site provider serving both children and adults. Today, Grafton offers therapeutic day schools, therapeutic group homes, early intervention services, outpatient services, and psychiatric residential treatment in Virginia and Minnesota. Throughout its growth, the organization has held fast to its mission of ensuring dignity, respect, and individualized support.

My Personal Experience

I began my career at Grafton when I was 19 years old, just six months out of high school and enrolled in a local college. I saw a newspaper advertisement for a position working with children, and it immediately felt right for me. After my interview and walk-through, I joined the residential program.

My first three days of training made an immediate and lasting impression. The first morning focused on human rights—treating people with dignity and respect. The next two-and-a-half days were spent in restraint training. Although it was described as "passive defense," the techniques were anything but passive. I was taught to restrain individuals and escort them to seclusion. No one explained how individuals actually get to seclusion when they are in distress; in reality, students seldom walk there calmly. It was almost always a struggle.

For my first five years, I used the tools I had been taught. Over time, I moved into various management and leadership roles. Looking back at the 1990s and early 2000s, I now understand that we were doing what we believed was necessary based on the knowledge and training available at the time. As public schools evolved and children with the most complex behavioral needs were referred to places like Grafton, we believed that increasing behavioral intensity required increasing force and control. We convinced ourselves that restraint and seclusion were essential to maintaining safety. In truth, the more we used restrictive practices, the more everyone—staff and individuals—was hurt.

A System in Crisis (2003)

By 2003, the situation had reached crisis levels. For an organization serving about 220 individuals, our outcomes were alarming:

- Over **6,600** manual/physical restraints
- Over **1,500** seclusions
- Extremely high workers' compensation claims
- A modification risk factor exceeding that of the New York City Fire Department
- Direct care turnover at **54%**
- Goal mastery for individuals at only **35%**
- Internal silos resulting in dysfunctional teams
- Families, regulators, and placing agencies losing confidence
- Financial instability

At this time, Grafton's long-time CEO had recently retired. In 2002, our Board hired a new CEO, Jim Gaynor, who brought a leadership style grounded in hope, motivation, and collective problem-solving. He observed, listened, and then acted.

In the summer of 2004, he attended a Restraint and Seclusion Minimization Task Force meeting—a group that had existed for five years but taken little meaningful action. After hearing us review troubling data, he stopped the meeting, looked at the three regional executive directors, and said it was time for action. He issued a mandate: **We must reduce restraint and seclusion without increasing injuries to staff or individuals.** He asked for a written plan—and then left the room.

Searching for Solutions—and Being Told They Don't Exist

My regional leadership team was at a loss. I began researching books, articles, and conferences—anything that might help. After hearing one national speaker several times, I finally approached him for guidance. His response was blunt: *It cannot be done with the population you serve.* He insisted that success required individuals capable of reasoning, negotiating, and problem-solving—which, in his opinion, excluded our clients.

I left devastated. When I relayed this to Jim Gaynor, he simply said:

"Then I guess you are going to have to build it."

That moment changed everything. We knew we had to try.

Understanding the Real Problem: Fear and Frustration

My team and I began by asking a difficult question:

Why were we resorting to restraint and seclusion so often?

We identified two primary drivers:

1. **Fear** – When you are hit, bitten, punched, or pulled to the ground, the pain and trauma stay with you. Even small signs of escalation can trigger fear. That fear caused staff—including me—to intervene far more quickly than policy required.
2. **Frustration** – Surprisingly, the challenging behaviors of individuals served were not the primary source. Instead, staff were frustrated by:
    - Infrequent support or visibility from managers
    - Behavior plans created by people who spent little time with clients
    - Feeling undervalued or misunderstood
    - Personal stressors they were expected to "leave in the parking lot," which is unrealistic

We realized that leadership—including myself—was spending 80% of our time "in the weeds," leaving only 20% for supporting staff and improving systems. We needed to flip that balance.

Reimagining Our Practices

We began asking: **What helps us when we are having our worst day?**
A run, a nap, reading, a bubble bath, time alone, time with friends.

Then we realized: **none of these options were offered to the individuals we served.**

During their worst moments, they received:

- restraint
- seclusion
- time-outs
- loss of privileges
- isolation

We had unintentionally created an environment where the very supports humans need during distress were unavailable.

This realization became the foundation for a new approach—one centered on safety, dignity, creativity, and compassion. We now call this **Comfort vs. Control**, embedded within our comprehensive trauma-informed practices.

We quickly recognized that these practices must apply **not only to those we serve but also to our employees**. Staff cannot offer comfort if they themselves do not feel safe or supported.

Key components of our transformation included:

• Defensive blocking tools (Ukeru)
To ensure staff safety without restraints, we created a system of training and equipment for defensive blocking. When employees feel physically safe, they are far more able to use de-escalation strategies effectively.

• Transparency and orientation
All individuals served are oriented to the system—even a brief explanation promotes respect, reduces fear, and eliminates the staff-versus-student dynamic.

• Normalizing the tools
Ukeru blocking equipment is kept openly available in environments—not hidden or reserved for crisis. These tools are also used for everyday activities (building forts, sledding, games, or simply as cushions) so they are not linked solely to challenging moments.

• Learning Debriefings
We overhauled post-incident processes, replacing compliance-driven checklists with meaningful learning conversations. These focus on improvement—not shame or blame—so that teams do not repeat the same ineffective responses.

Our Results

Since implementing Ukeru at Grafton:

- **Seclusion was eliminated more than 10 years ago**
- **Restraints have been reduced by over 98%**
- **Restraints have been eliminated in our Community-Based Programs**
- **Workers' Compensation claims have decreased by over 67%**
- **Employee turnover has decreased**
- **The organization has recaptured over $27 million**

When Ukeru was first created, we had no intention of sharing it beyond Grafton. But as results grew and word spread, organizations began reaching out. Today, Ukeru is used in **more than 1,300 schools and organizations** across every U.S. state, as well as in Brazil and Canada. It is not just a training program—it is a movement to change cultures and mindsets.

From our experiences at Grafton, we understand the fears, hopes, and dreams of families. At the end of the day, all of us—as humans—need **more Comfort and less Control** to be our best.

Conclusion

Our journey transformed Grafton. The process required honesty, innovation, and a willingness to challenge the long-standing belief that restraint and seclusion are necessary. What we ultimately learned is that these practices are not solutions—they are signals that something within the system must change.

I share this testimony because I believe deeply in the importance of your work. Policies surrounding seclusion and restraint profoundly impact the safety, dignity, and well-being of individuals and staff alike. Our experience demonstrates that meaningful change is possible—even when experts say it cannot be done.

Please consider that restraint and seclusion are not necessary tools for safety.

Thank you for your time and consideration. I welcome the opportunity to answer any questions or provide further information.

Respectfully submitted,

Kim Sanders
COO, Grafton and President of Ukeru Systems

Dear Mr. George,

I am writing as a School Psychologist Intern working in Minnesota special education, specifically within a Federal Setting IV program, to offer my comment on the future of seclusion as a safety tool of last resort.

My primary professional goal is to ensure that our schools are places where students feel both emotionally and physically safe. I never feel successful when seclusion is implemented; however, the reality is that the "Hard Stop" Proposal without fully implemented, funded, and evidence-based alternatives poses a severe risk to both students and staff. Seclusion, used strictly as a last resort when all other de-escalation fails, currently serves as a vital tool to prevent serious injury to both students and staff. Notably, there are some students for whom seclusion is reported to feel safer to the student than the alternative of physical holding. When used in these emergency situations, students are continuously monitored, the spaces are clean and safe, and it is not used when a student is at risk of self-harm.

I urge the Working Group to choose the "Runway with Support" Proposal. This approach is the only responsible path forward as it allows schools to continue supporting students in the least restrictive way possible while the necessary infrastructure is established statewide.

Removing this safety net before effective, fully funded, and piloted alternatives are in place will lead to dangerous outcomes, including

- Increased physical restraint with risk of injury to students and staff.
- Law enforcement involvement, which can result in vulnerable students facing assault charges for behaviors that could otherwise be managed by school staff.
- Use of shortened school days or loss of placement stability for students with the highest level of need.

Successful alternatives, such as the implementation of Ukeru, reduce the use of seclusion for some students, yet Ukeru has not solved the safety issue for *all* students. We must have access to the full range of tools necessary to respond to complex situations safely until alternatives are proven effective across the spectrum of student needs.

Thank you for considering the realities faced by our dedicated teams and students.

Sincerely,

Isabella Kranz

School Psychologist Intern, M.S. Ed.
ISD 917/Alliance Education Center

To Whom It Concerns,

I currently serve as the site administrator for a Level IV behavioral program serving students with diverse needs from kindergarten through age 22. Our team is deeply committed to reducing the use of physical restraint and seclusion to the greatest extent possible. Like most professionals in similar roles, we prioritize proactive, preventive strategies to help students regulate, because we genuinely care about their well-being. If we did not, we would not be doing this work. We recognize physical holds or seclusion damages relationships we work so hard to build, and will require extensive repair work to be completed with the child after.

At the same time, I must emphasize the critical importance of protecting our staff. The intensity and frequency of significant behaviors we encounter daily require that we ensure our teachers and paraprofessionals feel safe coming to work. Staff who feel regulated and supported are far better equipped to make thoughtful, compassionate, and effective decisions for students resulting in a reduction of elevated behaviors. Conversely, when staff are consistently fearful of injury or harm, the likelihood of positive outcomes diminishes for everyone involved, we stand a greater chance of elevating the student when we are elevated. Mirror neurons provide a neurological basis for understanding why behavior, emotion, and self-regulation can be contagious, underscoring the importance of modeling calm and respectful interactions—particularly for students with behavioral or emotional needs. We need to find a way to ensure our teachers and school staff feel safe, whenever possible.

Our building utilizes the Ukeru approach, which has significantly improved feelings of safety for both staff and students. As a result, the use of physical holds has been greatly reduced. For many of our older secondary students, we also rely on law enforcement support rather than physical restraint when safety risks escalate, again to prevent injury to staff or students. This approach reflects our commitment to minimizing harm while maintaining clear and necessary safety boundaries.

It is also important to acknowledge the statewide shortage of qualified special education teachers. I am concerned that continuing to remove safety protections and tools without viable alternatives will only exacerbate this issue. Trauma is real, and students should never be placed in isolation unless there are no other safe options available. However, educators also deserve to feel safe in their workplace. In some situations, seclusion remains the safest option to protect both the student and staff.

School districts must retain reasonable, well-regulated avenues to address serious safety concerns. Without practical alternatives, eliminating these measures entirely will lead to increased risk, greater staff burnout, and ultimately, the loss of dedicated professionals from an already strained field.

Thank you for your time,

Ivy Jorgenson

--

01/28/2026

Seclusion Working Group

Legislative Coordinating Commission

658 Cedar St., Saint Paul, MN 55155

Dear Members of the Seclusion Working Group,

Thank you for the opportunity to provide written testimony regarding the Working Group's draft recommendations. MDE first received the legislative charge in 2013 to work with school districts to end the use of restrictive procedures. In 2016, that charge expanded to include eliminating the use of seclusion. Additional amendments in 2023 further strengthened these requirements. For more than a decade, MDE has worked to reduce the use of restrictive procedures and physical holds, including seclusion, in Minnesota schools. Based on years of research and collaboration, MDE continues to recommend prohibiting the use of seclusion for all students.

The comments below highlight several areas that MDE would like to flag about the feasibility, equity, and unintended consequences of some of the working group proposals under consideration.

- **Identifying Parents of Students Subject to Seclusion**

The recommendation to notify "parents or guardians of students subject to seclusion" presents practical challenges. MDE does not receive family contact information in restrictive procedures reports; only names and demographic data are provided, often months after the incident. Any outreach would still require the state going through local education agencies (LEAs) to obtain this information, and past attempts to obtain contact information from districts have been inconsistent. Without a clear purpose or mechanism, this requirement may not be feasible or effective.

- **Student-Level Data Reporting**

Any requirement for MDE to collect student-level data would necessitate new reporting obligations for districts, likely embedded within the Individualized Education Program (IEP) process. This would add substantial administrative burden without clear evidence that it would improve student outcomes. Such reporting would only be necessary if informed-consent-based IEP requirements were enacted, compounding the concerns described below.

- **District-Level Reporting and Data Privacy**

Requiring district-level reporting of seclusion-related information raises significant data privacy concerns. Restrictive procedures reports are highly contextual and often cannot be interpreted without additional information. Disaggregating them to the district level increases the risk of identifying individual students, particularly in smaller districts or low-incidence categories. The statewide annual Restrictive Procedures Report already reflects the maximum detail that can be shared without compromising student privacy.

- **Informed Consent and Parent Understanding**

Several recommendations rely on "informed consent" within the IEP process. In practice, many parents do not fully understand the contents of an IEP or the implications of agreeing to LEAs proposals for their student's IEP. Families frequently describe feeling pressured to consent, particularly when surrounded by multiple district staff. Without addressing this underlying power imbalance, additional consent requirements risk reinforcing inequities rather than improving transparency.

- **Expansion of the IEP Team and Power Dynamics**

The proposal to add more district-level personnel to IEP meetings raises concerns. Increasing the number of individuals who do not work directly with the student does not guarantee stronger student advocacy. Instead, it may intensify the existing imbalance of power between families and districts and increase pressure on teachers. Adding more voices aligned with the district may complicate the process without improving outcomes for students.

- **MDE Technical Assistance and Administrative Burden**

The proposed MDE technical assistance amendment is aligned with prior recommendations made in the Restrictive Procedures Reports over the years, and would likely increase paperwork, notices, and training requirements for both LEAs and SEAs. If the goal is to improve practice, it may be more immediately effective to focus on providing meaningful information about de-escalation and evidence-based behavioral supports rather than creating additional procedural steps.

- **Fiscal Impact on MDE and LEAs**

Many of the proposed recommendations would significantly expand responsibilities for both MDE and LEAs. Increased reporting, additional team members, new notification requirements, and expanded procedural safeguards all carry substantial financial implications. Any recommendation that increases obligations must be accompanied by a fiscal note of the associated costs.

MDE respectfully asks the Working Group to consider these concerns as it finalizes its recommendations.

Sincerely,

_____

Daron Korte, J.D., Assistant Commissioner

GOODHUE COUNTY EDUCATION DISTRICT
PARTNERS IN THE JOURNEY

Members of the Seclusion Work Group:

My name is Jennifer Marquardt, and I serve as Assistant Director at Goodhue County Education District (GCED), a special education district serving six member school districts in southeast Minnesota. GCED operates a Federal Setting IV special education program. The students attending our special education programs are placed by their IEP teams. Our role is to serve students with the most complex educational and behavioral needs; students whose disabilities require intensive, highly structured programming and supports to access education safely.

For many years, GCED has invested heavily in staff training focused on prevention, de-escalation, and emergency response. All staff receive Professional Crisis Management training in crisis prevention, safe physical intervention, and training on legal compliance. Two years ago, we added Ukeru to our Federal Setting IV program to further reduce the use of restraint and seclusion. Ukeru has proven effective for many students and has meaningfully reduced restrictive interventions across our program.

Despite these efforts, there are rare but critical situations where seclusion serves as the safest and least harmful emergency response for a student.

When Minnesota's restriction on the use of seclusion for students in grades K-3 went into effect on September 1, 2024, two students in GCED's Federal Setting IV program raised significant concern for their IEP teams. These students experience sudden and severe behavioral escalations without predictable triggers. Even neutral or positive interactions (e.g., a staff member giving feedback such as, "good job") could result in immediate physical aggression. Despite extensive data collection, expert consultation, bringing in outside agencies to consult, and consistent implementation of proactive strategies, the team could not identify reliable methods to prevent escalation. These teams included highly experienced Setting IV special educators, board-certified behavior analysts, licensed mental health professionals, a lead teacher and social worker who were also Ukeru trainers. Our district's lead Ukeru trainers provided regular on-site coaching to ensure fidelity of implementation.

When the students escalated, the students would immediately begin physically attacking staff or at times peers. Due to the sudden and unpredictable onset of physical aggression, staff and, sometimes other students, in the room were injured.

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Ukeru blocking strategies were implemented with fidelity but frequently lasted over an hour and often resulted in continued or increased escalation. Physical holds were also ineffective and frequently intensified the students' distress. In contrast, when seclusion was used appropriately as an emergency intervention, the students more quickly de-escalated and more frequently remained regulated. For these students, seclusion functioned as a stabilizing intervention, not a punitive one. It appeared that the lack of direct contact with others in a quiet, small space with no distractions, may have helped the students to feel secure and seemed to support the students' ability to regulate.

After seclusion was no longer permitted, staff injuries increased, and at times, students were placed on shortened school days for safety reasons. These outcomes occurred despite extensive training in trauma-informed practices, neurobiology of stress and trauma, de-escalation techniques, and ongoing professional support and coaching.

Ultimately, the IEP team discussed whether a referral to a residential treatment program was necessary; not solely because the team believed the students required a higher level of care, but because the Federal Setting IV program no longer had access to a critical safety tool that supported these students. The students' parents strongly opposed the placement of their student in a residential program. The students' parents also stressed that having a room where they could be left alone to de-escalate is what works the best for their child.

This example illustrates some of the potential unintended consequences of removing seclusion entirely from the emergency response toolbox. These consequences include, but are not limited to:

- Increased reliance on prolonged physical holds and blocking techniques
- Higher rates of staff injury
- More frequent involvement of law enforcement and emergency medical services
- Shortened school days
- Increased recommendations to place the student in a more restrictive setting (e.g., home-based or residential placements)

These consequences disproportionately affect students in rural and out-state Minnesota. Residential options, particularly those for elementary-aged students, students with significant aggression, and students with lower cognitive profiles, are extremely limited. Furthermore, most special education placements above Setting IV are privately run so these programs can say no to taking students who do not fit their desired client profile. For many families, Federal Setting IV programs are the highest level of care realistically available within their community. When these programs lose the ability to respond safely to emergencies, students face fewer educational options, greater disruption, and more restrictive placements.

I strongly believe that seclusion, when tightly regulated, carefully monitored, and used only as a last resort in true emergencies, can be an appropriate and necessary intervention for a small number of students. Allowing seclusion supports safety, preserves access to education, and promotes equity for students in rural Minnesota who lack access to alternative services.

I urge policymakers to consider the real-world impact of this restriction and to allow limited, regulated use of seclusion to ensure student and staff safety while maintaining access to appropriate educational placements.

Sincerely,

Jennifer Marquardt

Jennifer Marquardt
Assistant Director of Special Education
651-388-4441

Seclusion Working Group,

I wanted to provide public comment on the Seclusion Working Group Report. I live in Rep. Marion Rarick & Senator Michael Holmstrom's districts (respectively). I serve on the Maple Lake School Board, ISD 881 and on the MAWSECO Special Education Cooperative Board (which serves ISD 881). I heard about the Seclusion Working Group during a MAWSECO board meeting. Our Executive Director, Melissa Hanson spoke about the importance of the appropriate and correct use of seclusion in regards to MAWSECO. I wanted to provide my own personal thoughts and experiences on the use of seclusion as a mother of a child with an IEP due to emotional / behavior disorders. Reading through the entire report the below excerpts stood out.

Report page 11, Reference 28 & 29:
"seclusion is the only way to disrupt injurious behavior from students to staff, other students, and to themselves by giving students a way to pause and reset (28)"
"but sometimes those physical holds start to become dangerous for the staff involved. Students may start to engage in additional behaviors towards the staff that can lead to injury to the staff that are attempting to keep the students safe at that moment." (29)

Report page 12, Reference 32:
"In short, seclusion is not the go-to strategy to address emergency situations; when used correctly it is implemented when a suite of preventative strategies and other interventions have unsuccessfully regulated students' behavior and ended emergencies. Audrey Allorie added that "When seclusion is used well, it also provides teams with an alternative to other emergency interventions, such as physical holding and restraint, and EMT or police intervention," (32)

Report page 13, Reference 37:
"One parent mentioned that: "When a student becomes a danger to themselves or others, a seclusion room can serve as a temporary, last resort intervention, allowing them the necessary space and time to regain control in a safe, supervised setting. In our experience, the use of the seclusion room has alleviated the need for police intervention when my child has become so dysregulated at school. This not only protects the classmates but protects the dysregulated child's wellbeing." (37)

Report page 15, Reference 46:
"Testimony and Working Group discussion spoke at length about the importance of addressing seclusion misuse. As one parent concluded, "the solution to this problem is not to target the tool, but to target misuse of the tool," highlighting both their support for the need for seclusion as a restrictive procedure, as well as assurances that it is not misused. (46)

Report page 18 & 19: discusses importance of mental health supports in detail.

The above sections provided much evidence for the appropriate and correct use of seclusion. I can personally attest that seclusion when used correctly is an important support for children

dealing with emotional and behavioral incidents. When my child had outbursts, a good way to defuse was to remove them from the situation aka seclusion of some way shape or form. I was thankful that this was an option, as it helped my child calm down. But I also know for a fact that removing my child kept other children and staff safer, again I am thankful for this tool. I know that staff and other children have been kicked, scratched, etc by my child. I know that these are not isolated incidents occurring with just my child. A friend who taught special education, went into early labor with her baby because her special education student lashed out punching her pregnant belly; thankfully her baby was ok. I have heard of other incidents as well. Having the ability to remove a child from a situation protects other children, staff, and the child themselves.

The use of calm down rooms are mentioned as good tools, but often children can't comprehend when they need to move to these spaces. Incidents occur because young children (and many older) are not always able to recognize their emotions soon enough, thus a process to defuse is absolutely necessary. We were able to help my child identify the calm down rooms as options as my child aged up. But that took many, many years. However, being able to provide a child with a secluded space when it's clear that is the best next step, is the safest option for the child, and it should absolutely remain an option, a tool for our teachers and most importantly for our children. Removing our child from a situation has never been treated as a punishment but as a tool.

My child is actually going through the process of "graduating" out of the IEP program. This is only happening due to the combined hard work of our child, school staff, and us as parents - each working toward a common goal of our child's emotional and behavioral regulation. As I was reading the report I found it disturbing that on page 17, reference 60, the MPS representative stated that seclusion "does not teach students better coping strategies". I have found this to be the opposite with my child. Through the use of removing one's self from a situation we (as parents and child) have recognized the importance of calming down and thinking straight, which for my child often can't happen in the heat of a situation. As my child has aged up I have seen instances of self-reflection - the ability to recognize the situation and understand what's happening isn't healthy, and my child has decided on their own accord to remove themselves. This is because seclusion was never used as a punishment but as a tool, my child has likewise used it as such.... Aka it's a crowded space and causing anxiety that we know might lead to behaviors, it's time to move to a quieter space. Another example - my child has gotten irritated by something and instead of blowing up, has recognized I need to go for a walk to clear my head or go to the calm down room at school. And yet another example, someone is purposefully trying to escalate my child's behaviors and my child chooses to walk away rather than engage knowing what that will likely lead to. These situations have been defused because my child was able to use ALL the tools in their toolbox, seclusion included. As an adult I find it interesting to try to say seclusion is not a coping method when how many times have we heard other adults say "I need to go for a walk to clear my head" or something similar. Using seclusion in some way shape or form is a natural tool that is used as a healthy way to work through things.

Separately it would be interesting to include statistics on law enforcement intervention for the various ISDs involved with the report. That might provide some insight into how interventions are or are not working.

I apologize for the long-winded response, but from a parent perspective my experience has taught me that the appropriate and correct use of seclusion in some way shape or form is a helpful tool to deal with emotional and behavioral outbursts in students in the school setting. Without having utilized that tool (and my child's understanding of how to use it), my child wouldn't be in the positive position they are in, and instead would be a bigger danger to staff, other children, and themselves.

Thank you for your time & effort on this workgroup.

Sincerely,

Jen Rasset

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Maple Lake MN 55358
320-420-2745

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

118TH CONGRESS
1ST SESSION

S. 1750

To prohibit and prevent seclusion, mechanical restraint, chemical restraint, and dangerous restraints that restrict breathing, and to prevent and reduce the use of physical restraint in schools, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mr. MURPHY (for himself, Mr. SANDERS, Mrs. MURRAY, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Mr. CASEY, Ms. DUCKWORTH, Mr. DURBIN, Mr. FETTERMAN, Ms. HASSAN, Mr. KAINE, Mr. LUJÁN, Mr. MARKEY, Mr. MERKLEY, Mr. PADILLA, Mr. VAN HOLLEN, Ms. WARREN, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To prohibit and prevent seclusion, mechanical restraint, chemical restraint, and dangerous restraints that restrict breathing, and to prevent and reduce the use of physical restraint in schools, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Keeping All Students Safe Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—PROHIBITIONS ON RESTRAINT AND SECLUSION AND ADDITIONAL REQUIREMENTS

Sec. 101. Prohibition, additional requirements.

TITLE II—STATE PLAN, REPORTING REQUIREMENTS, AND GRANTS FOR STATE EDUCATIONAL AGENCIES

Sec. 201. Definitions.
Sec. 202. State plan.
Sec. 203. Grants for State educational agencies.

TITLE III—GENERAL PROVISIONS

Sec. 301. National assessment.
Sec. 302. Protection and advocacy systems.
Sec. 303. Schools operated or funded by the Department of the Interior or the Department of Defense.
Sec. 304. Rule of construction.
Sec. 305. Applicability to private schools and home schools.
Sec. 306. Severability.
Sec. 307. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In this Act:

(1) CHEMICAL RESTRAINT.—The term ''chemical restraint'' means a drug or medication used on a student to control behavior or restrict freedom of movement that is not—

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under State law.

(2) ESEA TERMS.—The terms ''early childhood education program'', ''educational service agency'', ''elementary school'', ''local educational agency'', ''other staff'', ''paraprofessional'', ''parent'', ''school leader'', ''secondary school'', ''specialized instructional support personnel'', ''State'', and ''State educational agency'' have the meanings given the terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) LAW ENFORCEMENT OFFICER.—The term ''law enforcement officer''—

(A) means any person who—

(i) is a State, Tribal, or local law enforcement officer (as defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284)); and

(ii) is assigned by the employing law enforcement agency to a program, who is contracting with a program, or who is employed by a program; and

(B) includes an individual referred to as a ''school resource officer'' if that individual meets the definition in subparagraph (A).

(4) MECHANICAL RESTRAINT.—The term ''mechanical restraint'' means the use of devices as a means of restricting a student's freedom of movement.

(5) PHYSICAL ESCORT.—The term ''physical escort'' means the temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

(6) PHYSICAL RESTRAINT.—The term ''physical restraint'' means a personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, torso, or head freely, except that such term does not include a physical escort, mechanical restraint, or chemical restraint.

(7) POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.—The term ''positive behavioral interventions and supports''—

(A) means a schoolwide, systematic approach that embeds evidence-based practices and data-driven decision making to improve school climate and culture in order to achieve

improved academic and social outcomes and increase learning for all students (including students with the most complex and intensive behavioral needs); and

(B) encompasses a range of systemic and individualized positive strategies to teach and reinforce school-expected behaviors, while discouraging and diminishing undesirable behaviors.

(8) PROGRAM.—The term ''program'' means—

(A) all of the operations of a local educational agency, system of vocational education, or other school system;

(B) a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.); or

(C) an elementary school or secondary school that is not a public school that enrolls a student who receives special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

(9) PROGRAM PERSONNEL.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''program personnel'' means any agent of a program, including an individual who is employed by a program, or who performs services for a program on a contractual basis, including—

(i) school leaders;

(ii) teachers;

(iii) specialized instructional support personnel;

(iv) paraprofessionals; or

(v) other staff.

(B) EXCLUSION.—Notwithstanding subparagraph (A), program personnel shall not include a law enforcement officer or a school security guard.

(10) PROTECTION AND ADVOCACY SYSTEM.—The term ''protection and advocacy system'' means a protection and advocacy system established under section 143 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15043).

(11) SCHOOL SECURITY GUARD.—The term ''school security guard'' means an individual who is not a sworn law enforcement officer and who is re-

sponsible for addressing one or more of the following safety and crime prevention activities in and around a program:

(A) Assisting program personnel in safety incidents.

(B) Educating students in crime and illegal drug use prevention and safety.

(C) Developing or expanding community justice initiatives for students.

(D) Training students in conflict resolution and supporting restorative justice programs.

(E) Serving as a liaison between the program and outside agencies, including other law enforcement agencies.

(F) Screening students or visitors to the program for prohibited items.

(12) SECLUSION.—The term ''seclusion'' means the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving, except that such term does not include a time out.

(13) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(14) SPECIAL EDUCATION SCHOOL.—The term ''special education school'' means a school that fo-

cuses primarily on serving the needs of students with disabilities under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(15) STATE-APPROVED CRISIS INTERVENTION TRAINING PROGRAM.—The term ''State-approved crisis intervention training program'' means a training program approved by a State and the Secretary that, at a minimum, provides—

(A) training in evidence-based techniques shown to be effective in the prevention of physical restraint;

(B) evidence-based skills training related to positive behavioral interventions and supports, safe physical escort, conflict prevention, understanding antecedents, deescalation, and conflict management;

(C) training in evidence-based techniques shown to be effective in keeping both school personnel and students safe when imposing physical restraint;

(D) training in first aid and cardiopulmonary resuscitation;

(E) information describing State policies and procedures to ensure compliance with section 101; and

(F) certification for school personnel, law enforcement officers, and school security guards in the techniques and skills described in subparagraphs (A) through (D), which shall be required to be renewed on a periodic basis.

(16) STUDENT.—The term ''student'' means—

(A) for purposes of title I, a student enrolled in a program; and

(B) for purposes of title II, a student enrolled in an elementary school or secondary school.

(17) TIME OUT.—

(A) IN GENERAL.—The term ''time out'' means a behavior management technique that may involve the separation of the student from the group or classroom in a non-locked setting.

(B) CLARIFICATION.—The term ''time out'' does not include—

(i) seclusion; or

(ii) a separation of the student described in subparagraph (A) from which

such student is physically or otherwise prohibited from leaving.

TITLE I—PROHIBITIONS ON RESTRAINT AND SECLUSION AND ADDITIONAL REQUIREMENTS

SEC. 101. PROHIBITION, ADDITIONAL REQUIREMENTS.

(a) PROHIBITION.—No student shall be subjected to unlawful seclusion or restraint by program personnel, a law enforcement officer, or a school security guard, while attending any program that receives Federal financial assistance.

(b) UNLAWFUL SECLUSION OR RESTRAINT DEFINED.—

(1) IN GENERAL.—In this section, the term ''unlawful seclusion or restraint'' means—

(A) seclusion;

(B) mechanical restraint;

(C) chemical restraint;

(D) physical restraint or physical escort that is life threatening, that restricts breathing, or that restricts blood flow to the brain, including prone and supine restraint;

(E) physical restraint that is contraindicated based on the student's disability,

health care needs, or medical or psychiatric condition, as documented in—

(i) a health care directive or medical management plan;

(ii) a behavior intervention plan;

(iii) an individualized education program or an individualized family service plan (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401));

(iv) a plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.); or

(v) another relevant record made available to the State or program involved; or

(F) physical restraint that is not in compliance with subsection (e)(1).

(2) NOT INCLUDED.—The term ''unlawful seclusion or restraint'' shall not include—

(A) a time out; or

(B) a device implemented by trained school personnel, or utilized by a student, for the spe-

cific and approved therapeutic or safety purposes for which such devices were designed and, if applicable, prescribed, provided that such devices are not used to purposefully cause a student pain as a means of behavioral modification, including—

(i) restraints for medical immobilization;

(ii) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; or

(iii) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

(c) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—A student who has been subjected to unlawful seclusion or restraint in violation of subsection (a), or the parent of such student, may file a civil action against the program under which the violation is alleged to have occurred in an appropriate district court of the United States or in State

court for declaratory judgement, injunctive relief, compensatory relief, attorneys' fees, or expert fees.

(2) LIMITATION ON LIABILITY.—Program personnel shall not be liable to any person in a proceeding described in paragraph (1) or in an arbitration proceeding for a violation of subsection (a).

(3) NO SOVEREIGN IMMUNITY.—No program shall be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal or State court for a violation of subsection (a) of this section.

(d) ENFORCEMENT.—

(1) INVESTIGATIONS.—

(A) IN GENERAL.—The Secretary shall address any complaints alleging a violation of subsection (a) by an entity described in subparagraphs (A) or (C) of section 2(8) for an appropriate investigation.

(B) HEAD START.—The Secretary of Health and Human Services shall address any complaints alleging a violation of subsection (a) by an entity described in section 2(8)(B) for an appropriate investigation.

(2) WITHHOLDING PAYMENTS.—In the event a student has been subjected to unlawful seclusion or

restraint in violation of subsection (a), the Secretary shall withhold from the program under which the violation occurred, in whole or in part, further payments (including payments for administrative costs) in accordance with section 455 of the General Education Provisions Act (20 U.S.C. 1234d).

(3) HEAD START PROGRAMS.—The Secretary of Health and Human Services, in coordination with the Secretary, shall—

(A) ensure that entities described in section 2(8)(B) meet the requirements described in subsection (e);

(B) promulgate regulations with respect to how the reporting requirements described in section 202(b) shall be carried out with respect to Head Start agencies (including Early Head Start agencies) under the Head Start Act (42 U.S.C. 9801 et seq.); and

(C) in the event a student served by a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.) has been subjected to unlawful seclusion or restraint in violation of subsection (a), withhold from the program under which the

violation occurred, in whole or in part, further payments (including payments for administrative costs) in accordance with section 646 of the Head Start Act (42 U.S.C. 9841).

(e) ADDITIONAL REQUIREMENTS.—The Secretary shall ensure that each program that receives Federal financial assistance meets the following requirements:

(1) PHYSICAL RESTRAINT.—The use of physical restraint by any program personnel, a school security guard, or a law enforcement officer shall be considered in compliance with the requirements of this subsection only if each of the following requirements are met:

(A) The student's behavior poses an imminent danger of serious physical injury to the student, program personnel, a school security guard, a law enforcement officer, or another individual.

(B) Before using physical restraint, less restrictive interventions would be ineffective in stopping such imminent danger of serious physical injury.

(C) Such physical restraint is imposed by—

(i) program personnel, a school security guard, or a law enforcement officer trained and certified by a State-approved crisis intervention training program; or

(ii) program personnel, a school security guard, or a law enforcement officer not trained and certified as described in clause (i), in the case of a rare and clearly unavoidable emergency circumstance when program personnel, a school security guard, or a law enforcement officer trained and certified as described in clause (i) is not immediately available due to the unforeseeable nature of the emergency circumstance.

(D) Such physical restraint ends immediately upon the cessation of the imminent danger of serious physical injury to the student, any program personnel, a school security guard, a law enforcement officer, or another individual.

(E) The physical restraint does not interfere with the student's ability to communicate in the student's primary language or primary mode of communication.

(F) During the physical restraint, the least amount of force necessary is used to protect the student or others from the threatened injury.

(2) TRAINING.—Each State, in consultation with program officials and State Directors of Head Start Collaboration (as described in section 642B of the Head Start Act (42 U.S.C. 9837b)), shall ensure that a sufficient number of program personnel are trained and certified by a State-approved crisis intervention training program to meet the needs of the specific student population in each program.

(3) PROHIBITION ON PLANNED INTERVENTION.—The use of physical restraint as a planned intervention shall not be written into a student's education plan, individual safety plan, behavioral intervention plan, or individualized education program (as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401)), except that a program may establish policies and procedures for use of physical restraint in program safety or crisis plans, provided that such a plan is not specific to any individual student.

(4) PROCEDURES FOLLOWING PHYSICAL RESTRAINT.—Each program shall establish procedures to be followed after an incident involving the imposi-

tion of physical restraint upon a student, which shall include each of the following:

(A) Procedures to provide to the parent of the student, with respect to such incident—

(i) an immediate verbal or electronic communication, as soon as is practicable and not later than the same day as the incident; and

(ii) written notification, as soon as is practicable, and not later than 24 hours after the incident that shall include, at minimum—

(I) a description of the incident, including precipitating events;

(II) positive interventions used prior to restraint;

(III) the length of time of restraint; and

(IV) a description of the serious physical injury of the student or others that occurred or was about to occur that necessitated the use of restraint.

(B) A meeting between parents of the student and the program, as soon as is practicable,

and not later than 5 school days following the incident (unless such meeting is delayed by written mutual agreement of the parent and program)—

(i) which meeting shall include, at a minimum—

(I) the parent of such student;

(II) the student involved (if appropriate);

(III) the program personnel, law enforcement officer, or school security guard who imposed the restraint;

(IV) a teacher of such student;

(V) a program leader of such student; and

(VI) an expert on behavior interventions, who may be a special education teacher;

(ii) the purpose of which shall be to discuss the incident, as described by both the student and the program personnel, law enforcement officer, or school security guard involved, including—

(I) any precipitating events;

(II) how the incident occurred; and

(III) prior positive behavioral interventions and supports used to de-escalate the situation; and

(iii) which meeting shall include—

(I) the discussion of proactive strategies to prevent future need for the use of physical restraint;

(II)(aa) for a student identified as eligible to receive accommodations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.), or accommodations or special education or related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), a discussion of the need for a functional behavioral assessment and a behavior intervention plan; or

(bb) for a student not identified as eligible to receive accommodations under the provisions of law described

in item (aa), evidence of a referral for such accommodations or special education or related services, or documentation of the basis for declining to make such a referral for the student; and

(III) providing to the parent, for use during the meeting, a written statement from each adult witness who was in the proximity of the student immediately before and during the time of the physical restraint, but was not directly involved in such restraint.

TITLE II—STATE PLAN, REPORTING REQUIREMENTS, AND GRANTS FOR STATE EDUCATIONAL AGENCIES

SEC. 201. DEFINITIONS.

In this title:

(1) SCHOOL.—The term ''school'' means an elementary school, secondary school, or special education school.

(2) HEAD START PROGRAM.—The term ''Head Start program'' means a program that serves chil-

dren who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.).

SEC. 202. STATE PLAN.

(a) STATE PLAN.—Not later than 2 years after the date of enactment of this Act and each year thereafter, each State educational agency shall submit to the Secretary a State plan that provides—

(1) demonstrations to the Secretary that the State has in effect—

(A) State policies and procedures that comply with section 101, including with respect to State-approved crisis intervention training programs; and

(B) a State mechanism to effectively monitor and enforce compliance with section 101;

(2) a description of the State policies and procedures, including a description of the State-approved crisis intervention training programs in such State and how the State ensures accurate and timely reporting to the Department of Education;

(3) a description of the State plan to ensure program personnel, students, and parents (including private school personnel, students, and parents) are aware of the State policies and procedures;

(4) a description of the State activities described in the State's plan under section 1111(g) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(g)) that reduce aversive behavioral interventions and improve school conditions;

(5) for public comment—

(A) not less than 60 days prior to submission of the State plan, which shall provide stakeholders with the opportunity to provide written comments on the State plan, which shall be included in the State plan, including—

(i) how the policies and procedures comply with section 101;

(ii) the policies and procedures related to State-approved crisis intervention programs;

(iii) training provided to program personnel; and

(iv) notification procedures for parents; and

(B) notice of which shall be provided in an accessible format, which is compliant with the most recent Web Content Accessibility Guidelines, or successor guidelines, for stakeholders and posted on a website;

(6) written response to the public comments provided by stakeholders under paragraph (5); and

(7) a description of State oversight of schools that includes—

(A) monitoring use of restraint in the schools;

(B) monitoring compliance with the prohibition on seclusion in schools;

(C) not less than every 6 months, discussions between State educational agency officials and school leaders to examine the progress of reducing the use of physical restraint in schools;

(D) not less than annual site visits to the special education schools in the State; and

(E) technical assistance to focus on the use of proactive, positive behavioral interventions and supports.

(b) REPORTING.—

(1) REPORTING REQUIREMENTS.—Not later than 2 years after the date of enactment of this Act, and each year thereafter—

(A) each State educational agency shall (in compliance with the requirements of section 444 of the General Education Provisions Act

(commonly known as the Family Educational Rights and Privacy Act of 1974) (20 U.S.C. 1232g)) prepare and submit to the Secretary, and make available to the public, a report that includes the information described in paragraph (2), with respect to each local educational agency, each special education school, and each school not under the jurisdiction of a local educational agency, located in the same State as such State educational agency; and

(B) each Head Start agency (including each Early Head Start agency) designated under the Head Start Act (42 U.S.C. 9831 et seq.) shall prepare and submit to the Secretary and the Secretary of Health and Human Services, and make available to the public, a report that includes the information described in paragraph (2), except that—

(i) such information shall be provided with respect to each program served by the agency and with respect to children enrolled in Head Start programs; and

(ii) the information described in subclause (II)(bb), subclause (III), and sub-

clause (IV) of paragraph (2)(B)(i) shall not be required.

(2) INFORMATION REQUIREMENTS.—

(A) GENERAL INFORMATION REQUIREMENTS.—The report described in paragraph (1) shall include with respect to physical restraint imposed upon students in the preceding full academic or program year—

(i) the total number of such incidents;

(ii) the total number of students upon whom such physical restraint was imposed;

(iii) in the case in which such physical restraint was imposed more than twice on a student, the number of times such student or child was so restrained; and

(iv) the total number of such incidents where the use of physical restraint is referred to law enforcement.

(B) DISAGGREGATION.—

(i) GENERAL DISAGGREGATION REQUIREMENTS.—The information described in subparagraph (A) shall be disaggregated as follows:

(I) With respect to the total number of incidents in which physical

restraint was imposed upon a student, disaggregated by each of the following:

(aa) By those that resulted in injury.

(bb) By those that resulted in death.

(cc) By those in which the program personnel imposing physical restraint was not trained and certified, as described in section 101(e)(1)(C)(i).

(II) By the demographic characteristics of all students upon whom physical restraint was imposed, including disaggregation—

(aa) by each major racial and ethnic group, economically disadvantaged students as compared to students who are not economically disadvantaged, English proficiency status, and sex;

(bb) by students with an individualized education program

under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d));

(cc) by students who have a plan developed pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(dd) by students who have a plan developed pursuant to title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 et seq.).

(III) By the total number of incidents of physical restraint in which a law enforcement officer or school security guard was involved, which may include the law enforcement officer or school security guard imposing the physical restraint or assisting with the physical restraint.

(IV) By the type of school, including disaggregation by special education school, charter school, and private school.

(ii) UNDUPLICATED COUNT; EXCEPTION.—The information and disaggregation required under subparagraphs (A) and (B) shall—

(I) be carried out in a manner to ensure an unduplicated count of the total number of incidents in the preceding full academic year in which physical restraint was imposed upon a student; and

(II) not be required in a case in which the number of students in a category would reveal personally identifiable information about an individual student.

SEC. 203. GRANTS FOR STATE EDUCATIONAL AGENCIES.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From the amount appropriated under section 307 to carry out this section for a fiscal year, the Secretary shall award grants to State educational agencies with an application approved under subsection (c), on the basis of their relative need, as determined with the Secretary in accordance with paragraph (2), to assist the State educational agencies in—

(A) establishing, implementing, and enforcing the policies and procedures that ensure compliance with section 101;

(B) improving State and local capacity to collect and analyze data related to physical restraint; and

(C) improving school climate and culture by implementing schoolwide positive behavioral interventions and supports, mental health supports, restorative justice programs, trauma-informed care, and crisis and de-escalation interventions.

(2) DETERMINATION OF RELATIVE NEED.—In determining the relative need of State educational agencies under paragraph (1), the Secretary shall consider—

(A) the physical restraint and seclusion incidents that occurred at a school served by the State educational agencies for the most recent academic year for which data are available;

(B) the capacity needs of the State educational agency and the local educational agencies served by the State educational agency to collect and analyze the data described in paragraph (1)(B); and

(C) whether the State educational agency has been carrying out the activities described in paragraph (1)(C) and, if so, how the activities are being implemented.

(3) REPORT.—The Secretary shall provide a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives not later than 60 days after the date the Secretary awards a grant to a State under this section detailing why the State was chosen and how the criteria described in subparagraphs (A), (B), and (C) of paragraph (2) were applied to select the State.

(b) DURATION OF GRANT.—A grant under this section shall be awarded to a State educational agency for a 3-year period.

(c) APPLICATION.—

(1) IN GENERAL.—To be eligible to receive a grant under this section, each State educational agency desiring a grant shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(2) CONTENTS.—Each application submitted under paragraph (1) shall include—

(A) the total number of incidents in which physical restraint was imposed upon students for the most recent school year;

(B) the total number of incidents in which seclusion was imposed upon students for the most recent school year;

(C) a description of the State's data collection policies and procedures;

(D) a description of crisis intervention or prevention trainings used in the State to prevent or reduce physical restraint and seclusion (if applicable);

(E) a description of statewide initiatives regarding school climate and culture (if applicable), such as schoolwide positive behavioral interventions and supports, mental health supports, restorative justice programs, trauma-informed care, and crisis and de-escalation interventions;

(F) a description of activities to be funded under the grant and the goals of such activities, including how the activities will eliminate seclusion and reduce and prevent physical restraint; and

(G) a description of how the activities under the grant will coordinate and align with current Federal, State, and local policies, programs, or activities regarding seclusion and physical restraint, crisis intervention, and school climate or culture.

(d) AUTHORITY TO MAKE SUBGRANTS.—

(1) IN GENERAL.—A State educational agency receiving a grant under this section may use such grant funds to award subgrants, in the manner determined by the State educational agency, to local educational agencies served by the State educational agency.

(2) APPLICATION.—A local educational agency desiring to receive a subgrant under this section shall submit an application to the applicable State educational agency at such time, in such manner, and containing such information as the State educational agency may require.

(3) EARLY CHILDHOOD EDUCATION PROGRAM PARTICIPATION.—A local educational agency receiving subgrant funds under this section shall ensure that educators working in an early childhood education program, as defined in section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003),

may participate, to the extent practicable, on an equitable basis in activities supported by subgrant funds under this section that are trainings on developmentally appropriate practices for meeting the needs of young children.

(e) PRIVATE SCHOOL PARTICIPATION.—

(1) IN GENERAL.—A local educational agency receiving subgrant funds under this section shall, after timely and meaningful consultation with appropriate private school officials, ensure that private school personnel may participate, on an equitable basis, in activities supported by subgrant funds under this section.

(2) PUBLIC CONTROL OF FUNDS.—The control of grant and subgrant funds under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer such funds, materials, equipment, and property.

(3) PROVISION OF SERVICES.—

(A) IN GENERAL.—Services described under this section shall be provided—

(i) by employees of a public agency; or

(ii) through contract by the public agency with an individual or entity.

(B) INDEPENDENCE; PUBLIC AGENCY.—An individual or entity described in subparagraph (A)(ii) that contracts with a public agency to provide services under this section shall be independent of a private school and of any religious organization. Individuals providing such services shall be employed by and under the control and supervision of the public agency.

(C) COMMINGLING OF FUNDS PROHIBITED.—Funds used to provide services under this section shall not be commingled with non-Federal funds.

(f) REQUIRED ACTIVITIES.—A State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section shall use such grant or subgrant funds to carry out the following:

(1) Establishing and implementing policies to prohibit seclusion, mechanical restraint, chemical restraint, and other forms of prohibited restraint in schools, consistent with section 101.

(2) Implementing and evaluating strategies and procedures to prevent seclusion and to prevent and

reduce physical restraint in schools, consistent with such policies.

(3) Providing professional development, training, and certification for school personnel to comply with such policies.

(4) Analyzing the information included in a report prepared under section 202(b) to identify student, school personnel, and school needs related to preventing seclusion, and preventing and reducing the use of physical restraint.

(5) Providing training to school security guards and, as appropriate, school personnel, on how to comply with education and civil rights laws, including the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), when interacting with students with disabilities, including, when conducting disciplinary actions involving students with disabilities.

(g) ADDITIONAL AUTHORIZED ACTIVITIES.—In addition to the required activities described in subsection (f), a State educational agency receiving a grant, or a local educational agency receiving a subgrant, under this section may use such grant or subgrant funds for one or more of the following:

(1) Developing and implementing high-quality professional development and training programs to implement evidence-based systematic approaches to schoolwide positive behavioral interventions and supports, including improving coaching, facilitation, and training capacity for administrators, school leaders, teachers, specialized instructional support personnel, paraprofessionals, and other staff.

(2) Providing technical assistance to implement evidence-based systematic approaches to schoolwide positive behavioral interventions and supports, including technical assistance for data-driven decision making related to behavioral supports and interventions in the classroom.

(3) Researching, evaluating, and disseminating high-quality evidence-based programs and activities that implement schoolwide positive behavioral interventions and supports with fidelity.

(4) Supporting other local positive behavioral interventions and supports implementation activities consistent with this subsection.

(5) Developing, implementing, and providing technical assistance to support evidence-based programs that reduce the likelihood of physical restraint, such as mental health supports, restorative

justice programs, trauma-informed care, and crisis and de-escalation interventions.

(h) EVALUATION AND REPORT.—Each State educational agency receiving a grant under this section shall, at the end of the 3-year grant period for such grant—

(1) evaluate the State's progress toward the elimination of seclusion and the prevention and reduction of physical restraint in the schools located in the State, consistent with section 101;

(2) submit to the Secretary a report on such progress; and

(3) publish such report on the State educational agency website in an accessible format.

TITLE III—GENERAL PROVISIONS

SEC. 301. NATIONAL ASSESSMENT.

(a) NATIONAL ASSESSMENT.—The Secretary shall carry out a national assessment to determine the effectiveness of this Act, which shall include—

(1) analyzing data related to incidents of physical restraint in schools and programs that serve children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.) (referred to in this title as ''Head Start programs'');

(2) analyzing the effectiveness of Federal, State, and local efforts to eliminate seclusion and prevent and reduce the number of physical restraint incidents in schools and Head Start programs;

(3) identifying the types of programs and services that have demonstrated the greatest effectiveness in eliminating and preventing seclusion and preventing and reducing the number of physical restraint incidents in schools and Head Start programs; and

(4) identifying evidence-based personnel training models with demonstrated success in preventing seclusion and preventing and reducing the number of physical restraint incidents in schools and Head Start programs, including models that emphasize positive behavioral interventions and supports and de-escalation techniques over physical intervention.

(b) REPORT.—The Secretary shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives—

(1) not later than 3 years after the date of the enactment of this Act, an interim report that summarizes the preliminary findings of the assessment described in subsection (a); and

(2) not later than 5 years after the date of the enactment of this Act, a final report of the findings of the assessment.

SEC. 302. PROTECTION AND ADVOCACY SYSTEMS.

(a) NOTIFICATION.—In a case in which physical injury or death of a student or of a child enrolled in a Head Start program occurs in conjunction with the use of seclusion or physical restraint or any intervention used to control behavior at a school or Head Start program, the local educational agency serving such school or the agency administering a Head Start program under the Head Start Act (42 U.S.C. 9801 et seq.) shall have procedures to—

(1) notify, in writing, not later than 24 hours after such injury or death occurs—

(A) the State educational agency, or in the case of an agency administering a Head Start program, the appropriate official at the Department of Health and Human Services;

(B) the local law enforcement agency; and

(C) the relevant protection and advocacy system; and

(2) provide any information that the protection and advocacy system may require.

(b) RESTATEMENT OF AUTHORITY.—Protection and advocacy systems shall have the same authorities and

rights provided under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.) with respect to protections provided for students or children enrolled in Head Start programs under this Act when such students or children are otherwise eligible to be clients of the protection and advocacy system, including investigating, monitoring, and enforcing such protections.

SEC. 303. SCHOOLS OPERATED OR FUNDED BY THE DEPARTMENT OF THE INTERIOR OR THE DEPARTMENT OF DEFENSE.

(a) SCHOOLS OPERATED OR FUNDED BY DEPARTMENT OF THE INTERIOR.—The Secretary of the Interior shall promulgate regulations to ensure that schools operated or funded by the Department of the Interior comply with the requirements of title I and section 202(b).

(b) SCHOOLS OPERATED OR FUNDED BY THE DEPARTMENT OF DEFENSE.—The Secretary of Defense shall promulgate regulations to ensure that schools operated or funded by the Department of Defense Education Activity or otherwise operated or funded by the Department of Defense for the education of military-connected dependents (as described in subparagraph (B) or (D)(i) of section 7003(a)(1) of the Elementary and Secondary Education

Act of 1965 (20 U.S.C. 7703(a)(1))) comply with the requirements of title I and section 202(b).

SEC. 304. RULE OF CONSTRUCTION.

Subject to section 101(e), nothing in this Act shall be construed to prohibit a sworn law enforcement officer with probable cause from arresting a student for violating a Federal or State criminal law.

SEC. 305. APPLICABILITY TO PRIVATE SCHOOLS AND HOME SCHOOLS.

(a) PRIVATE SCHOOLS.—Nothing in this Act shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program or activity supported, in whole or in part, with Federal funds.

(b) HOME SCHOOLS.—Nothing in this Act shall be construed to—

(1) affect a home school, whether or not a home school is treated as a private school or home school under State law; or

(2) consider parents who are schooling a child at home as program personnel.

SEC. 306. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconsti-

tutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act for fiscal year 2024 and each succeeding fiscal year.

○

Legal Aid and Solutions not Suspensions

Testimony on Misuse of Seclusion

Seclusion Working Group

November 19th, 2025

1. **Defining "Misuse" or "Illegal" Seclusion.**

Senator Seeberger seems to be focused on the *illegal* use of seclusion, that is, seclusion that occurs outside the confines of current Minnesotan statutes. The illegal use of seclusion is broad and can include:

- Seclusion is used for non-emergency situations (disciplinary, non-compliance).
- Seclusion does not end when the emergency is over.
- Parent or guardian is not informed of the seclusion.
- Seclusion takes place in a non-registered room.
- Seclusion takes place in a room that does not meet specifications under Minn. Stat. 125A.0942, subd. 3(a)(6).
- No one is consistently observing the child while they are secluded.
- Seclusion is not properly documented (e.g., multiple seclusions occur but only one is
- documented, documentation does not include all requirements under law, etc.)
- Seclusion takes place for a child outside the age limits (under grade 3).
- Meals, restroom, or water are withheld during seclusion.
- Seclusion is conducted by a person who has not been trained on the use of restrictive procedures.

Seclusion is also illegal or misused when it impacts certain populations more than others. MDE and nationwide data consistently demonstrate that seclusion disproportionately affects boys of color with disabilities, particularly autism or emotional behavioral disabilities.

The U.S. Department of Education and U.S. Department of Justice, under both Republican and Democratic administrations, have repeatedly found seclusion of students violates the Americans with Disabilities Act (ADA) and other federal civil rights laws in multiple states, most recently in July 2025. "Students with disabilities should never be discriminated against by experiencing the trauma of seclusion or improper restraint," said Assistant Attorney General Harmeet K. Dhillon of the Justice Department's Civil Rights Division, in the July 2025 statement.

See resources attached and linked:

PDF: *Exploring the Disproportionate Use of Restraint and Seclusion Among Students with Disabilities, Boys, and Students of Color* (Katsiyannis, et. al. 2020)

Civil Rights Division | Combating Improper Seclusion in Schools

Restraints and Seclusion: Schools | National Alliance on Mental Illness (NAMI)

2. Quantitative Data.

Because the illegal use of seclusion is broadly defined, there is no quantitative data or resource on the illegal use of seclusion in Minnesotan schools. The only indication of illegal use of seclusion is when a parent or guardian reports the allegedly illegal use to an authority figure. This requires the parent or guardian to:

a) know seclusion was used on their child (the school or child reports it to the parent);
b) know their child's legal rights regarding seclusion;
c) know their legal options for holding the school district accountable or remedying the situation;
d) wanting to pursue legal action;
e) having the resources to pursue legal action; and
f) actually contacting or following through with legal action.

With language, cultural, financial, and disability barriers, the vast majority of families never report illegal seclusion or pursue legal action at all. As long as the onus is on families to report illegal seclusion, it will go dramatically under-counted.

Families who *do* know seclusion was used and believe it was used illegally may contact MDE, an advocate, or an attorney. There are both private and non-profit advocates and attorneys, but they all keep different quantitative data on the calls they receive about illegal seclusion. There is no central database.

One recipient of these calls is Minnesota Disability Law Center, the protection and advocacy agency for the state of Minnesota. During the last school year, Minnesota Disability Law Center has received about one case a month with allegations of secluding a child in school. All clients were boys with autism. Some also had diagnoses of EBD, ADHD, and/or developmental delay. Of the five clients, three clients were white and two were children of color. Of the five clients, four were age 10 or younger. All of the clients' parents pulled them out of that school following the seclusion for at least a period of time; several went to homeschooling. Our preliminary analysis was that all five of these cases may have valid legal claims for "illegal" seclusion under MN Stat. 125A.0942. Three of the five clients opted to pursue legal action.

Another recipient of these calls is PACER Center, which provides free advocacy services to families of children with disabilities. PACER Center reports that a majority of their received calls are about

behavior/discipline, and a substantial number of those are about restraint/seclusion, but they do not keep codified data on illegal use of seclusion in schools.

3. **Qualitative Data**

There is plenty of qualitative data regarding the illegal use of seclusion. The Seclusion Working Group has received testimony from.

4. **Suggestions for Data Collection**

Nationwide data demonstrates that seclusion is underreported, and that which is reported, shows significant disproportionate use on boys of color with disabilities. We are attaching some resources to be shared with the group on the "misuse" of seclusion.

Data indicates the reporting of seclusion is far below what is actually occuring. We support the gathering of data across the state to better assess which seclusion incidents are "illegal." Some suggestions include:

- Identification of which school buildings – not just the district – that use seclusion every school year to identify if a specific building over-relies on seclusion
- Identification of staff who used seclusion to identify staff members who may not be appropriately trained or who may be over-relying on seclusion
- Identification of student who was secluded, with demographic information, to identify students who are overly targeted for seclusion
- Duration of each incident of seclusion
- A checkbox on MDE complaints for restraint & seclusion so it's easy to track those complaints

Legislative Coordinating Commission

Centennial Office Building
St. Paul, MN 55155
Phone: 651-296-0099
www.lcc.mn.gov

Date: August 13th, 2025

To: Members of the Seclusion Working Group

From: Andrew George

RE: Legislative Open Meeting Law

Legislative Open Meeting Law Memorandum

As a legislative subdivision, the Seclusion Working Group should abide by the Legislative Open Meeting Law (Minn. Stat. § 3.055), which provides that its meetings "shall be open to the public" and defines meeting as any instance where (1) "a quorum is present," and (2) "action is taken regarding a matter within jurisdiction of the body." The law allows for meetings to be conducted through "interactive television," including the use of online video conferencing tools.

The Seclusion Working Group has 16 members. Under the Legislative Open Meeting Law, a quorum of the Working Group is 9 members. If the Working Group establishes subcommittees, a quorum is a majority of the members of that group. Further, a member participating in a meeting remotely via "interactive television" (Zoom) is considered present at the meeting for purposes of determining a quorum.

Districts Reporting Use of Seclusion in 2024-25 School Year:

Anoka-Hennepin Public School District
Austin Albert Lea Area Special Education Cooperative (AALASEC)
Bemidji Public School District
Benton-Stearns Education District
Brainerd Public School District
Buffalo-Hanover-Montrose Schools
Burnsville-Eagan-Savage School District
Cambridge-Isanti Public School District
Centennial Public School District
Eden Prairie Public School District
Elk River Public School District
Faribault Public School District
Forest Lake Public School District
Goodhue County Education District
Intermediate School District 287
Intermediate School District 917
Mahnomen Public School District
Mid-State Education District
Minnewaska School District
Minnesota Valley Education District
Moorhead Area Public School District
North St. Paul-Maplewood-Oakdale Public School District
Northeast College Prep
Northeast Metro 916
Northfield Public School District
PACT Charter School
Princeton Public School District
Region 6 and 8-SW/WC Service Cooperative
River Bend Education District
Rochester Public School District
Rosemount-Apple Valley-Eagan Public Schools
Roseville Public School District
South St. Paul Public School District
Southern Minnesota Education Consortium
Southwest Metro Intermediate 288
Spring Lake Park Public Schools
St. Cloud Public School District
St. Croix River Education District
St. Francis Area Schools
Wayzata Public School District
Winona Area Public School District
Zumbro Education District

List of local education agencies (LEAs) from FY20 through 25 with violations related to seclusion in IDEA State complaints (in alphabetical order):

1. Anoka-Hennepin Public School District 0011-01
2. Bemidji Public School District 0031-01
3. Brainerd Public School District 0181-01
4. Burnsville-Eagan-Savage School District 0191-01
5. Centennial Public School District 0012-01
6. Crosby-Ironton Public School District 0182-01
7. Intermediate School District 0917-06
8. Little Falls Community Schools 0482-01
9. Minnesota Internship Center 4201-06
10. Moorhead Area Public School District 0012-01
11. Osseo Public School District 0279-01
12. Richfield Public School District 0280-01
13. River Bend Education District 6049-61
14. St. Cloud Public School District 0742-01
15. St. Francis Area Schools 0015-01

Minnesota Local Education Agency Seclusion Rooms

District Name	School	Room Status	Locking Mechanism
Aitkin Public School District	Rippleside Elementary	Registered	N
Anoka-Hennepin School District	Adams Elementary	Inactive	Y
Anoka-Hennepin School District	Adams Elementary	Inactive	Y
Anoka-Hennepin School District	Andover Elementary	Inactive	Y
Anoka-Hennepin School District	Andover Elementary	Inactive	Y
Anoka-Hennepin School District	Andover Elementary	Inactive	Y
Anoka-Hennepin School District	Andover Senior High	Inactive	Y
Anoka-Hennepin School District	Anoka High School	Inactive	Y
Anoka-Hennepin School District	Anoka Middle School For The Arts	Inactive	Y
Anoka-Hennepin School District	Anoka Middle School For The Arts	Inactive	Y
Anoka-Hennepin School District	Anoka Middle School For The Arts	Inactive	Y
Anoka-Hennepin School District	Anoka Senior High	Inactive	N
Anoka-Hennepin School District	Blaine Senior High	Inactive	Y
Anoka-Hennepin School District	Bridges	Inactive	Y
Anoka-Hennepin School District	Brookside Elementary	Inactive	Y
Anoka-Hennepin School District	Brookside Elementary	Inactive	Y
Anoka-Hennepin School District	Brookside Elementary	Inactive	Y
Anoka-Hennepin School District	Champlin Park High School	Inactive	Y
Anoka-Hennepin School District	Coon Rapids High School	Inactive	N
Anoka-Hennepin School District	Coon Rapids High School	Inactive	Y
Anoka-Hennepin School District	Coon Rapids Middle School	Inactive	Y
Anoka-Hennepin School District	Coon Rapids Senior High	Inactive	Y
Anoka-Hennepin School District	Crooked Lake Elementary	Inactive	Y
Anoka-Hennepin School District	Crooked Lake Elementary	Inactive	Y
Anoka-Hennepin School District	Dayton Elementary	Inactive	Y
Anoka-Hennepin School District	Eisenhower Elementary	Inactive	Y
Anoka-Hennepin School District	Evergreen Park Elementary	Inactive	Y
Anoka-Hennepin School District	Evergreen Park Elementary	Inactive	Y
Anoka-Hennepin School District	Hamilton Elementary	Inactive	Y
Anoka-Hennepin School District	Hoover Elementary	Inactive	Y
Anoka-Hennepin School District	Jackson Middle	Inactive	Y
Anoka-Hennepin School District	Jackson Middle	Inactive	Y

Anoka-Hennepin School District	Johnsville Elementary	Inactive	Y
Anoka-Hennepin School District	Johnsville Elementary	Inactive	Y
Anoka-Hennepin School District	Madison Elementary	Inactive	Y
Anoka-Hennepin School District	Madison Elementary	Inactive	Y
Anoka-Hennepin School District	McKinley Elementary	Inactive	Y
Anoka-Hennepin School District	Monroe Elementary	Inactive	Y
Anoka-Hennepin School District	Monroe Elementary	Inactive	Y
Anoka-Hennepin School District	Monroe Elementary	Inactive	Y
Anoka-Hennepin School District	Monroe Elementary	Inactive	Y
Anoka-Hennepin School District	Morris Bye Elementary	Inactive	Y
Anoka-Hennepin School District	Morris Bye Elementary	Inactive	Y
Anoka-Hennepin School District	Morris Bye Elementary	Inactive	Y
Anoka-Hennepin School District	Morris Bye Elementary	Inactive	Y
Anoka-Hennepin School District	Morris Bye Elementary	Inactive	Y
Anoka-Hennepin School District	Northdale Middle	Inactive	Y
Anoka-Hennepin School District	Northdale Middle	Inactive	Y
Anoka-Hennepin School District	Oak View Middle	Inactive	Y
Anoka-Hennepin School District	Oxbow Creek Elementary	Inactive	Y
Anoka-Hennepin School District	Oxbow Creek Elementary	Inactive	Y
Anoka-Hennepin School District	Oxbow Creek Elementary	Inactive	Y
Anoka-Hennepin School District	RTLC @LO Jacob	Registered	Y
Anoka-Hennepin School District	RTLC @LO Jacob	Registered	Y
Anoka-Hennepin School District	Ramsey Elementary	Inactive	Y
Anoka-Hennepin School District	Ramsey Elementary	Inactive	Y
Anoka-Hennepin School District	River Trail Learning C Verndale	Inactive	Y
Anoka-Hennepin School District	River Trail Learning Ctr @ Lo Jacob	Inactive	Y
Anoka-Hennepin School District	River Trail Learning Ctr @ Lo Jacob	Inactive	Y
Anoka-Hennepin School District	River Trail Learning Ctr @ Lo Jacob	Inactive	N
Anoka-Hennepin School District	Rum River Elementary	Inactive	Y
Anoka-Hennepin School District	Sunrise Elementary	Inactive	Y
Anoka-Hennepin School District	University Elementary	Inactive	Y
Anoka-Hennepin School District	University Elementary	Inactive	Y
Anoka-Hennepin School District	University Elementary	Inactive	Y
Anoka-Hennepin School District	Wilson Elementary	Inactive	Y
Centennial Public School District	Golden Lake Elementary	Registered	Y
Columbia Heights Public School Dist	Valley View Elementary	Inactive	Y

St. Francis Area Schools	Crossroads School	Inactive	Y
St. Francis Area Schools	Crossroads School & Voc. center	Inactive	Y
St. Francis Area Schools	East Bethel Community El.	Registered	Y
SPRING LAKE PARK PUBLIC SCHOOLS	Centerview Elementary	Registered	Y
SPRING LAKE PARK PUBLIC SCHOOLS	Northpoint Elementary	Registered	Y
SPRING LAKE PARK PUBLIC SCHOOLS	Westwood Intermediate School	Registered	Y
DETROIT LAKES PUBLIC SCHOOL DIST.	Detroit Lakes Middle	Inactive	Y
DETROIT LAKES PUBLIC SCHOOL DIST.	Detroit Lakes Senior High	Inactive	Y
DETROIT LAKES PUBLIC SCHOOL DIST.	Detroit Lakes Senior High	Inactive	Y
DETROIT LAKES PUBLIC SCHOOL DIST.	Roosevelt Elementary	Inactive	N
DETROIT LAKES PUBLIC SCHOOL DIST.	Rossman Elementary	Inactive	Y
FRAZEE-VERGAS PUBLIC SCHOOL DIST.	Frazee Elementary	Inactive	N
FRAZEE-VERGAS PUBLIC SCHOOL DIST.	Frazee Elementary	Inactive	N
Bemidji Public School District	Bemidji Middle	Registered	N
Bemidji Public School District	Bemidji Middle	Registered	N
Bemidji Public School District	Bemidji Senior High	Registered	N
Bemidji Public School District	Bemidji Senior High	Inactive	N
Bemidji Public School District	Central Elementary	Registered	N
Bemidji Public School District	First City	Inactive	N
Bemidji Public School District	First City	Inactive	N
Bemidji Public School District	Horace May	Registered	N
Bemidji Public School District	Horace May	Registered	N
Bemidji Public School District	Horace May Elementary	Registered	N
Bemidji Public School District	Horace May Elementary	Inactive	N
Bemidji Public School District	J. W. Smith	Inactive	N
Bemidji Public School District	Lincoln Elementary	Registered	N
Bemidji Public School District	Lincoln Elementary	Registered	N
Bemidji Public School District	Northern	Inactive	N
Bemidji Public School District	Northern	Inactive	N
Bemidji Public School District	Paul Bunyan Center	Registered	N
BLACKDUCK PUBLIC SCHOOL DISTRICT	Blackduck Secondary	Inactive	N
BLACKDUCK PUBLIC SCHOOL DISTRICT	Blackduck Secondary	Inactive	N
RED LAKE PUBLIC SCHOOL DISTRICT	Red Lake Elementary	Inactive	N
RED LAKE PUBLIC SCHOOL DISTRICT	Red Lake Elementary	Inactive	N
FOLEY PUBLIC SCHOOL DISTRICT	Foley Intermediate Elementary	Registered	N
MANKATO PUBLIC SCHOOL DISTRICT	Dakota Meadows	Inactive	Y

MANKATO PUBLIC SCHOOL DISTRICT	Dakota Meadows	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	ECC	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	ECC	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Eagle Lake	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	East HS	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	East JH	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Franklin	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Franklin	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Franklin Elementary	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Futures	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Futures Program	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Garfield	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Kennedy	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Mankato West Senior High	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Mankato West Senior High	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Monroe Elementary	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Roosevelt	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Rosa Parks	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Rosa Parks	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Rosa Parks Elementary School	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Rosa Parks Elementary School	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	Washington	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	West HS	Inactive	Y
MANKATO PUBLIC SCHOOL DISTRICT	West HS	Inactive	Y
NEW ULM PUBLIC SCHOOL DISTRICT	Washington Elementary	Inactive	Y
Walker-Hackensack-Akeley Schl. Dist	Walker-Hackensack-Akeley Sec.	Inactive	N
CASS LAKE-BENA PUBLIC SCHOOLS	Cass Lake-Bena Elementary	Inactive	N
CASS LAKE-BENA PUBLIC SCHOOLS	Cass Lake-Bena Elementary	Inactive	N
CASS LAKE-BENA PUBLIC SCHOOLS	Cass Lake-Bena Middle School	Inactive	N
CASS LAKE-BENA PUBLIC SCHOOLS	Cass Lake-Bena Middle School	Inactive	N
MONTEVIDEO PUBLIC SCHOOL DISTRICT	Maria Sanford Elementary School	Inactive	N
MONTEVIDEO PUBLIC SCHOOL DISTRICT	Montevideo Middle	Inactive	N
MONTEVIDEO PUBLIC SCHOOL DISTRICT	Montevideo Middle	Inactive	N
MONTEVIDEO PUBLIC SCHOOL DISTRICT	Montevideo Senior High	Inactive	N
MONTEVIDEO PUBLIC SCHOOL DISTRICT	Ramsey Elementary	Inactive	N
North Branch Area Public Schools	Sunrise River Elementary	Inactive	Y

Moorhead Area Public Schools	Ellen Hopkins Elementary	Inactive	Y
Moorhead Area Public Schools	Ellen Hopkins Elementary	Registered	Y
Moorhead Area Public Schools	Horizon Middle School	Inactive	Y
Moorhead Area Public Schools	Moorhead High School	Inactive	Y
Moorhead Area Public Schools	R. asp Elementary	Registered	Y
Moorhead Area Public Schools	S.G.Reinertsen Elementary	Registered	Y
MINNESOTA STATE ACADEMIES	Pollard Hall	Inactive	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Baxter Elementary	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Garfield Elementary	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Harrison Elementary	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Lowell Elementary	Registered	Y
BRAINERD PUBLIC SCHOOL DISTRICT	Riverside Elementary	Registered	Y
Crosby-Ironton Public School Dist.	Crosby-Ironton Secondary	Registered	Y
Crosby-Ironton Public School Dist.	Cuyuna Range Elementary	Registered	Y
Burnsville-Eagan-Savage Schools	Edward Neill Elementary	Registered	Y
Burnsville-Eagan-Savage Schools	HIDDEN VALLEY ELEMENTARY	Inactive	Y
FARMINGTON PUBLIC SCHOOL DISTRICT	North Trail Elementary	Inactive	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
ROSEMOUNT-APPLE VALLEY-EAGAN	Dakota Ridge School	Registered	N
INVER GROVE HEIGHTS SCHOOLS	Salem Hills Elementary	Registered	Y
Albert Lea Public School District	Lakeview Elementary	Inactive	Y

CANNON FALLS PUBLIC SCHOOL DISTRICT	Wastedo	Inactive	Y
Red Wing Public School District	Sunnyside Elementary	Registered	Y
Bloomington Public Schools	Hillcrest Elementary	Inactive	Y
Bloomington Public Schools	Olson Elementary School	Inactive	Y
Bloomington Public Schools	Poplar Bridge Elementary	Inactive	Y
Bloomington Public Schools	Ridgeview Elementary	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Cedar Ridge Elementary School	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Central Middle School	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Eden Lake Elementary	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Forest Hills Elementary	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Forest Hills Elementary	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Oak Point/Eagle Heights Immersion	Inactive	Y
EDEN PRAIRIE PUBLIC SCHOOL DISTRICT	Prairie View Elementary School	Inactive	Y
OSSEO PUBLIC SCHOOL DISTRICT	Crest View Elementary	Inactive	Y
OSSEO PUBLIC SCHOOL DISTRICT	Edinbrook Elementary	Inactive	Y
OSSEO PUBLIC SCHOOL DISTRICT	Ts Oak View Elementary	Inactive	Y
OSSEO PUBLIC SCHOOL DISTRICT	Woodland Elementary	Inactive	Y
RICHFIELD PUBLIC SCHOOL DISTRICT	Centennial Elementary School	Inactive	Y
RICHFIELD PUBLIC SCHOOL DISTRICT	Richfield Middle School	Inactive	Y
RICHFIELD PUBLIC SCHOOL DISTRICT	Richfield STEM	Registered	Y
RICHFIELD PUBLIC SCHOOL DISTRICT	Sheridan Hills	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	Meadow Ridge Elementary School	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	Meadow Ridge Elementary School	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	Sunset Hill Elementary	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	Sunset Hill Elementary	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	Sunset Hill Elementary	Inactive	Y
WAYZATA PUBLIC SCHOOL DISTRICT	West Middle School	Inactive	Y
Intermediate School District 287	Sandburg Education Center	Inactive	N
PARK RAPIDS PUBLIC SCHOOL DISTRICT	Park Rapids Area Century Elementary	Inactive	Y
PARK RAPIDS PUBLIC SCHOOL DISTRICT	Park Rapids Area Century Middle	Inactive	Y
PARK RAPIDS PUBLIC SCHOOL DISTRICT	Park Rapids Area Century Middle	Inactive	Y
GRAND RAPIDS PUBLIC SCHOOL DISTRICT	Southwest Elementary	Inactive	N
MARSHALL PUBLIC SCHOOL DISTRICT	Park Side Elementary	Inactive	N
MARSHALL PUBLIC SCHOOL DISTRICT	Southview Elementary	Registered	N
MARSHALL PUBLIC SCHOOL DISTRICT	West Side Elementary	Inactive	N
MARSHALL PUBLIC SCHOOL DISTRICT	West Side Elementary	Inactive	N

MAHNOMEN PUBLIC SCHOOL DISTRICT	Mahnomen Elementary	Registered	N
MAHNOMEN PUBLIC SCHOOL DISTRICT	Mahnomen Secondary	Registered	N
MAHNOMEN PUBLIC SCHOOL DISTRICT	Mahnomen Secondary	Registered	N
Waubun-Ogema-White Earth Schools	Ogema Elementary	Inactive	N
Waubun-Ogema-White Earth Schools	Waubun High School	Inactive	N
Litchfield Public School District	Lake Ripley Elementary	Inactive	N
Litchfield Public School District	Litchfield Middle	Inactive	N
PRINCETON PUBLIC SCHOOL DISTRICT	North Elementary	Inactive	Y
PRINCETON PUBLIC SCHOOL DISTRICT	Princeton Intermediate School	Registered	Y
PRINCETON PUBLIC SCHOOL DISTRICT	Princeton Middle	Registered	Y
PRINCETON PUBLIC SCHOOL DISTRICT	Princeton Middle School	Inactive	N
PRINCETON PUBLIC SCHOOL DISTRICT	South Elementary	Inactive	Y
ONAMIA PUBLIC SCHOOL DISTRICT	MLA	Inactive	Y
Austin Public School District	Austin High School Annex	Inactive	N
Austin Public School District	Austin High School Annex	Inactive	N
Austin Public School District	Banfield Elementary	Inactive	N
Austin Public School District	Banfield Elementary	Inactive	N
Austin Public School District	Banfield Elementary	Registered	N
Austin Public School District	Southgate Elementary	Registered	N
Austin Public School District	Southgate Elementary	Registered	N
Austin Public School District	Sumner Elementary	Inactive	N
LYLE PUBLIC SCHOOL DISTRICT	Lyle Public School	Inactive	N
Southland Public School District	Southland HighSchool	Inactive	N
ST. PETER PUBLIC SCHOOL DISTRICT	South Elementary	Inactive	N
WORTHINGTON PUBLIC SCHOOL DISTRICT	Intermediate School	Registered	Y
WORTHINGTON PUBLIC SCHOOL DISTRICT	Prairie Elementary	Registered	Y
WORTHINGTON PUBLIC SCHOOL DISTRICT	Worthington Senior High School	Inactive	Y
Rochester Public School District	Ben Franklin Elementary School	Registered	Y
Rochester Public School District	Bishop Elementary	Registered	Y
Rochester Public School District	Century High School	Inactive	Y
Rochester Public School District	Educational Services Center	Registered	Y
Rochester Public School District	Franklin Elementary	Registered	Y
Rochester Public School District	Gage Elementary	Inactive	Y
Rochester Public School District	Hoover Elementary	Registered	Y
Rochester Public School District	Kellogg Middle	Inactive	Y
Rochester Public School District	Longfellow El.	Inactive	Y

Rochester Public School District	Overland Elementary School	Inactive	Y
Rochester Public School District	Riverside Central Elementary	Inactive	Y
Rochester Public School District	Rochester Phoenix Academy	Registered	Y
Rochester Public School District	Rochester Phoenix Academy	Registered	Y
Rochester Public School District	Rochester Phoenix Academy	Registered	Y
Rochester Public School District	Rochester Phoenix Academy	Registered	Y
Rochester Public School District	Rochester Phoenix Academy	Registered	Y
Rochester Public School District	Rochester Phoenix Academy	Inactive	Y
Rochester Public School District	Rochester Phoenix Academy	Inactive	Y
Rochester Public School District	Washington Elementary	Registered	Y
PERHAM-DENT PUBLIC SCHOOL DISTRICT	Prairie Wind Middle	Inactive	Y
PERHAM-DENT PUBLIC SCHOOL DISTRICT	Prairie Wind Middle	Inactive	Y
PINE CITY PUBLIC SCHOOL DISTRICT	Vision	Inactive	N
Crookston Public School District	Highland Elementary	Registered	N
Crookston Public School District	Washington Elementary	Inactive	N
Mounds View Public School District	Bridges Building	Registered	Y
Mounds View Public School District	Mounds View Bridges Program	Inactive	Y
Mounds View Public School District	Pinewood El.	Inactive	Y
North St. Paul-Maplewood Oakdale	HSI TLC I	Inactive	N
North St. Paul-Maplewood Oakdale	Harmony Learning Center	Inactive	Y
North St. Paul-Maplewood Oakdale	Webster K-12	Registered	Y
North St. Paul-Maplewood Oakdale	Webster K-12	Registered	Y
North St. Paul-Maplewood Oakdale	Webster K-12	Registered	Y
Saint Paul Public Schools	Battle Creek Learning Center	Inactive	Y
Saint Paul Public Schools	Battle Creek Learning Center	Inactive	Y
Saint Paul Public Schools	Battle Creek Middle	Inactive	Y
Saint Paul Public Schools	Benjamin E Mays Magnet	Inactive	Y
Saint Paul Public Schools	Bruce F Vento Learning Center	Inactive	Y
Saint Paul Public Schools	Bruce F Vento Learning Center	Inactive	Y
Saint Paul Public Schools	Frost Lake Learning Center	Inactive	Y
Saint Paul Public Schools	Frost Lake Learning Center	Inactive	Y
Saint Paul Public Schools	Hancock Learning Center	Inactive	Y
Saint Paul Public Schools	Hancock Learning Center	Inactive	Y
Saint Paul Public Schools	Highwood Hills Learning Center	Inactive	Y
Saint Paul Public Schools	Highwood Hills Learning Center	Inactive	Y
Saint Paul Public Schools	Maxfield Learning Center	Inactive	Y

Saint Paul Public Schools	Maxfield Magnet Elementary	Inactive	Y
Saint Paul Public Schools	Murray Junior High	Inactive	Y
Saint Paul Public Schools	Obama Learning Center	Inactive	Y
Saint Paul Public Schools	Obama Learning Center	Inactive	Y
Saint Paul Public Schools	Ramsey Junior High	Inactive	Y
Saint Paul Public Schools	Rivereast Program	Inactive	Y
Saint Paul Public Schools	Rivereast Program	Inactive	Y
Saint Paul Public Schools	Rivereast Program	Inactive	Y
Saint Paul Public Schools	Rondo Learning Center	Inactive	Y
Saint Paul Public Schools	Rondo Learning Center	Inactive	Y
FARIBAULT PUBLIC SCHOOL DISTRICT	Focus	Inactive	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Jefferson Elementary	Inactive	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Jefferson Elementary	Registered	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Lincoln Elementary	Inactive	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Lincoln Elementary	Registered	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Reflections	Inactive	N
FARIBAULT PUBLIC SCHOOL DISTRICT	Reflections	Inactive	N
Shakopee Public School District	Eagle Creek Elementary	Inactive	N
Shakopee Public School District	Jackson Elementary	Inactive	N
Shakopee Public School District	Red Oak Elementary	Inactive	N
BECKER PUBLIC SCHOOL DISTRICT	Becker Intermediate Elementary	Inactive	N
BIG LAKE PUBLIC SCHOOL DISTRICT	Independence Elementary	Inactive	N
Elk River Public School District	Meadowvale Elementary	Registered	N
Elk River Public School District	Meadowvale Elementary	Registered	N
ST. CLOUD PUBLIC SCHOOL DISTRICT	Roosevelt Education Center	Registered	Y
MORRIS PUBLIC SCHOOL DISTRICT	Morris Area Elementary	Registered	Y
BENSON PUBLIC SCHOOL DISTRICT	Benson Day Treatment	Inactive	N
BENSON PUBLIC SCHOOL DISTRICT	Benson Secondary	Inactive	N
BENSON PUBLIC SCHOOL DISTRICT	Northside Elementary	Inactive	N
BENSON PUBLIC SCHOOL DISTRICT	Northside Elementary	Inactive	N
WASECA PUBLIC SCHOOL DISTRICT	Waseca Intermediate School	Registered	N
WASECA PUBLIC SCHOOL DISTRICT	Waseca Senior High	Registered	N
Forest Lake Public School District	Forest Lake Elementary	Registered	Y
Forest Lake Public School District	Forest View El.	Registered	Y
Forest Lake Public School District	Scandia El.	Inactive	Y
Forest Lake Public School District	Southwest Jr.	Inactive	Y

WINONA AREA PUBLIC SCHOOL DISTRICT	Jefferson Elementary	Registered	Y
WINONA AREA PUBLIC SCHOOL DISTRICT	Jefferson Elementary	Inactive	Y
WINONA AREA PUBLIC SCHOOL DISTRICT	Washington-Kosciusko Elementary	Registered	Y
WINONA AREA PUBLIC SCHOOL DISTRICT	Winona Middle	Registered	Y
WINONA AREA PUBLIC SCHOOL DISTRICT	Winona Middle	Inactive	Y
Buffalo-Hanover-Montrose Schools	Buffalo Senior High	Inactive	Y
Buffalo-Hanover-Montrose Schools	Northwinds Elementary	Registered	N
Buffalo-Hanover-Montrose Schools	Tatanka Elementary	Inactive	Y
MAPLE LAKE PUBLIC SCHOOL DISTRICT	Maple Lake Elementary	Inactive	Y
ROCKFORD PUBLIC SCHOOL DISTRICT	Rockford Elementary Arts Magnet Sch	Registered	Y
Cambridge-Isanti Public School Dist	Brookside Academy	Registered	Y
Cambridge-Isanti Public School Dist	Brookside Academy	Registered	Y
Cambridge-Isanti Public School Dist	Brookside Academy	Registered	Y
Cambridge-Isanti Public School Dist	Brookside Academy	Registered	Y
Cambridge-Isanti Public School Dist	Cambridge Intermediate School	Registered	Y
Cambridge-Isanti Public School Dist	Cambridge Middle School	Registered	Y
Cambridge-Isanti Public School Dist	Cambridge Middle School	Inactive	Y
Cambridge-Isanti Public School Dist	Cambridge Primary School	Registered	Y
Cambridge-Isanti Public School Dist	Cambridge-Isanti High School	Inactive	Y
Cambridge-Isanti Public School Dist	Isanti Intermediate	Inactive	Y
Cambridge-Isanti Public School Dist	Isanti Intermediate School	Registered	Y
Cambridge-Isanti Public School Dist	Isanti Primary School	Registered	Y
Cambridge-Isanti Public School Dist	School For All Seasons	Registered	Y
MILACA PUBLIC SCHOOL DISTRICT	Milaca Elementary School	Inactive	Y
MILACA PUBLIC SCHOOL DISTRICT	Milaca Secondary High	Inactive	Y
Northeast Metro 916	ALP at Capitol View	Inactive	Y
Northeast Metro 916	ALP at Capitol View	Inactive	Y
Northeast Metro 916	ALP at Capitol View	Inactive	Y
Northeast Metro 916	ALP at Capitol View	Inactive	Y
Northeast Metro 916	ALP at Capitol View	Inactive	Y
Northeast Metro 916	ALP at John Glen	Inactive	Y
Northeast Metro 916	ALP at Valley Crossing	Inactive	Y
Northeast Metro 916	ALP at Valley Crossing	Inactive	Y
Northeast Metro 916	CAP at Capitol View	Inactive	Y
Northeast Metro 916	CID at Otter Lake	Inactive	Y
Northeast Metro 916	Elementary Alp At Oneka	Inactive	Y

Northeast Metro 916	Karner Blue Education Center	Registered	Y
Northeast Metro 916	Karner Blue Education Center	Registered	Y
Northeast Metro 916	Karner Blue Education Center	Registered	Y
Northeast Metro 916	Pankalo	Registered	Y
Northeast Metro 916	Quora High School	Registered	Y
Northeast Metro 916	South Campus 916	Registered	Y
Northeast Metro 916	South Campus Program	Registered	Y
Northeast Metro 916	Transition Program at Bellaire	Registered	Y
Northeast Metro 916	Transition Program at Bellaire	Registered	Y
INTERMEDIATE SCHOOL DISTRICT 917	917 Sun	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	917 Sun	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	917 Sun	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	917 Sun	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Alliance Education Center	Registered	Y
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar	Registered	N

INTERMEDIATE SCHOOL DISTRICT 917	Cedar-SUN	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar-SUN	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Cedar-SUN	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Concord Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Registered	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	Lebanon Education Center	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	SUN - Apple Valley	Inactive	N
INTERMEDIATE SCHOOL DISTRICT 917	SUN - Cedar	Inactive	N

FERGUS FALLS AREA SP. ED. COOP.	Lakes Area Education Center	Inactive	Y
FERGUS FALLS AREA SP. ED. COOP.	Mckinley Elementary	Inactive	Y
FERGUS FALLS AREA SP. ED. COOP.	Roosevelt Education Center	Registered	Y
FERGUS FALLS AREA SP. ED. COOP.	Roosevelt Education Center	Registered	Y
Meeker and Wright Special Education	Eastern Wright: MAWSECO	Registered	Y
Meeker and Wright Special Education	Journeys Alternative Program	Registered	Y
Region 6 and 8-SW/WC Service Coop	Belview Learning Center	Inactive	Y
Region 6 and 8-SW/WC Service Coop	Belview Learning Ctr Bridges	Inactive	Y
Region 6 and 8-SW/WC Service Coop	Belview Learning Ctr Bridges	Inactive	Y
Region 6 and 8-SW/WC Service Coop	Cosmos Learning Center	Inactive	N
Region 6 and 8-SW/WC Service Coop	Cosmos Learning Center	Inactive	N
Region 6 and 8-SW/WC Service Coop	Cosmos Learning Center	Inactive	Y
Region 6 and 8-SW/WC Service Coop	North Central Learning Center	Inactive	Y
Region 6 and 8-SW/WC Service Coop	North Central Learning Center	Inactive	N
Region 6 and 8-SW/WC Service Coop	North Central Learning Center	Inactive	N
Region 6 and 8-SW/WC Service Coop	Red Rock Ridge Setting Iv	Inactive	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	Inactive	N
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Marshall	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Marshall	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Montevideo	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Montevideo	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Pipestone	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	Inactive	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	Inactive	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	Registered	Y
Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	Registered	Y

MINNEWASKA SCHOOL DISTRICT	Minnewaska Area Elementary	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Area WIN Academy	Registered	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Area WIN Academy	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Area WIN Academy	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Area WIN Academy	Registered	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Area WIN Academy	Registered	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Day Treatment Program	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Day Treatment Program	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Day Treatment Program	Inactive	Y
MINNEWASKA SCHOOL DISTRICT	Minnewaska Secondary	Inactive	Y
PINE RIVER-BACKUS SCHOOL DISTRICT	Pine River-Backus Elementary	Registered	Y
PINE RIVER-BACKUS SCHOOL DISTRICT	Pine River-Backus High School	Registered	Y
LUVERNE PUBLIC SCHOOL DISTRICT	Southwestern Youth Services	Inactive	N
CLEARBROOK-GONVICK SCHOOL DISTRICT	Clearbrook-Gonvick Secondary	Inactive	N
WEST CENTRAL AREA	West Central Area High School	Inactive	Y
LE SUEUR-HENDERSON SCHOOL DISTRICT	Park Elementary	Inactive	N
LE SUEUR-HENDERSON SCHOOL DISTRICT	Park Elementary	Inactive	N
BIRD ISLAND-OLIVIA-LAKE LILLIAN	BOLD Elementary School	Inactive	N
WIN-E-MAC SCHOOL DISTRICT	Win-E-Mac School District 2609	Inactive	N
CEDAR MOUNTAIN SCHOOL DISTRICT	Cedar Mountain Elementary	Inactive	N
CEDAR MOUNTAIN SCHOOL DISTRICT	Cedar Mountain Elementary	Inactive	N
MORRIS AREA PUBLIC SCHOOLS	Morris Area Elementary	Registered	Y
REDWOOD AREA SCHOOL DISTRICT	Redwood Middle/High School	Registered	N
REDWOOD AREA SCHOOL DISTRICT	Redwood Valley Middle/High School	Inactive	N
REDWOOD AREA SCHOOL DISTRICT	Redwood Valley Middle/High School	Inactive	N
REDWOOD AREA SCHOOL DISTRICT	Reede Gray Elementary	Inactive	N
Ortonville Public Schools	Ortonville Public Schools	Inactive	Y
Ortonville Public Schools	Ortonville Public Schools	Registered	Y
PACT CHARTER SCHOOL	PACT Charter School	Inactive	Y
PACT CHARTER SCHOOL	PACT Charter Secondary	Inactive	Y
Seven Hills Preparatory Academy	Seven Hills Classical Academy	Inactive	N
LEARNING FOR LEADERSHIP CHARTER	Learning For Leadership Charter	Registered	Y
LIONSGATE ACADEMY	Lionsgate Academy - Lynx Program	Inactive	Y
LIONSGATE ACADEMY	Lionsgate Academy Lynx	Inactive	Y
ZUMBRO EDUCATION DISTRICT	Zumbro Education District	Registered	Y
Hiawatha Valley Education District	Caledonia Elementary	Registered	N

Hiawatha Valley Education District	Caledonia Elementary	Registered	N
Hiawatha Valley Education District	River Valley Academy	Registered	Y
Minnesota Valley Education District	MVED	Inactive	N
Minnesota Valley Education District	MVED	Registered	N
Minnesota Valley Education District	MVED MVCS	Registered	N
RIVER BEND EDUCATION DISTRICT	River Bend Education District	Registered	Y
RIVER BEND EDUCATION DISTRICT	River Bend Education District	Registered	Y
RIVER BEND EDUCATION DISTRICT	River Bend Education District	Registered	Y
Goodhue County Education District	River Bluff Education Center	Registered	Y
Goodhue County Education District	Wastedo	Inactive	Y
RUM RIVER SPECIAL EDUCATION COOP	Rum River North	Inactive	Y
RUM RIVER SPECIAL EDUCATION COOP	Rum River North	Inactive	Y
RUM RIVER SPECIAL EDUCATION COOP	Rum River South	Inactive	Y
RUM RIVER SPECIAL EDUCATION COOP	Rum River South	Inactive	Y
RUM RIVER SPECIAL EDUCATION COOP	rum river south	Inactive	Y
Southern MN Education Consortium	RESET	Registered	Y
Cannon Valley Special Education Coo	Alexander Learning Academy	Inactive	N
Austin Albert Lea Area Special Educ	Oakland Education Center	Registered	N
Austin Albert Lea Area Special Educ	Oakland Education Center	Inactive	N
Austin Albert Lea Area Special Educ	Oakland Education Center	Registered	N
Mid-State Education District	Mid-State North	Inactive	Y
Mid-State Education District	Morrison County Learning Center	Inactive	Y
Mid-State Education District	SUN Program	Registered	N
Mid-State Education District	WIN-Elementary School	Registered	N
Mid-State Education District	WIN-High School	Registered	N
Mid-State Education District	WIN-Middle School	Registered	N

MDE Follow-up Data

Number of school districts that reported the use of seclusion for the last four years (in descending order):

24-25: 42 school districts

23-24: 50 school districts

22-23: 54 school districts

21-22: 56 school districts

Total number of seclusions (in descending order)

24-25: 1871

23-24: 3449

22-23: 3990

21-22: 4702

MAWSECO

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Serving the following programs:
Cornerstones Program • Eastern Wright Program • Journeys Program • Sholund School • STEP Program
TREK Program • Village Ranch Alternative Program • Wings Program • Birth - 2

Members of the Seclusion Working Group:

My name is Melissa Hanson, and I serve as Executive Director of the Meeker and Wright Special Education Cooperative (MAWSECO), a special education cooperative serving seven member school districts in central Minnesota. MAWSECO operates eight specialized programs, including three schools located within residential care and treatment facilities and five Federal Setting IV special education programs. The students in the residential programs within MAWSECO are placed there by court order. The students attending our special education programs are placed by their IEP teams. Our role is to serve students with the most complex educational and behavioral needs; students whose disabilities require intensive, highly structured programming and supports to access education safely.

For many years, MAWSECO has invested heavily in staff training focused on prevention, de-escalation, and emergency response. All staff receive Handle with Care training in crisis prevention, safe physical intervention, and training on legal compliance. Four years ago, we added Ukeru to our Federal Setting IV programs to further reduce the use of restraint and seclusion. Ukeru has proven effective for many students and has meaningfully reduced restrictive interventions across our programs.

Despite these efforts, there are rare but critical situations where seclusion serves as the safest and least harmful emergency response for a student.

When Minnesota's restriction on the use of seclusion for students in grades K-3 went into effect on September 1, 2024, one student in a MAWSECO Federal Setting IV program raised significant concern for their IEP team. This student experienced sudden and severe behavioral escalations without predictable triggers. Even neutral or positive interactions (e.g., a staff member giving feedback such as, "good job") could result in immediate physical aggression. Despite extensive data collection, expert consultation, and consistent implementation of proactive strategies, the team could not identify reliable methods to prevent escalation. This team included highly experienced Setting IV special educators, board-certified behavior analysts (who were also Ukeru and Handle with Care trainers), a licensed mental health professional, a lead teacher who was also a Ukeru trainer, and paraprofessionals trained extensively in crisis response. Our cooperative's lead Ukeru trainer provided regular on-site coaching to ensure fidelity of implementation.

When the student escalated, the student would immediately begin physically attacking staff. Due to the sudden and unpredictable onset of physical aggression, staff and, sometimes other students, in the room were injured. Ukeru blocking strategies were implemented with fidelity but frequently lasted over an hour and often resulted in continued or increased escalation. Physical holds were also ineffective and frequently intensified the student's distress. In contrast, when seclusion was used appropriately as an emergency intervention, the student more quickly de-escalated and more frequently remained regulated. For this student, ***seclusion functioned as a stabilizing intervention, not a punitive one***. It appeared that the lack

of direct contact with others in a quiet, small space with no distractions, may have helped the student to feel secure and seemed to support the student's ability to regulate.

After seclusion was no longer permitted, staff injuries increased, and law enforcement was called regularly to assist in maintaining safety. Emergency medical services were engaged more frequently. These outcomes occurred despite extensive training in trauma-informed practices, neurobiology of stress and trauma, de-escalation techniques, and ongoing professional support and coaching.

Ultimately, the IEP team discussed whether a referral to a residential treatment program was necessary; not solely because the team believed the student required a higher level of care, but because the Federal Setting IV program no longer had access to a critical safety tool that supported this student. The student's parents strongly opposed the placement of their student in a residential program.

This example illustrates some of the potential unintended consequences of removing seclusion entirely from the emergency response toolbox. These consequences include, but are not limited to:

- Increased reliance on prolonged physical holds and blocking techniques
- Higher rates of staff injury
- More frequent involvement of law enforcement and emergency medical services
- Shortened school days
- Increased recommendations to place the student in a more restrictive setting (e.g., home-based or residential placements)

These consequences disproportionately affect students in rural and out-state Minnesota. Residential options, particularly those for elementary-aged students, students with significant aggression, and students with lower cognitive profiles, are extremely limited. Furthermore, most special education placements above Setting IV are privately run so these programs can say no to taking students who do not fit their desired client profile. For many families, Federal Setting IV programs are the highest level of care realistically available within their community. When these programs lose the ability to respond safely to emergencies, students face fewer educational options, greater disruption, and more restrictive placements.

I strongly believe that seclusion, when tightly regulated, carefully monitored, and used only as a last resort in true emergencies, can be an appropriate and necessary intervention for a small number of students. Allowing seclusion supports safety, preserves access to education, and promotes equity for students in rural Minnesota who lack access to alternative services.

I urge policymakers to consider the real-world impact of this restriction and to allow limited, regulated use of seclusion to ensure student and staff safety while maintaining access to appropriate educational placements.

Sincerely,

Melissa Hanson

Melissa Hanson
Executive Director

Melissa Winship – Seclusion Working Group recommendations

Priority Area	Policy Recommendation	Key Action
I. Professional Standard	**Mandate Comprehensive, Neuroscience-Informed Staff Training**	Require annual, standardized, and evidence-based training for all staff on prevention, and safe crisis management . Training must include modules on the neurobiology of stress and trauma, effective de-escalation, and legal compliance.
II. Prevention & Practice	**Require Vetted Alternatives**	Mandate that districts select and implement at least one vetted, evidence-based alternative to seclusion focused on proactive behavioral support and early de-escalation.
III. Resource Allocation	**Provide Targeted Implementation Funding**	Allocate specific, sustained funding to districts to cover costs associated with implementing new alternatives, including dedicated time and resources (e.g., substitute coverage, stipends) for high-quality staff training.
IV. Accountability & Oversight	**Establish Systemic Oversight and Review**	Mandate a standardized, disaggregated data collection system for all seclusion incidents, and require a systemic review process to identify patterns of misuse and implement Corrective Action Plans (CAPs) for high-usage schools.

Named Concern	Suggested Language Solution
Impact of Past or Potential Trauma; contraindications	Require the IEP team to include a mental health professional or practitioner (school psychologist, school social worker, school counselor, licensed school nurse or other licensed mental health provider serving the district). The team must consider contraindications and alternative restrictive procedures to use during an emergency before adding seclusion to a student's IEP/IFSP/BSP.
Informed Parental Consent - Eliminating passive consent for this issue - Parents/caregivers not understanding or being aware of the potential for the use of seclusion in an emergency	The use of seclusion as a restrictive procedure for children in grades 1 through 6 must be explicitly agreed to: - (1) by all parents or guardians with legal decision-making authority regarding the child; - (2) through informed written consent which is separate from any other consent obtained - through the individualized education program or individualized family service plan; - (3) in the parents' or guardians' primary language, following the district's language access plan under section 123B.32, and with all necessary interpretation and cultural supports to ensure adequate understanding of said consent. A parent or guardian's failure to respond to a request for consent must not be considered consent to the use of seclusion.
Disproportionality and Inappropriate use	Limit seclusion to be permitted for students receiving setting 3 or setting 4-level services only. This would prohibit use for the vast majority of students across the state.
Efficacy vs. Effectiveness	Seclusion data (frequency, duration, etc.) must be explicitly reviewed by the IEP team no less than annually or whenever requested by the parent/guardian or the district.
Monitoring & Accountability - Districts not addressing improper use - High rates of use going unaddressed	Continuation of quarterly district-based Restrictive Procedures Oversight Committee meeting requirements Implement an accountability structure similar to the Accountability, Rationale, & Context (ARC) report that is required annually based on Minnesota Test of Academic Skills (MTAS)/Minnesota Alternate Assessment rates. MDE, in consultation with Minnesota Administrators for Special Education (MASE) would set an annual seclusion rate threshold at which they would like districts to be below. They would pull data from Stepwell (just like they do for MTAS from the

	TestWes), compile a data visualization, and send to districts to analyze. If a district is routinely and significantly above the threshold OR their use data is not improving at an acceptable rate, then MDE could allocate additional resources to that building to address needs and provide targeted support.
Improper Use - Pr	Mandatory annual staff training for all special education staff and related services providers: ○ MN Statute 125A.0942 ○ Effects of trauma on the brain and brain state-dependent functioning ○ Effective practices for post-restrictive procedures team debriefing meetings
Lack of preventive and proactive interventions	Continuum of crisis intervention strategies (e.g., CPI and Ukeru) Funding and support for increasing layered supports
Disproportionate Representation	Incorporate restraint and seclusion data into the disproportionality calculation and accountability system.
Question posed: What is a reasonable timeline for the end of seclusion?	Our position is that setting a timeline is arbitrary. Rather, the focus needs to be on building systems and supports that diminish - or eventually eliminate - the need for seclusion. This requires fair and sustainable funding, training, technical support, and resources to ensure equitable opportunities for improvement statewide; with emphasis on greater Minnesota where lack of resources and funding create unique barriers. Direct funding mechanisms should be utilized whenever possible. We recommend leveraging the resources available through the regional service cooperatives and exploring interagency partnerships to enhance technical assistance (CAREI, NAMI, MN School-Based Behavior Analysts, etc.)

Minneapolis Public Schools follow-up information

Seclusion Working Group

- Has there been a need to call law enforcement in the past school year? No, we use our own staff to support. But the Emergency Support Staff are not doing physical holds. They are there to support the school for safety but we do not have a need to call police.
- Which MPS schools use school-linked mental health? All MPS schools have a social worker.
- Has there been a change to complaints or litigation since 2011? Not sure what this is referencing. Our complaints are consistent but none of them are due to restrictive procedures.
- Data or exit interview results on families who have open enrolled out of MPS due to lack of seclusion or supports? We have no data with parents actively open enrolling due to MPS not providing seclusion.
- How many uses of physical restraint/intervention and other restrictive procedures have been used in the past school year? In the 2024-25 school year, MPS staff used restrictive procedures 176 times across all of our 60+ schools and programs. Of those 176 incidents, families filed two complaints with the district regarding the procedure.

125A.0942 STANDARDS FOR RESTRICTIVE PROCEDURES.

Subdivision 1. **Restrictive procedures plan.** (a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:

(1) lists the restrictive procedures the school intends to use;

(2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;

(3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.187, subdivision 4;

(4) describes how the school will monitor and review the use of restrictive procedures, including:

(i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and

(ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; any disproportionate use of restrictive procedures based on race, gender, or disability status; the role of the school resource officer or police in emergencies and the use of restrictive procedures; and documentation to determine if the standards for using restrictive procedures as described in sections 125A.0941 and 125A.0942 are met; and

(5) includes a written description and documentation of the training staff completed under subdivision 5.

(b) Schools annually must publicly identify oversight committee members who must at least include:

(1) a mental health professional, school psychologist, or school social worker;

(2) an expert in positive behavior strategies;

(3) a special education administrator; and

(4) a general education administrator.

Subd. 2. **Restrictive procedures.** (a) Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, behavior analyst certified by the National Behavior Analyst Certification Board, a person with a master's degree in behavior analysis, other licensed education professional, paraprofessional under section 120B.363, or mental health professional under section 245.4871, subdivision 27, who has completed the training program under subdivision 5.

(b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

(c) The district must hold a meeting of the individualized education program or individualized family service plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program, individualized family service plan, or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program, individualized family service plan, or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program or individualized family service plan meeting when the child's individualized education program or individualized family service plan provides for using restrictive procedures in an emergency.

(d) If the individualized education program or individualized family service plan team under paragraph (c) determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the child.

(e) At the individualized education program or individualized family service plan meeting under paragraph (c), the team must review any known medical or psychological limitations, including any medical information the parent provides voluntarily, that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program, individualized family service plan, or behavior intervention plan.

(f) An individualized education program or individualized family service plan team may plan for using restrictive procedures and may include these procedures in a child's individualized education program, individualized family service plan, or behavior intervention plan; however, the restrictive procedures may be used only in response to behavior that constitutes an emergency, consistent with this section. The individualized education program, individualized family service plan, or behavior intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

Subd. 3. **Physical holding or seclusion.** (a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion is not used to discipline a noncompliant child;

(3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

(4) staff directly observes the child while physical holding or seclusion is being used;

(5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released;

(iv) a brief record of the child's behavioral and physical status; and

(v) a brief description of the post-use debriefing that occurred as a result of the use of the physical hold or seclusion;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others; and

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room.

(b) By February 1, 2015, and annually thereafter, stakeholders may, as necessary, recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures and the commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and recommendations to clarify and improve the law governing districts' use of restrictive procedures. The commissioner must consult with interested stakeholders when preparing the report, including representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. Beginning with the 2016-2017 school year, in a form and manner determined by the commissioner, districts must report data quarterly to the department by January 15, April 15, July 15, and October 15 about individual students who have been secluded. By July 15 each year, districts must report summary data on their use of restrictive procedures to the department for the prior school year, July 1 through June 30, in a form and manner determined by the commissioner. The summary data must include information about the use of restrictive procedures, including use of reasonable force under section 121A.582.

Subd. 4. **Prohibitions.** The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under chapter 260E;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso;

(10) prone restraint; and

(11) the use of seclusion on children from birth through grade 3 by September 1, 2024.

Subd. 5. **Training for staff.** (a) To meet the requirements of subdivision 1, staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

(b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The commissioner also must develop and maintain a list of experts to help individualized education program or individualized family service plan teams reduce the use of restrictive procedures. The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

Subd. 6. **Behavior supports; reasonable force.** (a) School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports.

(b) Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379. Any reasonable force used under sections 121A.582; 609.06, subdivision 1; and 609.379 which intends to hold a child immobile or limit a child's movement where body contact is the only source of physical restraint or confines a child alone in a room from which egress is barred shall be reported to the Department of Education as a restrictive procedure, including physical holding or seclusion used by an unauthorized or untrained staff person.

(c) By February 1, 2024, the commissioner, in cooperation with stakeholders, must make recommendations to the legislature for urgently ending seclusion in Minnesota schools. The commissioner must consult with interested stakeholders, including parents of students who have been secluded or restrained; advocacy organizations; legal services providers; special education directors; teachers; paraprofessionals; intermediate school districts and cooperative units as defined under section 123A.24, subdivision 2; school boards; day treatment providers; county social services; state human services department staff; mental health professionals; autism experts; and representatives of groups disproportionately affected by restrictive procedures, including People of Color and people with disabilities. The recommendations must include specific dates for ending seclusion by grade or facility. The recommendations must identify existing resources and the new resources necessary for staff capacity, staff training, children's supports, child mental health services, and schoolwide collaborative efforts.

History: *2009 c 96 art 3 s 11; 1Sp2011 c 11 art 3 s 2,12; 2012 c 146 s 2,3; 2013 c 116 art 5 s 4; 2014 c 312 art 17 s 1; 1Sp2015 c 3 art 5 s 15; 2016 c 189 art 29 s 7,8; 2018 c 182 art 1 s 33; 1Sp2020 c 2 art 8 s 17; 2023 c 55 art 7 s 8*

From Crisis to Care: How Schools Support Students with Dignity

Audrey Allorie, BCaBA, NE Metro Intermediate District 916
Jenna French-Greff, M.S., BCBA, LBA, NE Metro Intermediate District 916
Justin Hoelscher, M.S., Central Intake & Due Process Coordinator, Intermediate District 917
Cara McGlynn, MSW, LICSW, NE Metro Intermediate District 916
Adrienne Turzynski, M.S., BCBA, LBA, Intermediate District 917

Learning Target

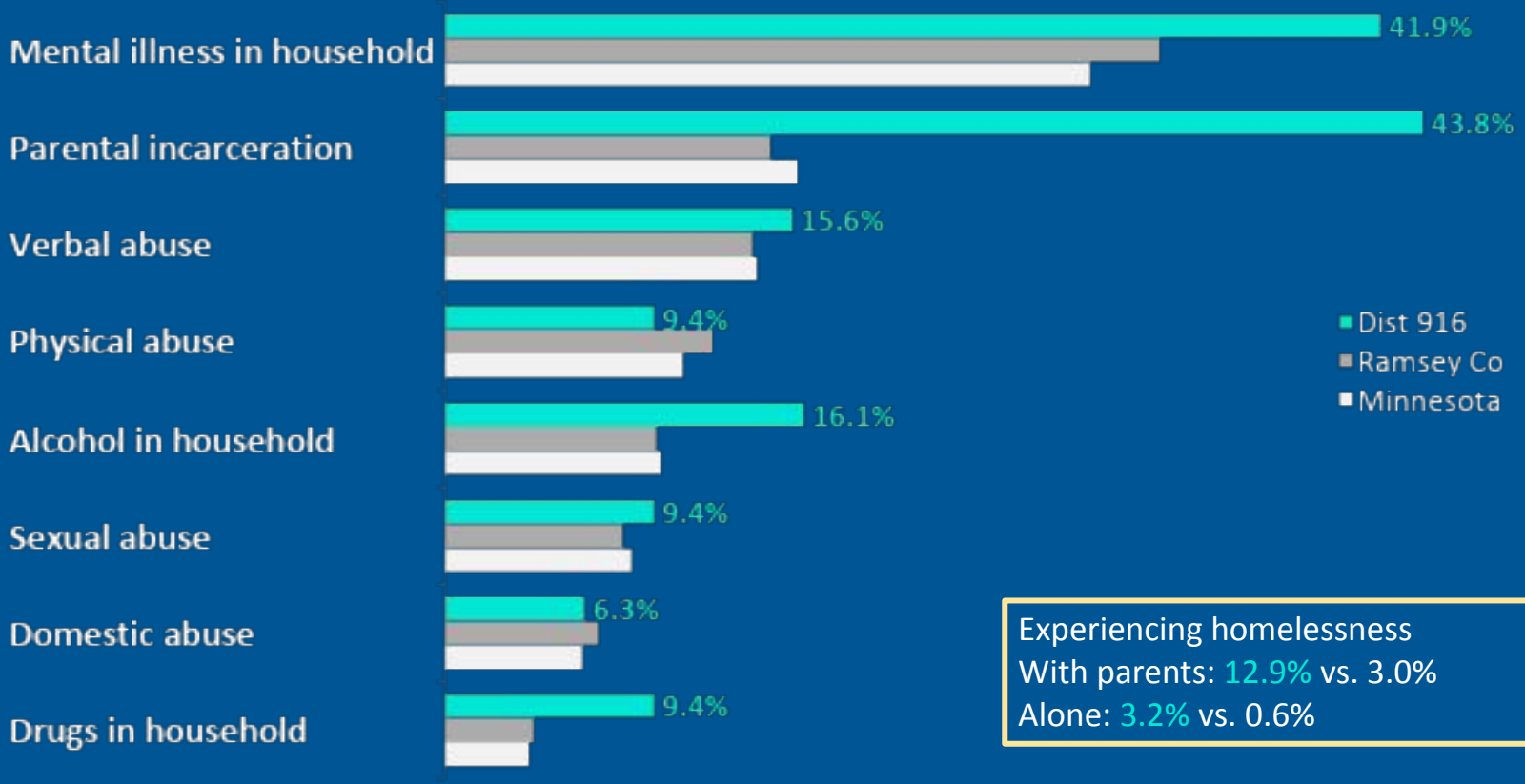
Analyze the role of seclusion within the continuum of care, emphasizing prevention, de-escalation, and recovery as priorities.

Background

2022 Minnesota Student Survey data

Frequency of ACE categories

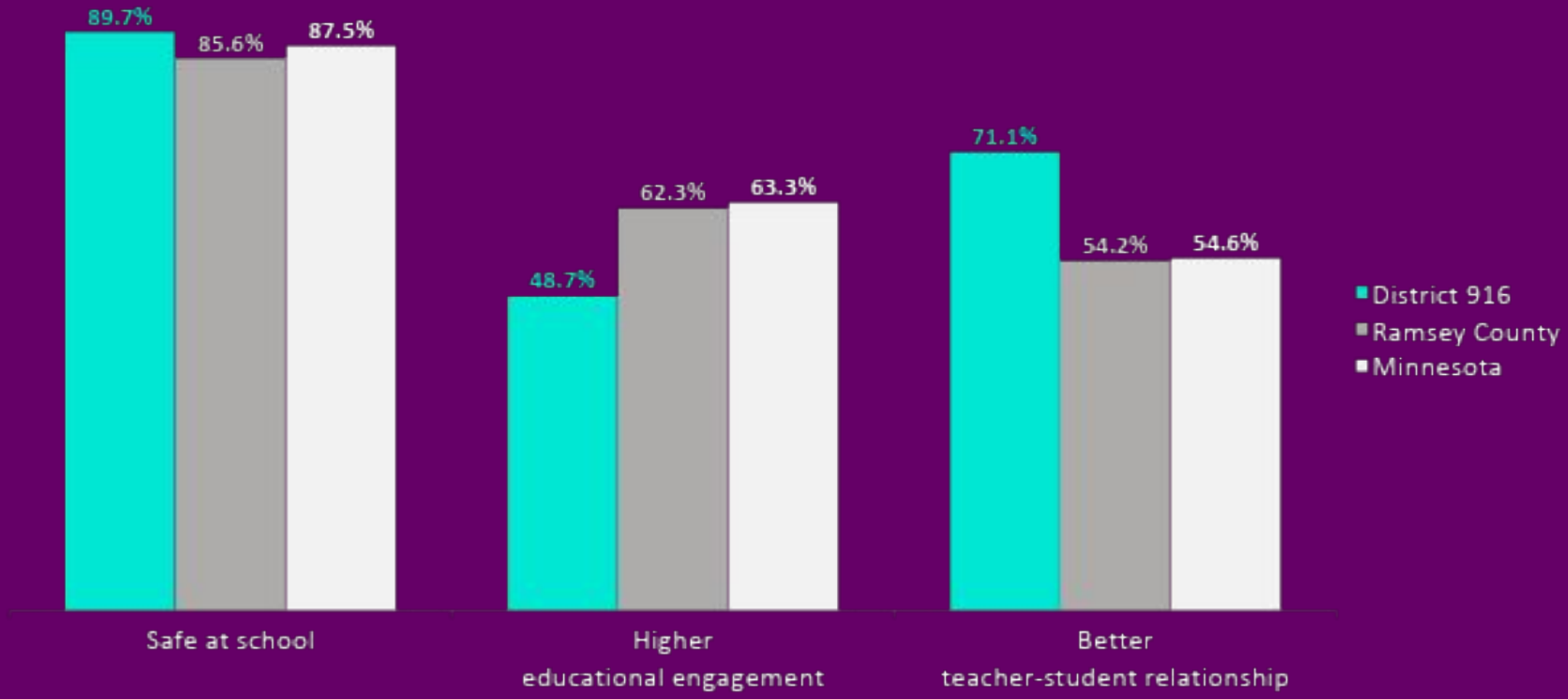
In the past year: 3.1%
More than a year ago: 40.6%



Experiencing homelessness
With parents: 12.9% vs. 3.0%
Alone: 3.2% vs. 0.6%

2022 Minnesota Student Survey data

School climate indicators



Minnesota's 13 Categorical Disability Areas

- Severely Multiply Impaired (SMI)
- Autism Spectrum Disorders (ASD)
- Blind-Visually Impaired (BVI)
- Deaf-Blind
- Deaf and Hard of Hearing (DHH)
- Developmental Cognitive Disabilities (DCD)
- Developmental Delay (DD)
- Emotional or Behavioral Disorders (EBD)
- Other Health Disabilities (OHD)
- Physically Impaired (PI)
- Specific Learning Disabilities (SLD)
- Speech or Language Impairments (SLI)
- Traumatic Brain Injury (TBI)

MDE Criteria Checklists (all areas): Minnesota Department of Education – Special Education Program Criteria Checklists

When Used In Alignment with Statute and Best Practices

- Prevention strategies are used daily
- De-Escalation Strategies are used to help the student calm down
- An emergency situation
  - Intensity
  - Duration
  - Risk of harm
- Highly trained staff
- Determining when seclusion ends
- Reintegration
- Parent/guardian communication
- Seclusion provides an alternative to other intervention strategies

Emergency Situations

Prevention

Foundational Practices- Trauma Informed, SEL, Restorative, Non-exclusionary Discipline

Relationships

Consistency

MTSS Tier 1 Supports

Building Design

Expectations: PBIS or Level System

Predictable Rules and Consequences

Environment considerations for noise level, visual distractions, and general structure

Visuals

Unconditional positive regard

Crisis

Personal Safety

Ukeru Pad Blocking

Transportation

Restraint

Seclusion

Student & Family Voice

De-escalation & Recovery

Co-regulation

Nurturance

Restorative Processing

Find something to praise

Relational repair- Forgiveness/Grace, Welcome kids back

Relationships

Consistency

Visuals

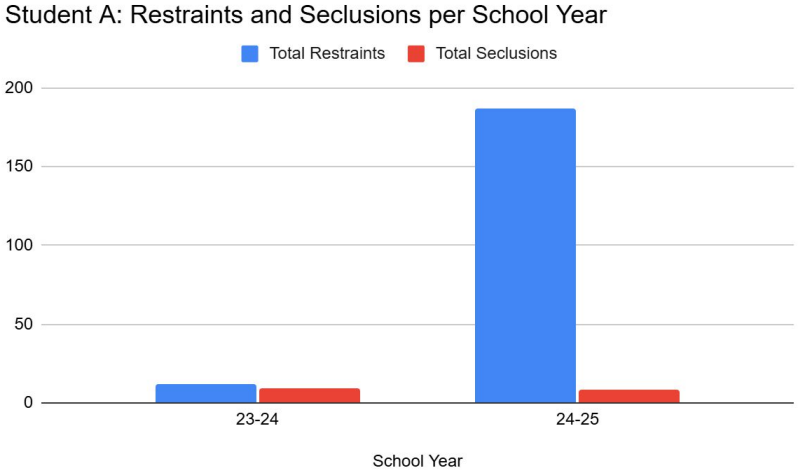
Unconditional positive regard

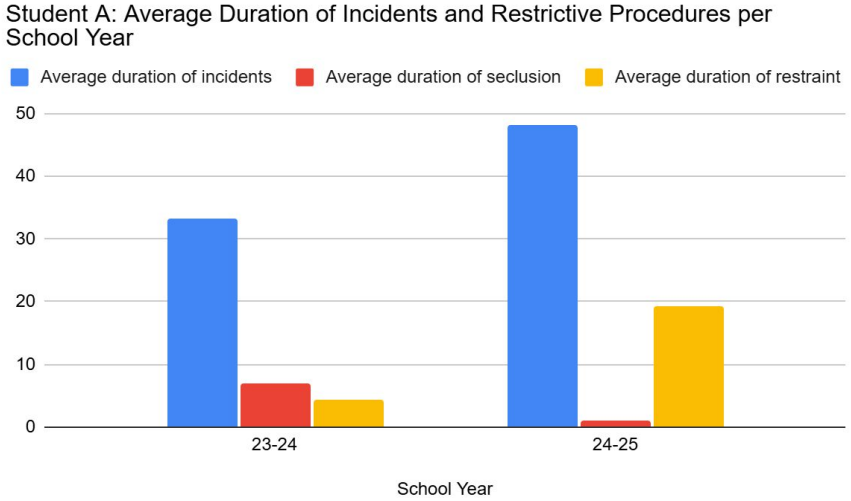
Student & Family Voice

Stays in School

Student Examples

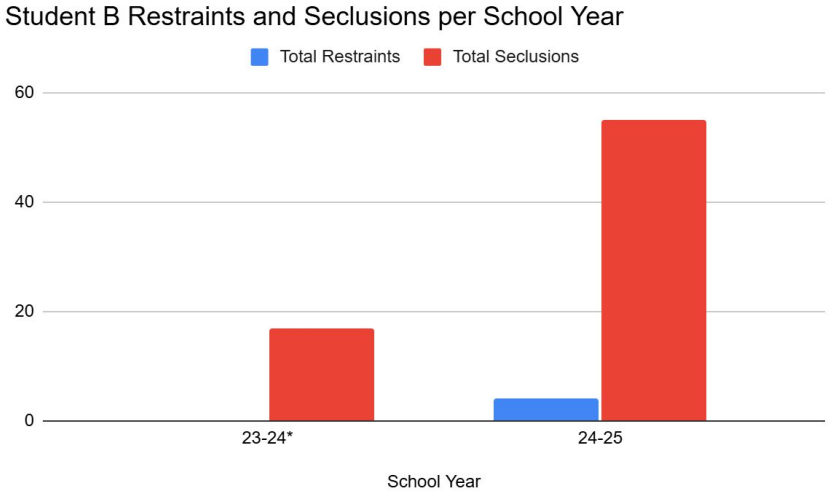
What Seclusion Looks Like: Student A

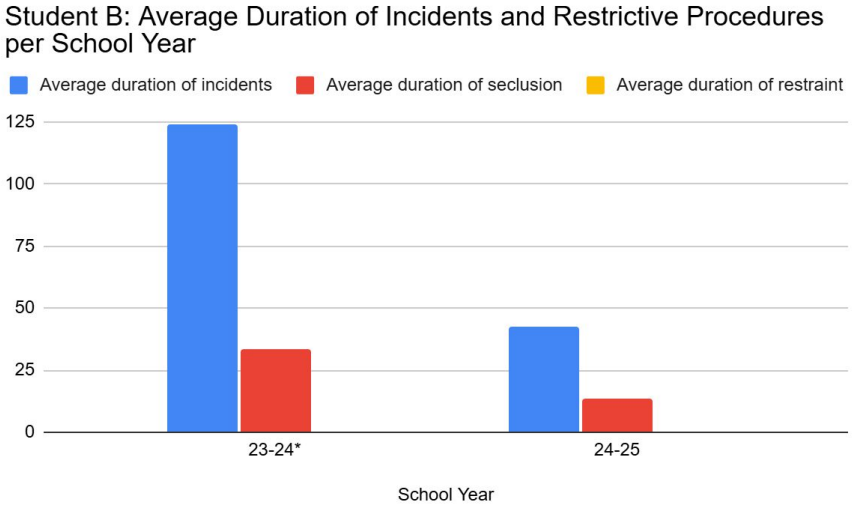




Student Profile, Additional Context, Data/Behavioral Intensity, Key Considerations

What Seclusion Looks Like: Student B





Student Profile, Additional Context, Data/Behavioral Intensity, Key Considerations

Debriefing - Reflecting and Training

Prevention

Foundational Practices- Trauma Informed, SEL, Restorative, Non-exclusionary Discipline

Relationships

Consistency

MTSS Tier 1 Supports

Building Design

Expectations: PBIS or Level System

Predictable Rules and Consequences

Environment considerations for noise level, visual distractions, and general structure

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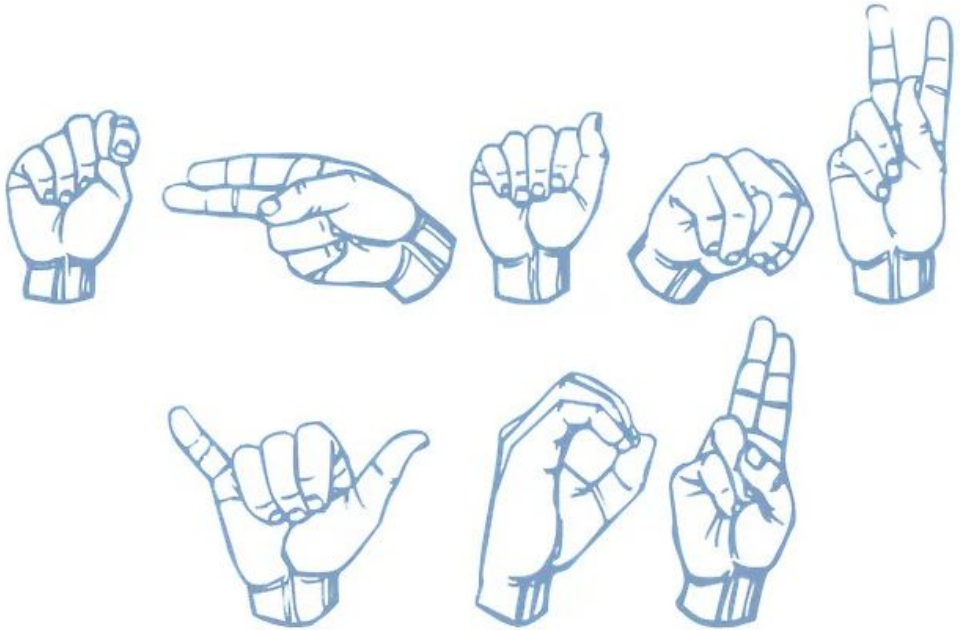
Stays in School



THANK YOU

2017-18

CIVIL RIGHTS DATA COLLECTION

THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K-12 SCHOOLS

WHAT IS THE 2017-18 CIVIL RIGHTS DATA COLLECTION?

The 2017–18 Civil Rights Data Collection (CRDC) is a survey of nearly all public schools and school districts in the United States.[1] The CRDC measures student access to courses, programs, staff, and resources that relate to Federal civil rights laws. The CRDC has long provided important information used by the U.S. Department of Education's (Department) Office for Civil Rights (OCR) in its enforcement and monitoring activities. As a collection, the CRDC is an aggregate of self-collected and self-reported data. Almost all reporting entities are school districts, and the district superintendent or an authorized designee certifies that the data they submit are true and correct.

In addition, the CRDC is a resource for other Federal agencies, policymakers, researchers, educators, school officials, parents, students, and other members of the public. To further explore the CRDC through the use of data tools, please visit the CRDC Reporting Website at **ocrdata.ed.gov**. To download the 2017-18 CRDC, visit **crdc.ed.gov**.

WHAT'S INSIDE:

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Restraint and Seclusion based on Students with Disabilities	4
More About the CRDC	15

[1] The CRDC includes local educational agencies (LEAs) in all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. Other U.S. territories, tribal schools operated by the U.S. Department of the Interior's Bureau of Indian Education, or schools operated by the U.S. Department of Defense Education Activity are not currently required to participate in the CRDC. In addition, if a public school's enrollment for a school year was less than five students for fewer than 60 days, OCR may exempt that school from CRDC reporting. This report uses data received as of December 15, 2019.

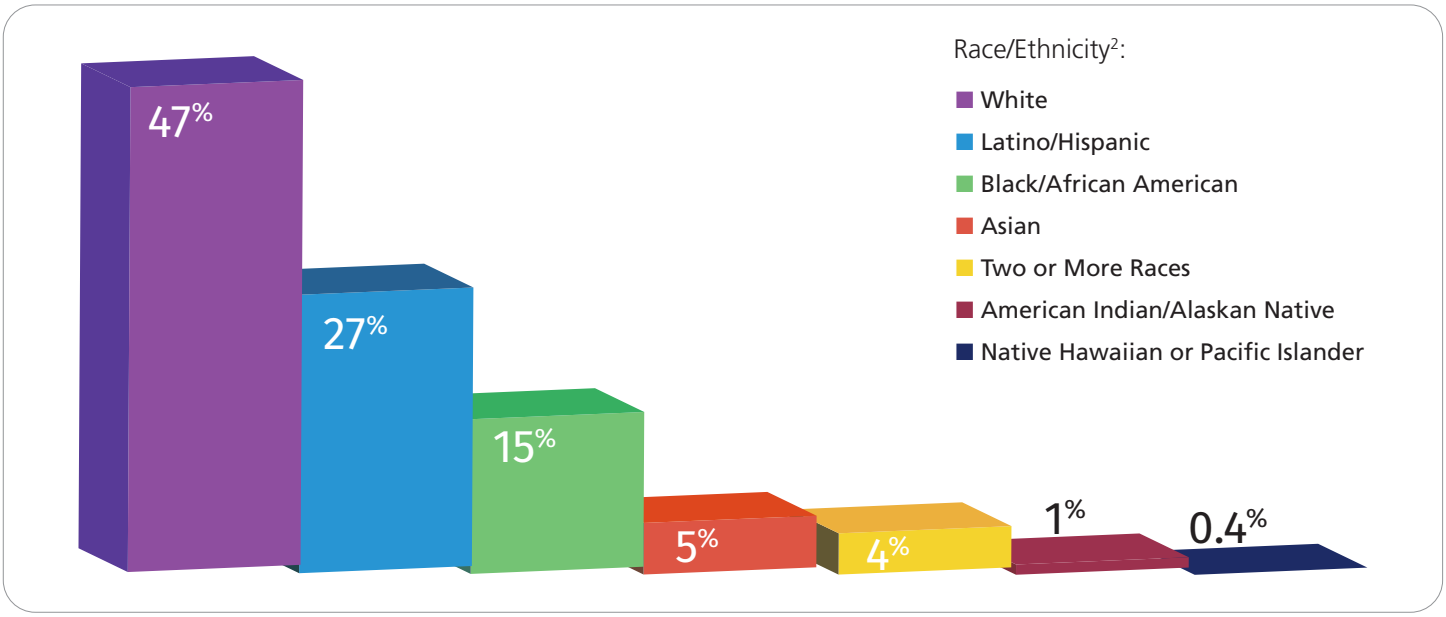
WHO IS IN THE 2017–18 CRDC?

Number of school districts:
17,604

Number of schools:
97,632

Total number of students:
50.9 million

Nationwide Student Demographics



Boys:
51%

Girls:
49%

English Learners:
10%

Students with Disabilities: **16%**

Students with disabilities served under the Individuals with Disabilities Education Act (IDEA):
13%

Students with disabilities served only under Section 504 of the Rehabilitation Act, as amended (Section 504):
3%

[2] The CRDC reports students using the seven racial/ethnic categories found in the U.S. Department of Education's Final Guidance on Collecting, Maintaining and Reporting Data on Race and Ethnicity. The Final Guidance can be found at http://nces.ed.gov/pubs2008/rediguide/pdf/appendixA.pdf. For brevity in this report, the racial/ethnic categories are referred to as "race." Likewise, race, color, or national origin – as referenced in Title VI of the Civil Rights Act of 1964 – is, for purposes of this report, referred to as "race."

INITIATIVE TO ADDRESS THE INAPPROPRIATE USE OF RESTRAINT AND SECLUSION

On January 17, 2019, U.S. Secretary of Education Betsy DeVos announced the U.S. Department of Education's (Department) initiative to address the possible inappropriate use of restraint and seclusion in our nation's public elementary and secondary schools as it applies to students with disabilities.[3] The initiative is intended to alert schools to their obligations under Federal law to make sure that students with disabilities receive a free appropriate public education (FAPE) under Section 504 of the Rehabilitation Act of 1973 (Section 504).

The initiative, a first of its kind, partnered OCR with the Department's Office of Special Education and Rehabilitative Services (OSERS) to provide support and technical assistance to schools in a way that would strengthen protections for children with disabilities. Together, OCR and OSERS oversee the initiative, which includes three components that draw on the work and expertise of both offices and their staff:

1. Nationwide compliance reviews conducted by all twelve of OCR's enforcement offices to examine various recipients' use of restraint and seclusion;
2. Data Quality Reviews (DQRs) conducted by OCR to improve the quality of restraint and seclusion data submitted as part of the CRDC; and
3. Technical assistance provided by OCR and OSERS to schools and school districts.

Since the announcement of the initiative in January 2019, OCR and OSERS have made significant progress toward fulfilling Secretary DeVos's commitment to ensuring that students with disabilities are fully protected under federal civil rights laws, as set forth below.

1. COMPLIANCE REVIEWS

In January 2019, OCR's regional offices launched 23 compliance reviews focused on recipients' restraint and seclusion of students with disabilities. These compliance reviews focus on the possible inappropriate use of restraint and seclusion, and the effect of such practices on the recipient's obligation to provide a FAPE for all students with disabilities. In the course of each review, the OCR regional offices work to identify any potential compliance concerns and, if identified, work with the recipient to appropriately address the concern.

2. DATA QUALITY REVIEWS IN THE CRDC

In a pioneering initiative to improve civil rights data quality, OCR initiated, for the first time, Data Quality Reviews (DQRs) to conduct a thorough examination of districts' submissions of restraint and seclusion data. As a part of this process, OCR issued letters to 50 school districts that had reported apparently anomalous data to the CRDC. As a result of this outreach, many school districts sent corrected data, and others have certified that their data, although they appeared anomalous, were in fact correct. For districts that submitted incorrect data, OCR is providing technical assistance and taking steps to correct data submissions for future collections.

3. TECHNICAL ASSISTANCE

The Department also proactively provides restraint and seclusion technical assistance to state educational agencies (SEAs) and school districts to ensure they are collecting and reporting accurate data to the CRDC and understand the legal requirements of students with disabilities served only under Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Individuals with Disabilities Education Act (IDEA). Beginning in July 2019, OCR and OSERS led a number of presentations on the topic of collecting and reporting accurate restraint and seclusion data. OCR and OSERS launched a webinar, "Students with Disabilities and the Use of Restraint and Seclusion in K-12 Public Schools," to ensure that the schools who serve those students are aware of their legal obligations under Federal civil rights laws. This webinar has been viewed over 21,000 times. OCR will continue to work with school districts and states to provide technical assistance, including working with school districts where ongoing investigations or compliance reviews are being conducted.

[3] "U.S. Department of Education Announces Initiative to Address the Inappropriate Use of Restraint and Seclusion to Protect Children with Disabilities, Ensure Compliance with Federal Laws," press release, January 17, 2019, https://www.ed.gov/news/press-releases/us-department-education-announces-initiative-address-inappropriate-use-restraint-and-seclusion-protect-children-disabilities-ensure-compliance-federal-laws

RESTRAINT AND SECLUSION DATA QUALITY IMPROVEMENTS

Over the past two years, OCR has made significant strides in improving the CRDC's data quality. Improving the data quality of restraint and seclusion data has been a particular priority for OCR and this Administration. For example, OCR conducted data quality checks when the data indicated any of the following:

1. Reports of identical counts across students subjected to mechanical restraint, students subjected to physical restraint, and students subjected to seclusion for students not served by IDEA (non-IDEA students) and IDEA students (e.g., if each entry were "25");
2. Reports of identical counts across instances (rather than students) of mechanical restraint, instances of physical restraint, and instances of seclusion for non-IDEA students and IDEA students;
3. Instances where overall enrollment by sex and race/ethnicity is smaller than students who were subjected to mechanical restraint, physical restraint, and seclusion by sex and race/ethnicity for non-IDEA and IDEA students; and
4. School districts with zero instances of mechanical restraint, physical restraint, or seclusion with enrollment that is greater than or equal to 25,000 students.

In addition to the foregoing specific data quality checks, general data quality checks were conducted on all restraint and seclusion data elements. These post-collection data quality checks focused on detecting (a) outliers for individual data elements, (b) significant value changes in individual data elements between the 2015-16 and 2017-18 data collections, and (c) outliers within the entire restraint and seclusion module.

The post-collection outreach to school districts specific to restraint and seclusion focused on the use of nulls and zeros, in addition to targeted outreach about the general and specific checks described above. In total, the CRDC's Partner Support Center conducted outreach to 15,526 local education agencies (LEAs), a marked increase from 4,386 LEAs contacted for the 2015-16 outreach period. As a result of OCR's proactive outreach efforts, 952 LEAs amended their original 2017-18 restraint and seclusion data submissions from June 2019 to August 2019. During the extended data corrections, which ran from September to December 2019, another 196 LEAs corrected their 2017-18 restraint and seclusion data submissions.

RESTRAINT AND SECLUSION FOR STUDENTS WITH DISABILITIES IN THE 2017-18 COLLECTION†

In conjunction with the Department's restraint and seclusion initiative, OCR is presenting this issue brief to highlight the data it has collected relevant to this issue.

Beginning with the 2009-10 data collection, OCR began collecting data on the physical and mechanical restraint of students, along with the seclusion of students. Under the CRDC, physical restraint is a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. Seclusion is the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.

While Federal law does not specifically prohibit the use of restraint and seclusion, there are circumstances under Section 504 and Title II in which the use of restraint and seclusion may constitute discrimination against students with disabilities. More specifically, in some cases, the use of restraint and seclusion may result in unlawful discrimination against individual students with disabilities in violation of Federal civil rights laws. Although the laws that OCR enforces do not address the use of restraint and seclusion, many states and school districts have laws or policies that ban or restrict its use. The Department's initiative supports state and local efforts to address the impact of restraint and seclusion on students with disabilities. In fact, OCR's initiative and the data collected and presented in the CRDC assist both states and schools in these efforts. As discussed below, restraint and seclusion data for individual schools and school districts are available on the CRDC website, and OCR has taken important steps to improve data quality, which will help states use this data effectively. OCR will continue to prioritize this issue – and will work to provide states and school districts with the resources to support children with disabilities and ensure that all students learn in environments free from discrimination.

The statistical data in this issue brief presents national data on the use of restraint and seclusion; it does not represent individual school-level data or district-level data, nor does it capture the circumstances surrounding the use of restraint and seclusion. School district and school level data is available at **ocrdata.ed.gov**. While national data are useful and informative, they are limited and do not reflect the unique factors or the individualized decisions regarding the use of restraint and seclusion. It is OCR's expectation that all school districts and schools fully protect the rights of all students, including students with disabilities.

DATA OVERVIEW

Figure 1. The total number of students enrolled vs. the total number of students who were subjected to restraint or seclusion

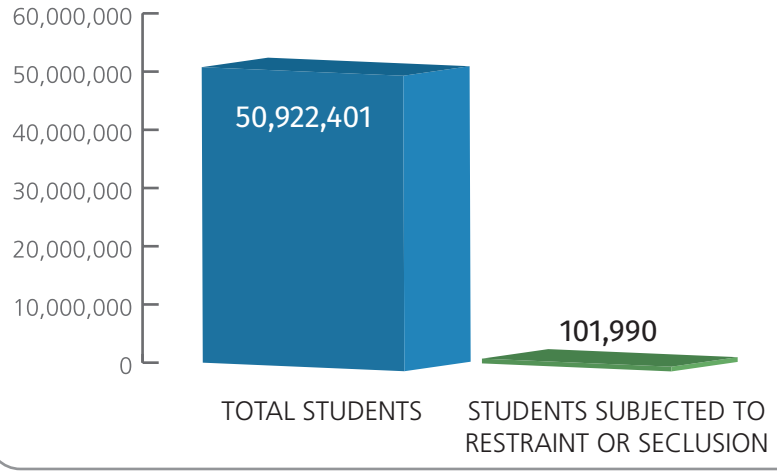
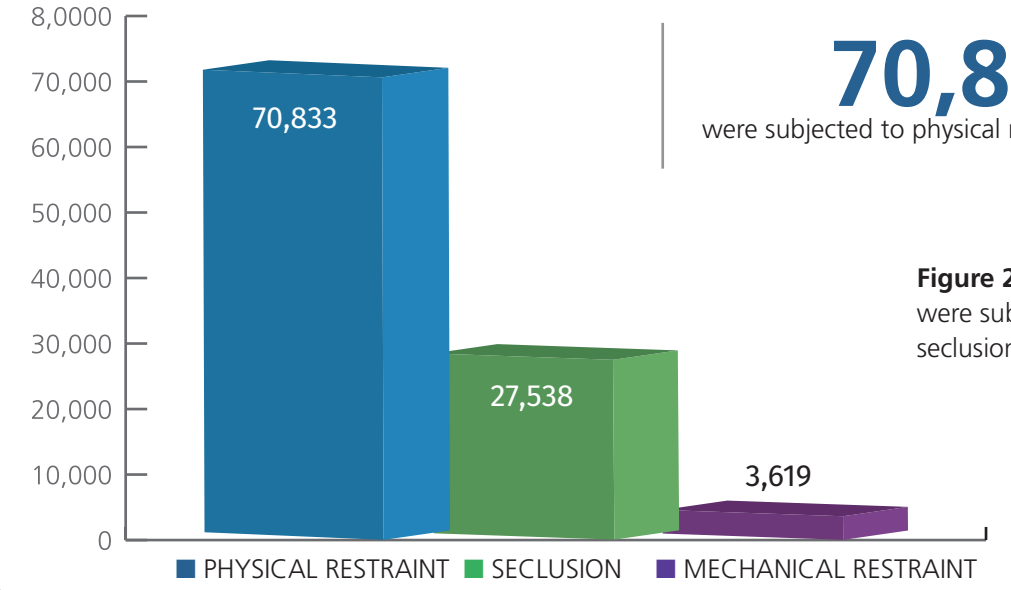


Figure 1 illustrates the total number of students enrolled vs. the total number of students who were subjected to restraint or seclusion. During the 2017-18 school year, 101,990 students of the over 50.9 million students enrolled across the nation's public schools were subjected to physical restraint, mechanical restraint or seclusion — including 70,833 students who were subjected to physical restraint, 3,619 students who were subjected to mechanical restraint, and 27,538 students who were subjected to seclusion.[4]

Figure 2. Students who were subjected to restraint or seclusion nationally



70,833
were subjected to physical restraint in 2017-18.

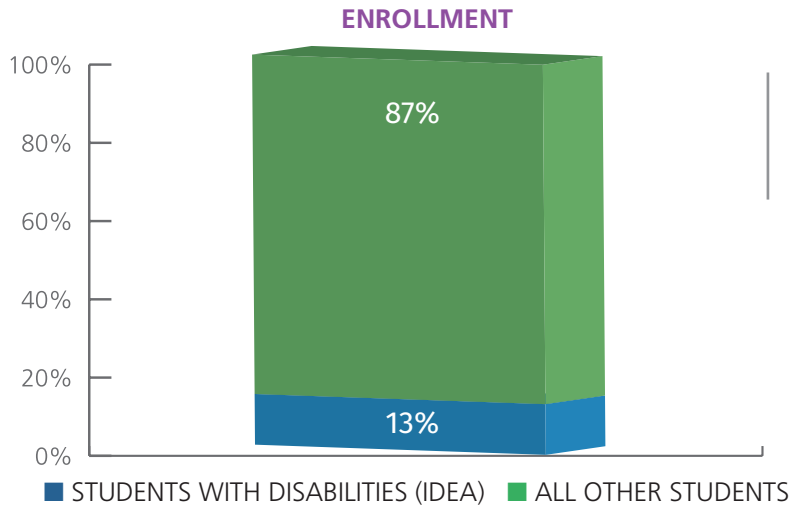
Figure 2 shows students who were subjected to restraint or seclusion nationally.

[4] The counts for students who were subjected to physical restraint, students who were subjected to mechanical restraint, and students who were subjected to seclusion are not mutually exclusive. For example, if a student was physically restrained and secluded, the student would be counted once in each category. Thus the total of 101,990 may not represent the actual number of individual students affected.

RESTRAINT AND SECLUSION BY DISABILITY (IDEA)[5]

Of the 101,990 students[6] who were restrained at school to immobilize them or reduce their ability to move freely or were placed in seclusion — 79,676, or 78%, were students with disabilities (IDEA)[7]. Specifically, 56,905 students were subjected to physical restraint, 1,494 students were subjected to mechanical restraint, and 21,277 students were subjected to seclusion.

Figure 3. Total student enrollment, by disability (IDEA)



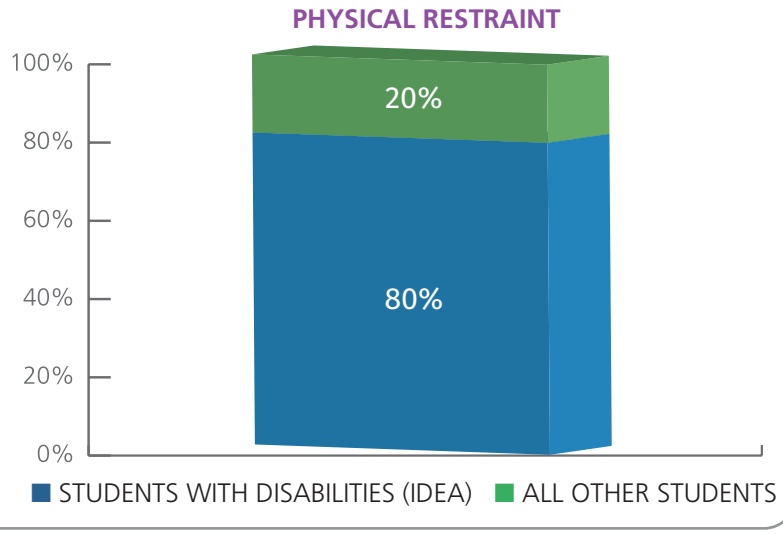
13%
of students enrolled were students with disabilities served under IDEA.

Figure 3 shows students with disabilities served under IDEA (6.7 million) as a percentage of total student enrollment (50.9 Million).

Figure 4. Percentage distribution of all students who were subjected to physical restraint, by disability (IDEA)

80%
of students who were subjected to physical restraint were students with disabilities (IDEA).

Figure 4 displays the percentage distribution of all students who were subjected to physical restraint (70,833) who are students served under IDEA (56,905).

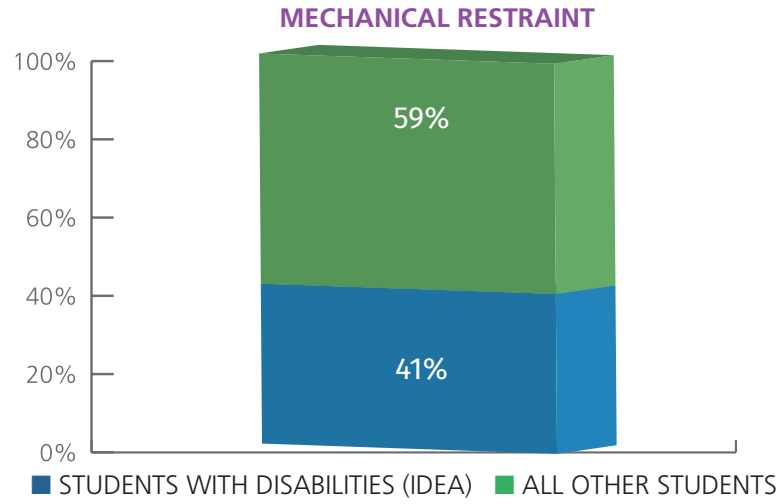


[5] Students served only under Section 504 of the Rehabilitation Act of 1973 are not included in Students with Disabilities (IDEA) counts.

[6] The counts for students who were subjected to physical restraint, students who were subjected to mechanical restraint, and students who were subjected to seclusion are not mutually exclusive. For example, if a student was physically restrained and secluded, the student would be counted once in each category. Thus, the total of 101,990 may not represent the actual number of individual students affected.

[7] As used in this report, the term "students with disabilities (IDEA)" is used to refer to students who receive special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an Individualized Education Program, Individualized Family Service Plan, or service plan. 20 U.S.C. §§ 1400-1419; 34 C.F.R. pt. 300. Part B of the IDEA addresses the obligations of states and local educational agencies (LEAs) to provide special education and related services to eligible children with disabilities. The Office of Special Education Programs (OSEP) in the Department's Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. The national percentages reported by OSEP may differ from those reported by OCR due to differences in the population of students included in the collection. For information about the IDEA, please see osep.grads360.org and www.ed.gov/osers/osep/index.html.

Figure 5. Percentage distribution of all students who were subjected to mechanical restraint, by disability (IDEA)



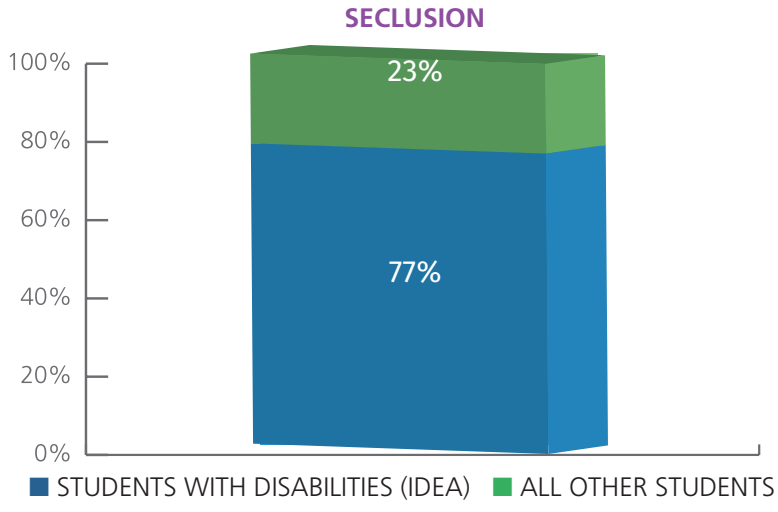
41%
of students subjected to mechanical restraint were students with disabilities (IDEA).

Figure 5 illustrates the percentage distribution of all students who were subjected to mechanical restraint (3,619) who are students served under IDEA (1,494).

Figure 6. Percentage distribution of all students who were subjected to seclusion, by disability (IDEA)

77%
of students subjected to seclusion were students with disabilities (IDEA).

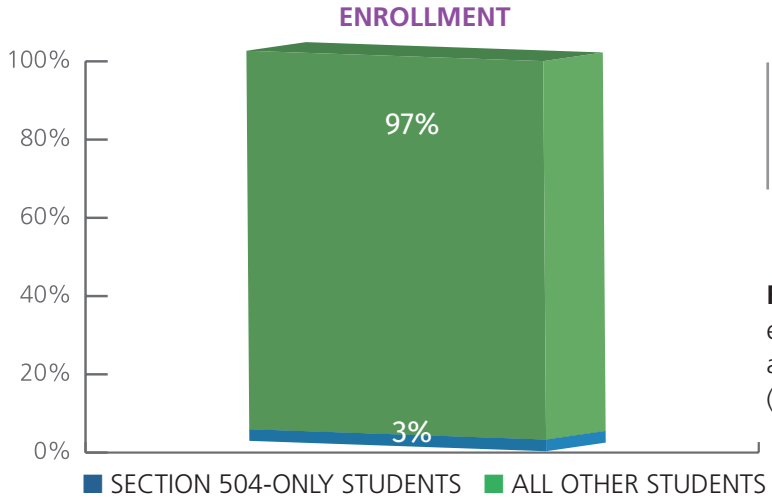
Figure 6 presents the percentage distribution of students who were subjected to seclusion (27,538) who are students served under IDEA (21,277).



RESTRAINT AND SECLUSION BY DISABILITY (SECTION 504)[8]

Of the 101,990 students who were subjected to restraint or seclusion, 1,398 students were served under Section 504. This includes 912 Section 504 students who were subjected to physical restraint, 153 who were subjected to mechanical restraint, and 333 who were subjected to seclusion.

Figure 7. Total student enrollment, by disability (Section 504)



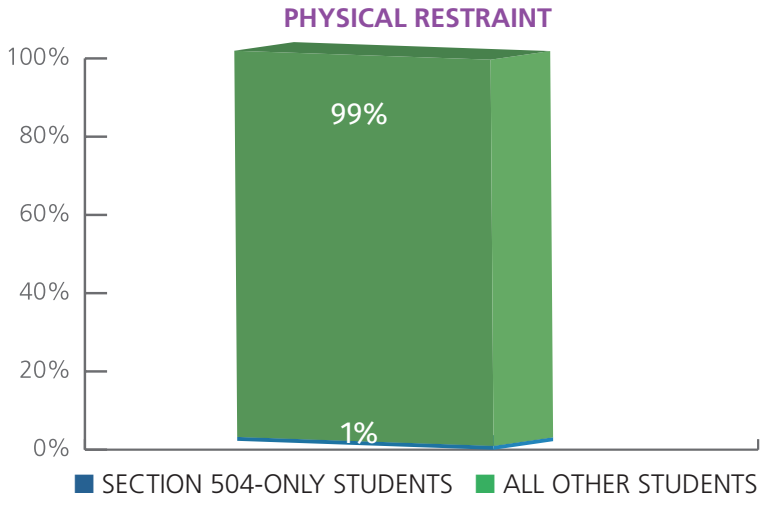
3%
of students enrolled are students with a disability served under Section 504.

Figure 7 shows the percentage of total student enrollment (50.9 million) who are students with a disability served under Section 504 (1.4 million).

Figure 8. Percentage distribution of students who were subjected to physical restraint, by disability (Section 504)

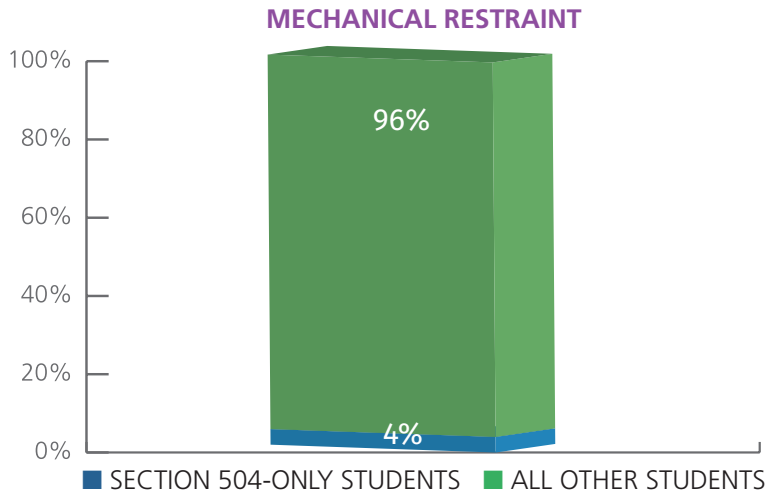
1%
of students subjected to physical restraint were students under Section 504.

Figure 8 displays the percentage distribution of all students who were subjected to physical restraint (70,833) who are students with a disability served under Section 504 (912).



[8] This section of the report includes students with disabilities served only under Section 504 of the Rehabilitation Act of 1973 (but not IDEA).

Figure 9. Percentage distribution of students who were subjected to mechanical restraint, by disability (Section 504)



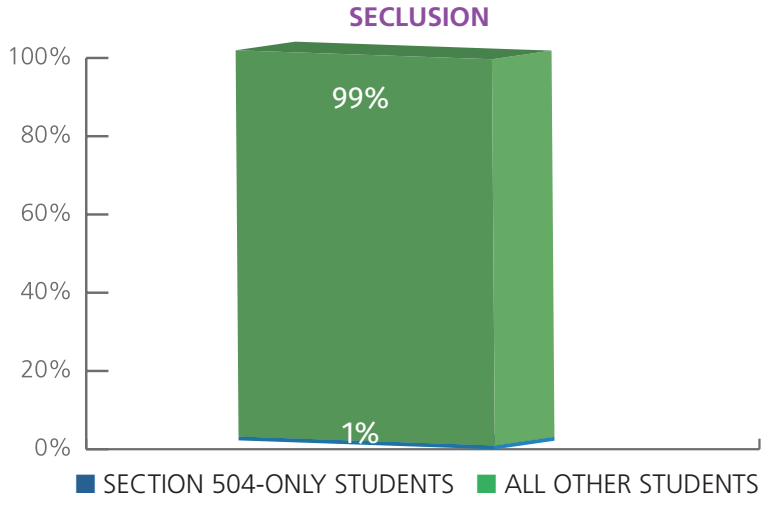
4%
of students subjected to mechanical restraint were students under Section 504.

Figure 9 illustrates the percentage distribution of students who were subjected to mechanical restraint (3,619) who are students with a disability served under Section 504 (153).

Figure 10. Percentage distribution of students who were subjected to seclusion, by disability (Section 504)

1%
of students subjected to seclusion were students under Section 504.

Figure 10 presents the percentage distribution of students who were subjected to seclusion (27,538) who are students with a disability served under Section 504 (333).



RESTRAINT AND SECLUSION OF STUDENTS WITH DISABILITIES (IDEA), BY RACE/ETHNICITY

Figure 11. Percentage distribution of students with disabilities (IDEA), by race/ethnicity

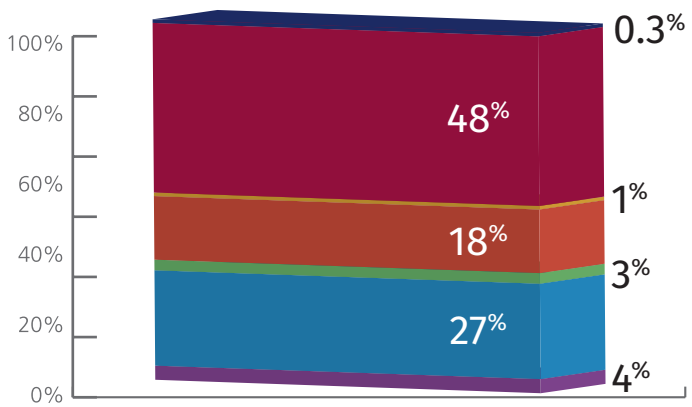


Figure 11 shows the percentage distribution of all enrolled students served under IDEA (6.7 million), by race/ethnicity.

Figure 12. Percentage distribution of students with disabilities (IDEA) who were subjected to physical restraint, by race/ethnicity

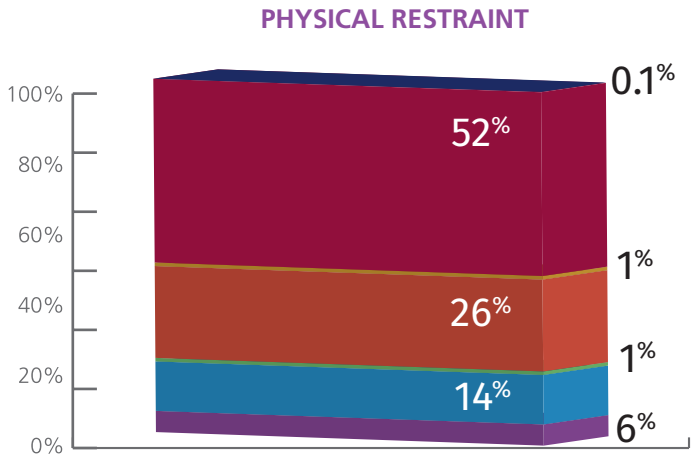


Figure 12 displays the percentage distribution of students served under IDEA who were subjected to physical restraint (56,905) by race/ethnicity.

Figure 13. Percentage distribution of students with disabilities (IDEA) who were subjected to mechanical restraint, by race/ethnicity

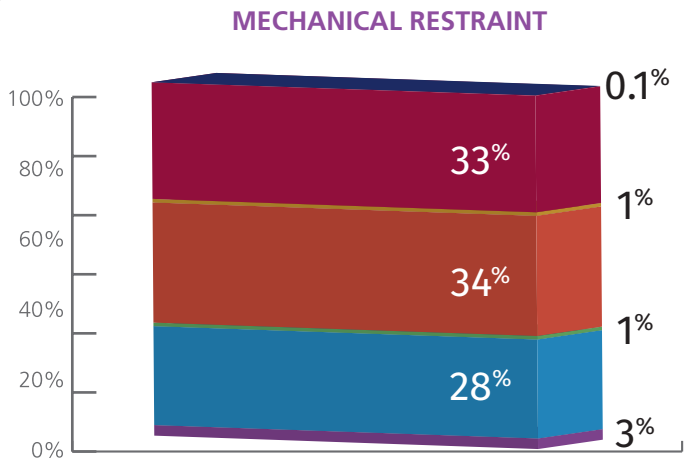


Figure 13 illustrates the percentage distribution of students served under IDEA who were subjected to mechanical restraint (1,494) by race/ethnicity.

Figure 14. Percentage distribution of students with disabilities (IDEA) who were subjected to seclusion, by race/ethnicity

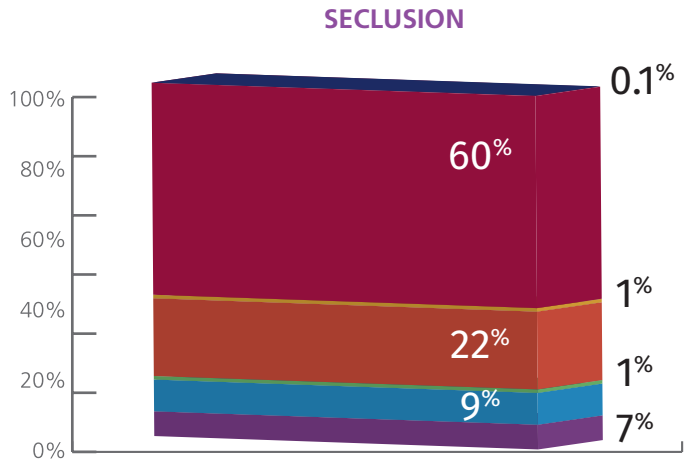
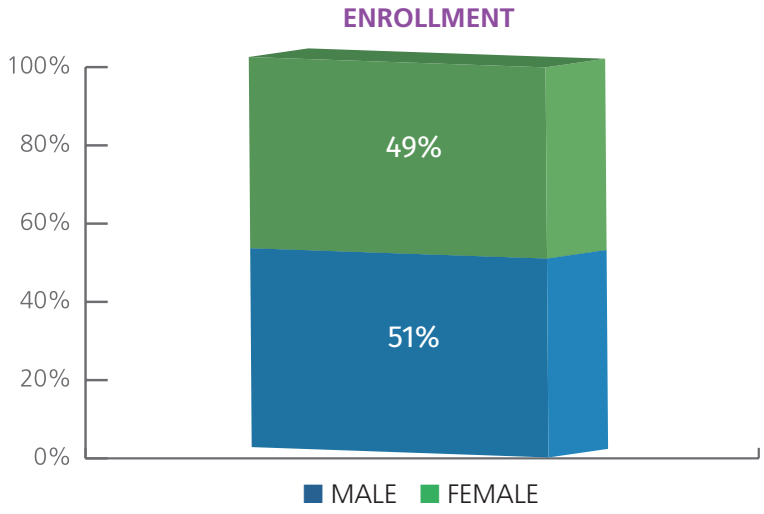


Figure 14 presents the percentage distribution of students served under IDEA who were subjected to seclusion (21,277) by race/ethnicity.

RESTRAINT AND SECLUSION OF STUDENTS WITH DISABILITIES (IDEA), BY SEX

Figure 15. Total student enrollment, by sex



51%
of students enrolled are male.

Figure 15 shows student enrollment, by sex.

Figure 16. Students with disabilities (IDEA) enrollment, by sex

66%
of students with disabilities (IDEA) enrolled are male.

Figure 16 shows students served under IDEA enrollment (6.7 million), showing distribution by sex.

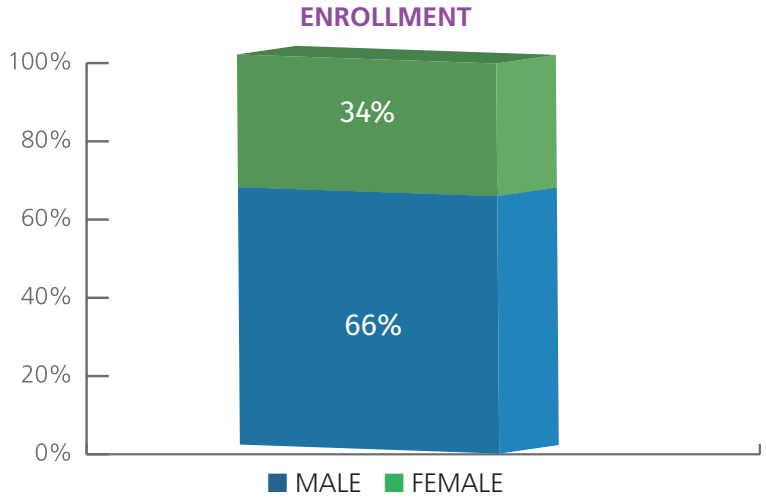
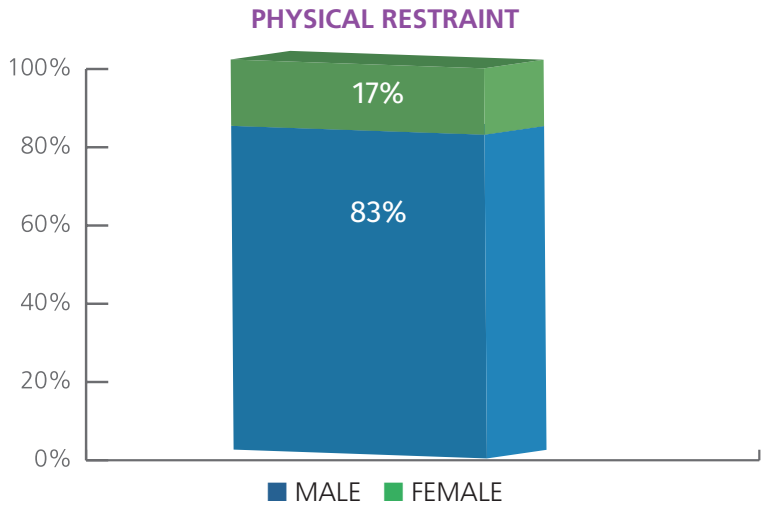


Figure 17. Percentage distribution of students with disabilities (IDEA) who were subjected to physical restraint, by sex



83%
of IDEA students who were subjected to physical restraint were male.

Figure 17 displays the percentage distribution of students served under IDEA who were subjected to physical restraint (70,833), showing distribution by sex.

Figure 18. Percentage distribution of students with disabilities (IDEA) subjected to mechanical restraint, by sex

82%
of IDEA students who were subjected to mechanical restraint were male.

Figure 18 illustrates the percentage distribution of students served under IDEA who were subjected to mechanical restraint (3,619), showing distribution by sex.

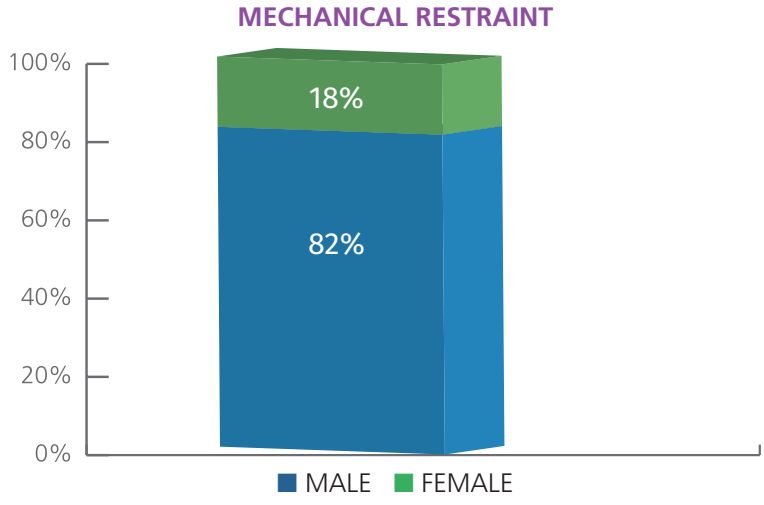
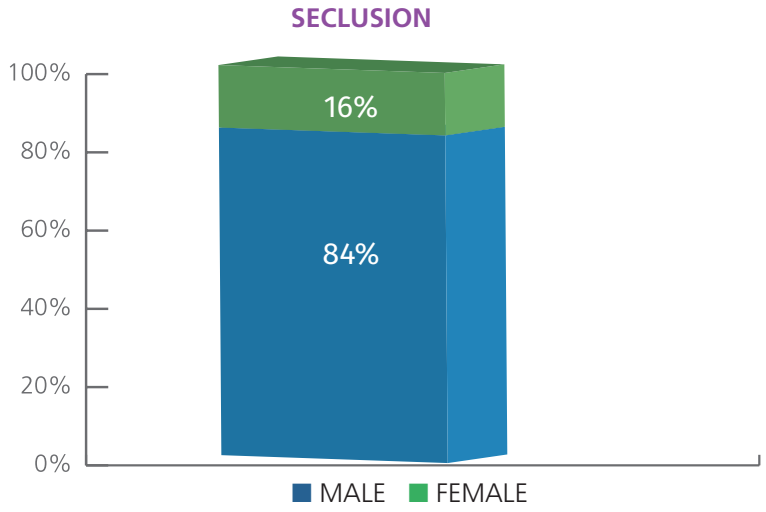


Figure 19. Percentage distribution of students with disabilities (IDEA) who were subjected to seclusion, by sex

84%
of IDEA students who were subjected to seclusion were male.

Figure 19 presents the percentage distribution of students served under IDEA who were subjected to seclusion (27,938), showing distribution by sex.



This report does not provide other potential data analyses which may be derived from the CRDC and other sources, such as restraint and seclusion usage in different regions, states, school sizes, school types, school populations and other classifications which may enlighten interested parties. Stakeholders and interested parties can derive that information from the data that is being released concurrently with the release of this report.

DATA HIGHLIGHTS

† Note: Except where the percentage is below 1 percent, the percentages listed in these data highlights are rounded to the nearest whole number. For the survey form and full definitions of all terms mentioned in the report, visit **ocrdata.ed.gov/SurveyDocuments**.

MORE ABOUT THE CRDC

What is the purpose of the CRDC?

Since 1968, the U.S. Department of Education (Department) Office for Civil Rights (OCR), or its predecessor agency, has conducted the Civil Rights Data Collection (CRDC) to collect data on key education and civil rights issues in our nation's public schools.

The CRDC collects a variety of information, including student enrollment and educational programs and services, most of which is disaggregated by race, sex, English learners, and disability.

The CRDC is a longstanding and important aspect of the overall enforcement and monitoring strategy used by OCR to ensure that recipients of the Department's Federal financial assistance do not discriminate on the basis of race, color, national origin, sex, and disability.

OCR has access to CRDC data from public school districts as it investigates complaints alleging discrimination, initiates proactive compliance reviews to focus on particularly acute or nationwide civil rights compliance problems, and provides policy guidance and technical assistance to educational institutions, parents, students, and others.

In addition, the CRDC is a resource for other Department offices and Federal agencies, policymakers and researchers, educators and school officials, parents and students, and other members of the public who seek data on student equity and opportunity.

Under what authority does OCR conduct the CRDC?

Section 203(c)(1) of the 1979 Department of Education Organization Act conveys to the Assistant Secretary for Civil Rights the authority to "collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights." The civil rights laws enforced by OCR include:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex; and
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability.

OCR's implementing regulations for each of these statutes require recipients of the Department's Federal financial assistance to submit to OCR "complete and accurate compliance reports at such times, and in such form and containing such information" as OCR "may determine to be necessary to enable [OCR] to ascertain whether the recipient has complied or is complying" with these laws and implementing regulations (34 CFR § 100.6(b), 34 CFR § 106.81, and 34 CFR § 104.61).

For further general information about the CRDC, visit the CRDC FAQ page, **https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/crdc.html**.

Availability of Alternate Format

Requests for documents in alternate formats such as braille or large print should be submitted to the Alternate Format Center by calling 202.260.0852 or emailing the Section 508 Coordinator at **om_eeos@ed.gov**.

Notice to Persons with Limited English Proficiency

If you have difficulty understanding English, you can request free interpretation or translation assistance for Department information that is available to the public. To find out more about these services, please call 1-800-USA-LEARN (1.800.872.5327), (TTY: 1.800.877.8339) or email us at **ED.Language.Assistance@ed.gov**.
You also can write to U.S. Department of Education, Information Resource Center, LBJ Education Building, 400 Maryland Avenue SW, Washington, DC, 20202.

How to Contact the United States Department of Education and the Office for Civil Rights

Betsy DeVos, Secretary
Kimberly M. Richey, Acting Assistant Secretary for Civil Rights

Lyndon Baines Johnson Building
Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100

Telephone: 800-421-3481
FAX: 202-453-6012
TDD: 877-521-2172
Email: OCR@ed.gov

www.ed.gov/ocr

MTSS

Academic

Tier 1 - Universal Supports

Tier 1 Academic - Expected Universal Supports	
Learning Targets	**Who to Contact for Support**
On display where students can see	
Linked to Minnesota State Standards	
Lessons begin and end with learning targets	
Explicit Instruction	**Who to Contact for Support**
Modeling of new skills (I Do)	
Ample opportunities for guided practice (We Do)	
Ample opportunities for independent practice and feedback (You Do)	
Routines and Procedures	**Who to Contact for Support**
Established routines and procedures (ie. for turning in work, accessing materials, procedures for "down time," exit tickets, transitioning between activities, lesson closing, etc.)	
Use of stations/centers to differentiate instruction	
Structured educational choice in place of unstructured time in class	
Literacy Instruction	**Who to Contact for Support**
105 minutes (grades K-4) or 50 minutes (grades 5-8) of literacy instruction daily	
Use of EL Education literacy curriculum (Modules), following scope and sequence	
Use of UFLI for foundational literacy skills (not applicable to grades 6-8 ASD/EBD classrooms)	
Progress monitoring at least monthly using a FastBridge or STAR literacy measure	
Use of data to inform instruction (EL Education assessments, FastBridge, PRESS and/or UFLI)	
Classroom Library	**Who to Contact for Support**
Includes a variety of books with different subjects/genres	
Includes wide variety of culturally relevant texts	

MTSS

Academic

Tier 1 - Universal Supports

Books are at appropriate text level for students in classroom (at or below instruction level to increase fluency/comprehension)	
Library usage is connected to other classroom routines (access when work is complete, during quiet time, other leisure times)	
Math Instruction	**Who to Contact for Support**
50 minutes of math instruction daily	
Use of Envision or Bridges math curriculum, following scope & sequence	
Progress monitoring at least monthly using a FastBridge or STAR math measure	
Use of data to inform instruction (Envision, Bridges, FastBridge and/or SpringMath)	
Intervention Instruction	**Who to Contact for Support**
Intervention block used for tier 2 math and/or literacy instruction for students showing skill gaps, or enrichment for students who are at grade level (PRESS, UFLI, MobyMax, SpringMath, etc.)	
Consistent use of communication supports for complex communicators (if applicable)	**Who to Contact for Support**
Coreboard visible	
AAC device or communication tool within arm's reach of student	
Minimum 10 language models that matches every student's communication method (per 30 minutes)	

MTSS

Social/Emotional/Behavioral

Tier 1 - Universal Supports

Tier 1 SEB - Expected Universal Supports	
TCIT implementation	**Who to Contact for Support**
PRIDE, sentence starter, and effective command posters are displayed in the classroom	
1 or fewer instances of Negative Talk, per staff per 30 minutes	
CDI skills are used at a high frequency (each staff uses 15 CDI skills per 5 minutes classwide)	
Class Sit & Watch/Sit & Calm plans are developed and used consistently	
SEL curriculum	**Who to Contact for Support**
Implementation of digital Second Step curriculum following the pacing guide (1 lesson per week)	
Implementation of daily Second Step practice activities	
Implementation of Tool of the Week lessons weekly	
Integration of Tool of the Week throughout the week, including access to OT-provided toolboxes in each classroom	
Data collection/point sheets	**Who to Contact for Support**
Individualized and data-based goals on point sheet	
Target behaviors from FBA, defined operationally on point sheet, are tracked daily	
Rubric defining points for each goal (0-3) on point sheet, rubric used to determine points for each period	
Consistent use of point sheets following school model (reference level system presentation)	
Reinforcement systems	**Who to Contact for Support**
Consistent use of the level system following school model if applicable (reference workshop week presentation)	
Appropriate use of tickets (ASD/EBD classrooms) or token boards (ASD/DCD classrooms)	

MTSS

Social/Emotional/Behavioral

Tier 1 - Universal Supports

Staff are familiar with and follow students' Proactive Behavior Intervention Plans (PBIPs)	
Minimum of one solely positive parent/guardian communication per month	
Consistent structure and routine	**Who to Contact for Support**
Consistent start and end times following the daily schedule	
Expectations/rules/norms, created with students, are posted in classroom	
Classwide and individualized break routines are defined, pre-taught and practiced per school-wide Tier 1 Break procedures	
Staff honor student breaks when requested (ie. not contingent on task completion/compliance but can be time-limited)	
Use of staff	**Who to Contact for Support**
Staff schedules reflect student needs (i.e. breaks)	
Proximity to students (in class, not office; sitting next to students and/or floating the room to support proactively, not sitting away from students)	
Use of prompt hierarchy (ie. physical, verbal, visual, independent)	
Use of visuals throughout classroom/environment	**Who to Contact for Support**
Schedules posted on walls, desks, lockers (e.g., class, individual, task specific, first/then) and are referenced often	
Other appropriate visuals in use and referenced (e.g., visual timers, duration maps, etc.)	
Consistent use of communication supports for complex communicators (if applicable)	**Who to Contact for Support**
Coreboard visible	
AAC device or communication tool within arm's reach of student	
Minimum 10 language models that matches every student's communication method (per 30 minutes)	

916 Seclusion Data

916 Seclusion Data by Site	23-24	24-25
Bellaire Education Center - students in grades 6-8 who have autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **27-34 students**	3	37 *54% of this total includes incidents with seclusion for one student. Incidents with seclusion were documented for 5 additional students, ranging from 1-5 instances during the school year.
Karner Blue Education Center - K-8 program that serves students with emotional behavioral disorders (EBD), autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **121-123 students** ***This program serves students in grades K-3. Seclusion was prohibited for this age group in September, 2024***	89 *63% of this total includes seclusions documented for 3 students, ranging from 11-27 instances over the school year	110 *65% of this total includes seclusions documented for 4 students, ranging from 12-24 instances over the school year.
Pankalo Education Center - K-8 program that serves students with emotional behavioral disorders (EBD), autism spectrum disorders (ASD), developmental cognitive disabilities (DCD), and certain low-incidence disabilities; **100-114 students** ***This program serves students in grades K-3. Seclusion was prohibited for this age group in September, 2024***	139* *49% of this total includes seclusions documented for 5 individual students, ranging from 9-17 instances over the school year	93 *55% of this total includes seclusions documented for 3 students, ranging from 12-23 instances over the school year.
Quora Secondary School - students in grades 7-12+ who have emotional behavioral disorders (EBD), autism spectrum disorders (ASD), developmental cognitive disabilities (DCD), and certain low-incidence disabilities; **136-137 students**	6	2
South Campus Education Center - students in grades 9-12+ who have autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **62-66 students**	130 *62% of this total includes seclusions documented for 4 students, ranging from 8-54 instances over the school year	145 *71% of this total includes seclusions documented for 5 students, ranging from 13-32 instances over the school year.
WELS-N - students ages 18-22 who have emotional behavioral disorders (EBD), autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **31-33 students**	0	0
Total	**367**	**387**

Average Duration of Incidents	23-24	24-25
Bellaire Education Center	35 minutes	36 minutes
Karner Blue Education Center	40 minutes	40 minutes
Pankalo Education Center	39 minutes	40 minutes
Quora Secondary School	18.5 minutes	21 minutes
South Campus Education Center	47 minutes	40 minutes
WELS-N	18 minutes	26 minutes

Average Duration of Restraint	23-24	24-25
Bellaire Education Center	*90 seconds*	*46 seconds*
Karner Blue Education Center	2 minutes	6 minutes
Pankalo Education Center	2.7 minutes	6 minutes
Quora Secondary School	4 minutes	2 minutes
South Campus Education Center	3 minutes	1.4 minutes
WELS-N	2.3 minutes	*30 seconds*

Average Duration of Seclusion	23-24	24-25
Bellaire Education Center	*8 seconds*	3.4 minutes
Karner Blue Education Center	3.4 minutes	3.5 minutes
Pankalo Education Center	5.3 minutes	2 minutes
Quora Secondary School	*10 seconds*	*23 seconds*
South Campus Education Center	7.25 minutes	6.6 minutes
WELS-N	0 minutes	0 minutes

% of Students who Experienced Seclusion	23-24	24-25
Bellaire Education Center	4%	18%
Karner Blue Education Center	13%	15%
Pankalo Education Center	25%	18%
Quora Secondary School	4%	1%
South Campus Education Center	27%	32%
WELS-N	0%	0%

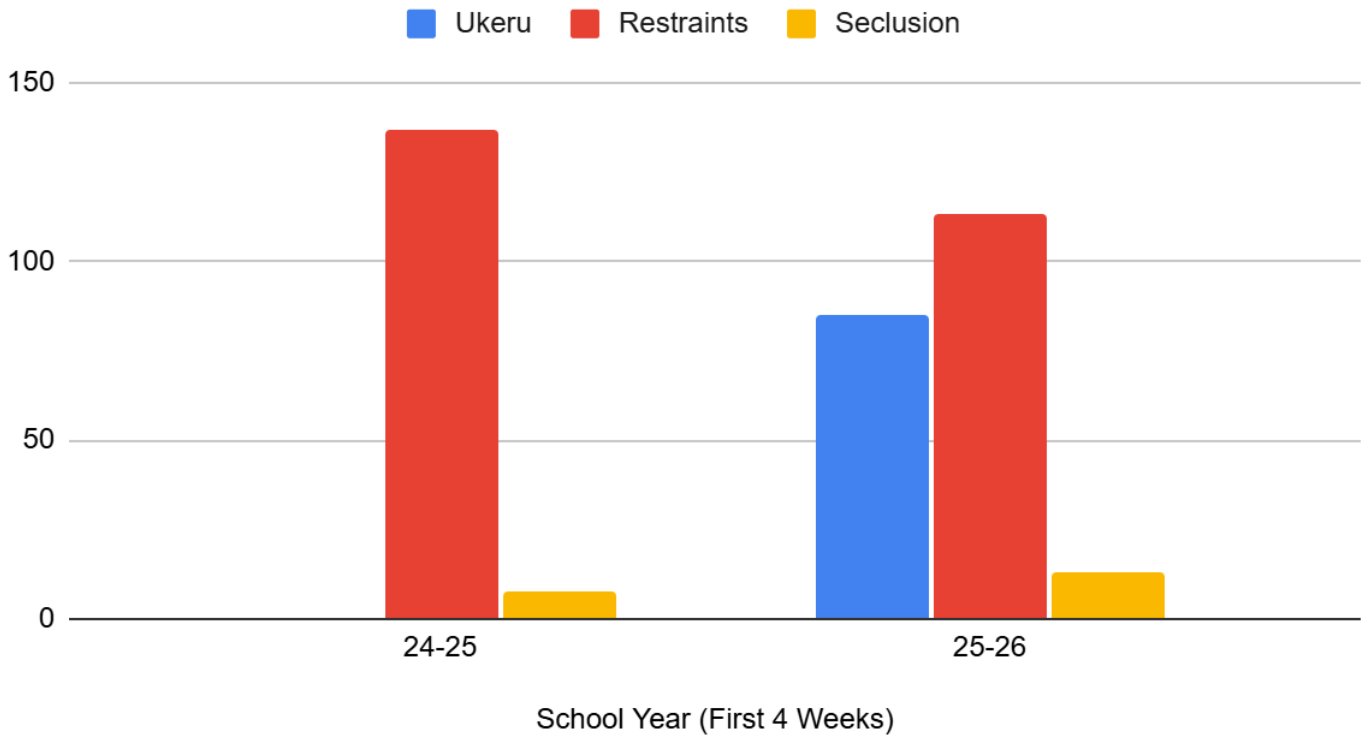
Tour Schedule:

- Start in the office/conference room - Tier 1 checklist
- Walk through beginning in classroom spaces, highlighting breakout spaces, sensory room, gym/Paisley Park
- Transition to LQR and CARES space to discuss crisis intervention and reintegration
- Return to classroom space, then transition to the conference room for questions and additional discussion

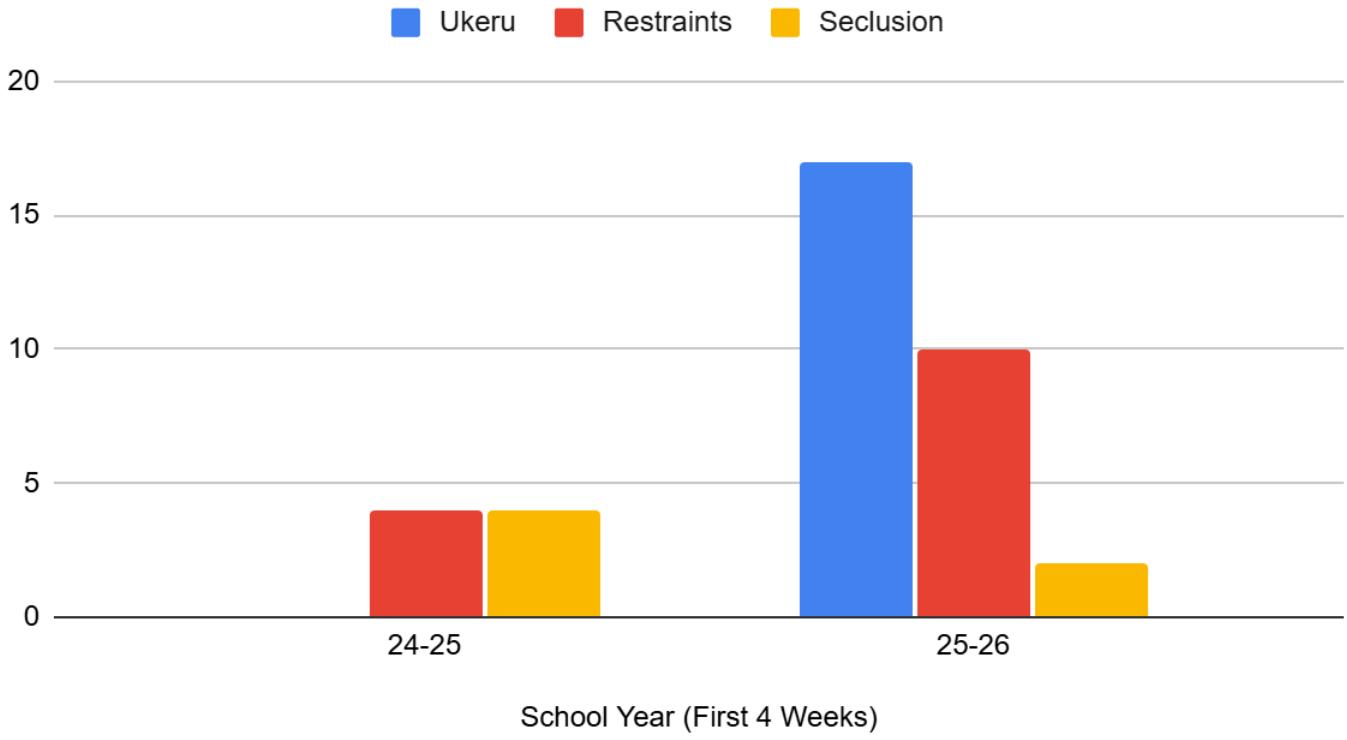
Discussion Points:

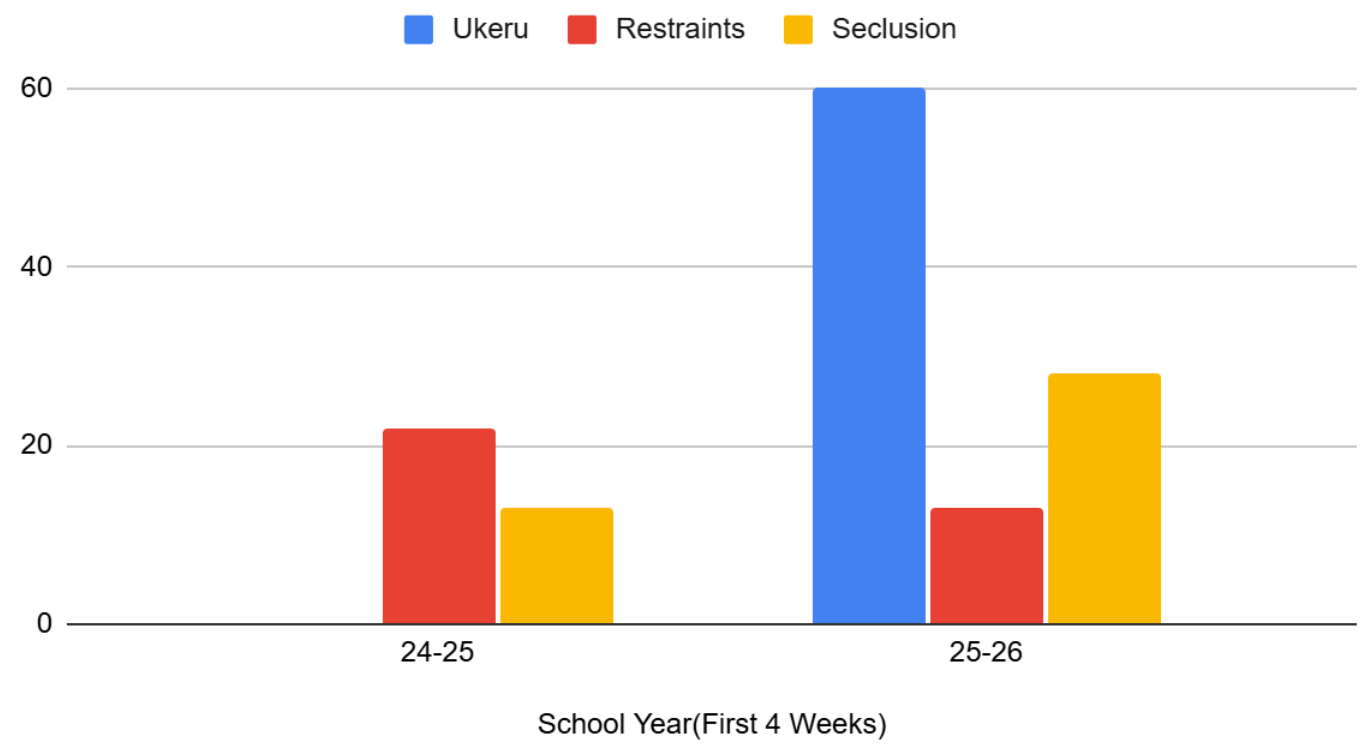
- The use of seclusion requires careful monitoring and critical reflection.
    - 916 staff receive training on the physical and psychological impacts of both physical restraint and seclusion as part of our onboarding process
    - Program leaders train staff to implement seclusion with care and in accordance with state statutes and in alignment with the district's guidelines for the use of restrictive procedures
    - The debrief process provides opportunities for oversight, feedback, and critical reflection
    - All students have a contraindications section in their FBA and Positive Behavior Intervention Plan (PBIP) that lists any psychological or physiological reasons why the team should avoid certain restrictive procedures. This includes input from the school nurse and school social worker.
    - 916 began to pilot the use of Ukeru Pad Blocking as an alternative to the use of restraint and seclusion. Three programs will be fully implementing Ukeru beginning in September 2025. The Behavior Intervention Committee will review data related to frequency of restrictive procedures and injuries in these programs compared to previous years.

Karner Blue



Bellaire Education Center





- Seclusion provides staff and families with options based on the student's trauma history.
    - IEP teams collaborate with parents/guardians and students to gather information, determine potential contraindications, and evaluate effectiveness student impact of proactive and reactive interventions
        - Intake Meetings, Annual IEP Meetings, Restrictive Procedure IEP Meetings
            - Individualizing the procedures that work best for the student based on data as well as student and family feedback.
        - Parent Advocates - for seclusion versus physical restraint

- Seclusion provides an alternative within emergency situations to:
    - Physical holding/restraint
    - EMT/Police intervention

- Eliminating seclusion could result in:
    - Staff need understanding and training in alternatives
    - The use of alternative procedures that have a higher likelihood of drift - staff coming up with responses in the moment that could cause more harm
    - The use of seclusion without accurate documentation/reporting
    - Increased staff and student injuries

- Duration Data: Individual student case studies
    - For individual students, the use of seclusion can be shorter than the use of physical restraint
    - Individual Karner Student, the total incident duration has increased after seclusion was prohibited (with other variables also possibly impacting behavior)

- Behavior Intervention Committee (BIC)
    - Provides oversight on the use of restrictive procedures across the district
    - Analyze trends and identify disparities among marginalized groups regarding the use of restrictive procedures. Discuss mitigation strategies when disparities are identified
    - Consultation for individual students who have more than 10 restrictive procedures during the school year
    - Members include behavior analysts, principal/managers, lead school social worker, the Director of Family and Community Partnerships, and the Executive Director of Special Services

Guidelines for the Use of Restrictive Procedures: Section on Seclusion:

As of September 1, 2024, seclusion is prohibited for students grades K-3.

When is it considered a seclusion?
When a student is alone in a room and prevented from leaving the room by any means including placing the student behind a locked door, an adult standing outside of the room and holding the door shut as the student approaches and/or tries to egress, using an object to prevent a student from leaving an area, pressing a button that locks the door, etc.

- Note – A seclusion should only occur in a state-approved seclusion room.

Can I seclude a student in a non-authorized seclusion room?
No – Seclusion should only occur in state-approved seclusion rooms

Is there a certain amount of time the door needs to be locked in order to be considered a seclusion?
No – Any time the door is locked, or egress is barred, is considered a seclusion and should be documented.

Should I keep the door locked if the student begins eating their feces or engages in significant self-injurious behaviors?
The educational team should immediately evaluate safety and consult with nurses or health professionals.

Is it seclusion when….

- A student is locked in a room and another person is in the room with the student?
  - **NO -** A seclusion occurs when the student is alone in a room, and egress is barred.
- A staff member is holding a door that is not locked?
  - **YES** – If the student is alone in the room, and egress is barred.
- A student is in a room that is blocked off by a mat?
  - **YES –** If the student is alone in the area, and is prevented from leaving by the mat (people are holding the mat or the mat is positioned so that the student cannot leave the area).
- Mats are being held around a student, but the student can move around within the area of the mats and there is an exit?
  - **No** – The student is not being prevented from egress.
- Mats are being held around a student, with no others in the matted area, and the student is not allowed to egress the area of the mats?
  - **YES** – You are barring egress and the student is alone.
- A student is physically resisting being shut in the room and the staff is continuing to hold the door, barring egress?
  - **YES -** Seclusion should only be used when there is imminent danger to the student or others and less restrictive measures have failed. If the student has been transported to the seclusion room, and the threat of physical harm has been abated, seclusion should not be used. Attempts to leave the room that are not aggressive towards others are **not** a reason to use seclusion. If a student is still a danger to themselves or others due to aggressive behavior, seclusion may be used.
- Is it seclusion if a student is in a room alone and not actively trying to leave?
  - **YES -** If the student were to attempt to leave the space and staff would bar egress (block the student from leaving) and the student is alone in the room, it would be considered seclusion. Documentation of seclusion should start at the time that the student is alone in the space and staff would not allow the student to leave, regardless if the student is attempting to leave the space or not.
- Is it seclusion if a student is accidentally locked in a space alone briefly during a transition with staff into or out of a space where all doors require keycard access?
  - **YES** - Seclusions may occur in some programs where keycard access is required to open the doors. If this occurs, simply unlock the door as soon as possible and document accordingly.
- Is it seclusion if the door is ajar with staff standing within the doorway?
  - **MAYBE** - If egress is barred and the staff is not fully in the room with the student, this would be considered seclusion. To avoid the use of seclusion, staff may step fully within the room.

The educational team should immediately evaluate safety and consult with nurses or health professionals.

Can I expect a student to sit at the back of the LQR room in order for the door to be unlocked?
Signs of readiness vary based on the individual student, and should be determined by the IEP team and documented in the student's plan. The definition of safe behavior does not equate to compliance.

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Seclusion Data by Program

916 Seclusion Data by Site	23-24	24-25
Bellaire Education Center - students in grades 6-8 who have autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **27-34 students**	3	37 *54% of this total includes incidents with seclusion for one student. Incidents with seclusion were documented for 5 additional students, ranging from 1-5 instances during the school year.
Karner Blue Education Center - K-8 program that serves students with emotional behavioral disorders (EBD), autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **121-123 students** ***This program serves students in grades K-3. Seclusion was prohibited for this age group in September, 2024***	89 *63% of this total includes seclusions documented for 3 students, ranging from 11-27 instances over the school year	110 *65% of this total includes seclusions documented for 4 students, ranging from 12-24 instances over the school year.
Pankalo Education Center - K-8 program that serves students with emotional behavioral disorders (EBD), autism spectrum disorders (ASD), developmental cognitive disabilities (DCD), and certain low-incidence disabilities; **100-114 students** ***This program serves students in grades K-3. Seclusion was prohibited for this age group in September, 2024***	139* *49% of this total includes seclusions documented for 5 individual students, ranging from 9-17 instances over the school year	93 *55% of this total includes seclusions documented for 3 students, ranging from 12-23 instances over the school year.
Quora Secondary School - students in grades 7-12+ who have emotional behavioral disorders (EBD), autism spectrum disorders (ASD), developmental cognitive disabilities (DCD), and certain low-incidence disabilities; **136-137 students**	6	2
South Campus Education Center - students in grades 9-12+ who have autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **62-66 students**	130 *62% of this total includes seclusions documented for 4 students, ranging from 8-54 instances over the school year	145 *71% of this total includes seclusions documented for 5 students, ranging from 13-32 instances over the school year.
Work Experience Life Skills (WELS) - students ages 18-22 who have emotional behavioral disorders (EBD), autism spectrum disorders (ASD) and developmental cognitive disabilities (DCD); **31-33 students**	0	0
Total	**367**	**387**

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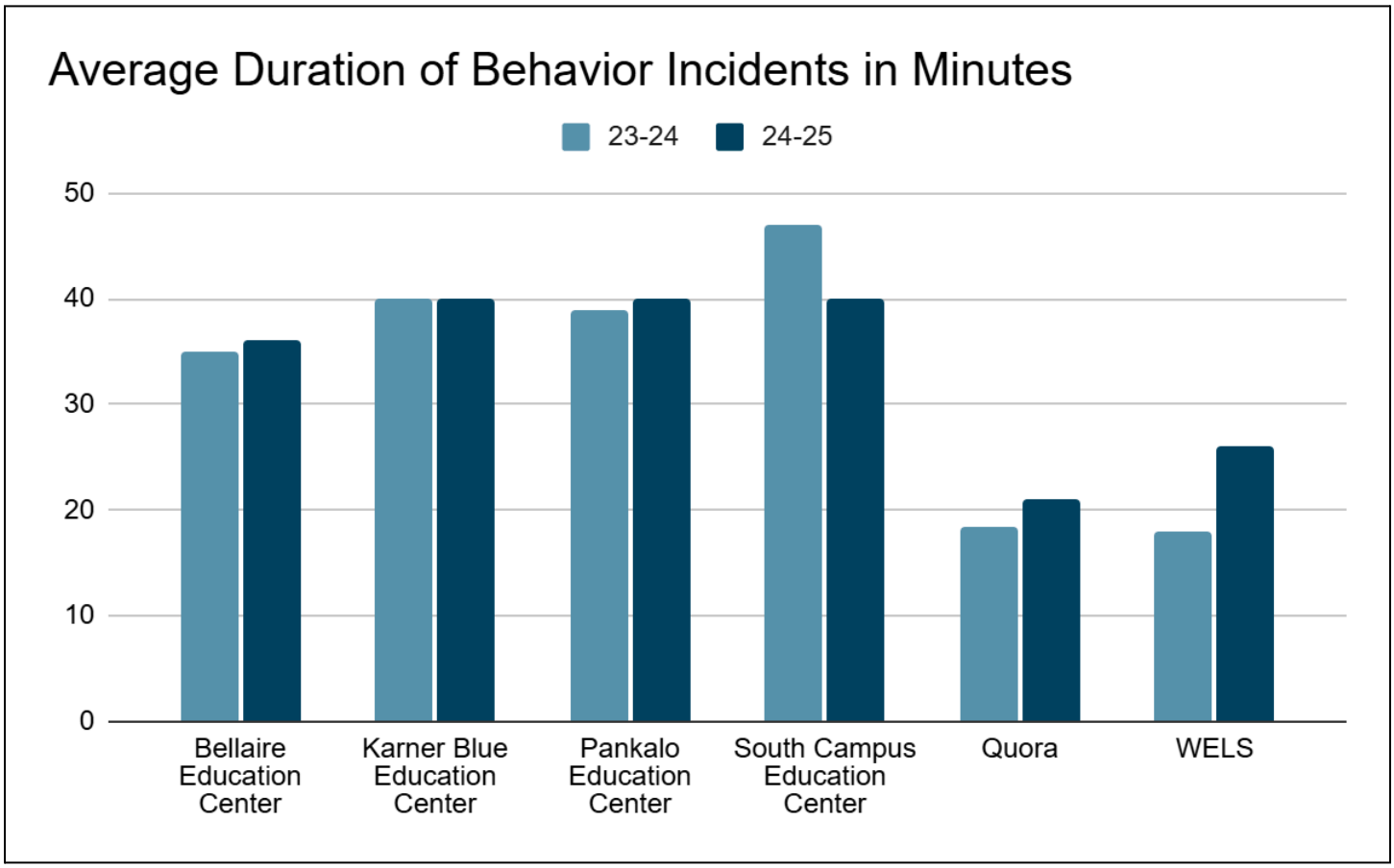

Average Duration of Behavior Incidents	23-24	24-25
Bellaire Education Center	35 minutes	36 minutes
Karner Blue Education Center	40 minutes	40 minutes
Pankalo Education Center	39 minutes	40 minutes
Quora Secondary School	18.5 minutes	21 minutes
South Campus Education Center	47 minutes	40 minutes
WELS	18 minutes	26 minutes

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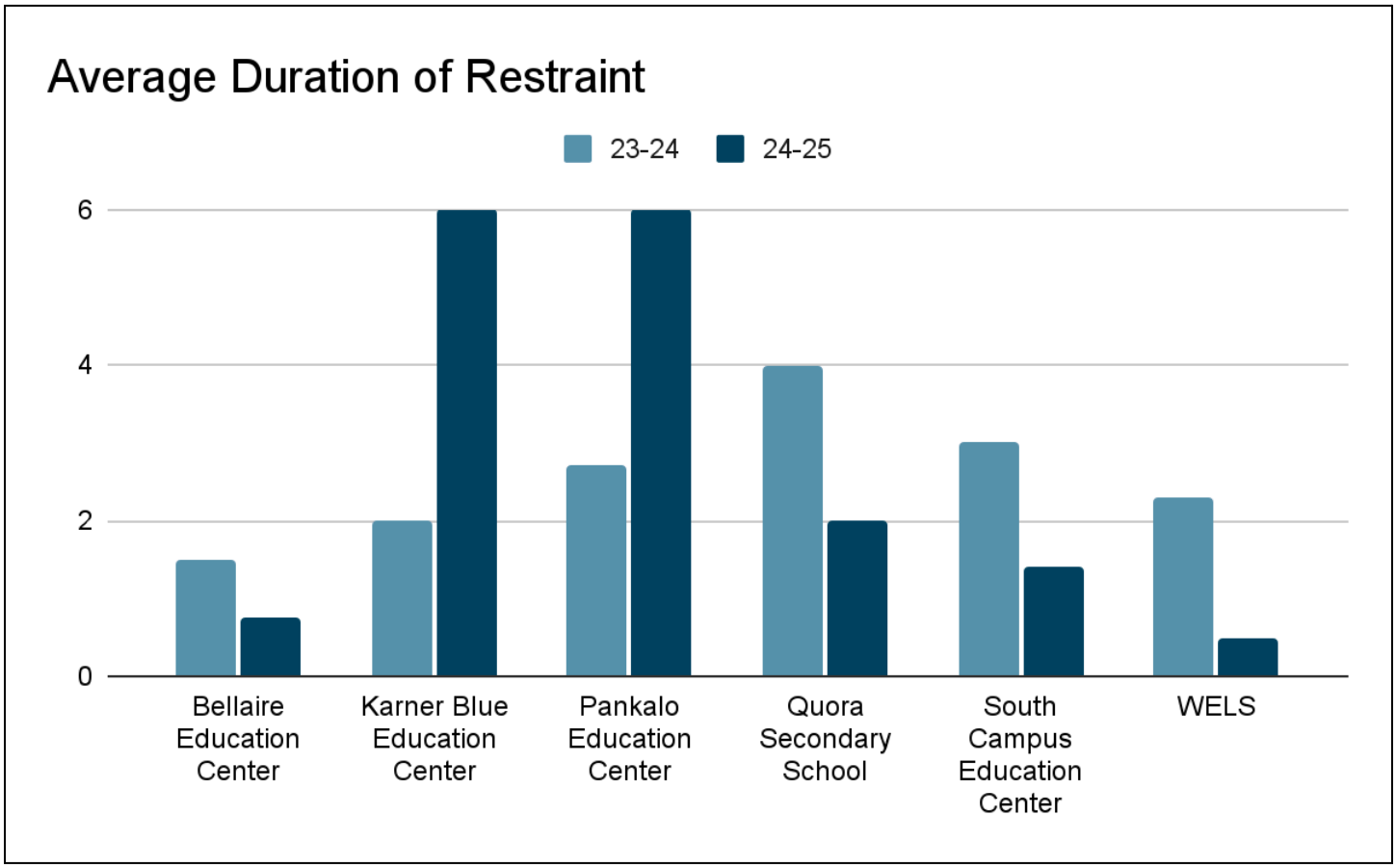

Average Duration of Restraint	23-24	24-25
Bellaire Education Center	*90 seconds*	*46 seconds*
Karner Blue Education Center	2 minutes	6 minutes
Pankalo Education Center	2.7 minutes	6 minutes
Quora Secondary School	4 minutes	2 minutes
South Campus Education Center	3 minutes	1.4 minutes
WELS	2.3 minutes	*30 seconds*

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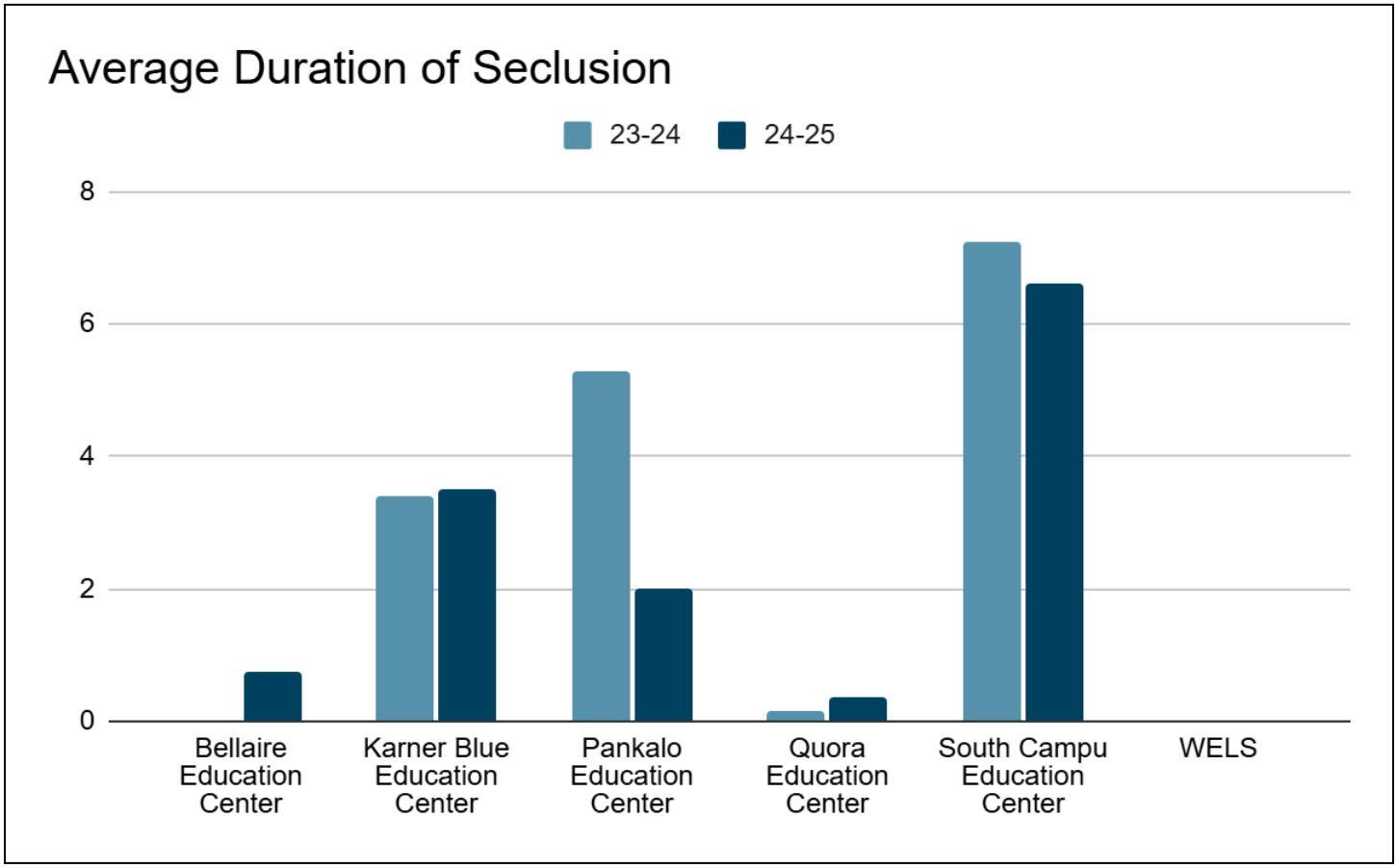

Average Duration of Seclusion	23-24	24-25
Bellaire Education Center	*8 seconds*	3.4 minutes
Karner Blue Education Center	3.4 minutes	3.5 minutes
Pankalo Education Center	5.3 minutes	2 minutes
Quora Secondary School	*10 seconds*	*23 seconds*
South Campus Education Center	7.25 minutes	6.6 minutes
WELS	0 minutes	0 minutes

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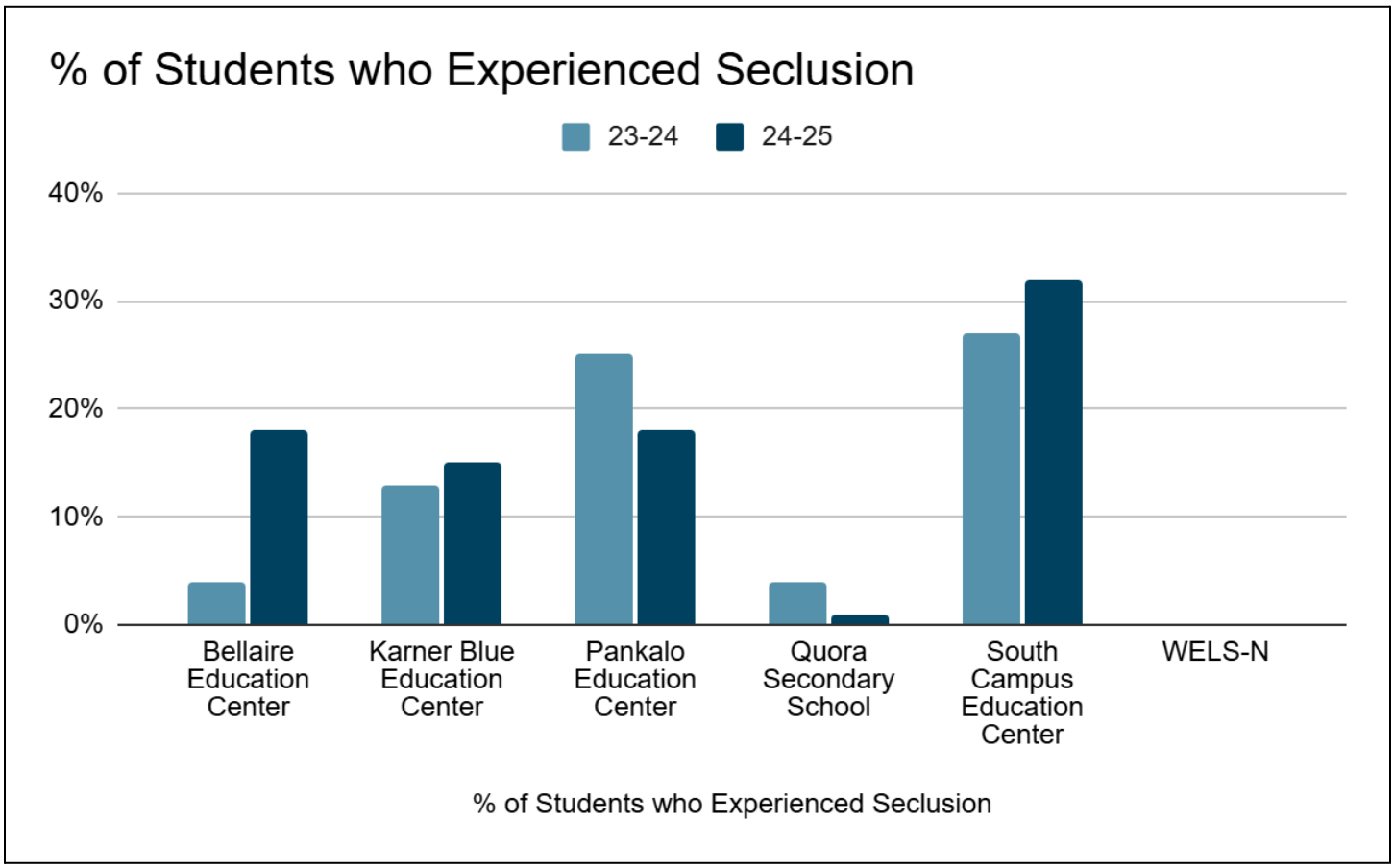
Additional Incident Data Related to Seclusion



% of Students who Experienced Seclusion	23-24	24-25
Bellaire Education Center	4%	18%
Karner Blue Education Center	13%	15%
Pankalo Education Center	25%	18%
Quora Secondary School	4%	1%
South Campus Education Center	27%	32%
WELS-N	0%	0%

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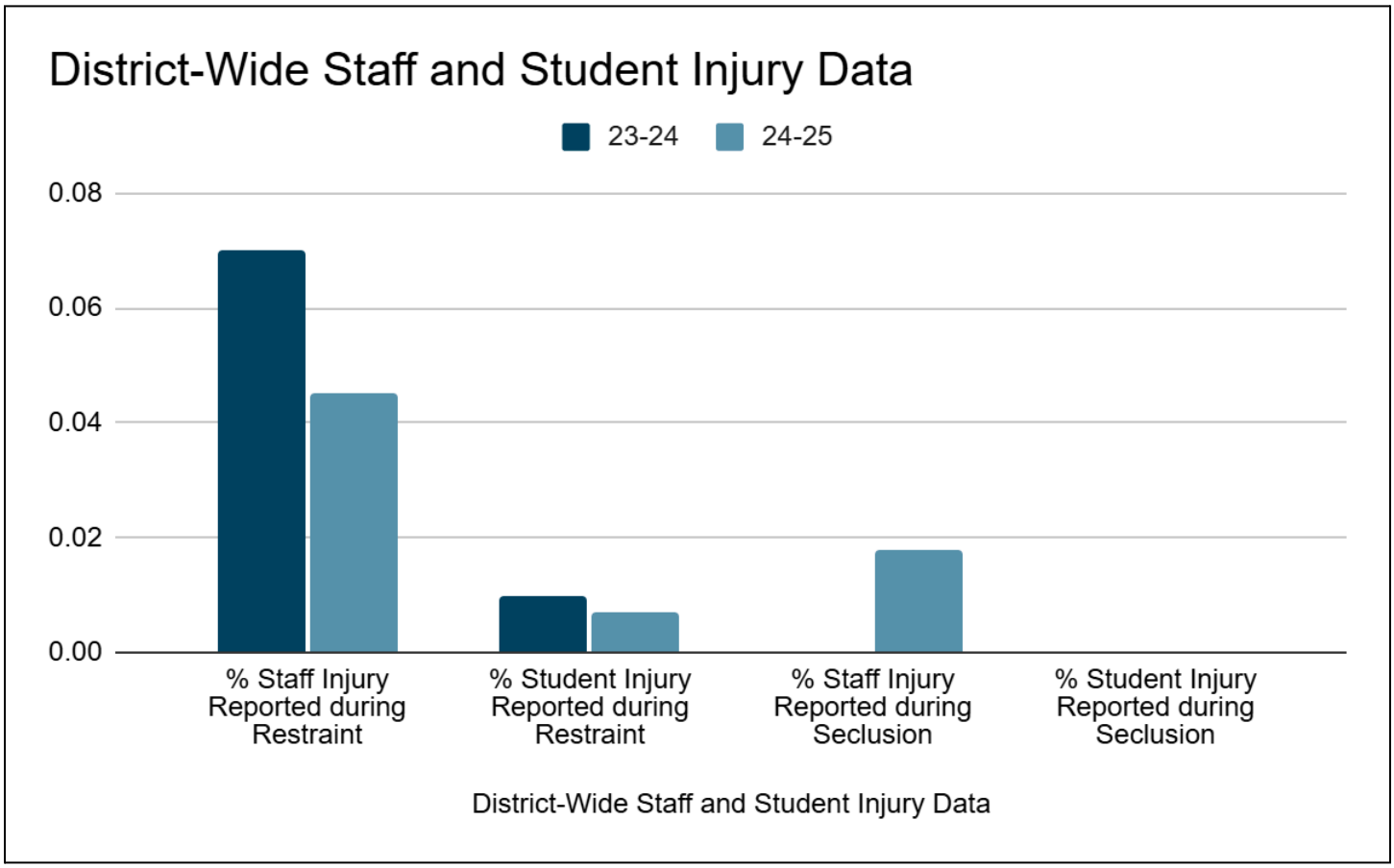

District-Wide Staff and Student Injury Data	23-24	24-25
% Staff Injury Reported during Restraint	7%	4.5%
% Student Injury Reported during Restraint	1%	0.7%
% Staff Injury Reported during Seclusion	0%	1.8%
% Student Injury Reported during Seclusion	0%	0%

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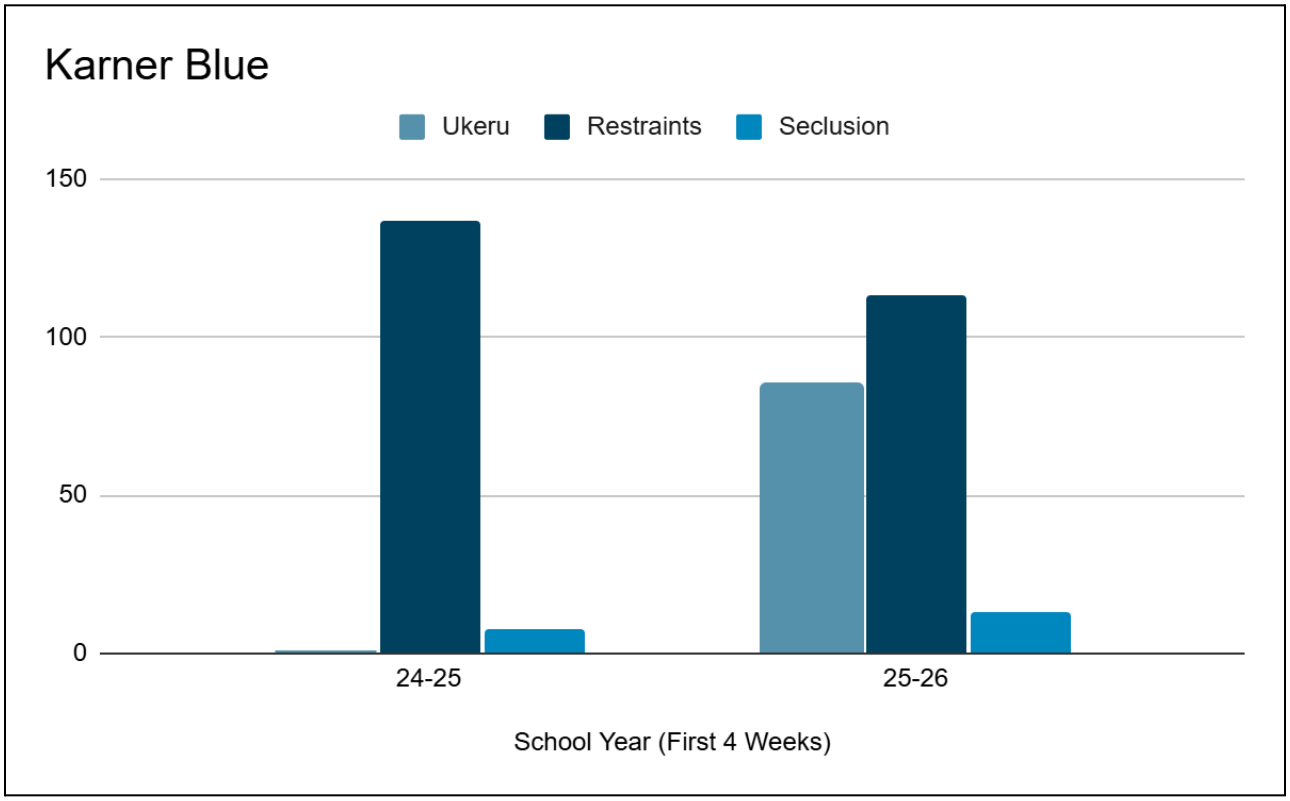
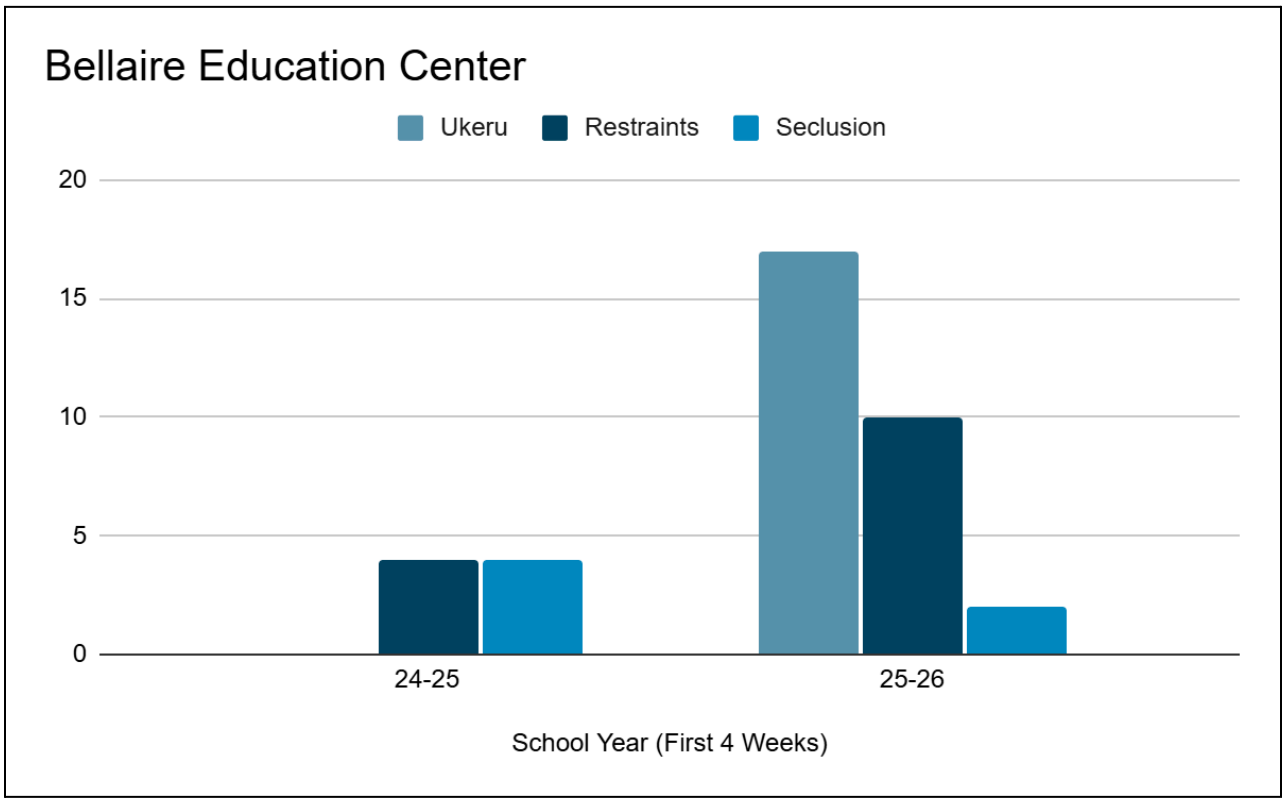
Procedure Frequency Comparison: First 4 weeks of school from fall of 2024 (without Ukeru) and fall of 2025 (with Ukeru).





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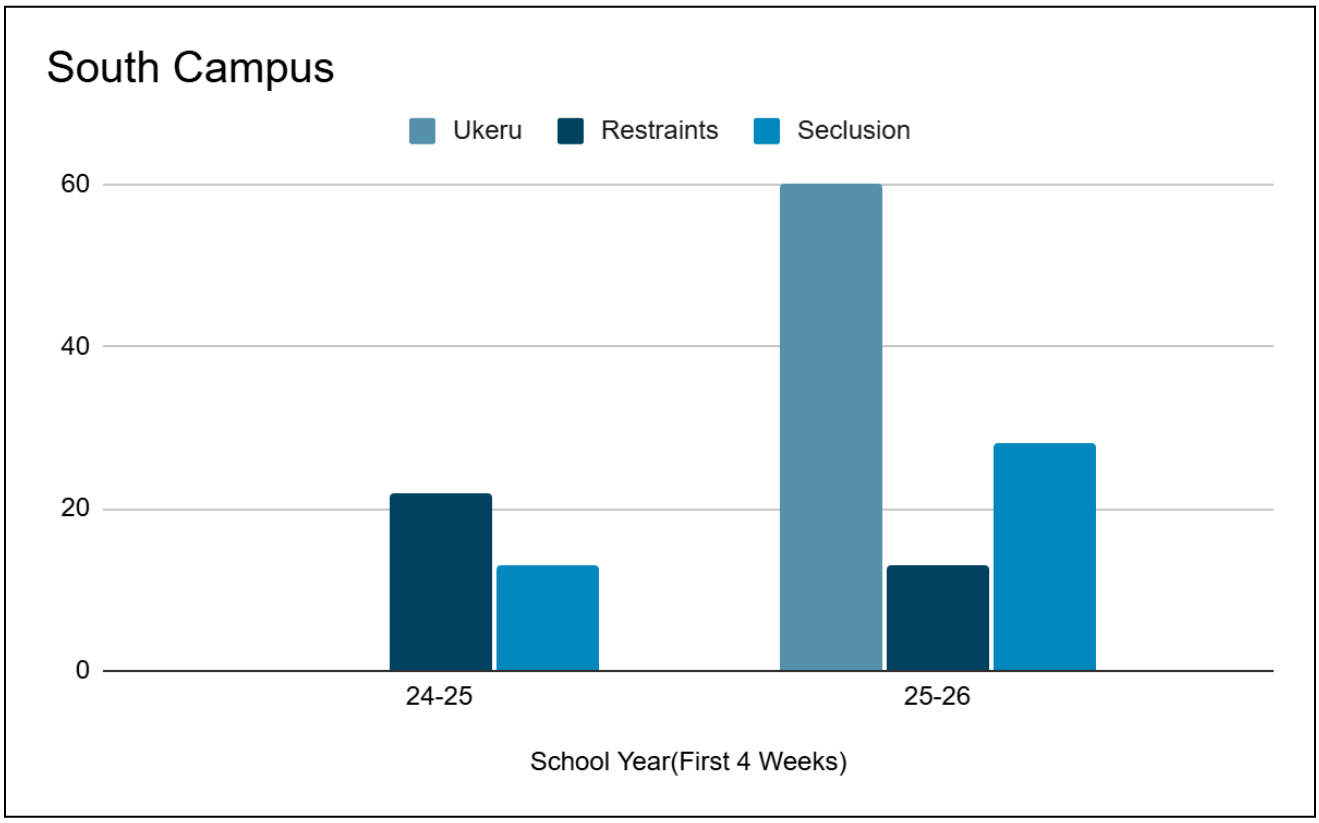
Procedure Frequency Comparison Continued: First 4 weeks of school from fall of 2024 (without Ukeru) and fall of 2025 (with Ukeru).



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Discussion Points:

- The use of seclusion requires careful monitoring and critical reflection.
  - 916 staff receive training on the physical and psychological impacts of both physical restraint and seclusion as part of our onboarding process
  - Program leaders train staff to implement seclusion with care and in accordance with state statutes and in alignment with the district's guidelines for the use of restrictive procedures
  - The debrief process provides opportunities for oversight, feedback, and critical reflection
  - All students have a contraindications section in their FBA and Positive Behavior Intervention Plan (PBIP) that lists any psychological or physiological reasons why the team should avoid certain restrictive procedures. This includes input from the school nurse and school social worker.
  - 916 began to pilot the use of Ukeru Pad Blocking as an alternative to the use of restraint and seclusion. Three programs are fully implementing Ukeru as of September 2025. The Behavior Intervention Committee will review data related to frequency of restrictive procedures and injuries in these programs compared to previous years.

- Seclusion provides staff and families with options based on the student's trauma history.
  - IEP teams collaborate with parents/guardians and students to gather information, determine potential contraindications, and evaluate effectiveness student impact of proactive and reactive interventions
    - Intake Meetings, Annual IEP Meetings, Restrictive Procedure IEP Meetings: Individualizing the procedures that work best for the student based on data as well as student and family feedback.

- Restrictive Procedures Oversight Committee: Behavior Intervention Committee (BIC)
  - Provides oversight on the use of restrictive procedures across the district
  - Analyze trends and identify disparities among marginalized groups regarding the use of restrictive procedures. Discuss mitigation strategies when disparities are identified
  - Consultation for individual students who have more than 10 restrictive procedures during the school year
  - Members include behavior analysts, principal/managers, lead school social worker, the Director of Family and Community Partnerships, and the Executive Director of Special Services

- Duration Data:
  - For individual students, the use of seclusion can be shorter than the use of physical restraint

- Seclusion provides an alternative within emergency situations to:
  - Physical holding/restraint
  - EMT/Police intervention

- When considering the elimination of seclusion:
  - Staff need understanding and training in alternatives
  - The use of alternative procedures that have a higher likelihood of drift - staff coming up with responses in the moment that could cause more harm
  - The use of seclusion without accurate documentation/reporting
  - Increased staff and student injuries

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916 Guidelines for the Use of Restrictive Procedures: Section on Seclusion

As of September 1, 2024, seclusion is prohibited for students grades K-3.

When is it considered a seclusion?
When a student is alone in a room and prevented from leaving the room by any means including placing the student behind a locked door, an adult standing outside of the room and holding the door shut as the student approaches and/or tries to egress, using an object to prevent a student from leaving an area, pressing a button that locks the door, etc.

- Note – A seclusion should only occur in a state-approved seclusion room.

Can I seclude a student in a non-authorized seclusion room? No – Seclusion should only occur in state-approved seclusion rooms

Is there a certain amount of time the door needs to be locked in order to be considered a seclusion?
No – Any time the door is locked, or egress is barred, is considered a seclusion and should be documented.

Should I keep the door locked if the student begins eating their feces or engages in significant self-injurious behaviors? The educational team should immediately evaluate safety and consult with nurses or health professionals.

Is it seclusion when….

- A student is locked in a room and another person is in the room with the student?
  - **NO -** A seclusion occurs when the student is alone in a room, and egress is barred.
- A staff member is holding a door that is not locked?
  - **YES** – If the student is alone in the room, and egress is barred.
- A student is in a room that is blocked off by a mat?
  - **YES –** If the student is alone in the area, and is prevented from leaving by the mat (people are holding the mat or the mat is positioned so that the student cannot leave the area).
- Mats are being held around a student, but the student can move around within the area of the mats and there is an exit?
  - **NO** – The student is not being prevented from egress.
- Mats are being held around a student, with no others in the matted area, and the student is not allowed to egress the area of the mats?
  - **YES** – You are barring egress and the student is alone.
- A student is physically resisting being shut in the room and the staff is continuing to hold the door, barring egress?
  - **YES -** Seclusion should only be used when there is imminent danger to the student or others and less restrictive measures have failed. If the student has been transported to the seclusion room, and the threat of physical harm has been abated, seclusion should not be used. Attempts to leave the room that are not aggressive towards others are **not** a reason to use seclusion. If a student is still a danger to themselves or others due to aggressive behavior, seclusion may be used.

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- Is it seclusion if a student is in a room alone and not actively trying to leave?
    - **YES -** If the student were to attempt to leave the space and staff would bar egress (block the student from leaving) and the student is alone in the room, it would be considered seclusion. Documentation of seclusion should start at the time that the student is alone in the space and staff would not allow the student to leave, regardless if the student is attempting to leave the space or not.
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    - **YES** - Seclusions may occur in some programs where keycard access is required to open the doors. If this occurs, simply unlock the door as soon as possible and document accordingly.
- Is it seclusion if the door is ajar with staff standing within the doorway?
    - **MAYBE** - If egress is barred and the staff is not fully in the room with the student, this would be considered seclusion. To avoid the use of seclusion, staff may step fully within the room.

The educational team should immediately evaluate safety and consult with nurses or health professionals.

Can I expect a student to sit at the back of the LQR room in order for the door to be unlocked?
Signs of readiness vary based on the individual student, and should be determined by the IEP team and documented in the student's plan. The definition of safe behavior does not equate to compliance.

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PHYSICAL HOLDING DATA
2024-25

Total Restrictive Procedures
Statewide: School Years 2020-21 - 2024-25

Year	Physical Holds	Seclusions	Total RP
2021-22	13,289	4,702	17,991
2022-23	12,405	3,990	16,395
2023-24	14,013	3,451	17,464
2024-25	19,097	1,867	20,964

Physical Holding: Injuries
Statewide: School Years 2020-21 - 2024-25

Year	Injury to staff	Injury to student
2024-25	1,711	240

Physical Holding: Disability
Statewide: 2024-25

Disability	Physical Holds	Statewide Special Education Enrollment
Deaf-Blind	0.1%	0.1%
Visually Impaired	0.2%	0.3%
Physically Impaired	0.2%	0.9%
Traumatic Brain Injury Disabled	0.3%	0.2%
Deaf-Hard of Hearing	0.6%	1.4%
Speech/Language Impaired	0.6%	18.0%
Severely Multiply Impaired	1.6%	0.9%
Developmental Cognitive Disorder	4.8%	0.0%
Specific Learning Disability	4.9%	23.3%
Developmental Delay	7.9%	13.3%
Other Health Disabilities	10.4%	11.7%
Autism Spectrum Disorders	31.5%	16.6%
Emotional Behavior Disorders	37.0%	9.4%

Physical Holding: Setting
Statewide: 2024-25

Setting	Physical Holds	Statewide Special Education Enrollment
01	16.6%	55.7%
02	17.0%	17.3%
03	29.8%	8.9%
04	33.7%	2.9%
Other	0.9%	5.2%
EC	2.1%	0.0%

Physical Holding: Race/Ethnicity
Statewide: 2024-25

Race/Ethnicity	Physical Holds	Statewide Special Education Enrollment
Native Hawaiian or other Pacific Islander	0.1%	0.1%
Asian	2.4%	4.9%
American Indian or Alaska Native	4.0%	2.8%
Hispanic or Latino	7.6%	13.0%
Two or More Races	12.2%	7.9%
Black or African-American	26.3%	12.6%
White	47.3%	58.6%

Physical Holding: Gender
Statewide: 2024-25

Gender	Physical Holds	Statewide Special Education Enrollment
Female	17.8%	35.4%
Male	82.2%	64.6%

Physical Holding: Age
Statewide: 2024-25

Age Group	Physical Holds	Statewide Special Education Enrollment
0-5 Years	8.0%	19.1%
6-10 Years	60.5%	34.9%
11-15 Years	24.8%	30.3%
16-22 Years	6.7%	15.8%

Physical Holding: Grade Level

Statewide: 2024-25

Grade	Percent of Total
01	11.8%
02	14.2%
03	14.8%
04	10.6%
05	9.1%
06	6.8%
07	5.3%
08	4.3%
09	3.4%
10	2.2%
11	2.1%
12	3.3%
EC	0.3%
KN	11.6%

Date is current as of Thursday, September 18, 2025 7:01:09 PM

PHYSICAL HOLDING DATA

	2024-25	Percent of Total	Change from Previous Year	2023-24	2022-23
Totals					
Total Restrictive Procedures	20,964		+3,500	17,464	16,395
Physical Holds	19,097		+5,084	14,013	12,405
Staff Injuries	1,711		+489	1,222	920
Student Injuries	240		+39	201	132
Physically Held or Secluded Students (Unduplic	2,904		-28	2,932	2,958
Students Physically Held (Unduplicated)	2,810		+33	2,777	2,750
Disability					
Autism Spectrum Disorders	904	31%	+53	851	762
Developmental Cognitive Disorder	138	5%	+24	114	142
Deaf-Blind	3	0%	+3	0	0
Deaf-Hard of Hearing	16	1%	+5	11	14
Developmental Delay	226	8%	-7	233	250
Emotional Behavior Disorders	1,061	37%	-39	1,100	1,112
Other Health Disabilities	299	10%	+17	282	302
Physically Impaired	7	0%	-1	8	9
Severely Multiply Impaired	45	2%	-12	57	49
Specific Learning Disability	141	5%	-17	158	141
Speech/Language Impaired	17	1%	-3	20	30
Traumatic Brain Injury Disabled	8	0%	-4	12	7
Visually Impaired	5	0%	+1	4	4
Setting					
01 Outside of regular class room less than 21 p	476	17%	-61	537	592
02 Resource room between 21 percent and 60	487	17%	+36	451	486
03 Separate classroom more than 60 percent c	855	30%	+2	853	785
04 Public separate day school facility > 50 perc	968	34%	+29	939	904
Other Settings	25	1%	+4	21	10
Early Childhood Settings	59	2%	+10	49	45
Race/Ethnicity					
Asian	70	2%	+10	60	50
Black or African-American	756	26%	+31	725	682
Hispanic or Latino	219	8%	-3	222	210
American Indian or Alaska Native	115	4%	+28	87	111
Two or More Races	349	12%	+56	293	295
White	1,358	47%	-104	1,462	1,471
Native Hawaiian or other Pacific Islander	3	0%	+2	1	3
Gender					
Male	2,358	82%	+40	2,318	2,344
Female	512	18%	-20	532	478
Age Group					
0-5 Years	230	8%	+15	215	192
6-10 Years	1,736	60%	-38	1,774	1,783
11-15 Years	712	25%	+50	662	688

16-22 Years	192	7%	-7	199	159
Grade					
First	338	12%	-64	402	380
Second	408	14%	-35	443	371
Third	426	15%	+84	342	368
Fourth	305	11%	-29	334	342
Fifth	262	9%	+8	254	319
Sixth	196	7%	-8	204	179
Seventh	153	5%	+28	125	148
Eighth	122	4%	+11	111	124
Ninth	98	3%	+16	82	72
Tenth	63	2%	-10	73	53
Eleventh	61	2%	+3	58	48
Twelfth	96	3%	-7	103	95
Early Childhood	9	0%	-40	49	44
Kindergarten	333	12%	+63	270	279

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2021-22

17,991
13,289
801
249
2,681
2,489

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223
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25
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887
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43
591
206
105
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1,317
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2,119
422

218
1,564
590

171

288
353
320
328
230
193
120
102
70
58
56
83
72
270

PHYSICAL HOLDING DATA
2024-25

Total Restrictive Procedures
Statewide: School Years 2020-21 - 2024-25

Year	Physical Holds	Seclusions	Total RP
2021-22	13,289	4,702	17,991
2022-23	12,405	3,990	16,395
2023-24	14,013	3,451	17,464
2024-25	19,097	1,867	20,964

Physical Holding: Injuries
Statewide: School Years 2020-21 - 2024-25

Year	Injury to staff	Injury to student
2024-25	1,711	240

Physical Holding: Disability
Statewide: 2024-25

Disability	Physical Holds	Statewide Special Education Enrollment
Deaf-Blind	0.1%	0.1%
Visually Impaired	0.2%	0.3%
Physically Impaired	0.2%	0.9%
Traumatic Brain Injury Disabled	0.3%	0.2%
Deaf-Hard of Hearing	0.6%	1.4%
Speech/Language Impaired	0.6%	18.0%
Severely Multiply Impaired	1.6%	0.9%
Developmental Cognitive Disorder	4.8%	0.0%
Specific Learning Disability	4.9%	23.3%
Developmental Delay	7.9%	13.3%
Other Health Disabilities	10.4%	11.7%
Autism Spectrum Disorders	31.5%	16.6%
Emotional Behavior Disorders	37.0%	9.4%

Physical Holding: Setting
Statewide: 2024-25

Setting	Physical Holds	Statewide Special Education Enrollment
01	16.6%	55.7%
02	17.0%	17.3%
03	29.8%	8.9%
04	33.7%	2.9%
Other	0.9%	5.2%
EC	2.1%	0.0%

Physical Holding: Race/Ethnicity
Statewide: 2024-25

Race/Ethnicity	Physical Holds	Statewide Special Education Enrollment
Native Hawaiian or other Pacific Islander	0.1%	0.1%
Asian	2.4%	4.9%
American Indian or Alaska Native	4.0%	2.8%
Hispanic or Latino	7.6%	13.0%
Two or More Races	12.2%	7.9%
Black or African-American	26.3%	12.6%
White	47.3%	58.6%

Physical Holding: Gender
Statewide: 2024-25

Gender	Physical Holds	Statewide Special Education Enrollment
Female	17.8%	35.4%
Male	82.2%	64.6%

Physical Holding: Age
Statewide: 2024-25

Age Group	Physical Holds	Statewide Special Education Enrollment
0-5 Years	8.0%	19.1%
6-10 Years	60.5%	34.9%
11-15 Years	24.8%	30.3%
16-22 Years	6.7%	15.8%

Physical Holding: Grade Level

Statewide: 2024-25

Grade	Percent of Total
01	11.8%
02	14.2%
03	14.8%
04	10.6%
05	9.1%
06	6.8%
07	5.3%
08	4.3%
09	3.4%
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Monica Byron
President

Marty Fridgen
Vice President

Ryan Fiereck
Secretary-Treasurer

Carrie Lucking
Executive Director

Dec. 16, 2025

Members of the seclusion working group,

Education Minnesota represents over 84,000 active, retired and aspiring educators, including teachers, paraprofessionals, school counselors, and higher education faculty. We represent educators in every school district across the state.

Our members have various experiences with seclusion – some have received proper training and have seen it used appropriately to defuse situations, and others have seen it used too broadly. For this reason, we do not have a formal legislative position on the use of seclusion at this time. Instead we rely on our member experiences to formulate our responses and inform decision-making, including talking with members before and after each hearing of this working group.

However, Education Minnesota is strongly opposed to any changes to Student Support Personnel Aid. Student Support Personnel Aid goes to every school district, charter, intermediate and coop in the state and must be used to increase or maintain staffing for school counselors, school social workers, school psychologists and school nurses. This was one of the premier achievements of the 2023 legislative session, originally authored in House File 8, and represents a decade of advocacy by our members, parents and students across the state to demand schools staff the mental and physical health positions our students need. Minnesota consistently ranks towards the bottom in school staffing for these positions while the needs are ever growing. Even in this working group, the proposal outlined by Ms. Woodward would require increased staffing for mental and physical health teams as her proposal would require adding these staff to any IEP decisions on seclusion.

Education Minnesota and other organizations worked for a decade to create Student Support Personnel Aid. This funding goes to every district, charter school and intermediate in the state, and is the only formula that must be spent on qualified mental health professionals there in the school. The number one predictor of academic success is that the student has a relationship with someone in the building, that they believe one adult cares if they show up that day or not. That, combined with the mental health crisis that impacts one in three high school students, and the fact that Minnesota is consistently ranked 48th in the nation in mental health supports in schools, is why we care about this funding so much. We urge the working group to not touch this funding. Chair Seeberger has talked before about the harms of the legislature making choices without full vetting. We invite members of the working group to join conversations with their local school counselors, school social workers, school psychologists and school nurses and judge for yourselves if we are adequately meeting our students' needs in these areas.

The legislature, in order to solve a difficult budget process, has already cut Student Support Personnel Aid by $50 million. Please do not further reduce our state's investment in student mental health.

41 Sherburne Ave., St. Paul, MN 55103
651-227-9541 800-652-9073
www.educationminnesota.org

Education Minnesota is an affiliate of the American Federation of Teachers, the National Education Association and AFL-CIO. 6058

EDUCATION MINNESOTA
THE VOICE FOR PROFESSIONAL EDUCATORS AND STUDENTS

Dear Mr. Andrew George,

I am writing to advocate for the continued, carefully regulated use of seclusion specifically within Level IV programs. These programs serve students with the most significant behavioral and emotional needs, and it is essential that staff maintain access to all appropriate tools to ensure safety and support learning.

All students have the fundamental right to be educated, regardless of the complexity of their needs. In order to uphold this right, schools must be equipped to respond effectively when students experience behavioral crises that place themselves or others at risk. In Level IV settings, seclusion remains a necessary intervention when used as a last resort, in accordance with established policies, training, and oversight.

Our communities are experiencing increased exposure to trauma, which has a direct impact on students' ability to process frustration, disappointment, or situations that do not result in their desired outcome. Many students in Level IV programs have witnessed or experienced significant trauma in their home environments. As a result, their problem-solving responses may be rooted in survival behaviors, including aggression or violence, rather than regulation and communication.

In moments of crisis, seclusion can provide a controlled, safe environment that allows a student to de-escalate, regain emotional regulation, and prevent harm. When implemented appropriately, it is not punitive, but protective—supporting both the student in crisis and the broader learning community.

Eliminating seclusion without viable, equally effective alternatives risks compromising safety and undermining the ability of Level IV programs to meet the needs of their students. Maintaining this intervention, alongside trauma-informed practices, staff training, and ongoing review, ensures that we can continue to educate all students while prioritizing dignity, safety, and well-being.

Thank you for your consideration and continued commitment to serving our most vulnerable learners.

Sincerely,
Katie Wheelock

Special Education Coordinator

River Bend Education District #6049

Level IV administrator

The use of seclusion as a **last resort** is a safety tool intended to protect both students and staff when there is an imminent risk of harm to the student or others. Staff are trained to implement a continuum of proactive and responsive crisis interventions prior to considering seclusion, including de-escalation strategies, non-restrictive crisis intervention techniques, and the use of protective blocking strategies such as Ukeru. These approaches are designed to reduce escalation, maintain student dignity, and support regulation while prioritizing safety. Seclusion is only considered when other interventions have been attempted or are deemed insufficient to address an imminent danger to themselves or others.

Staff receive **annual training** on the appropriate use of seclusion and alternative interventions to ensure practices align with safety standards, legal requirements, and trauma-informed principles. When seclusion is used, it is applied solely to maintain safety and is never a punitive measure. While every effort is made to prevent situations from reaching this level, there are times when seclusion is necessary as a last resort to protect the student and others from harm. In these instances, staff act with care, professionalism, and respect, with the goal of stabilizing the situation and returning the student to a safe and supportive learning environment as soon as possible.

Thank you,

--
AJ Boehmer
Pronouns: they/them; he/him
Principal/Assistant Director of Special Education
Lebanon Education Center and ECSE TEA
Intermediate School District 917
Office: 952-431-8632
Cell: 651-261-5100
Fax: 952-431-4063

Mr. George,

As a doctoral-level behavior analyst working in Minnesota schools—specifically with students served in Setting IV programs—I strongly support the “Runway with Support” proposal. While the long-term goal of eliminating seclusion is understandable, a hard stop without fully implemented, funded, and fidelity-based alternatives creates a serious safety risk for students and staff. In high-acuity settings, seclusion is used rarely and only as a true last resort when there is imminent danger, and removing it prematurely risks increased physical restraint, law enforcement involvement, injuries, shortened school days, or loss of placement stability. Preserving seclusion temporarily while the state invests in evidence-based alternatives, training, and technical assistance (such as Ukeru and other preventative frameworks) is the only responsible path forward. A runway ensures we replace unsafe practices with safer ones—rather than simply removing a tool without providing what is needed to protect students, staff, and learning environments across Minnesota.

Sincerely,

Corey

--

Corey Stocco, Ph.D., BCBA-D, LBA

Dear Seclusion Working Group,

My name is Val Rae Boe. I am writing to emphasize my concerns and recommendations regarding proposals under consideration. My commitment to students in setting IV has provided me with over 20 years of rewarding service as a special education teacher, Principal, director of Special Education, and, currently, Superintendent.

At 916, we prioritize prevention, de-escalation, and collaboration with parents and guardians. Seclusion is used rarely and only when less restrictive interventions have failed and when physical restraint would be more traumatic or harmful, particularly for students with a history of significant trauma.

For Setting IV special education programs, an abrupt ban creates a significant risk. Removing seclusion without first ensuring statewide readiness for effective alternatives leaves programs without adequate emergency response options, increasing the likelihood of physical restraints, law enforcement involvement, reduced instructional time, and harm to both students and staff.

An alternative approach supported by special education colleagues and aligned with recommendations from NAMI calls for preserving seclusion as an emergency tool of last resort while the state invests in evidence-based alternatives, training, and technical assistance. Under this model, seclusion would be phased out when suitable alternatives are identified, fully funded, and implemented with fidelity statewide. Programs such as Ukeru have been identified as promising, but require sustained resources and professional learning to be effective.

Eliminating seclusion without first ensuring that alternatives are fully resourced and operational will have serious unintended consequences. I urge you to support a phased, well-funded transition that prioritizes safety, mandates state investment in alternatives, and allows districts the time and support necessary to implement change responsibly.

Thank you for your thoughtful consideration and continued commitment to Minnesota's most vulnerable students.

Dr. Val Rae Boe
Superintendent
Northeast Metro 916 Intermediate School District
2540 County Rd F East | White Bear Lake, MN 55110
vboe@916schools.org

Dear Senator Seeberger and Mr. George,

The use of seclusion as a part of our safety continuum of services and supports in schools enables students who have significant behavioral needs to remain in setting IV schools rather than be assigned to more restrictive environments, such as a residential setting.

While no one wants to use seclusion for students, sometimes it is necessary to keep the student and others around them safe when their behavior is extremely dysregulated. Seclusion, when used as the upper end in the continuum of supports for students is appropriate to meet their needs and honors a student to be able to keep them in school.

With gratitude for all those working on this, I firmly believe that we need to keep the option of seclusion in our setting IV programs.

Heather Kosec

--

Heather Kosec • Assistant Director of Special Services
Northeast Metro 916 Intermediate School District
651-415-5651 • hkosec@916schools.org
www.916schools.org • Facebook • Instagram
Pronouns: she/her/hers

Dear Mr. George,

After 15 years working in special education in a variety of positions, settings, and districts, I'd like to share that I strongly support the runway proposal-submitted by Kate Hulse and the special education administrators.It's concerning that a total ban on seclusion is being proposed by individuals who will never have to implement it or absorb its consequences. These decisions are being made by people who do not place their bodies in harm's way, who are not the ones intervening during violent crises, and who do not understand what it means to support someone in an intense physical crisis who could be two or three times their size. In Setting IV programs, seclusion is an emergency-only intervention used to prevent serious injury when all other strategies (and there are many) have failed. Removing it on an arbitrary timeline—without fully funded, implemented, and proven alternatives—is not progressive; it is reckless.

The very predictable result will be more physical restraints, increased law enforcement involvement, shortened and modified school days, more restrictive placements, and staff and student injuries. At a time when Setting IV staffing is already at a breaking point, this proposal signals to educators that their safety is secondary and their lived experience irrelevant. If this ban moves forward without a true runway, it will not reduce harm—it will simply shift that harm onto students and the frontline staff who are already carrying the heaviest burden. Please consider the runway proposal.

Thank you for your time regarding this matter.

--

Jackie Pauley
Assistant Director of Special Education/Principal
Alliance Education Center

The availability of seclusion as a safety measure is a critical tool for ensuring students with significant behavioral needs can remain in the Least Restrictive Environment (LRE). Without the brief, de-escalating option of seclusion—often used for only a few seconds or minutes to manage an immediate safety threat—schools would frequently be forced to resort to more restrictive measures. These alternatives, such as implementing homebound instruction, calling law enforcement, or significantly altering the student's school day, ultimately reduce the student's access to their peers and instruction. The ability to use seclusion strategically, sometimes for as little as a few seconds, can be the precise intervention that allows a student to safely enjoy a full school day of learning. When we remove this tool, we fail to do justice to these students by forcing them into homebound placements, involving law enforcement, or shortening their instructional days, which severely compromises their educational opportunity and social development. Crucially, the responsible use of seclusion also serves to protect the safety of other students and staff from injury when a student's behavior poses an imminent threat.

Speaking from my experience as a setting 4 special education teacher, I have utilized seclusion specifically to keep other students in my classroom safe when they were targets of severe physical aggression. The necessity of this intervention becomes clear when it is unavailable; I recall a day when the seclusion room was inaccessible for a particular student, resulting in the student biting me so severely they removed my entire thumbnail, and another staff member receiving a significant concussion that ended their career. While these are painful, real-world examples in our environment, we remain dedicated to our students. Seclusion is a necessary tool in emergencies to ensure the physical safety of ourselves, our staff, and the students we serve.

--

Kelly Quinn *she her* | Assistant Principal | South Campus Education Center

Northeast Metro 916 Intermediate School District

p: 651-415-5331 | e: kquinn@916schools.org

Hello,

I wanted to write to express my thoughts and concerns regarding changes to laws regarding the use of seclusion. I am a behavior analyst who has worked in a setting IV facility for nearly 9 years. During this time, we have faded the use of seclusion greatly based on the student population and the current laws. There are students that respond best to having a space on their own to calm without staff intervention. When assessing behaviors, we have students who engage in behaviors for the purposes of gaining attention from staff. In those situations, a student's physical aggression may escalate because it requires the intervention of multiple staff. For those students we can keep students and staff safe most effectively when we can remove as much attention as possible and allow for de-escalation. The idea of removing seclusion without any additional supports has been talk of discussion for years. As setting IV staff this is a very scary thought and has led many staff to share that they would leave if these safety tools were not in place. The state of staffing in an educational facility is dire as it is and keeping staff safe and comfortable with their work environment is critical for staff retention. If seclusion must be eliminated, we need to have a plan on how we are going to replace this safety tool and make staff feel safe, secure, and comfortable with their work environment. The behaviors continue to escalate, and the students continue to get larger and come with more intense behaviors, but there have only been discussions on what is being taken away as tools rather than how we are going to support this escalation.

Thank you for your consideration.

Kari Watson, MS, BCBA, LBA – MN | Behavior Analyst

17530 County Road 9 NE

New London, MN 56273

SWWC
BEHAVIOR SERVICES

P: 320-262-5477 Ext. 3316

www.swwc.org/behaviorservices |

www.swwc.org/readyclinic

Dear Members of the Seclusion Working Group,

Thank you for inviting public input as you consider changes to state law around the use of seclusion in schools. I am writing from the perspective of a school principal who leads a Setting IV special education program serving students with significant emotional and behavioral needs.

I want to be very clear: seclusion should only be used as a last resort. In my school, it is not a routine strategy, it is not a preference, and it is not taken lightly. It is used only in moments when a student is at immediate risk of seriously hurting themselves or someone else, and only after other supports and de-escalation strategies have been tried or are no longer safe.

I am concerned about proposals that would completely eliminate seclusion by a certain date without first ensuring that schools like mine have well-funded, fully-implementedfully alternatives in place.

In a Setting IV program, we work with students who are more prone to crisis and are working to develop the skills to regulate their behavior in extreme moments. When those moments occur, staff must make split-second decisions to keep everyone safe. If a safety tool is removed before replacements are ready, the result is not fewer crises—it is fewer safe options during crises.

From my experience, removing seclusion without adequate preparation and support would lead to outcomes no one wants: increased physical restraint, more calls to law enforcement, students being sent home or excluded from school, and higher rates of injury to both students and staff. These outcomes undermine the very goals we are trying to achieve—safety, dignity, and access to education.

At this time, school districts are navigating many requirements that are not fully funded, and each additional mandate stretches staff and resources further. Safety systems cannot simply be turned off without carefully building something better in their place.

If staff believe that critical safety options are being removed without proven alternatives in place, many will choose not to enter this work—or will leave it. Increased risk of injury, combined with the feeling that safety decisions are being made far from the classroom, makes it harder to build and sustain a stable, experienced workforce. High turnover ultimately harms students, who rely on consistent, trusting relationships to make progress.

I respectfully urge the Working Group to consider one of two approaches:

- Maintain the current rules, continuing to allow seclusion as a tightly regulated emergency measure; or

- Adopt a gradual, supported transition, where the state first provides the resources, training, and technical assistance needed to implement proven alternatives, and only then moves toward further restrictions or elimination.

As a principal, my responsibility is to ensure that every student and every staff member leaves school safe each day. Removing a last-resort safety option before viable alternatives are fully in place shifts risk rather than reducing it—and that risk is borne by the students we serve and the adults who support them.

Thank you for your thoughtful consideration of this issue and for the care you are taking with decisions that have very real consequences in real schools.

Best,

--

Matt Bruns (he/him) **| Principal & Manager**

Pankalo Education Center

8568 Eagle Point Blvd

Lake Elmo, MN 55042

Phone: (651)415-6302 **Email:** mbruns@916schools.org

Members of the Seclusion Working Group,
Thank you for your work this summer and fall to look at the use of seclusion in schools as well as alternatives. This Working Group has had several deep and productive discussions over the months on a variety of topics related to supporting students with disabilities and educators who work with this population of students, and that is commendable. As the group considers recommendations EdAllies shares its support for:

- Maintaining the current birth-3rd ban on seclusion
- Expanding the ban on seclusion through 12th grade by negotiating an a target start date and implementation runway with stakeholders just like the current limit was negotiated in 2023
- Additional targeted resources for Intermediate Districts and school settings serving students with complex needs to address specific staffing, training and resource shortfalls

States that have banned the use of seclusion in public schools			
State	Statutory Reference	Age where seclusion is allowed	Year Ban Went Into Effect
Florida	Florida Statutes 1003.573 (e) "Seclusion" means the involuntary confinement of a student in a room or area alone and preventing the student from leaving the room or area. The term does not include time-out used as a behavior management technique intended to calm a student. (2) SECLUSION.—Each school district shall prohibit school personnel from using seclusion.	Seclusion is prohibited for all ages	2021
Georgia	Georgia State Board of Education 160-5-1-.35 (e) Seclusion - a procedure that isolates and confines the student in a separate area until he or she is no longer an immediate danger to himself/herself or others. The seclusion occurs in a specifically constructed or designated room or space that is physically isolated from common areas and from which the student is physically prevented from leaving. Seclusion may also be referred to as monitored seclusion, seclusion timeout, or isolated timeout. Seclusion does not include situations in which a staff member trained in the use of de-escalation techniques or restraint is physically present in the same unlocked room as the student, time-out as defined in paragraph (1)(g) of this rule, in-school suspension, detention, or a student-requested break in a different location in the room or in a separate room. Use of seclusion is prohibited in Georgia public schools and educational programs	Seclusion is prohibited for all ages	2010
Hawaii	HI Rev Stat § 302A-1141.3 (2024) The use of seclusion, chemical restraint, or mechanical restraint shall be prohibited in public schools regardless of any consent of the student, parents, or guardians. HI Rev Stat § 302A-1141.4 (2024) "Seclusion" means the confinement of a student alone in a room or structure from which the student is physically denied voluntary egress.	Seclusion is prohibited for all ages	2016
Maryland	Maryland 13A.08.04.05 The use of seclusion is prohibited in public agencies.	Seclusion is prohibited for all ages	2022
Massachusetts	Current DESE Regulations 603 CMR 46.00	Seclusion is	2021

	(1) Prohibition. (a) Mechanical restraint, medication restraint, and seclusion shall be prohibited in public education programs.Seclusion shall mean the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. Seclusion does not include a time-out as defined in 603 CMR 46.02.	prohibited for all ages	
Minnesota	125A.0941 (g) "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion. 125A.0942 the use of seclusion on children from birth through grade 3 by September 1, 2024.	Seclusion is prohibited birth through 3rd grade. Seclusion is allowed 4th grade through high school.	2024
Nevada	NRS 388.473 "Aversive intervention" defined. "Aversive intervention" means any of the following actions if the action is used to punish a pupil with a disability or to eliminate, reduce or discourage maladaptive behavior of a pupil with a disability: 8. The placement of a person alone in a room where release from the room is prohibited by a mechanism, including, without limitation, a lock, device or object positioned to hold the door closed or otherwise prevent the person from leaving the room;	Seclusion is prohibited for all ages	1999
Pennsylvania	22 Pa. Code § 14.133 The following aversive techniques of handling behavior are considered inappropriate and may not be used by agencies in educational programs: (3) Locked rooms, locked boxes or other structures or spaces from which the student cannot readily exit.	Seclusion is prohibited for all ages	2008
Texas	Sec. 37.0021. (a) It is the policy of this state to treat with dignity and respect all students, including students with disabilities who receive special education services A student with a disability may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique. (2) "Seclusion" means a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that: (A) is designed solely to seclude a person; and (B) contains less than 50 square feet of space.	Seclusion is prohibited for all ages	2001

Matt Shaver, Senior Policy Director, mshaver@edalliesmn.org

Hello Andrew,

My name is Mollie Raab and I am the supervisor/principal of Webster Education Center, a Federal Setting IV program, in ISD 622. I am writing to you today in support of the Runway with support proposal. Taking away seclusion at this time would only increase injury to both staff and students. In my experience, when a student is unsafe to self or others, seclusion is the safest way to de-escalate the behavior. Taking away this option is premature at best and down right reckless at worst.

In conclusion, it is important that we keep seclusion in place for students and sites that require this level of care.

Regards,

Mollie Raab

--

Mollie Raab

Supervisor of Webster Education Center and ISD 622 Care & Treatment Programs

2170 7th Ave East

North St. Paul, MN 55109

651-748-7110

I am writing to express my support for the Runway with Support proposal developed by the Seclusion Working Group. As a Federal Setting IV related service provider and special education administrator, my team and I serve students with the most significant and complex educational needs in the state. We are deeply connected to and invested in our students' success.

While seclusion is not a practice we promote or use lightly, removing it as a last-resort option without a suitable alternative places both students and staff at risk. I ask that you consider the layered, proactive approaches schools already implement to support students with significant mental health and behavioral needs, as well as the limited and emergency-based circumstances in which seclusion may be used to maintain safety during a crisis.

Our teams are committed to supporting students every day—even when that work is challenging. To do so responsibly and safely, we must have access to the full range of tools necessary to respond to complex situations. We ask that you acknowledge the realities of the students we serve and the professionalism, expertise, and dedication of the teams supporting them.

Please allow us to continue serving students within a trauma-informed, equitable, and compassionate framework that is responsive and individualized to their needs.

Nikki VanOeveren, M.S., CCC-SLP
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Policy Paper

A Review of U.S. Policy Guidance and Legislation on Restraint and Seclusion in Schools: Considerations for Improvement

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Abstract

Restraint and seclusion (R/S) are practices employed by schools to address severe student behavior. Although the use of R/S has been shown to have harmful impact for students, staff, and schools, there is no federal law that addresses its use in schools. A lack of a universal approach leaves each state to determine its own legislation and policy. The current study seeks to extend previous research efforts on state policy guidance and legislation reviews on the use of R/S by reporting on key similarities and differences across states policy guidance and legislation. Specifically, policy guidance and legislation on the school use of R/S are reviewed from the U.S. states and territories, including Washington, D.C.; Puerto Rico; Guam; and the Virgin Islands. Most states and territories were found to have either legislation or policy guidance on the use of R/S in schools. However, there are many differences across the states, including on its use and reporting for students with disabilities. Findings are also compared with the proposed federal bill Keeping All Students Safe Act. Finally, given the lack of passage of the federal law, highlights and recommendations are provided for state leaders on considerations for improvement as R/S remains a state regulated educational issue.

Keywords

restraint and seclusion, education law and policy, school discipline, students with disabilities

Since the *Hartford Courant* reported on the number of deaths resulting from restraint and seclusion (R/S) in nonschool settings (Weiss et al., 1998), there has been an enhanced concern about the continued use of R/S in schools. In 2009, the U.S. Government Accountability Office (GAO) investigated the use of R/S and reported that over the past two decades, there were "hundreds of cases of alleged abuse and death," including a 7-year-old who died after being held face down and 5-year-olds who were confined to chairs with bungee cords and duct tape (GAO, 2009, p. 2). In 2022, after a yearlong investigative report, "When Schools Use Force Investigation," Hearst newspaper reporters identified records of injury and death for students. Specifically, they found that over the past 30 years, 85 children, teens, and young adults 21 and younger had died in

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public and private schools, juvenile justice centers, residential facilities, and other settings for students with disabilities (Munson et al., 2022). The use of R/S in schools remains a historical and ongoing source of danger for school-age children.

The GAO (2009) report and Hearst investigation (Munson et al., 2022) also highlight a lack of federal law and oversight. Currently, no federal law exists on the use of R/S with students, leaving states to develop policy guidance and pass legislation on a state-by-state basis. For this article we will (a) consider the prevalence and impact of R/S; (b) describe select federal policy guidance and proposed legislation; (c) review prior studies on R/S policy guidance and legislation; (d) analyze U.S. state and territory policy guidance and legislation on the use of R/S in schools; (e) compare our findings with a proposed federal law, the Keeping All Students Safe Act (KASSA; 2023), that seeks to uniformly addresses R/S use in schools at the federal level; and (f) provide recommendations for states to consider in the development of future policy guidance.

R/S in Schools

To understand the prevalence of R/S in schools, we consulted the Civil Rights Data Collection (CRDC) on the use of disciplinary practices, including R/S. Although each state might define R/S differently through its state legislation, the CRDC uses the following federal definitions:

> *Physical Restraint: Refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location. (Office for Civil Rights [OCR], 2017–2018, p. 14)*

> *Seclusion: Refers to the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, and is implemented for the purpose of calming. (OCR, 2017–2018, p. 16)*

The CRDC reports that 122,000 students (approximately 0.2% of all students enrolled) were restrained or secluded during the 2017–2018 school year (OCR, 2020). More troubling, students receiving special education services make up 80% of the restrained students and 77% of those secluded (OCR, 2020). These statistics are staggering when considering that students with disabilities comprise only 13% of the entire student population (OCR, 2020).

Impact of R/S

R/S occurrences in school can negatively impact all involved. Specifically, R/S leads to a loss of instructional time for students, which is associated with lower academic achievement (Balfanz, 2016; Chang & Romero, 2008). The use of these practices also can lead to serious, even sometimes fatal, student injuries, such as blunt trauma to the chest or aspiration (Mohr et al., 2003; Munson et al., 2022). Munson et al. (2022) found that for the seven states that reported student injury, students were injured at least 1,062 times during 2019–2020. For the four states that reported staff injury, staff were injured 2,291 times. R/S can lead to overall sustained effects related to experiencing trauma and result in long-term psychological impacts and aggravation of existing mental health issues (Munson et al., 2022; Walker & Pinkelman, 2018; Westling et al., 2010).

Federal Policy Guidance

Recognizing the very real impact of R/S for schools, the U.S. Department of Education (ED) has created policy guidance on the matter. In 2009, ED issued a guidance letter that communicated ED's current thinking on R/S and asked states to change their policies on its use (Duncan, 2009). However, as is true for all such guidance letters, ED did not impose any requirements beyond those already required under existing applicable law and regulations. Subsequently in 2012, ED provided a comprehensive policy guidance document (resource document; ED, 2012) that focused on 15 principles to reduce R/S. The guidance suggested (a) changing policy, (b) employing preventive behavioral strategies, (c) providing training, and (d) using data-based decision-making (ED, 2012). The resource document (ED, 2012) also asserted that R/S should be used only in situations with "imminent danger" to self or others, after positive and proactive approaches to de-escalate these situations, and not as a punishment (ED, 2012). Additionally, this guidance outlined notification practices for schools (e.g., that schools should inform parents of current school policies; ED, 2012).

Following the resource document, ED offered further policy guidance for school districts through a nonbinding Dear Colleague letter (Lhamon, 2016) and an ED fact sheet (ED, 2016) that explained the impact of the use of R/S and promoted the use of preventive behavioral strategies. Both documents suggested that the use of R/S could lead to the discrimination of students with disabilities under federal law (e.g., § 504 of the Rehabilitation Act of 1973) and Title II of the Americans With Disabilities Act of 1990 (Lhamon, 2016). Furthermore, if the use of R/S led to a denial of education, a free appropriate public education (FAPE) may be violated under Section 504 (ED, 2016). The ED (2016) fact sheet recommended that schools (a) consider additional supports and interventions, such as positive behavioral interventions or other behavioral strategies; (b) consider the implementation fidelity of such supports; (c) make sure that changes are made when needed in a timely manner; and (d) address any potential denial of FAPE (ED, 2016).

In 2020 the GAO reviewed the 2015–2016 R/S data from the CRDC and interviewed stakeholders (GAO, 2020). Its subsequent report highlighted the need to enhance the quality of data reporting and to provide more clarity on definitions (GAO, 2020).

Proposed Federal Law

Year after year, Congress has proposed bills to address the use of R/S at the federal level: Senate Bill 1750—better known as KASSA (2023)—and its companion bill (H.R. 3470). However, these bills have yet to pass into law. KASSA covers preschool (i.e., Head Start) and K–12 programs that receive federal funds (KASSA, 2023, Title 2 § 201). The intent of the bill is to prohibit the use of seclusion, mechanical restraint, chemical restraint, and restraints that restrict breathing (e.g., prone restraints; KASSA, 2023). KASSA also limits the use of physical restraint to (a) when there is "imminent danger or serious injury to the student, program personnel, a school security guard, a law enforcement officer, or another individual"; (b) when "less restrictive interventions would be ineffective"; (c) administration by a certified program personnel, school security guard, or law enforcement officer; (d) ending immediately when the imminent danger is over; (e) not interfering with the student's ability to communicate; and (f) using the "least amount of force" (KASSA, 2023, Title I § 101 *et seq*.).

Additionally, KASSA includes other provisions. For example, KASSA contains extensive definitions for common terms (KASSA, 2023, Section 2). The bill also does not allow physical restraint as a planned intervention for a student with disability (i.e., not including R/S in a behavior support plan or individualized education program [IEP]; KASSA, 2023, Title I § 101[e][3]).

KASSA also provides parental protections. For example, there are notification requirements for parents following the incident, including a written incident report (KASSA, 2023, Title I § 101[e][4][A]). After an

incident, the parents, the student, and school staff must meet as soon as practicable (not later than 5 days; KASSA, 2023; Title I, § 101[e][4][B]). KASSA also allows parents the right to sue programs (KASSA, 2023, Title I § 101[c][1] and [2]).

Prior Reviews of State R/S Policy Guidance and Legislation

Through the years, several reviews of state policy guidance and legislation have been completed, and we will highlight a few of these reviews (i.e., Freeman & Sugai, 2013; Marx & Baker, 2017; Ober, 2020; Ryan et al., 2007, 2009; Stewart, 2011). When Ryan et al., 2007, 2009) examined state policies, legislation, and related guidelines on seclusion and physical restraint, they identified 24 states with guidance on seclusion (Ryan et al., 2007) and 32 states on physical restraint (Ryan et al., 2009). Some states had requirements for staff training (seclusion, 15; restraint, 22) and parent notification (seclusion, 15; restraint, 18). For written documentation after the event for both R/S, 21 states had a requirement (Ryan et al., 2007, 2009). Specific for seclusion, 16 states had restrictions for seclusion rooms, and 15 addressed duration (Ryan et al., 2007). For restraint, 11 states required that its use be stated in an IEP (Ryan et al., 2009). One of the most common findings was limiting restraint to emergency situations or when the student was a threat to themselves or others (Ryan et al., 2007).

In 2013, Freeman and Sugai examined legislation and state polices with an emphasis on determining what, if any, changes were adopted after the ED guidance letter (e.g., Duncan, 2009). They reported that 33 states had legislation and 15 had either policy guidance or guidance on the use of R/S, including eight comprehensive technical assistance documents. Additionally, 21 states established duration limitations, 11 states restricted the use of prone restraint, and 32 states referenced parent notification. Finally, 23 of the 30 policy guidance documents suggested that R/S be used only in case of emergency and not for punishment.

In 2019, Butler updated previous versions of her prior review of laws that addressed the use of R/S in schools across the 50 states and the District of Columbia in *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*. Butler reported that 31 states offered protective laws for children against the use of R/S. Noting the difficulty in passing protective laws at state and at federal levels, Butler shared this resource freely with the public and analyzed whether a law was "meaningful" in its level of protection for students with and without disabilities. Butler addressed policy guidance in her analysis but suggested it could be problematic to include policy as it is often nonbinding (Butler, 2019, p. 5).

In 2020, Ober reviewed the accountability of laws on R/S. He reported that 47 states had laws on R/S as of 2019. Ober coded the content of the laws across several areas (e.g., use of restraint, students with disabilities, documentation, notification). He also identified when the laws addressed aspects of enforceability, such as civil or criminal liability, for not following these laws. Ober reported that states focused more on ways to properly restrain or seclude and that terms were not used consistently across states (such as "seclusion" vs. "time-out" vs. "isolation"). He also noted that incident documentation and parental notification were the most common topics addressed in the laws and that over 75% of the laws included reporting of data, staff training, and/or incident debriefing. Ober found that over 50% of the states did not have any provisions for enforceability.

It has been over a decade since the ED (2012) guidance, and although KASSA has been introduced yearly, it has yet to gain traction and become law. Without a federally uniform legal mandate, school leaders need a better understanding of what is occurring across states to identify areas of concern and to consider if additional policy guidance is required. With the possibility of student and staff injury, there is an urgent need for an updated analysis of policy guidance and legislation. We seek to extend previous research efforts by reviewing states' and territories' policy guidance and legislation, compare our

findings with the proposed content of KASSA, and suggest areas where state policy guidance is needed. We specifically include policy guidance documents despite their nonbinding nature because they help translate existing law into practice and serve as a resource in school-level implementation. To that end, our research questions are as follows:

1. What is the content of state and territory policy guidance on the use of R/S in schools?
2. What is the content of state and territory legislation on the use of R/S in schools?
3. How does the content of state and territory policy guidance and legislation compare with the proposed provisions of KASSA?
4. In the event that KASSA does not become law, how might this analysis help states identify needed areas of policy guidance?

Method

Search Process

Policy guidance. We began by defining the types of policy guidance documents most often developed by states that are more likely to help schools implement legislative mandates. Specifically, we adapted definitions of types of policy guidance by Freeman & Sugai, 2013, p. 430) to include comprehensive technical assistance resources, technical assistance guidance, state data-reporting recommendations, model policy guidance recommendations, policy guidance memos, and other. We then reviewed each state's department-of-education website for documents that addressed "restraint" and/or "seclusion," omitting any document that did not meet our criteria (e.g., information on how to fill out a form).

Next, we looked through state department-of-education websites by visually reviewing areas more likely to house policy guidance for this area (e.g., special education departments) and by a search using the terms "restraint" and "seclusion." For states with multiple policies, we combined the results from each state into one coding so that we were able to report and compare policy guidance content across states. We conducted the searches from November 2019 through January 2020.

Legislation. We then moved to state legislation and considered "legislation" as both statute(s) and state regulation(s). We defined a statute as "a mandate (e.g., order) passed by the legislative branch of the state government" and a regulation as "a mandate (e.g., order) passed by an administrative branch of the state government." We searched the Westlaw legal electronic database for the terms "restraint" and "seclusion" for each state and territory. Westlaw is an online database for news and business information and law-related resources and is a primary law source for state statutes and regulations. First, the first author set the parameters of the Westlaw search to yield up to 100 citations. Roughly the equivalent of an abstract search for peer-reviewed articles, the search produced the citations and a brief description for each piece of legislation. The first author completed the search separately for the state statutes and the state regulations to find the legislation that addressed "restraint" and that addressed "seclusion," comprising a maximum of 21,600 citations and descriptions. The text from the relevant statutes and regulations was then put into a document with a compilation of all the states' legislation. This document was 412 pages single-spaced. We conducted this search from June 2, 2020, through August 19, 2020.

Next, we conducted a thorough review of other sources to double-check that the previous search was as complete as possible. Specifically, we reviewed the following sources: (a) policy guidance documents from the prior search that reference specific legislation for that state or territory; (b) the ED document (ED, 2010), which contains laws on S/R (current as of 2011); (c) the National Center Safe and Supportive Learning Environments Compendium of School Discipline (2019), which includes information on each state, focusing on its R/S section (current as of 2019); and (d) the guide *How Safe Is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, which includes relevant laws and

policies (current as of 2019; Butler, 2019). We omitted any legislation that does not address the education of students. As with the procedures utilized during the policy guidance review, for states with multiple statutes or regulations, we combined the results for each state to be able to compare across states.

Coding Categories

We selected categories that were reflective of the content of the policy guidance and legislation. The first author (who has a JD) reviewed several laws to set up categories that addressed topics often seen in state legislation and in the proposed KASSA bill, such as notification, definitions, what needs to be addressed, and so on. We also pulled coding categories from prior legislative reviews. If there was a topic that came up repeatedly that was not part of the initial coding categories, such as the specific requirements for seclusion rooms in the legislation, we added categories, and the first author and a student trained for reliability by the first author reread and recoded for this content. Interrater reliability (IRR) was completed at every step.

IRR

For reliability, the first author trained a PhD student in school psychology on how to read and analyze policy guidance and legislation. The student served as the primary coder for the policy guidance, and the first author assumed the role as the primary coder for the legislation. We calculated IRR on a category-by-category agreement using a process like the stringent, exact count-per-category interobserver agreement used for reliability with single-subject research (Cooper et al., 2020). See Appendices A and B in the online supplemental materials for the coding categories and their definitions.

Using random selection, we calculated IRR for about one-third (37%) of states and territories (policy guidance, 37%; legislation, 31%). For Round 1 of policy guidance coding, the average IRR was calculated as 79% for each category, with a median of 80% (ranging from 40% to 100%), and Round 2 was 86%, with a median of 90% (ranging from 50% to 100%). For legislation for Round 1, the average IRR was 92%, with a median of 90% (ranging from 60% to 100%), and for Round 2, the average IRR was 92%, with a median of 100% (ranging from 43% to 100%). Between rounds, we refined the definitions to increase the reliability in later rounds.

For any disagreement below 85% across any category, we met in person or virtually to reach coding consensus. We discovered that the areas with the largest disagreement occurred when there was ambiguity between the wording of the coding and the text of the policy guidance and/or legislation. For example, for the category "shared with state/district" (specifically for the incident report), it was difficult to determine whether the incident report was shared, and this impacted the reliability for that category.

Results

Overview of Content

Policy guidance (Research question 1). We identified 32 states and territories with policy guidance on R/S (out of 54 states and territories) for a total of 48 documents. Nineteen states and territories had a single policy guidance document, and 13 had several. The types of policy guidance included comprehensive technical assistance (10; 19%), technical assistance guidance (13; 24%), data-reporting recommendations (2; 4%), model policy guidance recommendations (5; 9%), policy guidance memo (6; 11%), and other (11; 20%). "Other" policy guidance often addressed training material that explicitly described the state legislation and how to implement the legislation in schools.

Legislation (Research question 2). Most states and territories had legislation on R/S (48 out of 54 states and territories), including statutes (36; 67%), regulations (38; 70%), or both (25; 46%). For instance, Indiana had the most of any state, with 21 statutes and 37 regulations. Conversely, Missouri had one statute and Nebraska had a single regulation. The six states and territories that had no legislation were Guam, Idaho, North Dakota, Puerto Rico, South Carolina, and the Virgin Islands. In total, 456 pieces of legislation were

coded, including 222 statutes and 234 regulations. Of note, the state's board of education or state education department was referenced in most statutes in the education code section of statutes for the states and in most of the relevant state regulations.

General Findings (Research Questions 1 and 2)

We reviewed content of the policy guidance and legislation for the following components: (a) types of R/S addressed, (b) definitions of R/S, (c) key details, (d) documentation, (e) incident report components, (f) outcome documentation, (g) use of data, (h) seclusion room restrictions, and (i) miscellaneous. All totals and percentages were reported. Specifically, the percentages were calculated by dividing the total of each state's policy guidance and legislation by 54, the number of states and territories that we examined. We also compared findings with the proposed KASSA bill. See Appendix A in the online supplement for an overall table of findings from the coding.

Types of R/S addressed. We coded the types of R/S addressed in the policy guidance and legislation (Figure 1). It should be noted that when the coding of "prone restraint" was expanded to include language about restricted breathing and/or being face down on the floor, only 12 states were found to not address prone restraint explicitly or by proxy through policy guidance or legislation.

Additionally, we coded topics related to R/S, such as disciplinary actions wherein students were removed to another setting or when adults were assisting with student movement. For instance, "physical escort" (physically assisting a student in walking to guide to another area) was found to be addressed more in the laws than in the policies (policy guidance, 16 [30%]; legislation, 33 [61%]). Likewise, more laws referenced the use of "time-out" than did policies (policy guidance, 11 [20%]; legislation, 31 [57%]). Interestingly, 21 (39%) states and territories addressed "corporal punishment" in the legislation in the same sections as R/S, such as prohibiting its use or differentiating its use from restraint procedures. Finally, only Illinois addressed the use of sensory rooms in the context of R/S.

Definitions of R/S. Further examinations included whether the policy guidance or legislation explicitly defined R/S. We found that

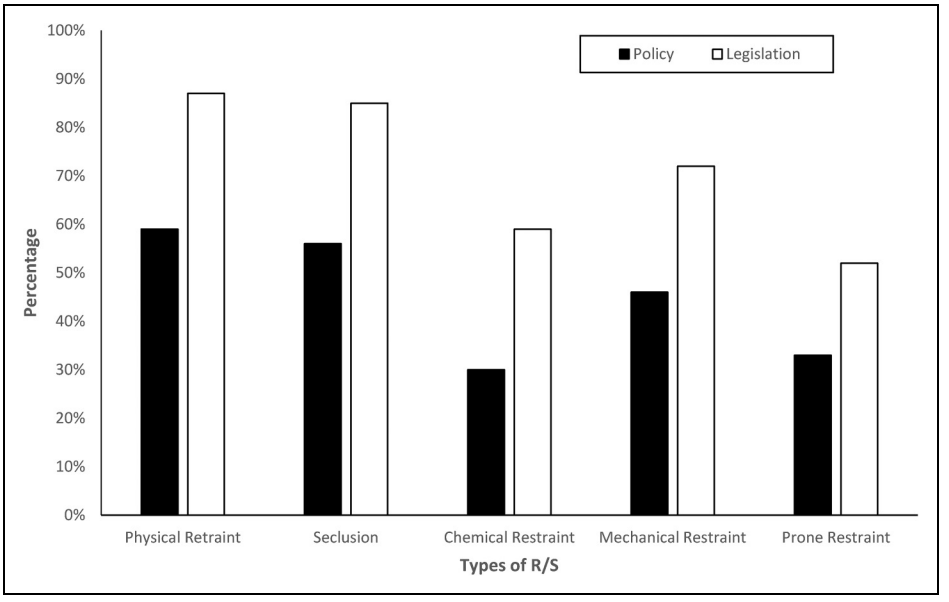

Figure 1. Types of restraint and seclusion contained in the policy and legislation.

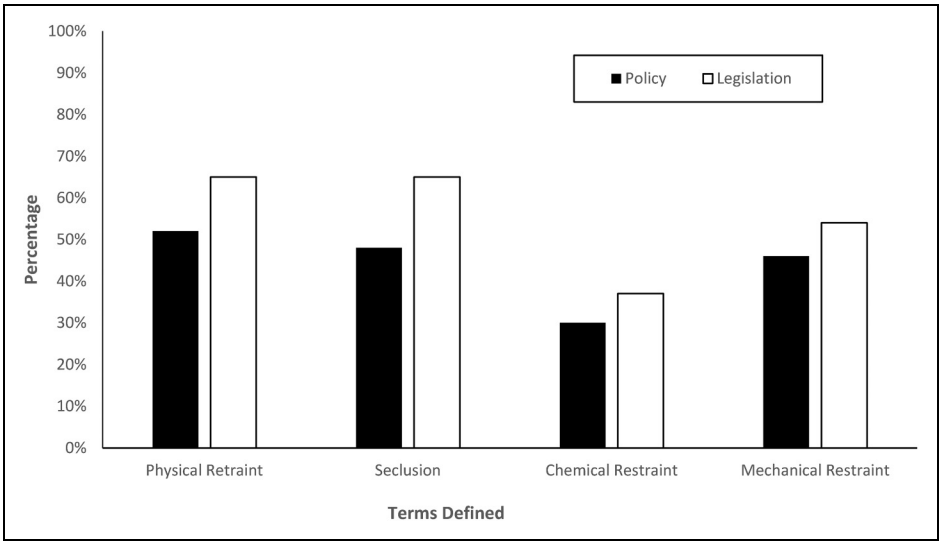

Figure 2. Most commonly defined terms.

policy guidance and legislation often used terms (e.g., "physical restraint") that were not defined. Figure 2 includes the most defined terms. Only Florida referenced the CRDC definitions in its policy guidance, and no state referenced or used these definitions in their laws. As these definitions are what is used for the CRDC federal data collection, this suggests that states and territories might be defining R/S differently than called for by the federal definition for data collection.

Key details. We looked for key details to see for whom the policy guidance or legislation was intended, any limitations on use or exceptions for bodily needs, and any training requirements. For many states and territories, R/S use was not limited to use on students with disabilities: 28 (52%) of the states and territories had policies and 37 (69%) legislation that included the use for R/S for *all* students in school. Very few states limited the maximum frequency of application of restraint (policy guidance, 1 [2%]; legislation, 4 [7%]). Many of the states and territories had language addressing staff training guidance (policy guidance, 30 [56%]; legislation, 42 [78%]). In a related review, we coded the policy guidance and legislation on alternatives to R/S, such as de-escalation and positive behavior intervention and support (PBIS; Kern et al., 2021), but this was outside the scope of the review for this study. Figure 3 includes the most common components.

Documentation. We discovered that there were often two levels of documentation for R/S: within schools (i.e., incident reports) and overall disciplinary outcomes (i.e., outcomes reported to the state). Next is a description of the incident report requirements and then outcomes.

Incident report components. We coded school-level documentation for R/S and found more states and territories required documentation on the use of restraint (policy guidance, 31 [57%]; legislation, 37 [67%]) compared with seclusion (policy guidance, 29 [54%]; legislation, 32 [59%]). Figure 4 includes the incident report components.

Outcome documentation. The states and territories often focused on a few outcomes. Figure 5 details the required reported outcomes. Of note, only Kansas's policy guidance suggested the reporting of a proportion or ratio of students restrained or secluded, but it was not in its legislation. Although we coded "other" outcomes, few were reported. For instance,

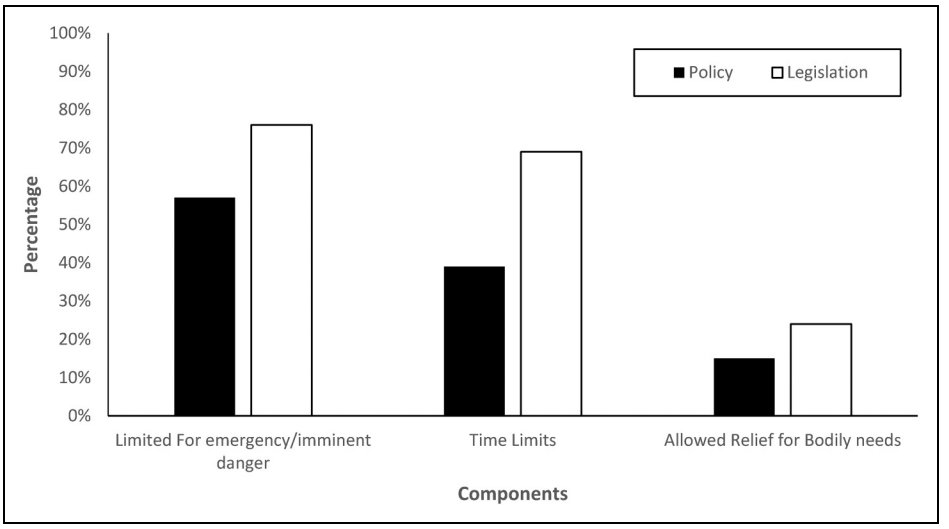

Figure 3. Most common components.

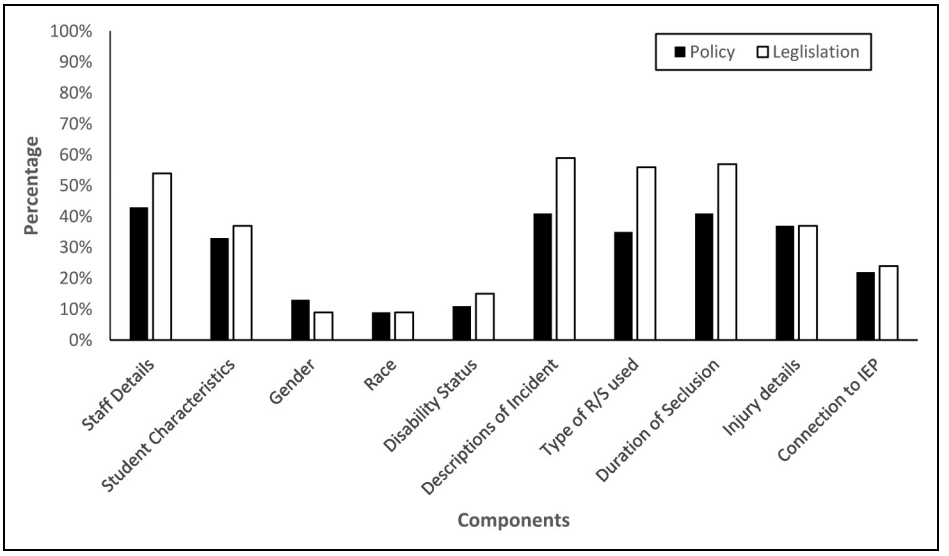

Figure 4. Incident report components.

Kentucky required the aggregate number of incidents involving school resource officers for R/S.

When it came to reporting student characteristics, states and territories lacked many requirements. For example, fewer states and territories were required to identify the total incidents for students with disabilities compared with incidents involving all students for restraint (policy guidance, 14 [26%]; legislation, 16 [30%]) and seclusion (policy guidance, 12 [22%]; legislation, 13 [24%]). This same pattern held true for race, with few states and territories requiring reporting of total incidents for all students by race for restraint (policy guidance, 8 [15%]; legislation, 8 [15%]) and seclusion (policy guidance, 7 [13%]; legislation, 6 [11%]), Interestingly, policy guidance documents often suggested more details needed to be reported than those required by legislation.

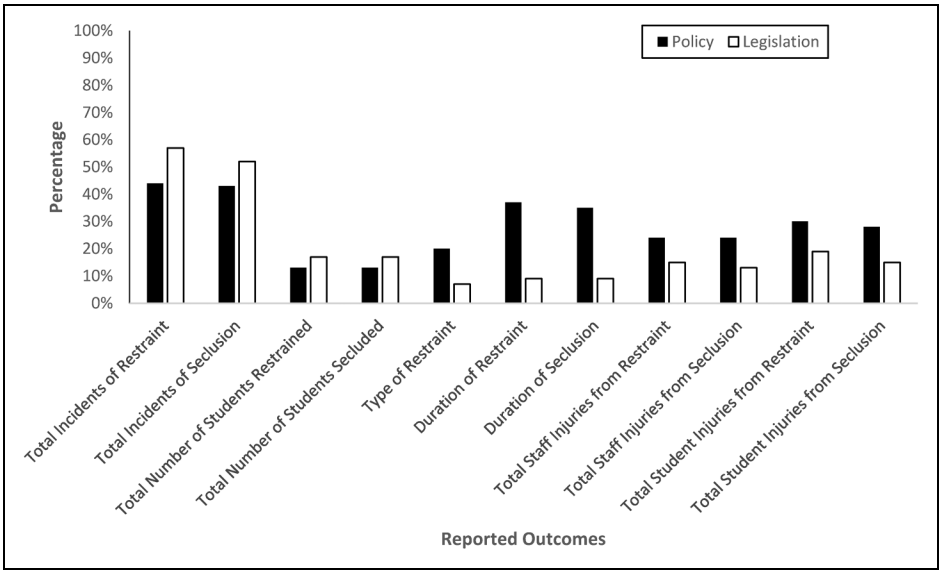

Figure 5. Required reported outcomes.

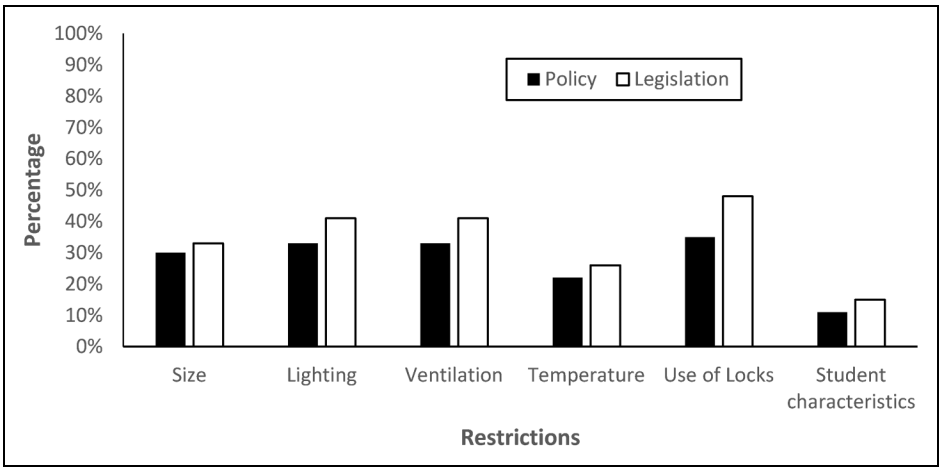

Figure 6. Restrictions on seclusion rooms.

Use of data. As data-based decision-making was part of the federal policy guidance, we coded for the use of data or where data were used, such as sharing incident reports with parents (policy guidance, 30 [56%]; legislation, 44 [81%]) or sending data to the state (policy guidance, 20 [37%]; legislation, 20 [37%]). Interestingly, we found that some states required team debriefing after an incident (policy guidance, 20 [37%]; legislation, 25 [46%]), and the debriefing might include the student (policy guidance, 10 [19%]; legislation, 9 [17%]). Furthermore, we discovered that very few states and territories promoted the use of a database that might assist with data collection (policy guidance, 4 [7%]; legislation, 1 [2%]).

Seclusion room restrictions. For this category, we looked for explicit restrictions for seclusion rooms. For a few states, this included legislation in other sections that was not tied

directly to education. For example, Florida's law was in the fire marshal section of legislation. Overall, fewer than half of the seclusion rooms explicitly required adult supervision (policy guidance, 22 [41%]; legislation, 23 [43%]). Similarly, only just over half of the states and territories (29 [54%]) had legislation that included limitations or specifications for seclusion rooms, including restrictions based on student characteristics (e.g., age, size, medical conditions). Figure 6 includes details of the seclusion room restrictions.

Miscellaneous legislative requirements. There were a few other areas worth noting in our statutory review. Fifteen (27%) of the states included requirements that addressed school resource officer involvement with R/S. Several states and territories (18 [33%]) contained protections for employees if they used "reasonable force." Finally, a little fewer than half the states (26 [48%]) required that policies must be shared with parents (not just incident reports), with 13 (24%) requiring an annual notice on the policies on the use of R/S with parents.

Comparison With KASSA (Research Question 3)

We also looked at how the legislation compared with KASSA, should KASSA be enacted. Unlike many of the state laws, KASSA includes specific definitions for many of the crisis procedures (KASSA, 2023, Section 2). This allows the states and schools to know what the law covers. KASSA also is more specific in the requirements on the use of physical restraint (i.e., KASSA, 2023, Title I § 101[e][1]). Whereas many states restrict use to imminent danger, KASSA contains additional restrictions, such as prohibiting other forms of restraint. KASSA also totally restricts the use of seclusion. Most states still allow the use of seclusion, and KASSA would constitute a major change to policy guidance and practice at the state level.

Like some of the state laws, KASSA addresses the presence of different personnel who might be involved, including school resource officers. However, KASSA specifically defines and differentiates school security guards from law enforcement officers (e.g., KASSA, 2023, Title I § 101[e][1][A]). KASSA also includes more details for activities and trainings for the school security guards compared with state legislation, including training for compliance with the Individuals With Disabilities Education Act (KASSA, 2023, Title II § 203[f][5]) and working with students with restorative justice or conflict resolution training (KASSA, 2023, Section 2[11][C] and [D]). KASSA clarifies that arrests by law enforcement officers are distinct from restraint, an area that might be concerning when the procedure overlaps with the use of restraint (KASSA, 2023, Title III § 304). Most states are silent on this issue or on the involvement of school resource officers.

Many of the state laws did not address lawsuits. If KASSA passes, parents will be able to sue the programs (KASSA, 2023, Title I § 101[c][1] and [2]). Although we identified some limitations in the state laws for use of reasonable force by staff, this is not explicitly identified as a limitation in KASSA. However, because staff cannot be sued under KASSA (KASSA, 2023, Title I § 101[c][2]), it would be a moot point to include this limitation. Allowing parents to sue may open the door for more civil litigation of programs that use R/S and would address concerns raised by legal scholars on the lack of enforceability of current state and federal legislation on the use of R/S (Cho, 2021; Decker & Ober, 2017; Kirkman, 2022; Mulay, 2012; Ober, 2020; Stewart, 2011).

Although not the main topic of this article, we note that KASSA identifies types of training and technical assistance allowed by the grant, including certified training on the use of schoolwide PBIS, restorative practices, and de-escalation, among other types of training. Several of these would be able to be supported by grants available under KASSA (KASSA, 2023, Title II § 203[g]).

At the state reporting level, KASSA is broader and addresses several other areas compared with states, such as the repeated use of R/S with the same student (KASSA,

2023, Title II § 202[b][2][A][iii]). KASSA also asks for outcome data to be disaggregated with specificity, including demographic information, such as racial and ethnic groups, English proficiency status, and students with IEPs (KASSA, 2023, Title II § 202[b][2][B]). This is more specific than many the state requirements.

On another note, KASSA covers the preschool years, especially by including Head Start programs, and this is not the case with the states. Although there has been policy guidance on the use of R/S with preschoolers nationally (Dunlap et al., 2011), KASSA is addressing this use more proactively than the states.

Discussion

This review of the policy guidance and legislation on the use of R/S in schools revealed seven interesting changes from prior reviews: (a) The vast majority of states now have legislation on the use of R/S, and over half of the states and territories have policy guidance. Compared with many of the previous reviews, this is an increase. Schools have more legal mandates and guidance from the state on what to do to address R/S in schools. (b) There were increased requirements to notify parents, including written notification, consistent with Ober (2020). (c) More states had legislative restriction for seclusion rooms. (d) Although there is some debate on the inclusion or exclusion of R/S in IEPs, more emphasis was placed on the use of R/S in the presence of imminent danger and/or threats to self or others than including it in an IEP to address behavior. This aligns with the findings of the ED resource document (ED, 2012) suggesting that R/S was to be used in emergency situations for imminent danger. (e) There are differences on the use of prone restraint, specifically that state legislation and/or policy guidance addressed the use of "prone" restraint while not defining or using the term explicitly. (f) There was a greater emphasis compared with Ryan et al., 2007, 2009) on staff training, with more training required by law and more guidance given to states on what that training should include. (g) There was no legal remedy for parents under most legislation compared with what is offered explicitly in KASSA. As a result, this might result in an increase in lawsuits, consistent with Ober's (2020) finding on the lack of provisions of enforceability within the laws. Overall, compared with the findings of prior reviews, states have expanded their legislative and policy guidance of the use of R/S.

Different from prior reviews, this study inspected policy guidance and legislation separately to identify when schools must follow legal mandates (e.g., legislation) compared with nonbinding guidance (e.g., policy guidance). This inclusion is important because legislation often contains requirements that states must follow but not what to do. Related policy guidance will ideally share this information with schools in an accessible manner that offers ways to carry out the intent of the legislation while also implementing with fidelity. In some areas, there was inconsistency across policies and legislation. For some states, there might not be any accompanying policy guidance in a state that has legislation. For example, the legislation might have specific components for incident reports with no policy guidance from the state. At other times, the policy guidance might include more guidance than the legislation required, such as on the reporting of disciplinary outcomes. Further, some of the legislation included more requirements than was referred to in policy guidance, such as requiring that R/S be used for imminent danger (policy guidance, 32 [59%]; legislation, 41 [76%]). Importantly, when there is misalignment of policy guidance with legislation, it can be problematic as schools are required to follow the law.

Highlights and Related Recommendations That Address Research Question 4

This review revealed that states have expanded both their legislative and policy guidance on the use of R/S, yet both are not

without limitations. Minimally, legislation and policy guidance do not always occur succinctly or in conjunction with each other, thus leaving schools and students vulnerable to dangerous practices and lawsuits. Without the passing of KASSA, the use of R/S remains a state educational issue. To assist in developing effective and efficient support for schools, we highlight four areas (defining, using data, preventing, and scope) and provide recommendations that are essential for state policy guidance.

Defining.

The GAO (2020) report suggested more consistency was needed in definitions.

This aligned with our findings as we found that states often defined R/S differently. Some states had more clarity on the types of R/S and included specific statutory definitions, whereas other states were silent. Only Florida referenced the CRDC definition directly but only in its policy guidance, not in legislation. The lack of clarity in definitions, aligned with the concerns raised by the GAO report, supports the need for a uniform approach such as contained in KASSA.

To address this need, states can create policy guidance on how to define R/S. This might include a review considering (a) if there are definitions in their legislation, (b) how such definitions might align with the CRDC definition and reporting requirements at the state and federal level, (c) the impact of the definitions or lack thereof on reporting and data requirements for the state, and (d) whether definitions might be needed through the passage of additional regulations.

Using data. The emphasis for both the GAO (2020) report and the CRDC on using the data to make decisions is something that might benefit policy guidance for states.

Although reporting outcome data and parent notification were found to be more prevalent than in past reviews, states, districts, and schools would benefit from more guidance on the type of data that is needed by each level and how to collect it.

For instance, states or districts can provide policy guidance for schools on how and when to notify parents, what to include in the notification, and what type of information to collect. Also, several state statutes are explicit in their data-reporting requirements, and state policy guidance can share such details with school leaders to ensure compliance with these mandates. For example, several states have specific requirements for what needs to be included in incident reports, and states can help by providing example forms that align with state reporting mandates.

Digging deeper into data-based decision-making, findings revealed that different types of data were collected and reviewed at different levels, but there was inconsistency on what to do with the data.

For example, even with specific requirements for incident reports, this information was not necessarily reaching the state level and not always shared with parents or the student at the school level through debriefing after an event. More state guidance is needed on what to do with the data to ensure that data-based decisions can happen to plan adequately and accurately so as to prevent events that have previously resulted in the use of R/S.

Preventing. As for what to do preventively, even when training is legislatively mandated, it is important to consider whether the training's purpose is to introduce alternatives to the use of R/S or on how to properly use R/S. Although safety is always a concern, and there is a place for training so that students and staff do not retain injuries, there is equal importance to addressing alternatives to prevent the use of R/S. In a review by Kern et al. (2021) using the same data source as used for this coding, the authors noted that training was mandated by legislation and

supported by policy guidance documents on several preventive measures, such as the use of PBIS, de-escalation, and functional behavior assessments (FBAs). This aligned with Freeman and Sugai (2013), who found that schoolwide positive behavior support (e.g., PBIS) was reported to prevent R/S and matched provisions found in KASSA that directly refer to preventive training (e.g., PBIS). However, Kern et al. (2021) also reported that more states included legislation and policy guidance on how to restrain rather than how to prevent the use of restraint (e.g., use of FBAs and altering the environment to reduce the likelihood of behavioral occurrences). It might be helpful for state policy leaders to look at their guidance on R/S training to ensure it complies with legislative mandates but also addresses prevention, not just how to restrain.

Scope. Most of the legislation was applicable to all students. In other words, states recognize that R/S could be used for any student and provided legislation and regulations for all students. Only a handful of states limited R/S to students with disabilities, and only a few connected the use of R/S to an IEP for students with disabilities. On one hand, it is important to consider the protection of all students, but on the other, this fails to recognize that students with disabilities are disproportionately subject to the use of R/S (OCR, 2020). Unlike some of the states, KASSA is clear on collecting data disaggregated for students with disabilities and other demographic characteristics.

Without such language from KASSA, states need to offer more guidance on how the use of R/S impacts students with disabilities in their state and schools.

Likewise, when there were requirements for outcomes reported to the state, few states asked for information on who was being restrained, including students with disabilities; race; and/or gender. As reported by the CRDC data collection, students with disabilities, Black or African American students, and male students have experienced R/S more frequently than the general population (OCR, 2018). It begs the question of how to address such disproportionate outcomes if the data were not disaggregated at the point of collection. Again, in the absence of federal legislation, states should provide policy guidance on ways to adequately measure to detect disproportionate outcomes for early intervention.

Limitations

Several limitations should be considered for the current study. Although significant care was extended to address coder reliability, coding inaccuracies are possible as two authors completed the searching of key terms and coding. Despite IRR and coding for consensus, there was a chance that policy guidance or legislation was missed or coded inaccurately. Additionally, the law is not stagnant. This search was current as of the summer of 2020, and several sources were reviewed to collect as much material as possible up until that time. There will always be changes in policy guidance and/or legislation that impact the implications of an analysis. For example, Kirkman (2022) indicates legislation was passed in North Dakota on the use of R/S, and in 2021, Florida prohibited the use of seclusion statewide. To compare between states, we collapsed all policy guidance types and legislation (statutes and regulations) into one combined category that coded for both policy guidance and legislation. We also treated the statutes and regulations as of equal importance. This was not the ideal way to analyze the weight of the types of law, but for the purposes of reviewing content across states, we made this decision that was also aligned with past studies. Future studies should consider the different types of policy guidance and legislation and the role of their importance relative to each other.

Of further note, there are reviews from the field of law that highlight the inability for parents to hold schools accountable for the use of R/S, including the lack of success of lawsuits that are brought under various areas of law (e.g., Cho, 2021; Decker & Ober, 2017; Kirkman, 2022; Mulay, 2012; Ober,

2020; Stewart, 2011). Although enforceability and accountability are of the utmost importance for legislation to prove effective, this topic extends beyond the scope of this article. Therefore, it is suggested that the referenced articles be reviewed for additional issues on enforcing the legislative requirements. Finally, although this study compared the characteristics across all states, we did not look explicitly at state differences. This approach was consistent with other reviews, but analyzing state differences more explicitly might be of interest in future analyses.

The use of R/S has immediate and long-lasting impact on students, schools, and staff. Although there are more state policies and legislation than in the past, this area still needs increased state policy guidance to minimize the use of R/S and, when it is used, to accurately report its use (e.g., for students with disabilities). Barring the passage of a federal law that addresses R/S uniformly, states will continue to control the use of R/S in schools. Until that changes, it is imperative that states provide more policy guidance for schools on how to address these legislative mandates.

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SANCTIONED ABUSE: CORPORAL PUNISHMENT, RESTRAINT AND SECLUSION OF CHILDREN IN PUBLIC SCHOOLS

Seven-year-old first grader Terrence Outley was a boy with Attention-Deficit/Hyperactivity Disorder (ADHD) who went to school in Fort Bend, Texas.[1] His teachers recognized that he would cause disruptions as an expression of his disability, so they put a plan in place to address these behaviors.[2] The plan directed staff to give Terrence positive reinforcement for good behavior, and when he became overwhelmed, an aide should take him to a quiet place to calm down.[3]

One day, Terrence was in the hallway working with his aide when Angela Abbott, a fourth-grade math teacher, walked by.[4] Abbott asked the aide if she needed any help, and the aide responded that the situation was under control.[5] Despite this, Abbott decided to insert herself in the situation and stood between Terrence and the classroom door.[6] Terrence became upset and tried to push past Abbott, saying that he wanted to return to class.[7] Abbott then grabbed the boy by his throat, threw him to the floor, and held him in a choke hold for several minutes until the aide begged her to release him.[8] While she was choking him, Abbott yelled that Terrence had "hit the wrong one" and needed "to keep his hands to himself."[9] Abbott was never fired or disciplined for her actions.[10] In fact, Abbott's actions were completely legal under Texas law.[11]

Although prohibited in the military, prisons, and mental institutions, corporal punishment is still legal in public schools in nineteen states.[12] As of the writing of this article, Texas is one of these states.[13] When Terrence's parents ***37** brought legal action against Abbott, they claimed a violation of his Constitutional rights to bodily integrity and freedom from unreasonable seizure.[14]

Many families have challenged the use of corporal punishment against their children using the Eighth Amendment prohibition against cruel and unusual punishment.[15] However, the majority of these claims have been dismissed because of the Supreme Court decision in *Ingraham v. Wright.*[16]

In this 1977 case, the Court held that under the historic context of the Eighth Amendment, the Cruel and Unusual Punishment Clause's protections for prisoners should not be extended to schoolchildren.[17] After this decision, most states passed laws prohibiting corporal punishment, others left discretion to the school districts, and the rest began to use the standard decided in the case *Hall v. Tawney* (1980).[18] The standard posits that a child's constitutional rights have been violated if the punishment they received was malicious or severe enough to "shock the conscience."[19] This standard is highly subjective, leaving ample room for bias and horrific cases of abuse being excused.[20] The Fifth Circuit, which Texas is a part of, does not follow even this standard.[21]

Texas schools that choose to prohibit corporal punishment may do so.[22] Otherwise, the Texas Education Code protects employees who deliberately inflict "physical pain by hitting, paddling, spanking, slapping, or any other physical force to the extent justified under Section 9.62 of the Penal Code."[23] Section 9.62 of the Penal Code specifies that the use of force by an educator against a student is justified "when and to the degree the actor reasonably believes the force is necessary to further

the special purpose or to maintain discipline in a group."[24] The only limit imposed by Section 9.62 is that the force must be "not deadly."[25]

***38** Judge Weiner, the Judge presiding over Terrence's case, cited the Education Code as well as past cases where children were forced to perform excessive exercise, shoved, kicked, choked, hit, and dragged along the floor for minor infractions like talking to a friend or questioning a teacher's directive.[26] In all of these cases, charges were dismissed because the punishment was "related to a legitimate state goal"; the goal being to maintain discipline and order in school.[27] The Judge acknowledged that Abbott's actions were "ill-advised" and "inappropriate," but stated, "we cannot say that it did not occur in a disciplinary context."[28] He denied any relief to Terrence's family, and protected Abbott from any discipline by her school.[29] In 2021, Terrence's case was denied a Writ of Certiorari by the Supreme Court of the United States, officially sanctioning the teacher's abuse.[30] Sadly, Terrence is far from the only child who has been subjected to physical punishment in the name of discipline.

On average, one child is hit every thirty seconds in public school in the United States.[31] According to surveys, more than 160,000 students are subjected to corporal punishment per year.[32] In states where corporal punishment is banned, physical discipline in schools seems like an unheard-of practice of the past. In most of the nineteen states that legally allow this practice, corporal punishment has been nearly eliminated, with less than four percent of students attending a school that permits it.[33] However, around half of all students in Alabama, Arkansas, and Mississippi still attend schools that use corporal punishment.[34] Mississippi is the state with the highest proportion, with one in every fourteen children subjected to it.[35] Prevalence of corporal punishment remains high in Mississippi's surrounding states and progressively decreases by distance.[36]

The racial disparities of children who are most vulnerable to corporal punishment are egregious.[37] In Alabama and Mississippi, Black children are at least ***39** fifty-one percent more likely to receive corporal punishment than white students, with rates being equal between majority Black and majority non-Black schools.[38] This is in line with data collected on suspensions and expulsions, which Black children also face at an exceptionally higher rate than their white peers.[39] These disparities cannot be explained by higher rates of misbehavior among Black children, as research has concluded that they are largely disciplined more severely for the same behaviors as white children.[40] Studies also suggest that children of color who perceive racial discrimination in their environment have lower self-esteem, higher depression and anxiety, lower academic engagement, and more negative school behaviors.[41] Schools then respond to these behaviors with more punishment, school exclusion, or even referrals to law enforcement, which pushes children out of education and puts them at a higher risk of violence and incarceration.[42]

Furthermore, boys are substantially more likely than girls to be punished using physical pain.[43] In the majority of school districts that utilize corporal punishment, boys were three times as likely as girls to face corporal punishment, even when correcting for differences in rates of misbehaviors.[44]

Disparities based on disability are also extremely common, with disabled children being fifty percent more likely to face corporal punishment.[45] Judges have consistently upheld school officials' right to physically punish disabled students, even when their behavior stems from disabilities such as autism, Tourette syndrome, or obsessive-compulsive disorder.[46] This violates the federal Individuals with Disabilities Education Act (IDEA), which prohibits punishing children for symptoms of their disabilities.[47] The Council of Parent Attorneys and Advocates (COPAA), a nonprofit group that works to protect the civil rights of children with disabilities, says:

> Children with disabilities are a vulnerable population, at special risk of being subject to aversive interventions. Their disabilities may manifest in what appears to be misbehavior, or they may have great difficulty following instructions. ***40** Rather than provide positive behavioral interventions, schools may react with aversive interventions. In addition, children may have communication, emotional, cognitive, or developmental impairments that may impede understanding or the ability to effectively report what happened to them. Moreover, they may be unable to comply with instructions that are made a condition for ending the abusive intervention and unable to communicate pain or danger while in the intervention. Children with these kinds of impairments are

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> frequently segregated in self-contained classrooms with other children with disabilities, and few witnesses who can describe the occurrence. [48]

RESTRAINT AND SECLUSION

The majority of states have outlawed corporal punishment in schools, and research suggests that the numbers of districts that allow it are shrinking. [49] However, schools often resort to other physically and mentally harmful punishments when dealing with "problem children" that they otherwise cannot control. [50] These practices are known as restraint and seclusion. [51]

The vast majority of states have no laws prohibiting these forms of punishment. [52] Even where the use of restraint and seclusion is regulated, advocates suspect it happens much more frequently than schools report. [53]

Restraint and seclusion refers to a range of techniques used to control or modify challenging behavior by force or isolation. [54] Restraint is the physical immobilization of a child's body by pinning them down or strapping them to equipment, while seclusion is the involuntary confinement of a student in an enclosed space, often alone. [55] Both of these practices are extremely damaging to a child's psyche, as well as dangerous to their physical health. [56] Shockingly, ***41** data gathered by COPAA revealed that seventy-seven percent of students subjected to seclusion and eighty percent of students subjected to restraint had disabilities recognized by their schools. [57]

Rachel Shapiro is the managing attorney of special education at Equip for Equality, a Chicago-based organization fighting to advance the rights of people with disabilities. [58] On the topic of restraint and seclusion, she says "a lot of times schools are using it in situations where there really isn't a danger to the student or to others. They're using it in a way that's more out of frustration, or a lack of ability to positively motivate the student." She explains that large classroom sizes and teacher burnout can also be a contributing factor. [59] "I think it's like a level of frustration with a student where you feel like you don't have enough time because you have all these other kids in the room, or you're not appropriately trained. And so you don't know what else to do because your district isn't giving you the supports and the resources you need in order to successfully and appropriately address the behavior issues." [60]

There are endless accounts of school staff members using restraint and seclusion on children in an egregiously harmful manner. [61] In West Virginia, a four-year-old boy was shut alone in a bathroom until his distressed screams drew other staff to find him. [62] In Florida, a child with Central Auditory Processing Disorder was shut in a windowless five-foot by six-foot room for a total of seventeen school days as a punishment for failing to follow directions that he could not hear. [63] In California, a thirteen-year-old boy with autism was pinned face down on the floor in front of his peers for nearly two hours until he lost consciousness. [64] The boy died the next day. [65] In nearly all of the 185 reports of students with disabilities subjected to restraint or seclusion included in the COPAA study, seventy-one percent of parents said the school had not tried any kind of research-based positive behavior interventions for their child. [66]

***42** These stories only scratch the surface of the use of restraint and seclusion in schools. What is meant to be a last resort to stop a child from injuring themselves or others is used thousands of times per school day across the country as a punishment for children who are perceived to be misbehaving. [67] Exact numbers are impossible to calculate, however, because these practices are not consistently monitored or recorded. [68] Parents are often kept ignorant of the fact that their child was restrained or secluded, especially when that child is unable to communicate what happened to them. [69] Rachel Shapiro says

> "our parents are seeing, you know, 'my kid has marks on their arm, like bruises that clearly look like fingers. It's not just random bruising, but it's something that really looks like it was a result of someone grabbing their neck or grabbing their arm. But then they haven't been given restraint documentation. And they're the most lost, because their kid can't tell them. They're the most vulnerable students." [70]

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WHERE DO WE GO FROM HERE?

It is a well-known fact that children who are subject to aversive punishment face long-lasting harm. [71] Many sustain serious injuries like whiplash, deep bruising, broken bones, and in severe cases, death. [72] Additionally, the Society for Adolescent Medicine states that victims of aversive punishment "may endure psychological harm, including difficulty sleeping, suicidal thoughts, anxiety, increased anger, feelings of resentment, and outbursts of aggression." [73] Corporal punishment is also linked to a tendency for school avoidance and school dropout. [74] Students who already face barriers to education, such as children of color, economically disadvantaged children, and children with disabilities, are further excluded from schools by the use of physical punishment. [75]

***43** School staff, who are often underpaid, understaffed, and burned out, are also harmed by the use of aversive punishments. [76] Sometimes, children create situations that put themselves or others at risk and cannot be de-escalated with words. [77] Teachers are generally not trained to respond properly to these situations and may resort to aversive punishment out of desperation. [78] Teachers report being kicked, punched, slapped, scratched, headbutted, and bitten by students in escalated situations where restraint and seclusion are used. [79] Conversely, school staff fear retaliation for speaking against these practices. [80] Nicole Farjani, a teaching assistant in New Jersey, said she faced backlash for reporting other teachers' use of seclusion rooms to her school board. [81] She eventually had to quit after eleven years of working in the district due to the fallout. [82]

Some argue that aversive punishments are necessary to maintain order and discipline in schools. [83] However, research has proven that these practices are not therapeutic or effective in controlling behavior, and actually increase misbehavior in the long run. [84] All students need to feel safe and supported in their school environment to be able to learn and grow. [85] The use of aversive punishments such as restraint, seclusion, and corporal punishment cannot be a part of that environment. [86] Teachers and school staff must be educated on how to respond to problematic behavior before it escalates by addressing the reasons behind it. [87] In cases where restraint is absolutely necessary to prevent harm, it should only be utilized by properly trained professionals. [88]

Schools around the country have already made changes to their disciplinary models to ban corporal punishment, restraint and seclusion. [89] Instead, they use methods such as Positive Behavioral Interventions and Supports (PBIS), a ***44** three-tiered system of interventions that helps children manage their emotions, change their behavior, and return to class. [90] These tiers are:

> "1) rules, routines, and physical arrangements for all students developed to prevent initial problem behavior; 2) small group or individual responses for students at risk of problem behaviors, such as mentoring programs and staff support teams for students; and 3) more intensive interventions tailored to meet the specific needs of individual students with patterns of problem behaviors." [91]

Instead of aversive punishments, schools should be using this kind of science-backed intervention plan to address negative behaviors in students before the need for discipline arises. [92] Additionally, schools should be investing in social workers and mental health professionals to give children support during hardships.

There are currently two bills introduced in Congress that seek to address the issue of corporal punishment in schools--H.R. 1234--the Ending Corporal Punishment in Schools Act of 2021, and H.R. 3474--the Keeping All Students Safe Act. [93] These bills aim to ban the use of physical punishment, restraint, and seclusion on a federal level. [94] Every child should have an education free from the threat of pain and abuse. Whether that be through district, state, or federal regulation, it is past time this becomes a reality in the United States.

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Footnotes

1 T.O. v. Fort Bend Indep. Sch. Dist., 2 F.4th 407, 412 (5th Cir. 2021).

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3 *Id.*

4 *Id.*

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20 *Id.* at 325.

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84 *Id.*

85 *Id.*

86 *Id.*

87 *Id.*

88 *Id.*

89 *Id.* at 54.

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29 PUBILREP 36

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W.E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH

SCHOOL OF PUBLIC HEALTH
UNIVERSITY OF MINNESOTA

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POLICY BRIEF

School-Based Mental Health Services Can Increase Access to Care and Decrease Suicide Attempts

Ezra Golberstein, Irina Zainullina, Aaron Sojourner, and Mark A. Sander

BRIEF HIGHLIGHTS

- *School-based mental health services (SBMH) are a promising way to provide children and adolescents with mental health support, but evidence about these programs' effectiveness is limited.*
- *We study a program that placed mental health clinicians in over half the schools in Hennepin County, Minnesota. The staggered timing of the roll-out allowed us to estimate the program's effects.*
- *The SBMH program increased students' access to mental health services by 8 percent and decreased rates of attempted suicide by 15 percent, averting approximately 260 self-reported suicide attempts a year by 2018.*
- *With a program cost of about $117 per pupil annually, our results suggest that SBMH could be a valuable investment in child and adolescent mental health.*

For additional details, see the full paper: Ezra Golberstein, Irina Zainullina, Aaron Sojourner, and Mark A. Sander. 2023. "Effects of School-Based Mental Health Services on Youth Outcomes." *Journal of Human Resources* 1222-12703R2; DOI: 10.3368/jhr.1222-12703R2. https://doi.org/10.3368/jhr.1222-12703R2.

Young people's mental health was suffering even before the COVID-19 pandemic. Rates of anxiety, depression, and other problems are relatively high in the United States, and suicide is the second-leading cause of death among young people. Amid concerns that the pandemic made the situation worse, there is growing interest in finding ways to provide children and adolescents with the mental health support they need (White House 2021).

Schools may be able to help, especially if they offer a way to identify and treat children who otherwise might not be able to access mental health services. School-based mental health (SBMH) services are gaining traction across the United States, but causal evidence about their effects is limited. Better evidence could inform federal, state, and local policymakers who make decisions around financing these services, as well as educational professionals who make decisions about how best to serve students.

We study an intervention that placed mental health clinicians in Minnesota schools. Our analysis focuses on the implementation of the SBMH program in K–12 public schools in Hennepin County, which includes the city of Minneapolis and its suburbs. We use administrative data and survey data on nearly 500,000 students, together with new data we collected on the implementation of the program from 2001 to 2019.

Because poor mental health in childhood and adolescence can have long-term consequences for students' health, educational, and economic well-being, we estimate the effects of SBMH on a range of outcomes: not only students' access to mental health services and their mental health status, but also outcomes related to academic performance, disciplinary actions, and juvenile justice involvement.

After SBMH was implemented in a school, rates of mental health service use rose, suggesting that the program enabled more students to access mental health support. We also find that SBMH reduced self-reported rates of suicide attempts by 15 percent. We find weaker evidence that SBMH decreased suspensions and juvenile justice involvement. We do not find effects on attendance or on academic achievement test scores, in contrast to previous research that has linked mental health services to those outcomes.

Our findings suggest that SBMH services, while not a silver bullet for all behavioral and learning outcomes, are a valuable investment in child and adolescent mental health. Policymakers and educators looking for ways to improve young people's mental health could consider investing in those services.

The School-Based Mental Health Model

Schools often provide some mental health supports via school social workers, counselors, or psychologists, but these resources are frequently limited. However, most schools say that they lack the capacity to deliver mental health services successfully to all students in need of those services.

By 2018, the SBMH program we study was averting approximately 260 self-reported suicide attempts a year.

The SBMH model that we study aims to provide a higher level of support by placing licensed mental health clinicians directly in schools, complementing the existing capacity of school counselors and social workers. Students are referred to SBMH services by teachers, who receive training on identifying mental health problems among students, as well as by school counselors, social workers, school psychologists, and school nurses. SBMH clinicians diagnose and treat mental health problems through individual, group, and family psychotherapy. They generally do not have the authority to prescribe drugs, but may refer students to physicians for prescription drugs.

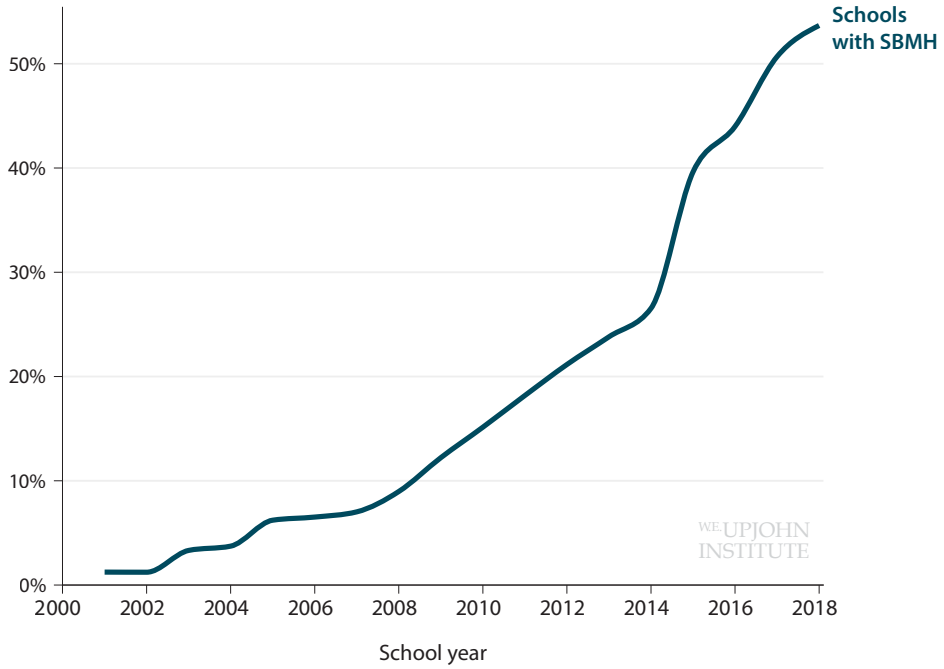
Proponents argue that mental health services in schools have several advantages: school staff can identify potential problems quickly; students can connect with services more easily than if they and their families had to navigate services in the community; and students who are uninsured or face other barriers can access treatment, improving equity in access to care.

However, evidence of the causal effects of SBMH has been limited, even as policy interest has risen sharply. Some states are appropriating direct funding for SBMH services, some are creating subsidies to increase the SBMH workforce, and others are changing their Medicaid policies to allow for more Medicaid financing of SBMH (Anderson 2021; Hill 2021). At the federal level, recent House and Senate bills have been proposed to enhance funding for SBMH. Every single witness in Senate Finance Committee hearings on child mental health in February 2022 testified to the importance of SBMH, and the Surgeon General called for greater investment in SBMH in a 2021 advisory (U.S. Surgeon General 2021). Better evidence of the effects of SBMH is needed to inform policy choices.

The SBMH Program in Hennepin County

During the first two decades of the 2000s, the state of Minnesota made a series of increasing grant investments that substantially expanded SBMH, including in Hennepin County, as Figure 1 shows. Of 263 schools that operated between 2001 and 2019 in

Figure 1 Growth in School-Based Mental Health Implementation across Hennepin County Schools, 2001–2018



SOURCE: Authors' original data collection.

School-based mental health is not a silver bullet for all behavioral and learning outcomes. But it can be a valuable investment in children and adolescents' well-being.

Hennepin County, which includes Minneapolis and 45 suburbs, 123 schools eventually implemented SBMH. The staggered timing of the rollout allows us to use a difference-in-differences approach to make causal estimates of the program's effects.

We estimate that SBMH, as implemented in Hennepin County over the study period, costs about $100,000 per year for the typical school, or about $117 per pupil. The typical school participating in SBMH has 0.75 full-time-equivalent clinical staff, along with some additional off-site support by the agency. We estimate that approximately 5 percent of students use services in a year if their school has SBMH.

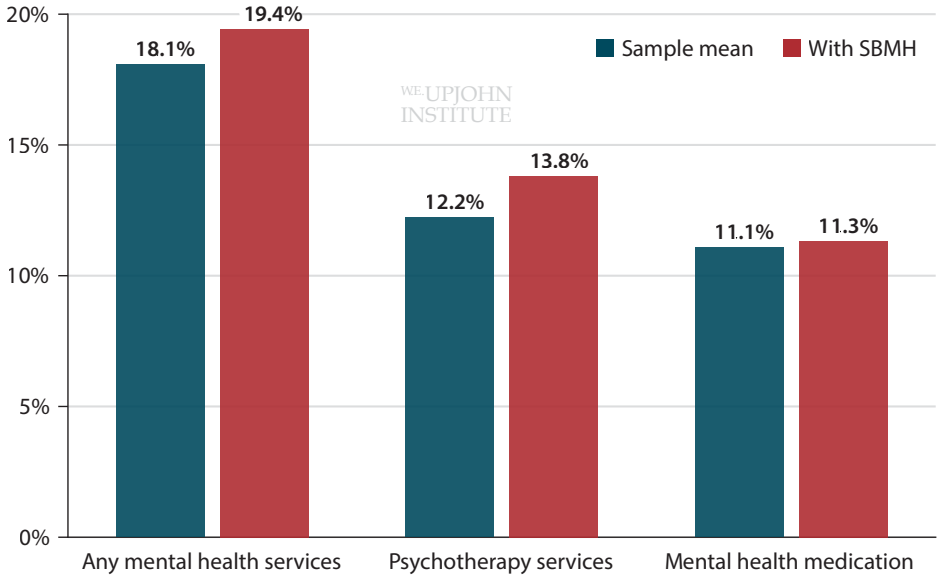
We pulled together data from 2001 to 2019 from several sources. We had linked student-level administrative data on which schools were attended in each year, along with outcomes related to academic performance, disciplinary actions, mental health services use, and juvenile justice involvement. We also had seven waves of the large-scale triennial Minnesota Student Survey data with information on mental health status and substance use. We linked both those data sources with our own data on the implementation of SBMH services across Hennepin County K-12 schools from 2001 to 2019.

Effects of SBMH on Student Outcomes

The estimates suggest that SBMH services raised the likelihood of a student using any mental health services by 7.6 percent compared to the sample average. As Figure 2 shows, this effect represents a rise in access to 19.4 percent from a sample mean of 18.1 percent. The overall increase in use of mental health services was driven by increases in psychotherapy use rather than prescription medication use.

We find that SBMH reduced rates of self-reported attempted suicide by 15 percent. As Figure 3 shows, SBMH reduced the proportion of students who reported a suicide attempt in the past 12 months by nearly 1 percentage point in the first year after implementation, and rates remained fairly steady during the first five years. On average,

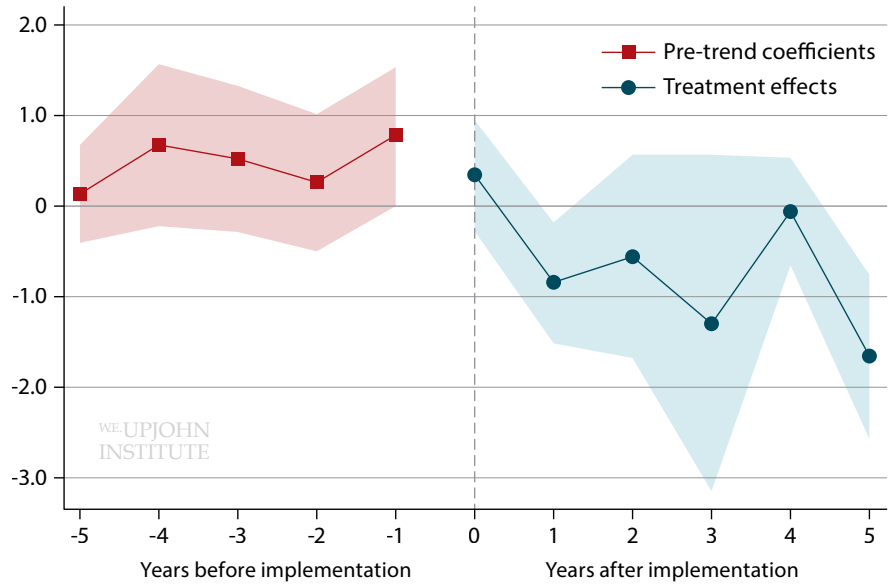
Figure 2 School-Based Mental Health Increased Access to Mental Health Services
Predicted probabilities of access to services



NOTE: Mental health services use data from administrative data available on Medicaid-enrolled students. Results are from models with individual-level covariates (age, race/ethnicity, sex, free/reduced-price lunch status), and include grade-level by year fixed effects. Predicted probabilities are based on our estimates of the average treatment effects on the treated in the full sample. See Table 2 in the full paper for details.

SBMH, as implemented in this study, increased rates of mental health services use by 7.6 percent.

Figure 3 School-Based Mental Health Reduced Self-Reported Suicide Attempts
Difference in the probability of a suicide attempt between students at schools with SBMH and students at schools without SBMH (percentage points)



NOTE: Suicide attempt = having any self-reported suicide attempt during the past 12 months. Data are from Minnesota Student Surveys. Results are from an event study model with individual-level covariates (age, race/ethnicity, sex), and grade-level by year fixed effects. Significance of test of pre-intervention trends: $p = 0.173$. Shaded areas show 95% confidence intervals.

about 3.7 percent of Hennepin County students in sixth grade and higher reported a suicide attempt in the past year. These estimates suggest that by 2018, SBMH was preventing approximately 260 suicide attempts a year.[1]

We find weaker evidence that SBMH services decreased suspensions and juvenile justice involvement. We do not find effects on attendance and test scores.

Conclusions

Our research provides new evidence on the impact of school-based mental health services on the well-being of children and adolescents. SBMH, as implemented in this study, increased rates of mental health services use by 7.6 percent. The program also decreased self-reported suicide attempts—perhaps one of the most critical outcomes—by 15 percent.

The value of SBMH in a given context will likely depend on how high the need is and how accessible mental health services are outside of school. Although we cannot tell from our data how many students in these particular schools need or would benefit from mental health services, recent estimates suggest that in 2021 approximately one in five U.S. adolescents had major depressive disorder and that fewer than half of adolescents who needed treatment had any mental health treatment (Flores et al. 2023). Data on patterns of mental health service use suggest that there is substantial unmet need.

[1] Our data do not allow us to make precise estimates of the number of suicide attempts averted by SBMH. However, we can make some approximate calculations. In the 2017–2018 school year, when a little more than half of Hennepin County schools were using SBMH, there were 93,214 students enrolled in grades 6–12. Given a 3.7 percent base rate of self-reported suicide attempts, if half of Hennepin County students were at schools using SBMH, the estimates that the program reduced self-reported suicide attempts by 15 percent suggest that SBMH averted approximately 260 attempts that year.

Policymakers and educators looking for ways to improve young people's mental health could consider investing in SBMH.

As policymakers grapple with how to address the crisis of child and adolescent mental health, information on the costs and benefits of different interventions is critical. The annual cost of this SBMH program was about $117 per student. These costs were shared by state grant funds and health insurers (to the extent children had insurance). The evidence of reductions in self-reported suicide attempts and the suggestive evidence of improvements in disciplinary behavior and juvenile justice involvement indicate the potential for important benefits. As schools continue to be an important place for identifying and treating mental health problems, additional research that further quantifies costs, benefits, and optimal size of school-based services will be valuable.

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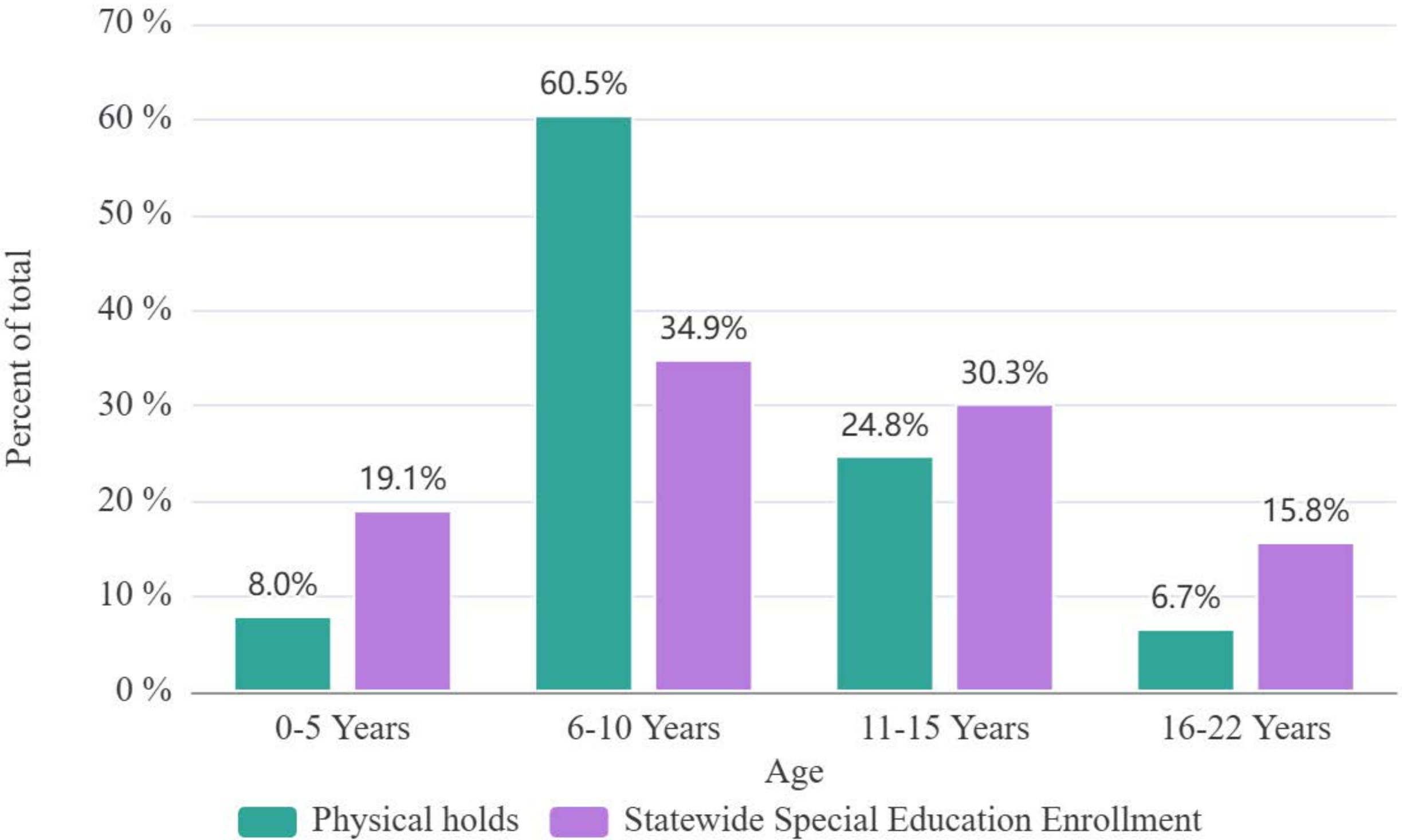
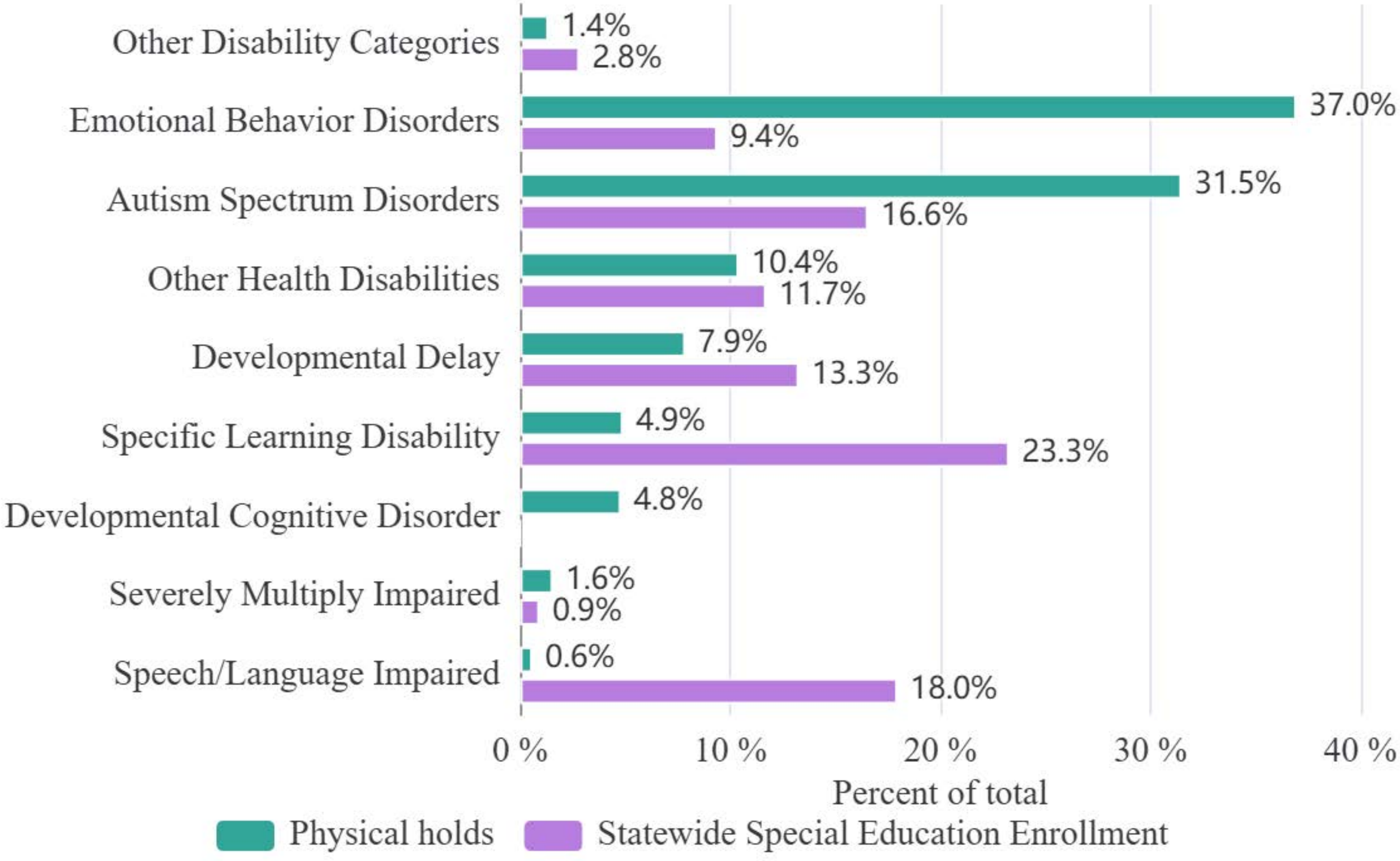
Physical Holding: Age

Statewide: 2024-25



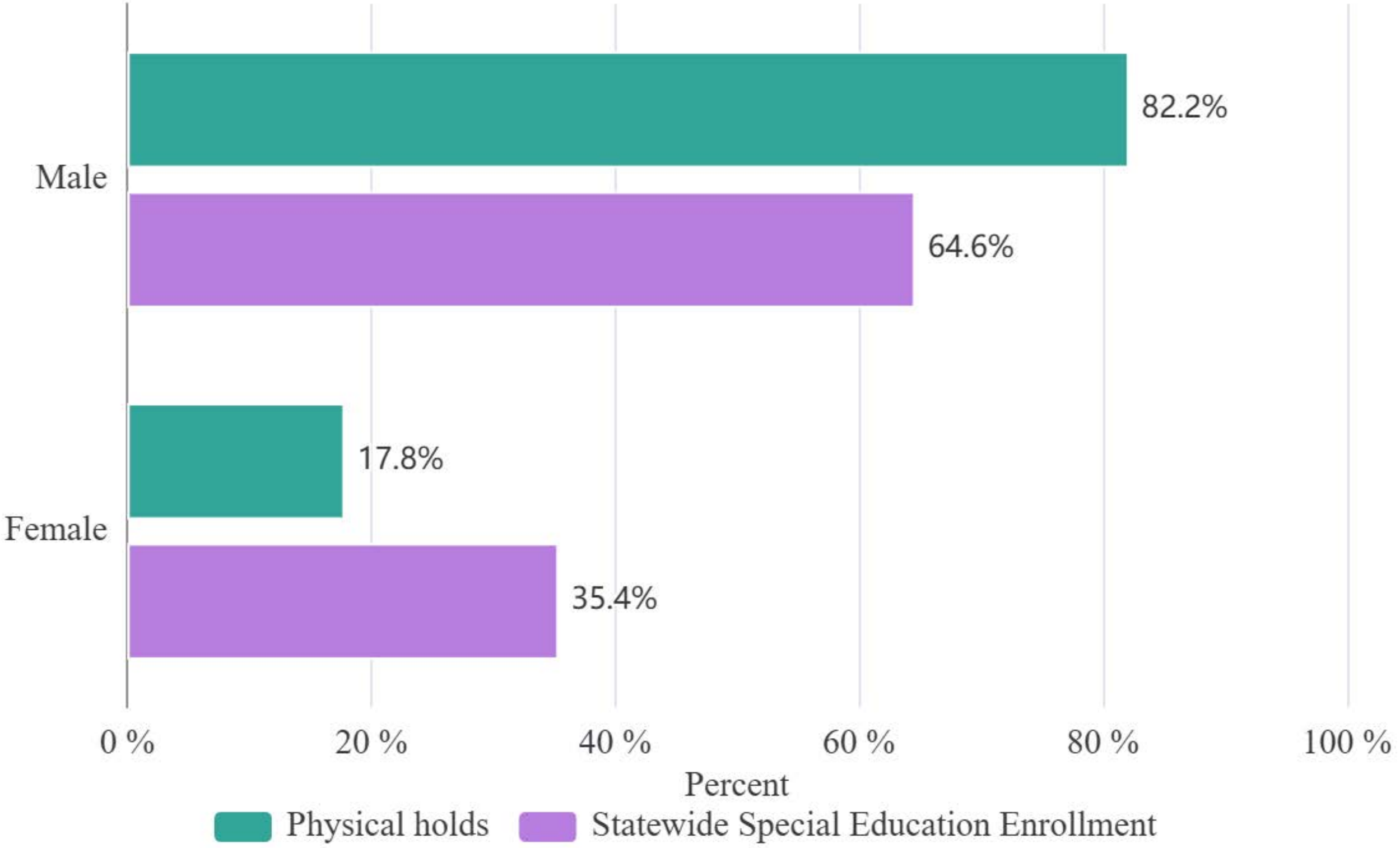
Physical Holding: Disability

Statewide: 2024-25



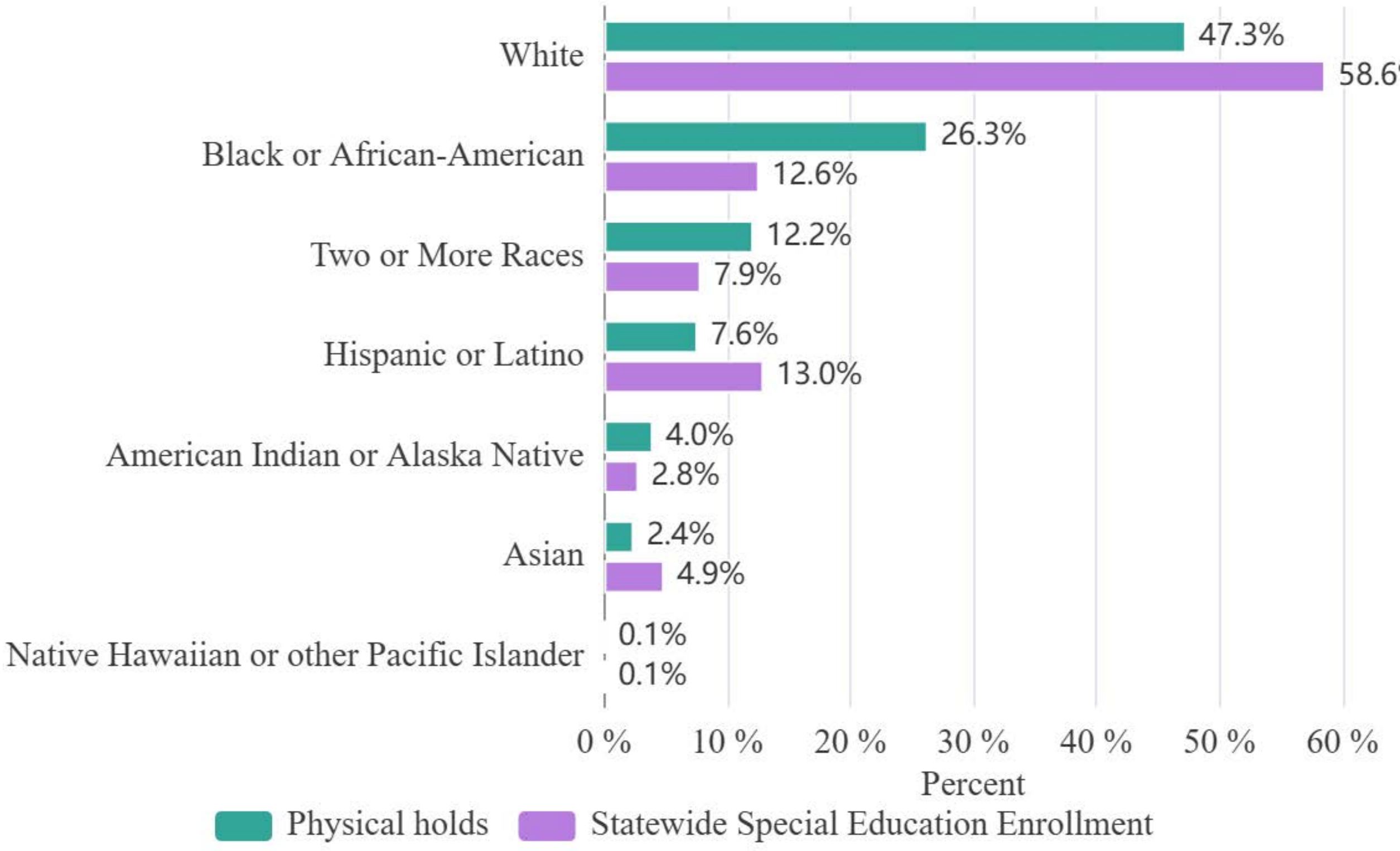
Physical Holding: Gender

Statewide: 2024-25



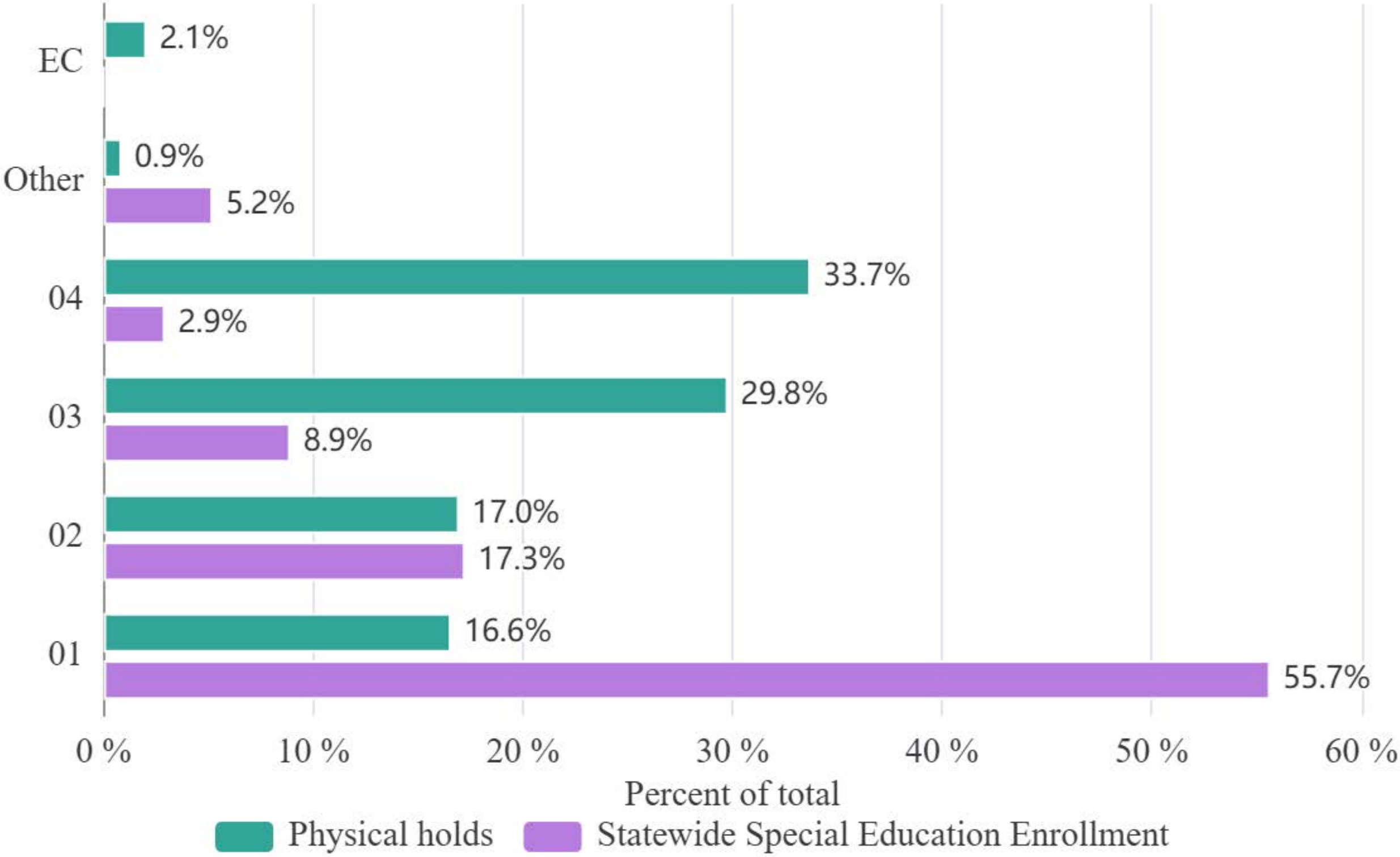
Physical Holding: Race/Ethnicity

Statewide: 2024-25



Physical Holding: Setting

Statewide: 2024-25



SECLUSION WORKING GROUP
CHAIR'S RECOMMENDATIONS
21 January, 2026

A. With the overarching goal of completely ending seclusion in all districts throughout Minnesota:
   1. By _____ all districts will have a vetted alternative to seclusion in place; and
   2. All districts will reduce the use of seclusion by _____% annually until seclusion is used _____% of the time in any school year.

B. Minn Stat 125A.0942, subdivision 2, be amended to include lines 1.26 – 2.13, and lines 3.1 – 3.8, as set forth in amendment AML007-7, and subsequent sections renumbered accordingly.

C. Minn Stat 125A.0942, subdivision 4, be amended to include 6.2 – 6.24 as set forth in amendment AML007-7 EXCEPT line 6.4 is changed to read grade 1 through grade 12.

D. Minn Stat Ch 125A be amended to add section 125A.101 as set forth in lines 6.25 – 6.27.

E. MDE and/or the legislature must evaluate the elimination on seclusion to determine if the data shows that the use of restrictive procedures has increased. Students must also be evaluated for trauma associated with the use of restrictive holds. If the data shows that the use of restrictive holds has increased in relation to the decrease in use of seclusion, then schools must be allowed to use seclusion subject to the provisions Minn Stat 125A.0942, subdivision 4.

SECLUSION WORKING GROUP

MEMBER REPRESENTATIVE SENCER-MURA'S PROPOSALS

28 January 2026

A. Minn Stat 125A.0942, subdivision 2, be amended to include lines 1.26 – 2.13, and lines 3.1 – 3.8, as set forth in amendment AML007-7, EXCEPT lines 1.26 and 2.4 are changed to read grade 4 through grade 12. Subsequent sections should be renumbered accordingly. MDE will draft a separate consent form specific to the use of seclusion. MDE will develop a streamlined and easy-to-use process for complaints relating to seclusion/restrictive procedures.

B. The Chair's recommendation identified as "Section C" in the final report be amended by deleting "grade 1 through grade 12" and inserting "grade 4 through grade 12".

External Seclusion Room Report

District Number	District Name	School	Room Number	Room Status	Locking Mechanism
0001-01	Aitkin Public School District	Rippleside Elementary	#126	Registered	N
0011-01	Anoka-Hennepin School District	RTLC @LO Jacob	408	Registered	Y
0011-01	Anoka-Hennepin School District	RTLC @LO Jacob	409	Registered	Y
0012-01	Centennial Public School District	Golden Lake Elementary	114	Registered	Y
0015-01	St. Francis Area Schools	East Bethel Community El.	42H	Registered	Y
0016-01	Spring Lake Park Public Schools	Centerview Elementary	Room A-107	Registered	Y
0016-01	Spring Lake Park Public Schools	Northpoint Elementary	this room)	Registered	Y
0016-01	Spring Lake Park Public Schools	Westwood Intermediate School	Rm S146 Take a Break Room	Registered	Y
0031-01	Bemidji Public School District	Bemidji Middle	1003	Registered	N
0031-01	Bemidji Public School District	Bemidji Middle	900	Registered	N
0031-01	Bemidji Public School District	Bemidji Senior High	1103	Registered	N
0031-01	Bemidji Public School District	Central Elementary	6	Registered	N
0031-01	Bemidji Public School District	Horace May	19A	Registered	N
0031-01	Bemidji Public School District	Horace May	20A	Registered	N
0031-01	Bemidji Public School District	Horace May Elementary	1	Registered	N
0031-01	Bemidji Public School District	Lincoln Elementary	2	Registered	N
0031-01	Bemidji Public School District	Lincoln Elementary	EBD	Registered	N
0031-01	Bemidji Public School District	Paul Bunyan Center	7	Registered	N
0152-01	Moorhead Area Public Schools	Ellen Hopkins Elementary	133	Registered	Y
0152-01	Moorhead Area Public Schools	R. asp Elementary	121B	Registered	Y
0152-01	Moorhead Area Public Schools	S.G.Reinertsen Elementary	143	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Baxter Elementary	1602	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	1407.1	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	1407.9	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	1422.1	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Forestview Middle	1422.9	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Garfield Elementary	Room # 22	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Harrison Elementary	#005	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	005.1	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	113.1	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Lincoln Education Center	114.2	Registered	Y

0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Lowell Elementary	#39	Registered	Y
0181-01	BRAINERD PUBLIC SCHOOL DISTRICT	Riverside Elementary	00A	Registered	Y
0182-01	Crosby-Ironton Public School Dist.	Crosby-Ironton Secondary	#207	Registered	Y
0182-01	Crosby-Ironton Public School Dist.	Cuyuna Range Elementary	Mrs. Mozey's Room	Registered	Y
0191-01	Burnsville-Eagan-Savage Schools	Edward Neill Elementary	26/problem solving	Registered	Y
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	100B, 100C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	101B, 101C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	102B, 102C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	103A, 103B, 103C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	105A, 105B, 105C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	110A, 110B, 110C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	139, 147	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	113A, 113B, 113C	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	143A, 143B, 143C, 143D	Registered	N
0196-01	Rosemount-Apple Valley-Eagan	Dakota Ridge School	145A, 145B, 145C, 145D	Registered	N
0199-01	Inver Grove Heights Schools	Salem Hills Elementary	Calming Room in Room 16C	Registered	Y
0256-01	Red Wing Public School District	Sunnyside Elementary	166	Registered	Y
0280-01	RICHFIELD PUBLIC SCHOOL DISTRICT	Richfield STEM	103, 105	Registered	Y
0413-01	Marshall Public School District	Southview Elementary	133B	Registered	N
0432-01	Mahnomen Public School District	Mahnomen Elementary	124	Registered	N
0432-01	Mahnomen Public School District	Mahnomen Secondary	214A	Registered	N
0432-01	Mahnomen Public School District	Mahnomen Secondary	Room 304	Registered	N
0477-01	Princeton Public School District	Princeton Intermediate School	303A	Registered	Y
0477-01	Princeton Public School District	Princeton Middle	Special Services Area	Registered	Y
0492-01	Austin Public School District	Banfield Elementary	402A	Registered	N
0492-01	Austin Public School District	Southgate Elementary	201A	Registered	N
0518-01	Worthington Public School District	Intermediate School	106A	Registered	Y
0518-01	Worthington Public School District	Prairie Elementary	Room #45	Registered	Y
0535-01	Rochester Public School District	Ben Franklin Elementary School	160	Registered	Y
0535-01	Rochester Public School District	Bishop Elementary	B215A	Registered	Y
0535-01	Rochester Public School District	Educational Services Center	105	Registered	Y
0535-01	Rochester Public School District	Franklin Elementary	161	Registered	Y
0535-01	Rochester Public School District	Hoover Elementary	174	Registered	Y
0535-01	Rochester Public School District	Rochester Phoenix Academy	100I	Registered	Y
0535-01	Rochester Public School District	Rochester Phoenix Academy	112 B	Registered	Y

0535-01	Rochester Public School District	Rochester Phoenix Academy	112C	Registered	Y
0535-01	Rochester Public School District	Rochester Phoenix Academy	115D	Registered	Y
0535-01	Rochester Public School District	Rochester Phoenix Academy	115E	Registered	Y
0535-01	Rochester Public School District	Washington Elementary	113 C	Registered	Y
0593-01	Crookston Public School District	Highland Elementary	708B	Registered	N
0621-01	Mounds View Public School District	Bridges Building	17-Seclusion	Registered	Y
0622-01	North St. Paul-Maplewood Oakdale	Webster K-12	113	Registered	Y
0622-01	North St. Paul-Maplewood Oakdale	Webster K-12	126	Registered	Y
0622-01	North St. Paul-Maplewood Oakdale	Webster K-12	133	Registered	Y
0656-01	Faribault Public School District	Jefferson Elementary	A145	Registered	N
0656-01	Faribault Public School District	Lincoln Elementary	EBD Room	Registered	N
0728-01	Elk River Public School District	Meadowvale Elementary	140	Registered	N
0728-01	Elk River Public School District	Meadowvale Elementary	140-2	Registered	N
0742-01	St. Cloud Public School District	Roosevelt Education Center	510	Registered	Y
0769-01	MORRIS PUBLIC SCHOOL DISTRICT	Morris Area Elementary	The Quiet Room in Room A 129	Registered	Y
0831-01	Forest Lake Public School District	Forest Lake Elementary	btw 102 and 104	Registered	Y
0831-01	Forest Lake Public School District	Forest View El.	123	Registered	Y
0861-01	Winona Area Public School District	Jefferson Elementary	169A	Registered	Y
0861-01	Winona Area Public School District	Washington-Kosciusko Elementary	106A	Registered	Y
0861-01	Winona Area Public School District	Winona Middle	120-1	Registered	Y
0877-01	Buffalo-Hanover-Montrose Schools	Northwinds Elementary	access #105	Registered	N
0883-01	ROCKFORD PUBLIC SCHOOL DISTRICT	Rockford Elementary Arts Magnet Sch	Room 607	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Brookside Academy	C111	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Brookside Academy	C112	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Brookside Academy	C123	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Brookside Academy	C124	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Cambridge Intermediate School	154B	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Cambridge Primary School	200	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Isanti Intermediate School	123	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	Isanti Primary School	220	Registered	Y
0911-01	Cambridge-Isanti Public School Dist	School For All Seasons	110	Registered	Y
0916-06	Northeast Metro 916	Karner Blue Education Center	Options #1	Registered	Y
0916-06	Northeast Metro 916	Karner Blue Education Center	Options #2	Registered	Y
0916-06	Northeast Metro 916	Karner Blue Education Center	Options #3	Registered	Y
0916-06	Northeast Metro 916	Pankalo	Cares Corner	Registered	Y

0916-06	Northeast Metro 916	Quora High School	Options Room	Registered	Y
0916-06	Northeast Metro 916	South Campus 916	156	Registered	Y
0916-06	Northeast Metro 916	South Campus Program	132A	Registered	Y
0916-06	Northeast Metro 916	Transition Program at Bellaire	111-2	Registered	Y
0916-06	Northeast Metro 916	Transition Program at Bellaire	Option Room #1	Registered	Y
0917-06	Intermediate School District 917	917 Sun	306	Registered	N
0917-06	Intermediate School District 917	917 Sun	307 C	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	137A	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	203	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	204	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	219	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	227	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	235	Registered	N
0917-06	Intermediate School District 917	Alliance Education Center	Study Room A	Registered	Y
0917-06	Intermediate School District 917	Cedar	214 B	Registered	N
0917-06	Intermediate School District 917	Cedar	307A	Registered	N
0917-06	Intermediate School District 917	Cedar	313 C	Registered	N
0917-06	Intermediate School District 917	Cedar	316 B	Registered	N
0917-06	Intermediate School District 917	Cedar	316 C	Registered	N
0917-06	Intermediate School District 917	Cedar	316C	Registered	N
0917-06	Intermediate School District 917	Cedar	318 C	Registered	N
0917-06	Intermediate School District 917	Cedar	318A	Registered	N
0917-06	Intermediate School District 917	Cedar-SUN	307B	Registered	N
0917-06	Intermediate School District 917	Cedar-SUN	314C	Registered	N
0917-06	Intermediate School District 917	Cedar-SUN	314D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	101D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	103D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	104D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	108D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	111	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	112E	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	114C	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	118A	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	118B	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	303B	Registered	N

0917-06	Intermediate School District 917	Concord Education Center	303D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	305D	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	314	Registered	N
0917-06	Intermediate School District 917	Concord Education Center	315D	Registered	N
0917-06	Intermediate School District 917	Lebanon Education Center	104A	Registered	N
0917-06	Intermediate School District 917	Lebanon Education Center	105B	Registered	N
0917-06	Intermediate School District 917	Lebanon Education Center	202E	Registered	N
0917-06	Intermediate School District 917	Lebanon Education Center	203B	Registered	N
0935-52	Fergus Falls Area Sp. Ed. Coop.	Roosevelt Education Center	113V	Registered	Y
0935-52	Fergus Falls Area Sp. Ed. Coop.	Roosevelt Education Center	2448	Registered	Y
0938-52	Meeker and Wright Special Education	Eastern Wright: MAWSECO	EWDT	Registered	Y
0938-52	Meeker and Wright Special Education	Journeys Alternative Program	124	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	121 B	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	156 B	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Cosmos	171B	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Marshall	124A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Marshall	153	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Montevideo	B104A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Montevideo	D104A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	333A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	341A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - New London	351A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Pipestone	114A	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	111	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	213	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Willmar	5	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	103B	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	111B	Registered	Y
0991-83	Region 6 and 8-SW/WC Service Coop	SWWC ELC - Windom	20B	Registered	Y
2149-01	Minnewaska School District	Minnewaska Area WIN Academy	1	Registered	Y
2149-01	Minnewaska School District	Minnewaska Area WIN Academy	4	Registered	Y
2149-01	Minnewaska School District	Minnewaska Area WIN Academy	5	Registered	Y
2174-01	Pine River-Backus School District	Pine River-Backus Elementary	#28	Registered	Y
2174-01	Pine River-Backus School District	Pine River-Backus High School	16	Registered	Y
2769-01	MORRIS AREA PUBLIC SCHOOLS	Morris Area Elementary	Quiet room in room A129	Registered	Y

2897-01	REDWOOD AREA SCHOOL DISTRICT	Redwood Middle/High School	Room 1 inside Room 202A	Registered	N
2903-01	Ortonville Public Schools	Ortonville Public Schools	C119A	Registered	Y
6012-61	Zumbro Education District	Zumbro Education District	149	Registered	Y
6013-61	Hiawatha Valley Education District	Caledonia Elementary	222B, Modified Seclusion 1	Registered	N
6013-61	Hiawatha Valley Education District	Caledonia Elementary	223C, Seclusion 2	Registered	N
6013-61	Hiawatha Valley Education District	River Valley Academy	Room	Registered	Y
6027-61	Minnesota Valley Education District	MVED	MVS-Elem	Registered	N
6027-61	Minnesota Valley Education District	MVED MVCS	Elementary	Registered	N
6049-61	RIVER BEND EDUCATION DISTRICT	River Bend Education District	414	Registered	Y
6049-61	RIVER BEND EDUCATION DISTRICT	River Bend Education District	415	Registered	Y
6049-61	RIVER BEND EDUCATION DISTRICT	River Bend Education District	416	Registered	Y
6051-61	Goodhue County Education District	River Bluff Education Center	D100.6	Registered	Y
6083-52	Southern MN Education Consortium	RESET	104	Registered	Y
6095-52	Austin Albert Lea Area Special Educ	Oakland Education Center	103	Registered	N
6095-52	Austin Albert Lea Area Special Educ	Oakland Education Center	141	Registered	N
6979-61	Mid-State Education District	SUN Program	208	Registered	N
6979-61	Mid-State Education District	WIN-Elementary School	179	Registered	N
6979-61	Mid-State Education District	WIN-High School	225	Registered	N
6979-61	Mid-State Education District	WIN-Middle School	159	Registered	N

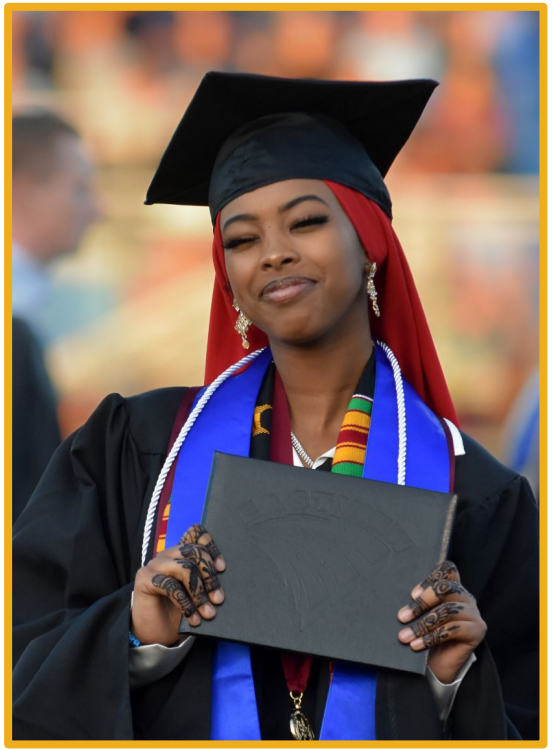
Alternatives to Seclusion

Andrea Engstrom - ISD 196

Finding Success for ALL Students

Environment and Supports

STRATEGIC ROADMAP



MISSION

Educating, developing, and inspiring our students for lifelong success.

VISION

- Developing the whole student and honoring diverse needs and cultures.
- Engaging students with opportunities in academics, arts and athletics.

CORE VALUES

Student-Centered • Empathy • Wellness • Integrity • Achievement
Collaboration • Community • Lifelong Learning

STRATEGIC PRIORITIES

Wellbeing • Achievement • Equity • Resources

BY THE NUMBERS

District 196 Today

38
BUILDINGS

4,400
STAFF

29,000
STUDENTS

115
STUDENTS SERVED IN SETTING 4

At Dakota Ridge School we serve less than 1% of total students in District 196. Many of these students live in group homes or are in and out of residential and correctional facilities.

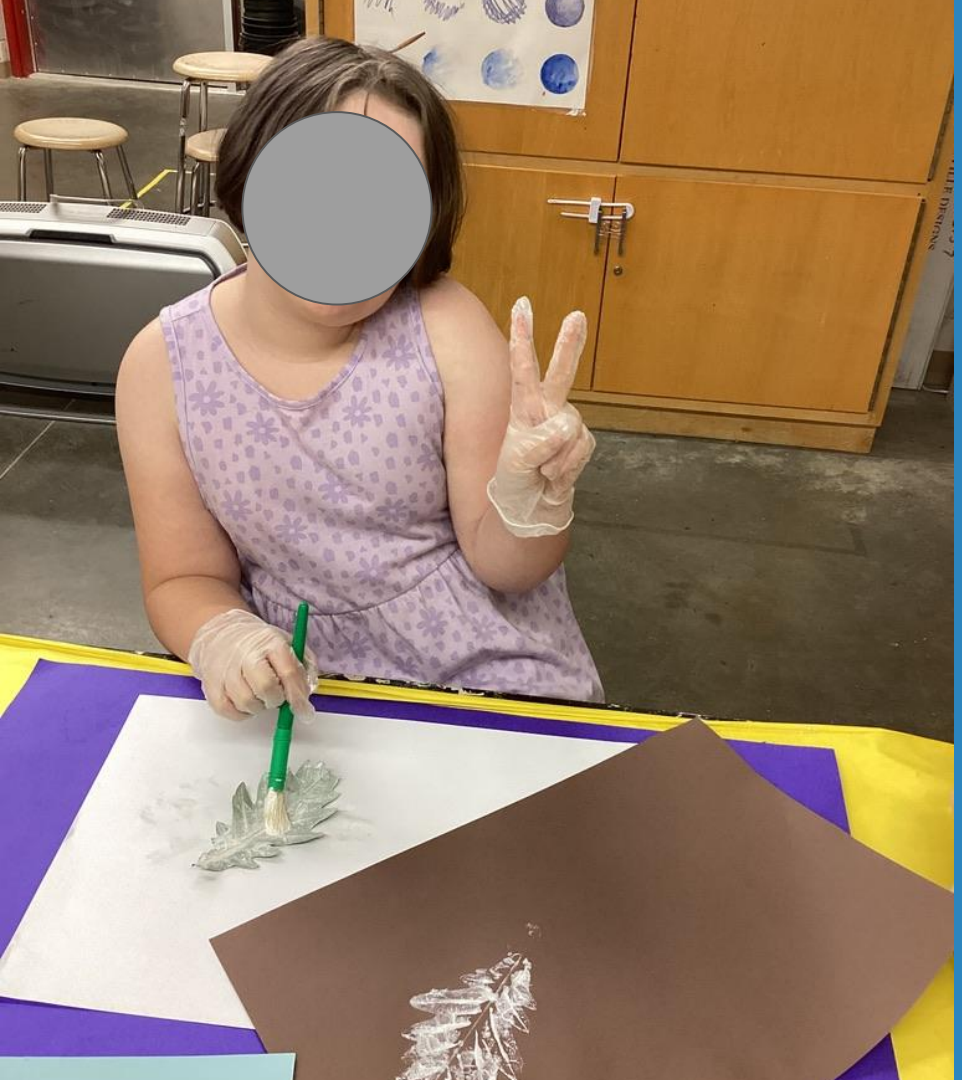
Educating, developing, and inspiring our students for lifelong success.

Dakota Ridge School

Who are we?

Setting 4 within a Comprehensive School District

- Grades K - age 22
- ALL Disability Categories
- Various levels of programming
- 115 students
- 39 Licensed Staff
- 45 Paraprofessionals



Dakota Ridge is a community engaged in developing the unique skills of individual students through creative programming and collaboration!

Why Ukeru?

Change in Legislation

- Increasing needs of the students we serve.
- Trauma informed response
- Staff expressing fear in keeping everyone safe
- Families expressing fear of not being able to serve all of our students through in-person learning.

Empowering Staff with More Tools

- More Trauma informed training for ALL staff
- No requirements of who to use Ukeru with. It is another tool in our continuum of support
- Team discussions around what will best support a student
- Dakota Ridge has GRIT
  - PBIS

Comfort Vs. Control

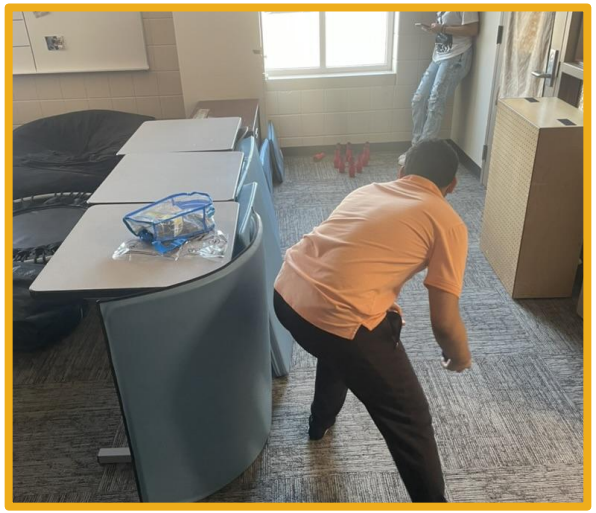
Our goal is to keep people safe while maintaining positive connections with students.

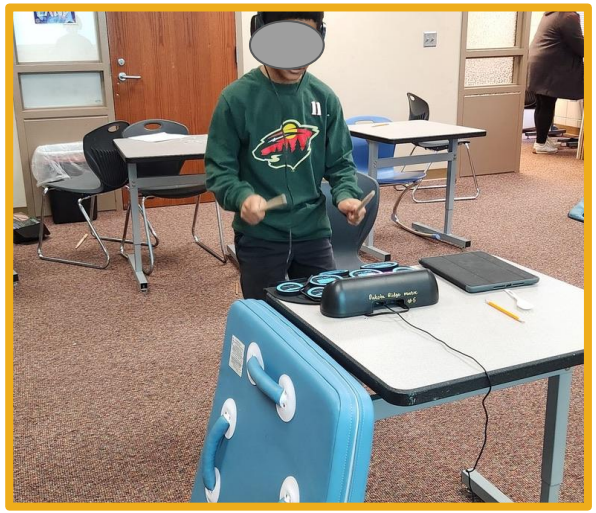
Connection before Correction

- Students get comfortable with the tools
- Non-threatening
- A natural part of our environment

Always there to keep us safe!

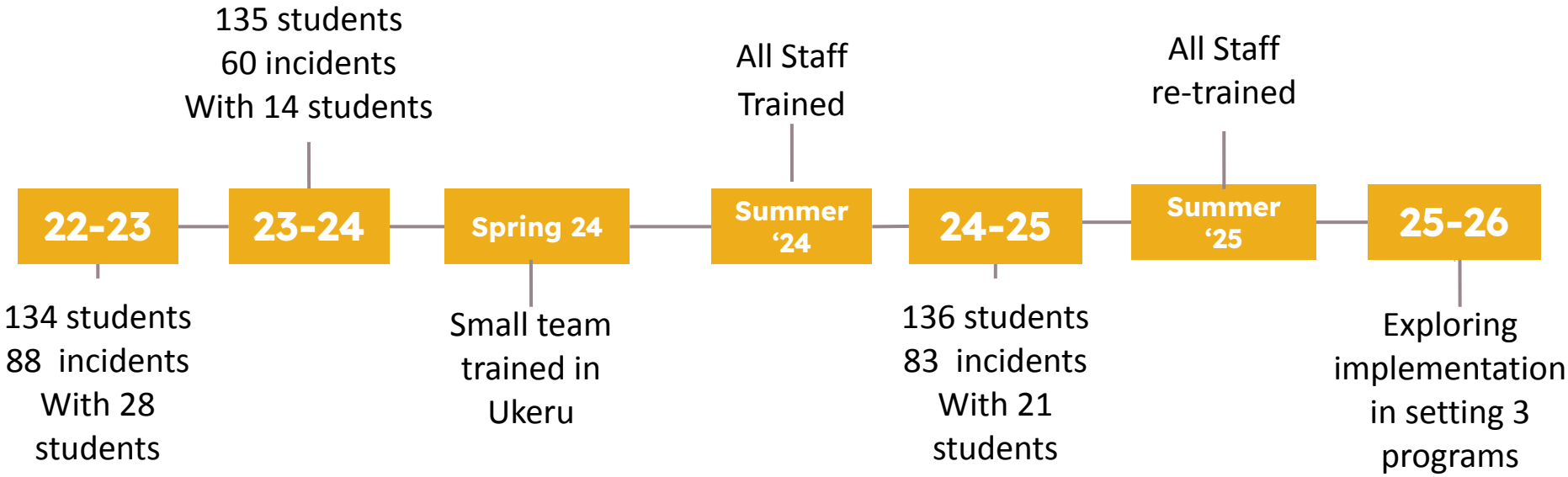
Not just for emergency situations!





Seclusion Over Time

Dakota Ridge School



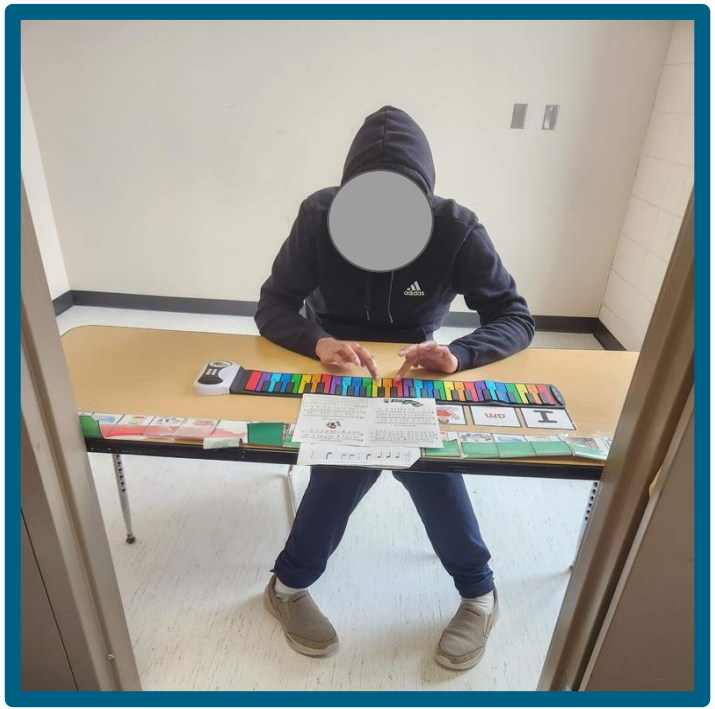
Impact of Seclusion in Schools

District Wide Data

YEAR	% of District 196 Total Students attending Dakota Ridge - Setting 4	% of District 196 Total Students Experiencing the Use of Seclusion	% of Dakota Ridge Students Experiencing Use of Seclusion	Staff Injury
22-23	.4%	.09%	21%	
23-24	.5%	.05%	23%	
24-25	.5%	.07%	15%	24

Physical Holding / Seclusion

District Wide Data



YEAR	Physical Holds	SECLUSION
21-22	321	95
22-23	385	88
23-24	453	60
24-25	382	83 *new data tracking tool.

Challenges

When serving the most impacted students.

Continued Proposals for Change

- Some of our youngest learners have endured significant physical trauma
- Understanding the time and place for seclusion
- Prioritizing the proactive work
- Staff getting injured and feeling helpless

Additional Training and Funding

- Additional required training for for all staff at Dakota Ridge School
- Equipment is costly
- Time
  - To plan
  - To debrief and adjust
  - To align teams

Words from a colleague:

Yesterday I was at DR to support in whatever capacity was needed and what I witnessed was nothing short of inspiring! I witnessed multiple staff come together to support students and each other during a significant crisis. Your teamwork absolutely shined and what I witnessed was nothing short of extraordinary.

Each of you demonstrated grace under pressure, **unwavering professionalism**, and an incredible amount of GRIT! You moved with calm, care, and clarity of purpose, always centering on safety and well-being. Staff communicated with each other and checked in to make sure everyone was okay.

I know the work is *daunting* and these moments are not easy for either our students or our staff. They require courage, compassion, and trust. So many staff responded to support without hesitation! I wish I could have recorded sound bites of staff communicating about students in a positive and supportive way in the time of crisis as an example to use with other teams. This would not have been the response in many locations. Please know we see you, hear you and are with you to support both yourselves and our students!!

Thank you for showing up for our students and for each other. You make a difference every single day, and your impact in challenging moments is profound!!

THANK YOU!

School-Based Behavioral Health Services
Seclusion Working Group Meeting
November 5, 2025

Teresa Steinmetz| Assistant Commissioner, Behavioral Health Administration

DEPARTMENT OF HUMAN SERVICES

Behavioral Health Services in Schools

Schools have a range of Behavioral Health services offered in schools by district staff and/or community partnerships that may include (but are not limited to):

- Psychotherapy
- Skills and Psychoeducation
- Consultation and Trainings for School Employed Staff
- Supports for Families
- Evidence Based Practices
- Special Education Services

Services may be covered through Minnesota Health Care Plan (MHCP), Federal Medicaid, and through School-Linked Behavioral Health Grants.

Behavioral Health Services in Schools

School-based community services (SBCS) are all behavioral health services identified as medically necessary provided by qualified health care professionals and reimbursed through Minnesota Health Care Programs (Medical Assistance).

Mental Health in Special Education (MH-SPED) are specific identified services that are provided to support youth in special education and allow for federal Medicaid reimbursement for students in Special Education from ages birth –22.

School Linked Behavioral Health (SLBH) is a grant program that serves and supports services to students that are uninsured or underinsured, and for services not otherwise reimbursable by other means. This program also extends to support training and education for teachers and parents through grant funding for school-based behavioral health services.

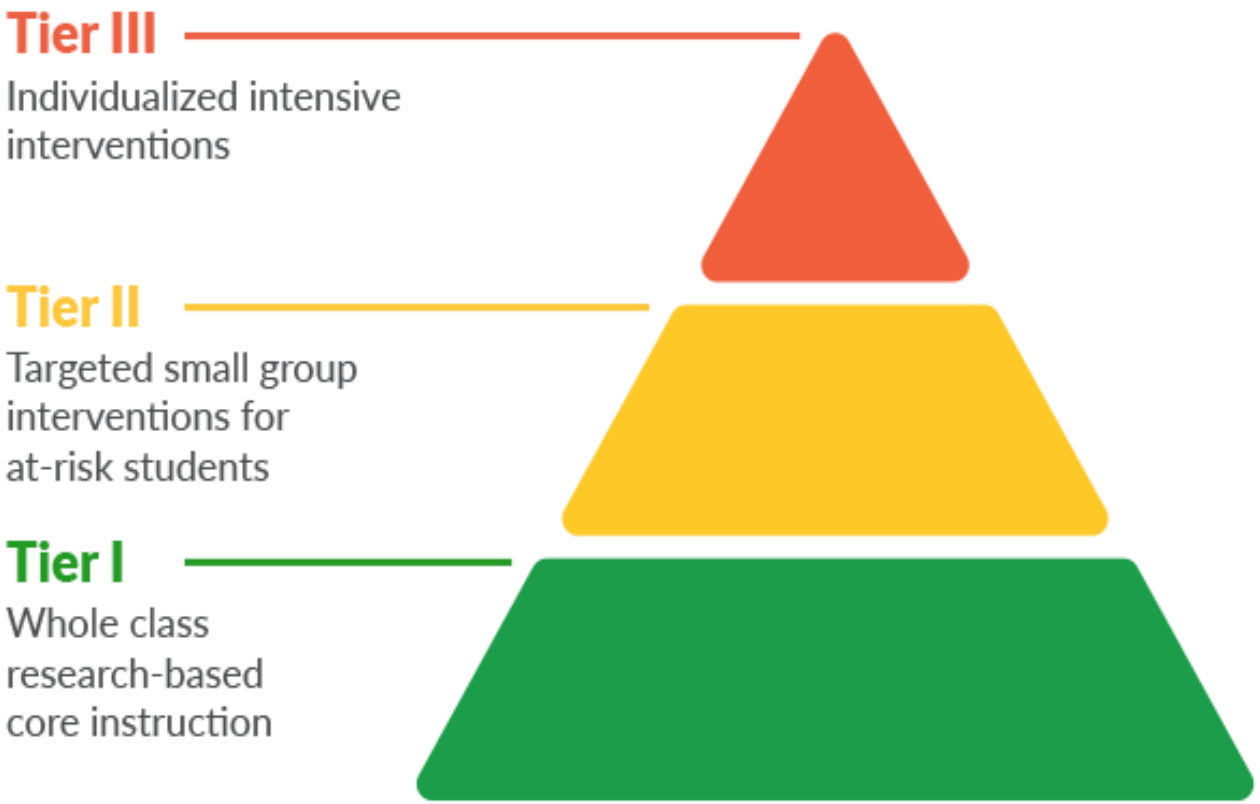
Benefits of School-Based Behavioral Health Services:

Youth are 6 times more likely to complete mental health treatment in schools than in community settings (Jaycox et al., 2010). Other benefits of school-based services include:

- ✓ Reduces barriers (transportation, insurance status, parent schedules, childcare, stigma)
- ✓ Equitable Access (bringing services to where students are)
- ✓ Promotes Early Identification and Intervention
- ✓ Enhances Student Well-Being and Learning
- ✓ Increases Engagement and Treatment Success
- ✓ Staff feel better prepared to identify and address concerns

Multi-Tiered System of Supports (MTSS)

Minnesota School Based behavioral health services are recognized as part of the Nationally recognized model of Multi-tiered system of supports.



Overview of Student Support Distribution:

- **Tier 3 (Intensive Supports):** Historically supports **1–5%** of students but now may exceed **20%** in schools.
- **Tier 2 (Targeted Supports):** Designed for **15–20%** of students needing additional interventions but trending upward.
- **Tier 1 (Universal Supports):** Serves **80–85%** of students with core academic and behavioral strategies.

Source: Weist et al., 2023

MDE and DHS Collaboration

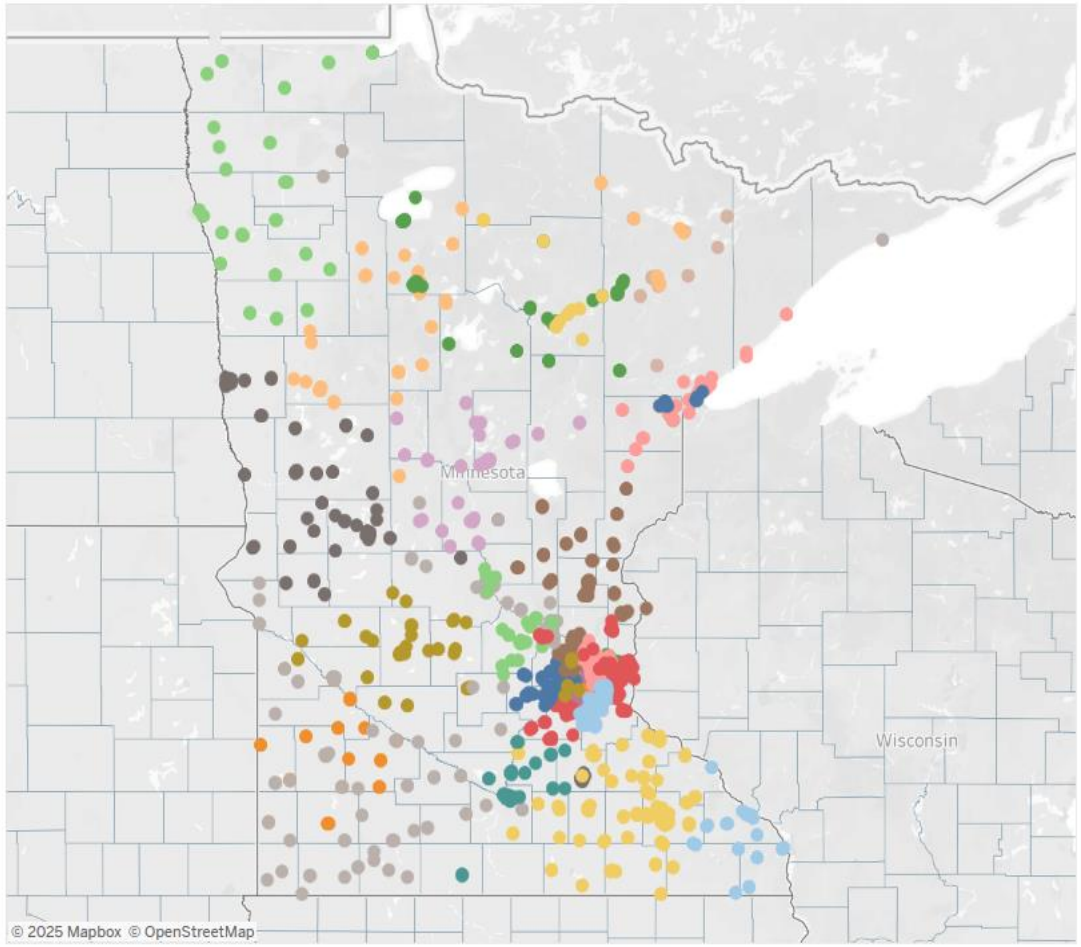
Since 2010, DHS and MDE have collaborated to meet the needs of youth in schools. Collaboration includes:

- Data Sharing Agreements to track trends, evaluate program impact, and make data-driven decisions.
- Positive Behavioral Intervention and Supports (PBIS) and School-Linked Behavioral Health (SLBH) alignment of interventions/efforts at the local level.
- State-wide trainings to school personnel on topics such as de-escalation, early warning signs of mental illness, mindfulness/regulation in the classroom, trauma informed practices, and restorative practices.
- Partner on trainings of Evidence-based mental health therapy techniques for student support personnel
- Advancing Wellness and Resilience in Education (Project AWARE) Grant (2020-2026).
- CMS School-Based Behavioral Health Services Enhancement Grant (2024-2027).
- Interagency agreement to develop a state-wide crisis response team and maintain 9 regional crisis response teams, including training that focuses on strengthening school safety and responses.

Who do School Linked Behavioral Health Grants Serve?

- Grants to Community Providers (in partnership with local schools) to support uninsured and underinsured students, their families, and school staff.
- Services are provided in:
  - Independent School Districts, Charter School Districts, Specialized Districts
  - Intermediate School Districts:
    - Intermediate schools provide highly specialized educational programs to students and families;
    - Helping students to return to their home school district, reversing the disproportionate impact on students of color, and providing support and training for school staff and parents
    - Supporting youth transitioning from placements including hospitals

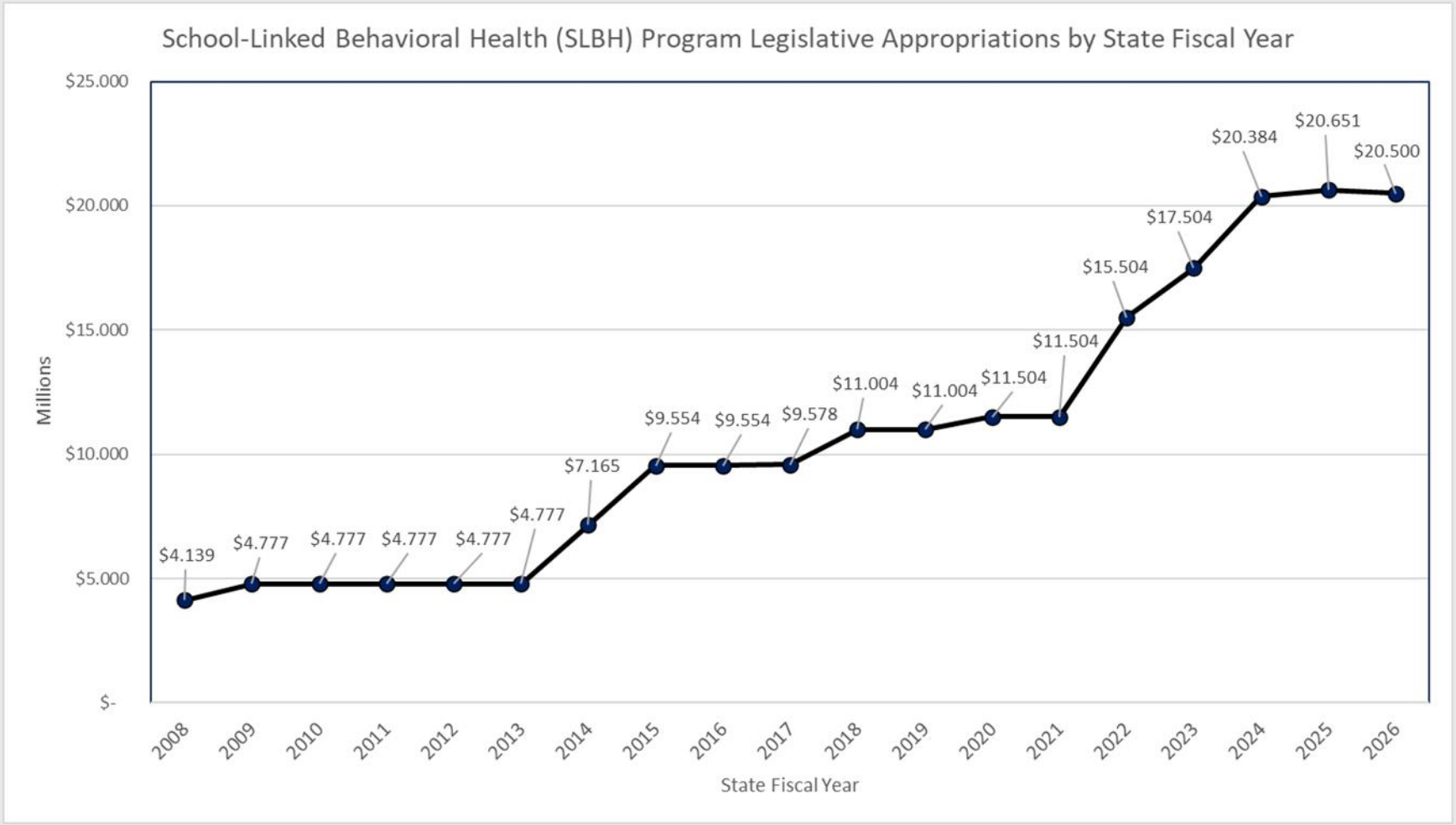
School Districts Served by SLBH Grants



Map of school and educational program locations currently being served by SLBH grantees

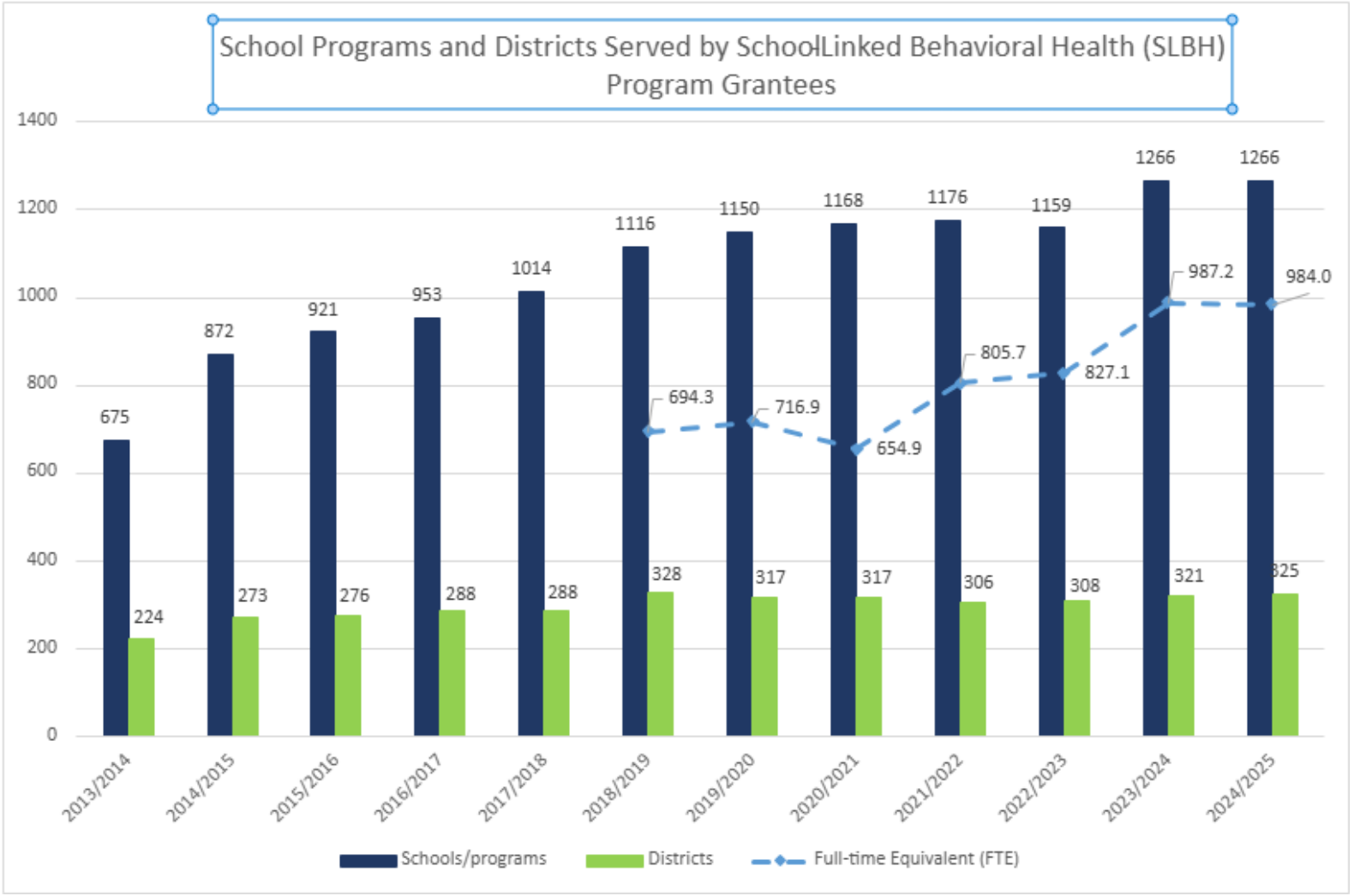
District Type	Districts Served Statewide	Districts Served Metro (7 county)	Districts Served Greater MN	Total Districts Statewide	Percent of Statewide Total
Independent Districts	280	44	236	325	86%
Special Districts	2	2	N/A	2	100%
Intermediate Districts	4	4	N/A	4	100%
Charter School Districts	28	6	22	175	16%
State Operated Schools	1	0	1	2	50%
Other District Types	13	0	13		
Total	328	56	272		

School-Linked Behavioral Health Grants: Legislative Appropriations

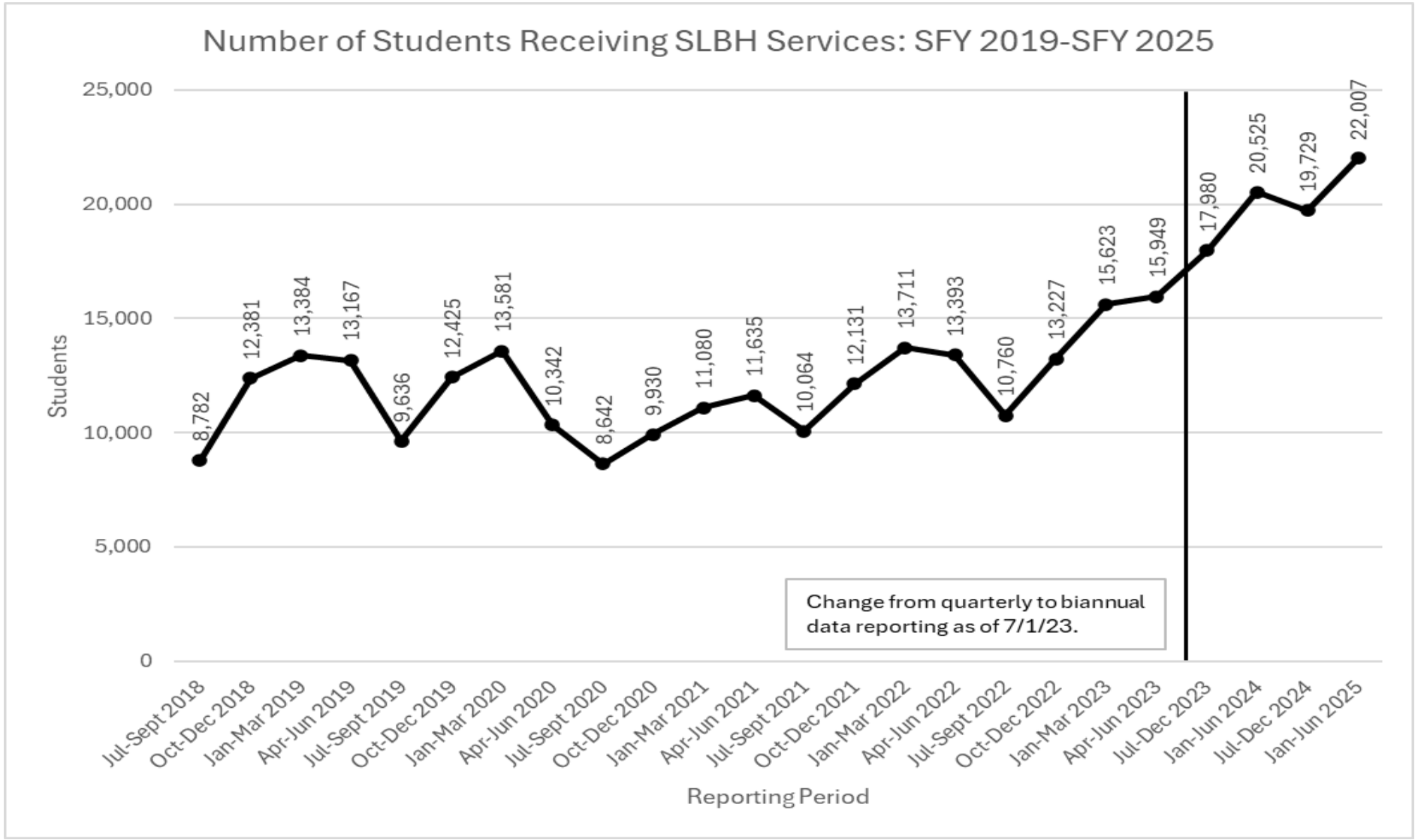


Schools/Districts: Demand and Utilization Continue to Increase

Continued state investment in the SLBH grant program and sustained collaboration between school districts and grantees has led to consistent growth in 1) the number of districts and schools/programs served by grantees, and 2) the number of behavioral health clinicians providing services in schools.



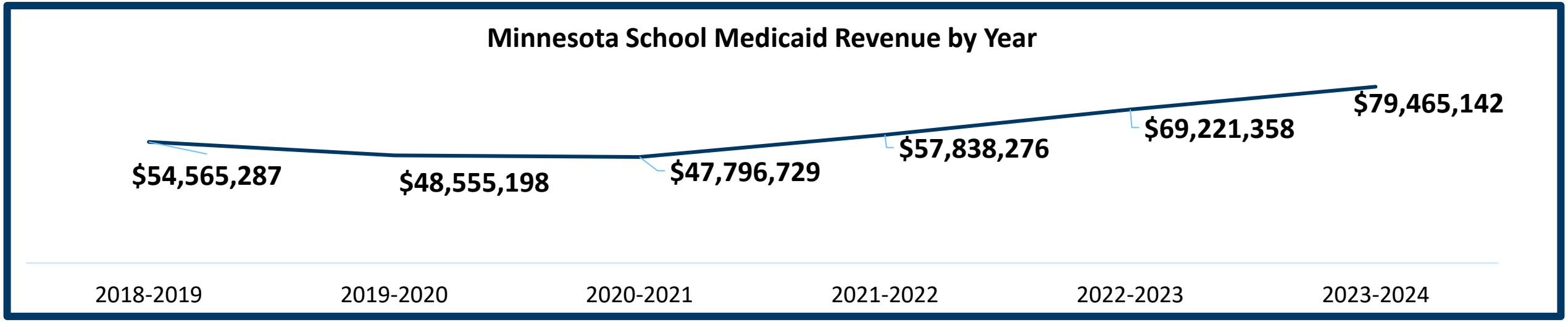
Students: Demand and Utilization Continue to Increase



Activities Outside the Scope of the Grant

- Minnesota Health Care Program (MHCP) provides payments for School-Based Community Services, including individual and group services provided to students not on an IEP.
- Services schools provide through Special Education receive the Federal Medicaid share through a cost-based rate.
- Through the Behavioral Health Administration's efforts—including needs assessments, training, and Medicaid expansion work—more schools are now able to bill Medicaid for eligible mental health services and support workforce needs.

Medicaid-Funded School Behavioral Health Supports



- Minnesota schools received **over $79 million** in FY 2023–24 through Federal Medicaid (Third-Party Reimbursement)
- These supports — especially behavioral health and PCA/paraprofessional supports — are key to the **reduction in seclusion and restraint** across Minnesota schools.
- Medicaid investment = more support for students, fewer crises for schools.

Advancing Safe and Supportive School Practices

- **Seclusion is not best practice:** US Government Accountability Office (2019) research shows seclusion is harmful and often traumatic for students and families, as reflected in both data and lived experiences.
- **Adults drive change:** Training and supporting school staff in effective approaches helps students manage dysregulation safely.
- **Data** indicates when school mental health systems are aligned, student outcomes improve.
- Efforts like **Project AWARE** and insights from the **MDE Legislative Report** highlight how schools, behavioral health providers, and community systems can work cohesively to reduce behavioral incidences in schools.
- **Prevention** via training & early intervention = better outcomes, lower long-term costs

Conclusion

When schools integrate behavioral health staff with Positive Behavioral Interventions and Supports (PBIS) and other support systems, data show fewer crises, reduced use of restraint and seclusion, and improved student well-being and learning outcomes.

DEPARTMENT OF HUMAN SERVICES

Thank You!

Teresa Steinmetz

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Monica Byron
President

Marty Fridgen
Vice President

Ryan Fiereck
Secretary-Treasurer

Carrie Lucking
Executive Director

Dec. 16, 2025

Members of the seclusion working group,

Education Minnesota represents over 84,000 active, retired and aspiring educators, including teachers, paraprofessionals, school counselors, and higher education faculty. We represent educators in every school district across the state.

Our members have various experiences with seclusion – some have received proper training and have seen it used appropriately to defuse situations, and others have seen it used too broadly. For this reason, we do not have a formal legislative position on the use of seclusion at this time. Instead we rely on our member experiences to formulate our responses and inform decision-making, including talking with members before and after each hearing of this working group.

However, Education Minnesota is strongly opposed to any changes to Student Support Personnel Aid. Student Support Personnel Aid goes to every school district, charter, intermediate and coop in the state and must be used to increase or maintain staffing for school counselors, school social workers, school psychologists and school nurses. This was one of the premier achievements of the 2023 legislative session, originally authored in House File 8, and represents a decade of advocacy by our members, parents and students across the state to demand schools staff the mental and physical health positions our students need. Minnesota consistently ranks towards the bottom in school staffing for these positions while the needs are ever growing. Even in this working group, the proposal outlined by Ms. Woodward would require increased staffing for mental and physical health teams as her proposal would require adding these staff to any IEP decisions on seclusion.

Education Minnesota and other organizations worked for a decade to create Student Support Personnel Aid. This funding goes to every district, charter school and intermediate in the state, and is the only formula that must be spent on qualified mental health professionals there in the school. The number one predictor of academic success is that the student has a relationship with someone in the building, that they believe one adult cares if they show up that day or not. That, combined with the mental health crisis that impacts one in three high school students, and the fact that Minnesota is consistently ranked 48th in the nation in mental health supports in schools, is why we care about this funding so much. We urge the working group to not touch this funding. Chair Seeberger has talked before about the harms of the legislature making choices without full vetting. We invite members of the working group to join conversations with their local school counselors, school social workers, school psychologists and school nurses and judge for yourselves if we are adequately meeting our students' needs in these areas.

The legislature, in order to solve a difficult budget process, has already cut Student Support Personnel Aid by $50 million. Please do not further reduce our state's investment in student mental health.

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Education Minnesota is an affiliate of the American Federation of Teachers, the National Education Association and AFL-CIO. 6058

EDUCATION MINNESOTA
THE VOICE FOR PROFESSIONAL EDUCATORS AND STUDENTS

DRAFT RECOMMENDATIONS FOR DISCUSSION

Seclusion Working Group members were invited to offer recommendations for the group's discussion. On December 10, 2025, seven working group members submitted written proposals (Dave Haveman, Jessica Heiser, Kate Hulse, Great Kjos, Erin Sandsmark, Melissa Winship, and Nicole Woodward). On December 17, 2025, the Seclusion Working Group engaged in discussion and found five areas of general consensus for recommendations:

1. *Mandatory Staff Training, Staff Supports, and Culture Shift*
2. *IEP/IFSP Requirements*
3. *Data Collection, Monitoring, and Accountability*
4. *Alternatives to seclusion*
5. *Funding*

Although there were areas of agreement, the group did not review specific language for proposals. On January 7, 2026, four working group members (Jessica Heiser, Kate Hulse, Eren Sandsmark, and Nicole Woodward) met to further clarify the five areas of recommendations and propose specific language for the Seclusion Working Group's review. This language will be presented to the Seclusion Working Group on January 14, 2025 for their review.

Mandatory Staff Training, Staff Supports, and Culture Shift

1. Mandate annual, standardized, evidence-based staff training for all special education staff and related services providers in Level 3 and 4 settings:
    - MN Statute 125A.0942
    - Effects of trauma on the brain and brain state-dependent functioning
    - Techniques for avoiding using seclusion / alternatives to seclusion
    - Effective practices for post-restrictive procedures team debriefing meetings
    - Effective practices for trauma-informed post-restrictive procedures restoration between school staff, child, and family

      Schools that register a seclusion room with MDE must confirm staff has received this training, in addition to their restrictive procedures plan

2. Mandate annual, standardized, evidence-based staff training for all school staff:

- Crisis prevention and safe crisis management. Training must include modules on the neurobiology of stress and trauma, effective de-escalation, co-regulation, and understanding sensory processing needs
- Ableism and bias-awareness to increase understanding that what is perceived as "behavior" is often part of the person's disability
- Shifting from control and compliance-based strategies to communication and connection

Right now we think this is too nebulous, not evidence-based. Funding would also need to be required, so the onus is not on local districts to implement.

IEP/IFSP Requirements

1. When considering the addition of seclusion to a child's IEP/IFSP/BSP, the IEP team is required to include a mental health professional or practitioner (school psychologist, school social worker, school counselor, licensed school nurse or other licensed mental health provider serving the district). The team must consider contraindications and alternative restrictive procedures to use during an emergency before adding seclusion to a student's IEP/IFSP/BSP.

2. When considering the addition of seclusion to a child's IEP/IFSP/BSP, add express consent/proactive agreement to IEP for use of seclusion
   (1) by all parents or guardians with legal decision-making authority regarding the child; (2) through informed written consent which is separate from any other consent obtained - through the individualized education program or individualized family service plan; (3) in the parents' or guardians' primary language, following the district's language access plan under section 123B.32, and with all necessary interpretation and cultural supports to ensure adequate understanding of said consent. A parent or guardian's failure to respond to a request for consent must not be considered consent to the use of seclusion.

3. For students with an IEP who are subjected to seclusion, the IEP team must review the seclusion data (frequency, duration, etc.) no less than annually or whenever requested by the parent/guardian or the district. This is in addition to the current twice-in-30-days requirements.

Data Collection, Monitoring, and Accountability

1. District-based data accountability. Continuation of quarterly district-based Restrictive Procedures Oversight Committee meeting requirements

2. MDE-based data accountability. Require an annual review and setting of strategic targets for training and improvement in identified areas of need. Specifically, implement an accountability structure similar to the Accountability, Rationale, & Context (ARC) report that is required annually based on Minnesota Test of Academic Skills (MTAS)/Minnesota Alternate Assessment rates. MDE would set the annual seclusion rate threshold which districts must be below and a rate of decrease of use of seclusion that districts must meet. If a district is above the threshold OR their use data is not improving at an acceptable rate, then MDE must implement a Corrective Action Plan (CAP) and allocate additional resources to that building, including technical assistance and ongoing monitoring, to address needs and provide targeted support.

3. Include use of restrictive procedures for each school district on public Minnesota Report Card

4. Enhance the MDE's legislative report: School Districts' Progress in Reducing the Use of Restrictive Procedures in Minnesota Schools, as required by Minnesota Statutes, section 125A.0942, to include how the use of seclusion, and non-use of seclusion may correlate with police/EMS involvement, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and other negative outcomes. To do this, the MDE would also need to develop a state-wide system for collecting data related to police/EMS involvement in emergency situations, as this particular data set does not currently exist.

Alternatives to seclusion

1. In addition to MDE's compilation of alternatives to seclusion in their legislative report, mandate that MDE research, vet, and identify alternative programs and interventions known to reduce the need for seclusion. The department must make available to districts a list of recommended alternatives deemed evidence-based and appropriate. MDE must also list a school district and school district contact who can provide technical assistance to other schools looking at the program utilized in that district. The department must continue to regularly provide districts

with information about professional development opportunities available throughout the state on alternatives to seclusion.

2. *To discuss as a group:*

School districts must adopt one of these alternative programs (most already have). Mandated adoption of these alternatives would only be required if paired with direct funding for implementation and in districts with registered seclusion rooms whose trends in use exceed appropriate thresholds.

Funding

1. Direct funding. For all funding recommendations, direct funding mechanisms should be utilized whenever possible. Funding should not be tied to competitive grants, which can disadvantage school districts without the resources to pursue grants.

2. Funding for alternatives to seclusion. Allocate specific, sustained funding to districts to cover costs associated with implementing new alternatives to seclusion, including obtaining licenses (such as Ukeru), dedicated time and resources (e.g., substitute coverage, stipends) for high-quality staff training.
    a. Training recommendations detailed above

3. Funding for related services. Maintain or expand current levels of funding for related services, including but not limited to speech therapy, occupational therapy, etc.

4. Funding for mental health services. Maintain or expand current levels of funding for school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers).

Seclusion Working Group - NAMI Minnesota Ideas

Drafted by Greta Kjos, Director of Children's Programs, NAMI Minnesota (12.3.25)

Summary of Meetings

What the working group agrees on/acknowledges:

- Seclusion is used disproportionately with students of color and those with disabilities such as Autism, EBD, and ODD.
- Data reporting and collection is an issue.
- Misuse of seclusion happens.
- Injuries to staff and students happen.
- Alternatives to reduce (at a minimum) seclusion exist.
- More funding for school staff training and supports are needed.
- Everyone wants staff and students to experience a safe learning environment.
- No one supports the misuse of seclusion or infliction of harm or trauma on children.
- No one enjoys using seclusion.

What the working group doesn't agree on:

- Whether there's a place for seclusion- using seclusion only for emergencies vs a total ban.
- Timeline for a ban, if total ban becomes the policy - immediate vs. giving schools a runway to have supports in place.
- There is a scenario with tools and culture shifts in which the need for seclusion is eliminated.

NAMI Minnesota's Position on Seclusion

NAMI believes that no one should be subject to practices that can cause or worsen mental health symptoms. NAMI National supports the elimination of restraints and seclusion in schools. NAMI Minnesota recognizes the often traumatizing, ineffective, and disproportionately use on students with disabilities and students of color. After meeting with Ukero and seeing their success in the elimination of seclusion we also acknowledge that there are successful alternatives with evidence-based strategies that have eliminated the need for seclusion altogether.

Reducing or banning the use of seclusion without providing tools, supports, and training can lead to reactive measures including increased restraints, increased calls to law enforcement and/or EMS, more suspensions, home-based and level 4 placements, increased trauma and the continued disproportionate impact on BIPOC and disabled students, as well as staff and students feeling unsafe. Any successful policy toward reducing or banning the use of seclusion must be paired with investments in prevention, de-escalation, and support structures. At the core is building a culture of regulation, de-escalation and inclusion in our schools and that takes investment in time and money.

Ideas:

- The Working Team should hear from Kim Sanders, CEO of Ukeru. Their story and approach at Grafton could be very valuable to the discussion. They've developed best practices that can inform our approach regardless of the company the schools work with.

- According to Ukero, they have seen the best outcomes when seclusion remains an option while alternatives are implemented. It is NAMI MN's position that investments need to be made in evidence-based alternatives and implemented as an additional tool, with accountability to staff for necessary shifts in new tools/ strategies and culture. Seclusion should remain available during implementation while the goal is to ultimately eliminate the need for seclusion.
- Include a prohibition on the use of law enforcement and school resource officers (SROs) as a behavior or disability response by creating policies/ practices that law enforcement cannot be used for nonviolent behavior, disability-related behavior, or mental health episodes.
- Any action should include solving for the issues with data collection and monitoring the impact on students and staff including police/EMS calls, student/ teacher injuries, expulsion/ suspensions, physical holds, home-based or level 4 placements, and whether there is disproportionate impact on students of color and with disabilities.
- Shift from culture of violation/repercussion regarding seclusion/ restraint to one of culture to one that encourages safety with kindness and compassion alongside the use of PBIS and de-escalation strategies. Create a culture of collaboration, de-escalation and learning debriefs vs a punitive approach to schools struggling with student behavior. This staff mindset shift flows to the student culture and becomes rooted in what Ukeru calls comfort over control.
- All of this needs Investment in:
    - **Oversight and data collection** to increase appropriate use of seclusion, eliminate improper use of seclusion and improve the use of de-escalation strategies. Require an annual review and setting of strategic targets for training and improvement in identified areas of need.
    - **Prevention and early intervention** through more school-linked mental health services, multi-tiered levels of support and school staff (counselors, psychologists, social workers)
    - **Evidence-based Positive Behavioral Interventions & Supports** from organizations like Ukeru and others. Attention should be paid to the culture of the organization chosen as well as the implementing practice to ensure alignment with goals.
    - **Designated and trained de-escalation mentor response teams** who work with schools side-by-side and onsite on PBIS, de-escalation strategies and reduction in use of seclusion. Ukeru, for example, offers this mentoring/ coaching in a train-the-trainer model. Schools are either identified as schools in need of assistance (e.g. improper use of seclusion, increased seclusion/ restraints happening, etc) or it is requested by the school themselves. The response teams could act as a mobile crisis team who assists onsite during crisis and/or after a crisis to debrief and work collaboratively to improve skills and procedures. The response teams could be embedded in the school staff as well. Prioritize the schools currently using seclusion with options being available to all schools.
    - **Ongoing staff training** (including de-escalation, bias-awareness, team-based crisis response) with priority being current schools using seclusion rooms (50 school districts). This training is inclusive of all staff in the building from teachers to custodians to build a culture of regulation and skills for de-escalation.
    - **State-wide training standards** on de-escalation, use of alternatives over seclusion, awareness of response teams to ensure consistent and equitable, and non discriminatory practices.

UNITED STATES DEPARTMENT OF EDUCATION
WASHINGTON, DC 20202

January 8, 2025

Dear Governors, Chief State School Officers, Administrators of Lead Agencies, School District Administrators, and Early Childhood Program and School Leaders:

As education leaders, we have a collective responsibility to ensure that all children are educated in learning environments that are safe, supportive, and responsive to their needs. We must keep this responsibility in mind when considering the practices of restraint and seclusion in schools. The U.S. Department of Education (Department) remains concerned that children continue to be subjected to restraint and seclusion practices even though these practices are harmful to children and despite the lack of evidence that these practices are effective strategies to respond to a child's behavior or that these practices reduce the occurrence of behaviors that interfere with learning. The use of restraint and seclusion practices is inconsistent with our shared goal to ensure every child is treated with dignity and free from abuse. The most recent publicly available data shows that more than 50,000 public school students were restrained or secluded in public schools during the 2020-2021 school year.[i]

Restraint and seclusion practices can have a lasting and negative impact on children. There is ample evidence of significant harms to students due to these practices, including serious physical injury, emotional trauma, and even death.[ii] Schools and early childhood programs should do everything possible to align their practices to ensure all children are educated in learning environments that are safe, supportive, and responsive to their unique needs.

Instead of relying on reactive restraint and seclusion practices, it is critical for educators to be given opportunities to learn about and implement positive, proactive practices in schools and early childhood programs and how to effectively support and respond to students' behavioral needs. As described in previous guidance from the Department, this involves using practices that provide a behavioral framework to support the social, emotional, physical, and mental health needs of students,[iii] including through the use of multi-tier systems of supports with individualized, targeted, and effective interventions for high-need students. Schools and early childhood programs should implement evidence-based practices[iv] to foster climates of inclusion, safety, and belonging as an alternative to exclusionary discipline and restraint and seclusion practices.[v]

I commend those states and districts that have prohibited the use of seclusion and limited the use of restraint in schools and early childhood programs, and those districts and programs that have committed to implementing evidence-based, responsive, and inclusive practices to support student behavior. The rejection of seclusion and the shift away from reliance on restraint in our

Nation's schools and early childhood programs is long overdue. We must equip educators and early childhood providers with the positive, proactive, and evidence-based tools and resources to meet the needs of all students. I encourage all States that have not yet done so to invest in providing educators with evidence-based, positive behavior support alternatives that support students and prevent the need to use restraint and seclusion practices, which can be harmful.

The Department has invested $1 billion through the Bipartisan Safer Communities Act Stronger Connections Grant program for states to award subgrants to high-need local educational agencies to establish safer, healthier, and more inclusive learning environments. The Department also published a guide for schools on how to implement positive, proactive approaches for supporting children with disabilities as an alternative to seclusion and restraint practices and a guide to implement functional behavioral assessments for any student whose behavior interferes with learning. In addition, the Department continues to provide resources to ensure educators and early childhood providers are prepared to respond effectively to students' behavior needs.[vi] School and early childhood program leaders can both keep their communities—including children and staff—safe while ensuring every child is included, supported, and treated fairly. Our children are depending on us, and the time to act is now.

Sincerely,

/s/

Miguel A. Cardona, Ed.D.
U.S. Secretary of Education

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[i] See: U.S. Department of Education, Office for Civil Rights, *2020-21 Civil Rights Data Collection: A First Look: Students' Access to Educational Opportunities in U.S. Public Schools,* https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/crdc-educational-opportunities-report.pdf.

[ii] Government Accountability Office, *Seclusion and Restraints: Selected Cases of Death and Abuse and Public and Private Schools and Treatment Centers*. GAO-09-719T. https://www.gao.gov/assets/gao-09-719t.pdf (Washington, DC: May 19, 2009).

[iii] U.S. Department of Education, Office of Planning, Evaluation, and Policy Development. *Guiding Principles for Creating Safe, Inclusive, and Fair School Climates.* March 2023. Available at: https://www.ed.gov/sites/ed/files/policy/gen/guid/school-discipline/guiding-principles.pdf.

[iv] See: U.S. Department of Education, Office of Planning, Evaluation, and Policy Development. *Guiding Principles for Creating Safe, Inclusive, and Fair School Climates.* March 2023. Available at: https://www.ed.gov/sites/ed/files/policy/gen/guid/school-discipline/guiding-principles.pdf.

[v] See: U.S. Department of Education, Office of Special Education Programs. *Positive, Proactive Approaches to Supporting Children with Disabilities: A Guide for Stakeholders.* July 2022. Available at: https://sites.ed.gov/idea/files/guide-positive-proactive-approaches-to-supporting-children-with-disabilities.pdf. See also: U.S. Department of Education, Office of Special Education and Rehabilitative Services & Office of Elementary and Secondary Education. See also: *Using Functional Behavioral Assessments to Create Supportive Learning Environments.* November 2024. Available at: https://sites.ed.gov/idea/files/Functional-Behavioral-Assessments-11-19-2024.pdf.

[vi] Resources are available through several Department-funded technical assistance centers, including the National Center on Intensive Intervention, the Center on Positive Behavioral Interventions and Supports, the National Center for Pyramid Model Innovations, and the National Center on Safe Supportive Learning Environments.

Advances in Neurodevelopmental Disorders (2020) 4:271–278
https://doi.org/10.1007/s41252-020-00160-z

ORIGINAL PAPER

Exploring the Disproportionate Use of Restraint and Seclusion Among Students with Disabilities, Boys, and Students of Color

Antonis Katsiyannis[1] · Nicholas A. Gage[2] · Luke J. Rapa[3] · Ashley S. MacSuga-Gage[2]

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Abstract

Objectives To examine disproportionality in the use of restraint and seclusion for students with disabilities compared with their peers, for boys compared with girls, and for students of color, specifically Black and Hispanic students, compared with White students.

Methods We used the 2015–2016 Civil Rights Data Collection (CRDC), in which 21% ($n = 19{,}700$) of U.S. public schools reported using restraints or seclusions at least once during the 2015–2016 school year and 6% ($n = 5485$) of schools reported using restraints or seclusions at least 10 times. We used risk ratios (*RR*) and robust variance estimation (RVE) meta-regression analyses to estimate a covariate-adjusted mean *RR* to identify disproportionate use of restraints and seclusions.

Results In schools with reported use of restraint or seclusion at least 10 times, students with disabilities were 200% more likely to be subject to restraint or seclusion relative to their peers; students attending elementary schools were more likely to receive restraint or seclusion than students attending secondary schools. Similarly, Black students were almost 200% more likely and Hispanic students were 45% more likely to experience a restraint or seclusion than their White counterparts.

Conclusions Prior research and results from this study indicate that subgroups of students—particularly students with disabilities, Black students, and Hispanic students—are disproportionately subject to the use of restraint and seclusion. Yet, research has found that restraints and seclusions are not effective interventions and should only be used as a last resort.

Keywords Restraint · Seclusion · Students with disabilities · Black and Hispanic students · Disproportionality

Punitive measures employed by public schools are associated with a host of negative outcomes, and such measures have been shown to disproportionally affect students of color and students with disabilities (Whitaker and Losen 2019). Of particular concern is the use of aversive measures such as restraint and seclusion. According to the U.S. Department of Education's Office for Civil Rights (OCR; 2019), physical restraint is defined as personal restriction affecting movement, mechanical restraint involves devices to restrict movement, and seclusion is defined as involuntary confinement. In 2015–2016, out of the 124,500 students restrained or secluded, 87,000 were physically or mechanically restrained and over 37,500 were secluded. Black students accounted for 27% of students restrained and 23% of students secluded, though they represented just 15% of students. Similarly, students with disabilities accounted for 71% of students restrained and 66% of students secluded, while they represented only about 14% of students (U.S. Department of Education OCR, 2019). Finally, the frequency of restraint and seclusion has been reported as considerably higher for younger students, involving a relatively small number of students with emotional and behavioral disorders (French and Wojcicki 2017).

These statistics, though underreported, are particularly troublesome in light of the potential for harm in using restraint or seclusion (U.S. Government Accountability Office (USGAO) 2019a, b). In recent years, the U.S. Government Accountability Office (USGAO) (2009a) has found hundreds of allegations of

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injury associated with restraint or seclusion, including 10 cases that resulted in criminal conviction (see also U.S. Government Accountability Office (USGAO) 2009b; National Disability Rights Network National Disability Rights Network 2009). Restraint and seclusion thus have the potential to physically harm or injure students. Beyond this potential for harm, they also increase problem behavior (Magee and Ellis 2001) and reinforce aggression (Gagnon et al. 2017). Furthermore, despite the Individuals with Disabilities Education Act (IDEA) (2004), which requires Individualized Education Program (IEP) teams to consider the use of positive behavioral and intervention supports when a child's behavior interferes with the child's learning or the learning of others, extant research suggests that students with disabilities are overwhelmingly subjected to these aversive procedures (20 U.S.C. Section 1414(d)(3)(B)(i)). Indeed, recent analyses by Gage et al. (2020) found that students with disabilities were seven times more likely to be restrained and four times more likely to be secluded, with students in special education schools particularly prone to such procedures.

Practically, these types of interventions are also subject to legal proceedings, putting schools that utilize restraint and seclusion at risk for litigation. According to Katsiyannis et al. (2017), 173 special education aversive cases reviewed from 1997 through 2016 were heard, most often in southern states (82% of corporal punishment, 39% of physical restraint, 33% of seclusion, and 41% of general abuse-related cases). Furthermore, the use of punitive measures may result in violations of Titles IV and VI regarding race and Section 504/Title II of the Americans with Disabilities Act regarding disability (U.S. Department of Education, Office for Civil Rights 2014).

The Council for Children with Behavioral Disorders (CCBD) notes "the only legitimate rationale for the use of seclusion is to prevent injury or harm" (Peterson et al. 2009, p.239). Scheuermann et al. (2016) identified six professional/ethical considerations involving seclusion and restraint, including "(a) potential for death or injury, (b) failure to use the least intrusive intervention and evidence-based practices, (c) inappropriate restrictions on liberty and removal from access to education, (d) repeated use of restraint or seclusion as the failure of programming, (e) disproportionate use with certain critical groups, and (f) insufficient training, supervision, and monitoring" (p.88) (see also Trader et al. 2017). U.S. Government Accountability Office (USGAO) (2009a) reported that there were no federal regulations regarding restraint and seclusion, and state initiatives pertaining to these interventions varied widely. As of July 1, 2019, 30 states had laws providing meaningful protections against restraint and seclusion for all children with 21 states protecting children from non-emergency seclusion (Butler 2019). Such policies are likely to have an effect on restraint and seclusion prevalence rates across states (Gagnon et al. 2017).

In light of recent research exploring the disproportionate utilization of restraint and seclusion among students with disabilities (Gage et al. 2020), we set out to examine this disproportionality among a broader set of students. That is, we aimed to examine disproportionality in the use of restraint and seclusion for students with disabilities compared with their peers, for boys compared with girls, and for students of color, specifically Black and Hispanic students, compared with White students. While we are sensitive to differences between Hispanic and Latinx identification (e.g., Santos 2017), in this paper, we utilize the designation Hispanic given the classification of students within CRDC's 2015–2016 data collection.

Method

Participants

We leveraged data from the U.S. Department of Education's OCR to complete this study. Every other year, the OCR collects school-level discipline data from all U.S. public schools In particular, we used the 2015–2016 Civil Rights Data Collection (CRDC) for this study, which included demographic characteristics and discipline data disaggregated by race, gender, and disability status. Twenty-one percent ($n = 19{,}700$) of U.S. public schools reported using restraints or seclusions at least once during the 2015–2016 school year, while 6% ($n = 5485$) schools reported using restraints or seclusions at least 10 times. At least one school in all states reported at least 10 restraint or seclusion incidents. Next, we examined the proportion of schools within each state that reported at least 10 restraints or seclusions. Alaska (28%) and Oklahoma (26%) had the largest proportion of schools with 10 or more restraint or seclusion incidents, while West Virginia had the lowest (0.6%) proportion, followed by Mississippi, New Jersey, California, Hawaii, Massachusetts, and Georgia, all with 2% of schools reporting at least 10 restraints or seclusions.

Disproportionality statistics estimated with small cell sizes may lead to biased estimates (Bollmer et al. 2014), which is a particular concern when examining disproportionality of an infrequently used disciplinary outcome, such as restraint or seclusion. For this study, we focused on disproportionate use of restraint or seclusion by subgroups of students; thus, small cell sizes for estimating disproportionality statistics was a concern. Therefore, we followed Girvan et al. (2018) recommendations and excluded all schools reporting less than 10 restraint or seclusion incidents.

The final analytic sample used in this study was the 5485 schools reporting at least 10 restraint or seclusion

incidents. Forty-six percent ($n = 2523$) were elementary schools, 2962 were secondary schools (middle or high school), 241 were special education-only schools, 63 were alternative schools, and 16 were juvenile justice centers. The average enrollment was 779 students, 50.3% ($SD = 30\%$) of students were White, 10.7% ($SD = 15.8\%$) were Black, and 23.3% ($SD = 26.3\%$) were Hispanic. Almost 17 % of students in schools with 10 or more restraint or seclusion incidents received special education services and 7.9% ($SD = 11.2$) received limited English proficiency services. Table 1 provides descriptive statistics for the full sample, for schools reporting at least one restraint and seclusion, and for our analytic sample, schools reporting 10 or more restraints and seclusions. Differences between schools with less than 10 restraint or seclusion incidents and 10 or more were statistically significant ($p < 0.001$) for all variables based on chi-square and t tests.

Measures

Restraints and Seclusions

We used variables from the CRDC to examine the disproportionality of restraint and seclusion for students receiving special education, male students, Black students, and Hispanic students. The CRDC reports the frequency of three specific types of restraints and seclusions: (1) mechanical restraint: the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or utilized for a student that has been prescribed such a restraint by an appropriate medical or related services professional (e.g., adaptive devices, vehicle safety, or medical immobilization); (2) physical restraint: a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort; and (3) seclusion: the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. It does not include a timeout, which is a behavior management technique that is part of an approved program and involves the monitored separation of the student in a non-locked setting and is implemented for the purpose of calming (U.S. Department of Education, Office for Civil Rights 2020).

All three indicators of restraint and seclusion were reported by special education status, gender, and ethnic-racial identity status. For most of the analyses, we summed all indicators for an overall measure of restraint and seclusion by school.

Covariates

We included school-level demographics as covariates in all statistical models, as described below. First, we included an indicator of school level, defined as elementary school (K–5th grades) or secondary school (6th–12th grades), and school type, defined as regular school or a combined special education-only, alternative, or juvenile justice school. Next, we included the total school enrollment, percentage of White, Black, and Hispanic students, and the percentage of students receiving special education and LEP services.

Table 1 Descriptive statistics for all schools and schools reporting restraints and seclusions

	Full sample ($n = 94{,}781$)		1 or more ($n = 19{,}700$)		10 or more ($n = 5485$)	
Characteristic	*M*	*SD*	*M*	*SD*	*M*	*SD*
Elementary	62.0		43.4		45.7	
Special Education School	2.0		2.0		4.4	
Alternative School	3.5		1.7		1.1	
Juvenile Justice	0.6		0.2		0.3	
Enrollment	531	450	795	613	779	684
% White	52.6	33.1	46.2	30.2	50.3	30.0
% Black	15.4	23.8	13.8	18.4	10.7	15.8
% Hispanic	22.5	26.5	29.7	27.9	23.3	26.3
% SWD	13.1	12.0	14.2	11.7	16.8	16.0
% LEP	9.3	14.8	10.3	13.7	7.9	11.2

Elementary, special education school, alternative school, and juvenile justice are reported as percentages of all school schools. SWD is the percentage of students with disabilities, LEP is parentage of students receiving limited English proficiency services

Data Analyses

Disproportionate Restraint and Seclusion Statistic

We used risk ratios (*RR*) to estimate the disproportionate use of restraints and seclusions. We utilized *RR* because the values are easily interpretable, because they are designed for comparing subgroups of students with a reference group, and because the variance of *RR* can be approximated and used to estimate a weighted average *RR* (described below). *RR* were calculated as follows (Borenstein et al. 2009):

$$RR = \left(\frac{\#\text{of target students with Restraints or Seclusions}}{\text{Total\#of target students}}\right) / \left(\frac{\#\text{ofreference students with Restraints or Seclusions}}{\text{Total\#of reference students}}\right)$$

Values of 1.00 indicate no difference in risk between the two groups (e.g., males compared with females). Values greater than 1 indicate a higher risk for the target group and those less than 1 a higher risk for the reference group. Each unit increase in a *RR* above 1 is the number of times greater the risk is for the target group than the reference group (Girvan et al. 2018).

As noted above, *RR* may be biased when there are few students in one of the four cells needed to calculate the ratio. Therefore, as noted above, we removed schools that reported less than 10 restraint and seclusion incidents. In addition, we created separate datasets for each analysis and removed all schools with less than 10 students in each of the subgroups. For example, when we conducted the comparison of students with disabilities (SWD) and typical peers, we removed all schools with less than 10 SWD. We calculated *RR* for the following target students: (a) SWD compared with students not receiving special education services, (b) Black students compared with White students, (c) Hispanic students compared with White students, and (d) male students compared with female students. All *RR* and their variances were calculated using the metafor (Viechtbauer 2010) package in *R* (R Core Team 2014).

Aggregating Risk Ratios

Next, we used robust variance estimation (RVE) meta-regression analyses (Hedges et al. 2010) to estimate a covariate-adjusted mean *RR* to identify disproportionate use of restraints and seclusions. RVE meta-regression is a statistical approach for aggregating nested effect sizes, such as *RR*. In this study, *RR* were at the school level and were nested in school districts and states. The 5485 schools with 10 or more restraint and seclusion incidents were nested in 2051 school districts. The median number of schools per district was 1, with a minimum of 1 and maximum of 99 schools. At the state level, the median number of schools per state was 73, with a minimum of four and a maximum of 600. Because the majority of districts only had 1 school with 10 or more restraints and seclusions, we controlled for state-level nesting in all models.

We used an RVE meta-regression model to estimate a covariate-adjusted weighted average *RR* and examine the relations among *RR* and the included covariates. We estimated three robust variance meta-regression models for each subgroup comparison: (a) an empty model; (b) a covariate-adjusted model with nine predictors (i.e., enrollment, school level, school type, percentage of male, Hispanic, Black, and White students, and the percentage of SWD and LEP students); (c) a covariate-adjusted model with a fixed-effect for state to evaluate *RR* differences by state. We centered all covariates as *z*-scores ($M = 0$, $SD = 1.0$) except school level and school type. Elementary level was the reference group for school level and regular school was the reference group for school type. Thus, the intercept value in the covariate-adjusted models is the average *RR* in regular elementary schools, with mean values on all other covariates. All models were estimated with the *LogRR*, to maintain symmetry in the analyses and which is best practice when modeling *RR* as the dependent variable (Borenstein et al. 2009), and then converted back to *RR* using exp.(*logRR*). All RVE meta-regression models were conducted in the robumeta package (Fisher et al. 2017) in *R*.

Results

First, we examined the descriptive statistics for each of the restraint and seclusion types in all schools, schools reporting at least one restraint and seclusion and schools reporting 10 or more restraint and seclusion incidents. Table 2 presents the means and standard deviations for both incidents and number of students for mechanical and physical restraints, seclusions, and all restraints and seclusions combined. The average number of restraints and seclusions for all reporting U.S. schools was 3.8. Schools reported more physical restraints, followed by seclusions and mechanical restraints. For schools reporting 10 or more restraint and seclusion incidents, the average was 57.4 restraint and seclusion incidents. We also examined the average number of students that received a restraint or seclusion. Approximately one student received a restraint and seclusion in all U.S. public schools, while an average of nine

Table 2 Descriptive statistics for restraints and seclusions

	Full sample ($n = 94{,}781$)		1 or more ($n = 19{,}700$)		10 or more ($n = 5485$)	
Type of restraint and seclusion	*M*	*SD*	*M*	*SD*	*M*	*SD*
Incidents						
Mechanical restraint	0.2	8.8	0.9	19.3	3.2	36.4
Physical restraint	2.2	27.2	10.8	58.8	32.9	108.0
Seclusion	1.3	23.0	6.4	50.2	21.3	93.4
Total	3.8	42.1	18.1	90.9	57.4	166.0
Students						
Mechanical restraint	0.1	2.5	0.4	5.2	0.8	8.4
Physical restraint	0.8	4.0	2.0	6.9	3.6	10.8
Seclusion	0.4	3.9	1.8	8.4	4.8	15.2
Total	1.3	8.2	4.2	16.6	9.1	28.8

Total is the sum of the three different types of restraints and seclusions

students received a restraint or seclusion in schools reporting 10 or more restraints and seclusions. Unlike all U.S. public schools, more students received seclusions in schools reporting 10 or more restraints and seclusions.

Disproportionate Rates of Restraint and Seclusion

Students with Disabilities Of the 5485 schools, 98% ($n = 5378$) had at least 10 SWD enrolled. The unweighted mean *RR* for SWD compared with students without disabilities was 6.37, suggesting that SWD were over 500% more likely to receive a restraint or seclusion. The weighted average *RR* for SWD was 6.23, and the covariate-adjusted weighted *RR* was 3.01, suggesting that, when controlling for school-level variables, SWD were more likely than their peers to experience seclusion or restraint. The full model results are presented in Table 3. When comparing school level, SWD in elementary schools have a *RR* of 11.47 (exp(1.34 + 1.10)), which suggests that elementary SWD were more likely to receive a restraint or seclusion than secondary SWD relative to their peers. Likelihood to experience seclusion or restraint did not vary by school type.

Table 3 Robust variance estimation meta-regression models for disproportionality statistics for SWD and male students

	SWD ($n = 5378$)			Male ($n = 5466$)		
Predictor	*LogRR*	*RR*	se	*LogRR*	*RR*	se
Intercept	1.10***	3.01	0.17	0.25***	1.29	0.03
Regular school	0.53		0.34	0.06		0.08
Secondary	1.34***		0.12	0.15***		0.04
Enrollment	0.26***		0.05	0.02		0.04
% White	0.91***		0.11	−0.01***		0.03
% Black	0.36***		0.08	−0.01		0.02
% Hispanic	0.66***		0.18	0.02***		0.03
% Male	0.09*		0.05	−0.12***		0.01
% SWD	−0.03		0.09	−0.06***		0.02
% LEP	0.11		0.07	0.01**		0.02

RR, risk ratio; *SWD*, students with disabilities; *LEP*, students receiving limited English proficiency services

Male Students The unweighted mean *RR* for male students compared with female students was 1.22, suggesting few differences in the use of restraint and seclusion by gender. The weighted average RR for males was 1.17, while the covariate adjusted, weighted *RR* was 1.29, which was statistically significant. Therefore, results suggest that males were disproportionately more likely to receive a restraint and seclusion. Again, results suggest that males in elementary schools were more likely to experience restraints and seclusions ($RR = 1.49$). Again, likelihood to experience seclusion or restraint did not vary by school type.

Black Students Sixty-five percent of the schools with 10 or more restraints and seclusions ($n = 3577$) had 10 or more Black students. The unweighted mean *RR* for Black students compared with White students was 2.56, suggesting that Black student are 156% more likely to receive a restraint or seclusion. The weighted average *RR* was 2.27 and the covariate-adjusted, weighted *RR* was 2.98 (see Table 4). The results suggest that, controlling for available school-level covariates, Black students were almost 200% more likely to experience a restraint or seclusion. Unlike SWD and male students, there was no difference in *RR* between elementary and secondary schools. Schools with more Black students or more Hispanic students were less likely to use restraints and seclusions with Black students. As in the previous analyses, likelihood to experience seclusion or restraint did not vary by school type.

Table 4 Robust variance estimation meta-regression models for disproportionality statistics for Black and Hispanic students

	Black ($n = 3577$)			Hispanic ($n = 4593$)		
Predictor	*LogRR*	*RR*	se	*LogRR*	*RR*	se
Intercept	1.09***	2.98	0.09	0.37***	1.45	0.09
Regular school	− 0.08		0.13	− 0.34		0.22
Secondary	− 0.01		0.07	− 0.19**		0.09
Enrollment	0.06*		0.04	− 0.02		0.04
% White	0.22*		0.12	0.13		0.13
% Black	− 0.34***		0.07	− 0.11		0.11
% Hispanic	− 0.30***		0.10	− 0.76***		0.13
% Male	0.01		0.02	0.05		0.04
% SPED	− 0.09***		0.03	− 0.01		0.05
% LEP	0.00		0.05	− 0.09		0.07

RR, risk ratio; *SWD*, students with disabilities; *LEP*, students receiving limited English proficiency services

Hispanic Students Eighty-four percent of schools with 10 or more restraints and seclusions ($n = 4593$) had at least 10 Hispanic students enrolled. The average *RR* for Hispanic students compared with White students was 1.19, suggesting no difference in the likelihood of experiencing a restraint or seclusion. The weighted RR was 1.11, which was similar to the raw *RR* and not statistically significantly different from White students. However, the covariate-adjusted, weighted *RR* was 1.45 and was statistically significant. The result suggests that when controlling for school-level differences, Hispanic students disproportionately experience restraints and seclusions compared with White students. Unlike SWD and male students, Hispanic students in elementary schools were less likely to receive restraints or seclusions than Hispanic students in secondary schools, relative to White students. Furthermore, Hispanic students in schools with more Hispanic students were less likely to experience restraint and seclusion than White students. Once again, likelihood to experience seclusion or restraint did not vary by school type.

Discussion

Through the analyses undertaken in this paper, we examined disproportionality in the use of restraint and seclusion for students with disabilities compared with their peers without identified disabilities, for boys compared with girls, and for students of color, specifically Black and Hispanic students, compared with White students. Leveraging the affordances of recent, large-scale population-level data, the results of our analyses provide important new insight into the disproportionate utilization of such interventions. Given existing disparities in academic performance and educational attainment across ethnic-racial and disability status lines, we contend that the disproportionate utilization of restraints and seclusion may exacerbate performance gaps and constrain adaptive development and functioning among vulnerable or underserved youth.

Across our sample of the 5485 schools reporting at least 10 restraint or seclusion incidents in CRDC's 2015–2016 data collection, when controlling for school-level differences, students with disabilities were much more likely than their peers without an identified disability to experience seclusion or restraint. In fact, students with disabilities were 200% more likely to be subject to seclusion or restraint relative to their peers. Furthermore, students with disabilities attending elementary schools were more likely to receive a restraint or seclusion than students attending secondary schools, relative to their peers. Boys were slightly more likely to experience seclusion or restraint than girls, with results suggesting that males in elementary schools were more likely to experience restraints and seclusions than their male peers in secondary school.

Similarly, Black students were almost 200% more likely to experience a restraint or seclusion than their White counterparts, though there was no observed difference in the rate of disproportionality between elementary and secondary levels. Nonetheless, regardless of level of school, Black students disproportionally experienced restraint or seclusion relative to their White peers. And finally, Hispanic students also disproportionately experienced restraints and seclusions compared with their White student counterparts. In particular, Hispanic students were 45% more likely to experience seclusion or restraint than their White peers.

These findings are concerning as they suggest, at least for Black and Hispanic students, that some students are at greater risk for restraints and seclusions when they should not be. There is no education-related or behavioral reason why White students should be less likely to be restrained or secluded. With regard to students with disabilities, the manifestation of their behaviors may, under certain circumstances, necessitate restraint or seclusion. These results correspond with extant literature demonstrating disproportionality in the use of restraint and seclusion among students with disabilities and students of color (e.g., Gage et al. 2020). The use of such interventions have demonstrated minimal pedagogical effect with adverse outcomes for youth, both physically (U.S. Government Accountability Office (USGAO) 2009b; National Disability Rights Network 2009) as well as psychologically and emotionally (Gagnon et al. 2017; Magee and Ellis 2001). Therefore, schools need to consider alternative approaches to restraint and seclusion. Indeed, restraint and seclusion should be used only for safety-related reasons (Peterson et al. 2009).

Practice Implications

Restraint and seclusion can bring dangerous consequences for both students and school staff. Therefore, the best approach to reduce the use of restraint and seclusion is to reduce the behaviors eliciting these consequences. One preventative approach designed to reduce the occurrence of problem behaviors throughout the school is school-wide positive behavior interventions and supports (SWPBIS; Sugai and Horner 2020). SWPBIS is a multi-tiered framework for preventing problem behaviors and intervening when they do. At the universal level, schools develop clear behavioral expectations, explicitly teach those expectations to students, and positively reinforce those expectations contingent on appropriate student behavior. In addition, schools monitor student behavior using systematic screening and team-based decision-making to identify students not responding to universal prevention. Those students are then provided with tier 2, or targeted, supports that are resource efficient and evidence-based, such as mentoring programs (e.g., Check-in/Check-out; Crone et al. 2010). Students non-responsive to targeted interventions are then evaluated using functional behavior assessment (FBA) procedures and individualized interventions are developed addressing the specific function (or need) of each student's behaviors. A recent meta-analysis found that implementing SWPBIS has significant and meaningful impacts on student behavior (Lee and Gage 2020), and subsequently can potentially reduce the need for restraint and seclusion.

Beyond prevention, schools should consider interventions designed as alternatives to restraint and seclusion. A recent review identified 11 interventions explicitly designed to reduce restraint and seclusion (Roy et al. 2019). For example, the Relationship-Based Crisis Prevention Curriculum (Van Loan et al. 2015) uses a cognitive behavior intervention approach to change adult perceptions of student problem behaviors, alternative approaches to addressing those behaviors, and identifies specific instances when, and only when, restraint and seclusion should be used. Taken together, more research is needed into the efficacy of prevention programs targeting restraint and seclusion, particularly in schools. However, the implementation of prevention models, such as SPWBIS, in tandem with specific restraint and seclusion reduction programs, has great promise to reduce the need for and use of restraint and seclusions.

Limitations and Future Research

In our analyses, we examined disproportionality at the national level, for all schools reporting 10 or more incidents of seclusion and restraint, while controlling for state-level nesting. Given the nature of the CRCD data, and the reported rates of seclusion and restraint across districts, there may be district-level differences that we were unable to account for in our analyses. Further disproportionality rates may differ for schools reporting less than 10 incidents of seclusion and restraint. Future analyses may consider how to assess district-level differences within states and also consider how disproportionality may manifest in schools with lower reported incident levels. With regard to students with disabilities, the CRDC does not disaggregate disability status by specific disabilities. It would be informative to understand if there were students with specific disabilities (e.g., autism) that are more likely to be restrained and secluded. The data also does not provide any indication of the behavior that resulted in a restraint or seclusion. Knowing what specific behaviors preceded the restraint and seclusion consequence would help educators develop prevention strategies to decrease the need for restraints and seclusions, in line with the use of SWPBIS.

Additionally, the data reported in CRCD's 2015–2016 data collection are cross-sectional. While these analyses provide a snapshot of disproportionality at a given point in time, future analyses should be carried out that account for change over time and report longitudinal differences in disproportionality rates. Such extended analyses may provide greater insight into the contours of disproportionally by disability, gender, and ethnic-racial identity statuses.

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Compliance with Ethical Standards

Conflict of Interest The authors declare that they have no conflict of interest.

Ethical Approval Disclosure of statement about research involving human participants and/or animals and informed consent were not required for this manuscript.

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Minnewaska Area W.I.N. Academy

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December 16, 2025

Greetings MN Seclusion Work Group,

First off, thank you for taking the time to consider this very important decision. My role as Principal of WIN Academy, a Level IV Care and Treatment Facility, has been one of the most rewarding of my thirty year career in education. With that being said it is also a role where I have seen the most dire need for appropriate specialized care for our most struggling and vulnerable students.

Staff at WIN Academy consists of highly trained paraprofessionals, appropriately licensed teachers, certified mental health practitioners, licensed mental health professionals and a fulltime SRO Officer. Each student receives an hour of individual mental health skills and an hour of group skills and an hour weekly of therapy. We are certified in CPI Nonviolent Crisis Intervention Training and UKERU, not to mention a certified PBIS school. We have reflection spaces, calming spaces, and large motor OT spaces for students to regulate.

Even with all of those tools and resources we experience behaviors that are dangerous to students and staff. We always respond with a trauma informed lens that uses the least restrictive options needed to keep everyone safe. Decisions to use a restrictive procedure or seclusion space are not taken lightly and are made with input from multiple staff members. Most importantly a mental health professional is always present. We understand more than most that this can be a traumatic event for the student and the staff member however sometimes the seclusion space is the safest space that minimizes the trauma and expedites the route to regulation. It is essential for the student to reach this tension reduction stage to be able process the event therapeutically.

Please consider maintaining seclusion as a tool for Level III and Level IV Settings with the appropriate training, documentation and program review. This is essential to keep students and staff safe in settings supporting, educating and caring for our highest need students. You are always welcome to visit and learn more about our unique program. Thank you for your time and consideration.

With Respect,

Susan Knutson
WIN Academy Principal
MAS Dist 2149 Special Education Coordinator

CHIP RANKIN
Superintendent
320-239-4820

SUSAN KNUTSON
Principal/Spec Ed Coordinator
320-239-1400

A. LEAH OELTJEN
Clinical Director
320- 239-2257 ext. 3107

NICOLE MEISSNER
Educational Coordinator
320-239-2257 ext. 3172

JAMIE DIETZMANN
Office Manager
320-239-2257 ext. 3130

500 John Street, Starbuck, MN 56381
AN EQUAL OPPORTUNITY EMPLOYER

Dear Members of the Seclusion Working Group,

Thank you for your continued work to examine seclusion practices and to develop recommendations that prioritize the safety and well-being of both students and staff. As a Setting IV School Social Worker, I wanted to share my perspective on the current proposals and the broader implications for practice. I have worked in Setting IV for over 13 years.

In these programs, staff work daily with students who have complex needs and may present in acute crisis. These environments inherently carry risk, and staff experience both primary trauma—direct exposure to challenging and sometimes dangerous situations—and vicarious trauma from supporting students through ongoing distress. Many of our students and staff, particularly BIPOC individuals, are impacted by intergenerational and historic trauma, which shapes behavior, responses to crisis, and access to resources. Without adequate training, funding, and support, this combination of trauma and high-stress work can lead to teacher burnout, decreased effectiveness, and increased safety risks for both students and staff.

While I share the goal of eliminating seclusion long-term, proposals like the *Hard Stop* do not reflect the realities of our work or the broader social, political, and cultural context. Removing seclusion without providing fully funded, safe alternatives would create a "safety vacuum." Many of our students are already deemed "too physically aggressive" for other settings, meaning there are no realistic services or programs to place them if they cannot remain safely in schools. Immediate elimination of seclusion without this infrastructure risks unsafe conditions, lost learning opportunities, and further marginalization of BIPOC students and staff.

The *Runway with Support* approach offers a balanced, trauma-informed path forward. It preserves seclusion as a last-resort emergency tool while funding and technical support are provided to implement evidence-based alternatives with fidelity. This approach acknowledges both student and staff trauma, supports staff well-being, and provides a realistic path to eventually reduce reliance on seclusion without compromising safety, program integrity, or access to education for our most vulnerable students.

In summary, thoughtful reform must consider the realities of our programs, the trauma our students and staff carry, and the structural inequities that shape their experiences. *Runway with Support* allows us to build safer, more equitable systems while maintaining a protective framework for students and staff.

Warmly,

Cara McGlynn, MSW, LICSW (she/her)

Hear my name

Teacher on Special Assignment

District School Social Work Lead

District McKinney-Vento, Fostering Connections, and Migrant Student Liaison

Phone: 651-415-5426

My Office is a Safe Space ❤️‍🩹

ITINERANT & RELATED Services

916 CONSULTATION

Hello, I am Colleen Carlson, the Director of Educational Programs at MAWSECO. I support eight alternative educational programs throughout our cooperative, three are schools within area residential programs and five are Federal Setting IV special education programs. I am writing to explain the critical role of the seclusion tool within our Federal Setting IV special education programs. Student safety is our number one priority. When students feel safe, their brains are ready to learn.

Most special education students in our districts and programs do not engage in behaviors that result in emergencies. For the small number of students who may escalate to that level, staff use proactive and preventive strategies to support safety and regulation. When a student becomes physically aggressive despite these efforts, staff rely on their training in Handle with Care and Ukeru to support de-escalation in the safest manner possible.

In some situations, these techniques are not effective or appropriate, such as when a student has a medical restriction that prevents physical intervention. In those rare emergencies, the appropriate use of a seclusion space, implemented by highly trained staff and in accordance with established protocols, serves as a critical tool to protect safety and maintain educational continuity for all students and staff. The primary importance of this tool can be broken down into several key areas:

Safety and Privacy for the Student in Crisis

-
-
- **Student Safety and De-escalation:**
- The seclusion space provides a quiet, safe, and minimized-stimulus environment where a student experiencing an escalating behavioral crisis can be protected from harming themselves or others. It is utilized as a last resort, alongside Handle With Care and
- Ukeru strategies, to allow the student a safe place to calm and regain emotional control.
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-
- **Privacy and Dignity:**
- Utilizing a designated seclusion space helps preserve the student's privacy and dignity during a moment of profound distress. It removes the need for highly public and potentially traumatizing physical management in a common area.

-

Minimizing External Intervention

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-
- **Reduction in Use of Law Enforcement:**
- The availability of a seclusion room as an option significantly reduces the need for police or other emergency personnel involvement in managing student crises. This maintains the school environment as an educational setting, rather than a correctional one.
-
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-
- **Safety of Peers and Staff:**
- During a behavioral escalation that poses a risk of harm (e.g., throwing furniture, physical aggression), allowing the student to de-escalate in a controlled, safe space directly preserves the safety of their peers and the surrounding educational staff.
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- **Maintenance of Educational Continuity:**
- By quickly and safely managing the crisis away from the classroom, we preserve the learning environment for the remaining students. Their instructional time and sense of security are not disrupted by prolonged, high-intensity outbursts.
-

Our staff are highly trained in crisis prevention, de-escalation techniques, trauma, brain science, Handle with Care, Ukeru, legal compliance, and the appropriate, safe, and ethical use of seclusion as an intervention. Although seclusion is not used often, it is an important and safe tool, when monitored closely and only used in emergency situations when other interventions have not been successful.

Thank you for engaging in this important work. I hope this information helps to highlight how this tool is a necessary and important component of our comprehensive strategy for supporting students in Federal Setting IV special education programs.

--

Colleen Carlson, Ed. S.

Director of Educational Programs

Meeker and Wright Special Education Cooperative

- 612.489.4082
- ccarlson@mawseco.k12.mn.us
- 720 9th Ave. Howard Lake, MN 55349

Dear Members of the Seclusion Working Group,

Thank you for your work to seek a deeper understanding around the use of seclusion in schools as a tool during emergency situations.

Overall, I am in agreement with the "Runway with Support" recommendations that were shared by members of this working group. As a behavior analyst in a district that provides federal setting IV special education services, I have significant concerns about the elimination of seclusion without the time, funding, and resources to provide staff with safe and supportive alternatives during crisis situations. There is no single alternative that provides an instant solution. As we continue to incorporate alternatives to restraint and seclusion into our programming, the amount of time that is required for staff to be able to utilize those alternatives with fidelity must also be considered. We are at a pivotal moment with how we strengthen and improve support for our students and the staff who serve them. The recommendations to provide more mental health oversight, critically examine seclusion data and disproportionate use, and invest time, resources, and funding are essential. Providing staff with high quality training in order to reduce the *need* for seclusion is where we must start. Only then can we truly be prepared to reduce, or even eliminate, the use of seclusion.

I respectfully ask that increased supports for students and educators be carefully considered prior to recommending the removal of an option that helps maintain safety.

Thank you,

Jenna French-Greff, M.S., BCBA, LBA | Behavior Analyst *(she/her)*

Northeast Metro 916 Intermediate School District

70 County Road B2 West | Little Canada, MN 55117

p: 651-415-5473 | e: jfrenchg@916schools.org

Hear my name

916 CONSULTATION Team

916 Center for Intensive Educator Preparation

CIN ON THE GO

Consultation Team Requests: https://lfforms.916schools.org/Forms/Consultation

To the Seclusion Work Group,

As the Superintendent of District 287, I am in support of the "Runaway with Support" proposal. While no one likes to use seclusion for a number of reasons, I am in agreement for the preservation of seclusion as an emergency tool for the time being, coupled with funding and dedicated support for evidence-based alternatives. We work tirelessly to support student behavior while keeping staff safe and it is important that promising alternatives are fully funded and supported. I encourage the seclusion committee to move forward the "Runaway with Support" proposal.

Sincerely,

Marcy

Marcy Doud

Superintendent

Phone: 763-550-7101

Email: madoud@district287.org

Website: www.district287.org

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To schedule a meeting with me, please contact Wauneen Denson-Mgeni at wbdmgeni@district287.org or call 763-550-7101

Mr. George,

I am writing to provide my comment on the proposal to remove seclusion from MN Schools. My name is Matt Newquist and I am a Board Certified Behavior Analyst and Licensed Behavior Analyst in Minnesota who works in the CASE program at ISD 917. This program serves students within our district who have not been able to safely access their education in our other setting 4 programs. When students first come to the CASE program they typically need at least 2:1 staff support if not more to help keep themselves and their staff safe. For some of these students, seclusion has been a tool that has supported their access to their education. It has allowed them to be able to move their body while they are upset while staff are also able to remain safe. There are some students for whom seclusion is reported to feel safer to the student and parents than physical holding of the student. There are also students for whom seclusion is contraindicated, and we do not use it with those students. We have been working to implement Ukeru in the CASE program over the last couple school years. During this time, we have been able to fade out the use of seclusion for some students thanks to Ukeru. We have also seen that for some students Ukeru has not solved the safety issue. As the state considers the removal of seclusion as a tool, I strongly urge you to choose the "Runway with Support" Proposal. This proposal will allow schools to continue to try and do the best they can to support their students in the least restrictive way possible. I fear the "Hard Stop" proposal will lead to an increase in staff and student injury, increased law enforcement response to behaviors that could previously be managed by school staff, and potentially an increase in the use of modified days or even home based services for students with the highest level of need.

Sincerely,

Matt

--

Matt Newquist (he/him/his)

Board Certified Behavior Analyst

ISD 917/Alliance Education Center

14300 Biscayne Ave. W.

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See our Family and Student Resources Page for information on a variety of topics for families and staff

"A failure is not always a mistake, it may simply be the best one can do under the circumstances. The real mistake is to stop trying." -B.F. Skinner

Hello,

I am emailing to provide input regarding the recommendations of the seclusion working group. As a director of special education for 22 years, 18 of those at an intermediate school district, there are dwindling resources available to support the students that we serve outside of the school district. As a result, we are serving students in greater numbers and with more intense needs than ever before. Without appropriate resources in place in the community to support students as well as an increasing scrutiny of special education funding to support students with disabilities I believe seclusion should only be prohibited *if and when* suitable alternative tools have been identified, fully funded, and implemented with fidelity. Programs such as Ukeru have been cited as examples of promising alternatives. This creates a "runway." It mandates that the state provide funding and technical support *before* removing the safety net that helps us run programs without increased physical holds, law enforcement involvement, shortened days, or injuries to students and staff.

Thank you for your consideration.

Melissa Schaller

I am a Special Education teacher at a federal Level 4 school. I previously worked in a Level 4 setting as a paraprofessional for four years and have served as a teacher for the past ten years. Throughout my experience, I have witnessed numerous situations involving dangerous student behaviors in which the use of seclusion was an effective and appropriate intervention to ensure the safety of the student, peers, and staff.

Without access to seclusion, staff are often limited to the use of physical restraint, which typically requires multiple practitioners and can be physically and emotionally exhausting for both the student and the staff involved. Recently, a first-grade student was placed in a physical hold following several consecutive days of severe and continuous aggression. The student repeatedly attacked anyone within reach and actively chased both staff and peers. The supine hold used in this situation was highly stressful for all parties and ultimately ineffective, as the student resumed aggressive behavior immediately upon release.

Had seclusion been available, the student could have been safely separated from staff and other students in a controlled environment. Because the student was not engaging in self-injurious behavior, seclusion would have been the most appropriate and least restrictive option. Unfortunately, this intervention is no longer permitted, and as a result, the student has not returned to school.

Tiffany Jensen

UKERU

(OO-CARE-OO)

PRESENTED BY:
Dr. Danielle Thompson
Director of Special Services
Fridley Public Schools

PRESENTED TO:
Seclusion Working Group

FRIDLEY PUBLIC SCHOOLS

What is Ukeru?

Ukeru is a safe, comforting, & restraint free approach to interaction.

Strong emphasis on brain development & interpersonal relationships

Strong emphasis on trauma.

- definition & prevalance of trauma
- trauma & the brain
- trauma informed approach

FRIDLEY PUBLIC SCHOOLS

What does Ukeru look like when it is used succesfully?

Students & Staff are safe

- Proactive
- Prevented Escalation
- Minimized injuries
- Hands off techniques
- Reduced restraints
- Comfort vs. Control
- Debriefing

FRIDLEY PUBLIC SCHOOLS

Data/Trends

How often is it used?

- Setting IV-multiple times a day
- Setting III Elementary & Middle School- daily
- Setting III High School- weekly

Restrictive Procedures Data

- ‘22-’23: 36
- ‘23-’24: 17
- ‘24-’25: 26 (opened Setting IV)

Injuries Prior to Ukeru

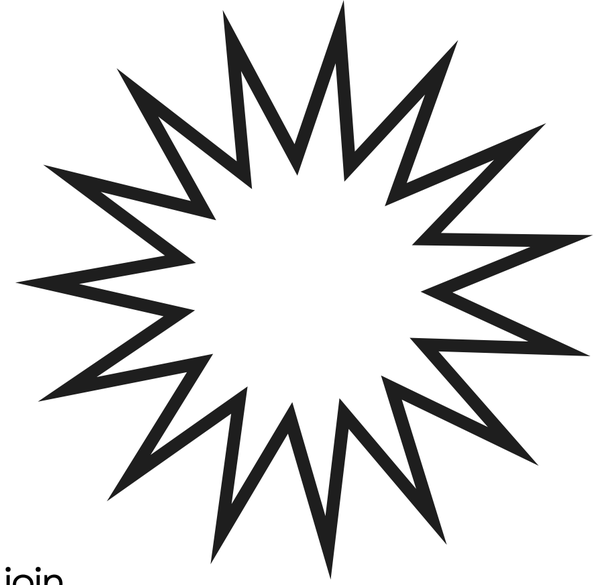
- Staff would need significant medical attention

Injuries after Ukeru implementation

- Injuries are primarily bumps and bruises

FRIDLEY PUBLIC SCHOOLS

Ukeru in Fridley Public Schools



‘23-’24 School Year

- Increase in staff injuries
- Started with 2 trainers who trained
  - All special education staff & paraeducators
  - All support staff
- Use CPI for restraints as a last resort
- Yearly communication to families

‘24-’25 School Year

- Added 6 additional trainers
- Recertify staff during workshop week
- Train new staff during workshop week
- As new special education & support staff join, we do small group trainings
- Use CPI for restraints as a last resort
- Yearly communication to families

‘25-’26 School Year

- Added 5 additional trainers
- We have a total of 12 trainers
- Recertify staff during workshop week
- Train new staff during workshop week
- As new special education & support staff join, we do small group trainings
- Use CPI for restraints as a last resort as we begin to fade out the use of it.
- Yearly communication to families

‘26-’27 School Year

- Continue current certify & recertify process
- Expand to teaching about the Ukeru principals to general education staff
- Use CPI ONLY for a very small number of administrators
- Yearly communication to families

FRIDLEY PUBLIC SCHOOLS

Dr. Danielle Thompson
Director of Special Services

E-mail drthompson@isd14.org

Phone 763-502-5012

FRIDLEY
PUBLIC SCHOOLS

Mark A. Sander
Hennepin County/Minneapolis Public Schools, USA

Jessie Everts
University of Minnesota, USA

Jim Johnson
Minneapolis Public Schools, USA

Using Data to Inform Program Design and Implementation and Make the Case for School Mental Health

Key words: evaluation; effectiveness research; expanded school mental health; data systems, data-driven programs

Introduction

Few children in the United States who need mental health services actually receive them. It has been estimated that 12–38% of children and young people under the age of 18 experience mental, emotional, and behavioral problems to an extent that mental health services would be appropriate or recommended (Adelman & Taylor, 2006; Roberts *et al*, 1998; Weist *et al*, 2005), and yet as few as 15–33% of those in need actually receive any mental health treatment (Congressional Office of Technology Assessment, 1991; Dwyer, 2002; Knitzer, 1990; Owens & Murphy, 2004; Owens *et al*, 2005; U.S. Department of Health and Human Services, 2001; Weist *et al*, 2005). School-based mental health can increase access to services by providing mental health services on-site at the student's school. Expanded school mental health (ESMH) is a more recent formulation of SBMH. ESMH builds on mental health services already present in schools (such as nursing, school psychology, school counseling, and social work) to provide comprehensive mental health services to children in one of their natural settings (Weist, 1997). ESMH refers to programs that represent partnerships between schools and community organizations to provide a full array of

A B S T R A C T

This article describes an evaluation and research system developed over many years by the Minneapolis Public Schools Expanded School Mental Health Program. The authors describe the rationale underlying the systems development, the challenges encountered and solutions developed throughout building the system, and the future directions for research and evaluation. Use of data to continuously inform program design and implementation will be discussed. Examples of preliminary program evaluation outcomes and results from two quasi-experimental studies will be presented. Recommendations for future research are discussed, and the need for more longitudinal studies investigating the impact of expanded school health on educational behaviors and academic achievement is emphasized.

therapeutic services to young people in the school setting (Flaherty & Osher, 2003; Weist, 1997; Weist *et al*, 2003).

There is research that supports the effectiveness of certain aspects of school-based mental health services, such as access to treatment and use of services (Hoagwood *et al*, 2007). However, there is a lack of research on the impact of SBMH on the social and emotional symptoms that SBMH is designed to address (Hoagwood *et al*, 1995; Nabors *et al*, 2003; Nastasi, 2004). Research on SBMH to date has focused on number of clients served and types of service provided, suggesting a lack of consensus on which social, emotional, and academic outcome variables are important to target or to study (Nabors *et al*, 2003; Nabors & Reynolds, 2000; Nastasi, 2004). More consistent and theoretically driven evaluation procedures are needed to advance the field of SBMH, and ESMH in particular. It is increasingly important that we build a research base to validate ESMH programs already in place (Owens & Murphy, 2004). In addition to evaluation and research studies, ESMH programs need to develop the infrastructure to collect and analysis program data to give clinicians, supervisors, and program administrators the ability to monitor the impact of their programs at multiple levels (individual student, school, and agency).

An *OvidSP* search for articles based on the keywords 'program evaluation', 'school health services', and 'mental health services' yielded 68 total results, 52 of which were published in the past ten years. Of these 52 articles, 26 (50.0%) focused on evaluation of health prevention services such as nutrition counseling, drug use and teen pregnancy prevention, and after-school programming for children with health and behavioral difficulties. Eighteen other articles (34.6%) were theoretical or editorial papers on the development of mental health services in the school setting. The eight remaining articles (15.4%) included some evaluation of SBMH services. One of these studies provided a review of school-based programs in general, focusing on services provided and collaborations used (Brener *et al*, 2001). Three of these articles were non-US studies on SBMH interventions in Great Britain, Australia, and New Zealand (Chipman & Gooch, 2003; Dickinson *et al*, 2003; Maloney *et al*, 2008). This left four studies that were evaluations of existing SBMH programs in the United States in the past ten years (Fox *et al*, 2005; Stormshak *et al*, 2005; Vernberg *et al*, 2004; Walrath *et al*, 2004).

This dearth of hands-on, evaluative research on existing SBMH programs highlights the need to examine what is already being implemented in order to improve existing services. As a field, ESMH needs to develop evaluation and research protocols that provide relevant data and outcomes on the effectiveness of ESMH and are feasible and not cost-prohibitive for programs to implement. The purpose of this article is to describe a feasible, multi-phase approach for ESMH programs to develop and sustain their own evaluation and research programs. In addition to presenting the evaluation program developed, the authors will share preliminary data from the first five years of the program.

Minneapolis Expanded School Mental Health Program

In 2004, the Minneapolis Public Schools (MPS) ESMH Program was started as part of the Safe Schools Healthy Students (SSHS) federal grant. The program is modeled on the ESMH framework developed by Mark Weist and colleagues at the Center for School Mental Health at the University of Maryland (Weist, 1997). At each school, a mental health agency places a full-time mental health professional to provide clinical mental health services and supports to students. The program started in 5 K-5 (children aged 5-10) or K-8 (children aged 5-13) schools working with two mental health agencies from the community. Currently, the program is working with four mental health agencies that are contracted to provide clinical mental health services in 15 Minneapolis schools.

Building an evaluation and research system: why, what and how

Why build it?

Increasingly, programs in education and mental health have to demonstrate evidence of effectiveness (Dimmitt, 2009). Even with a growing literature base on the effectiveness of ESMH, local stakeholders often require programs to provide their own evidence of success. The MPS ESMH program was developed with a focus on sustaining services beyond the funding of their SSHS grant, so the program developers knew it would be critical to have data and outcomes on the impact of the program. Programs must develop the ability to continuously demonstrate evidence of their effectiveness and that their programs have had their intended impact. The financial sustainability model for the MPS ESMH program relies on ongoing contributions from stakeholders, so the program had to be able to demonstrate outcomes that were important to each of the stakeholders

and answer the questions that were important to each stakeholder from their own perspective. The program realized that if they did not build an evaluation infrastructure that would be sustainable over time, the program would struggle to continue ongoing evaluation and research activities. The partners also were committed to developing the ability to use data to drive programmatic decision making and inform clinical decision making and treatment planning. Finally, the program wanted to build a data system that could be used for more rigorous evaluation and research studies in the future, even though at the time of development the program did not have the capacity to conduct such studies.

What do you build?

When developing an evaluation system, two of the most challenging components are getting buy-in from all partners involved and then selecting the measurement tools. The partners in MPS ESMH program all agreed on the necessity of collecting evaluation data, so initial buy-in in this case was not difficult. However, when discussions started about what types of measure and evaluation data should be collected, program administrations from the mental health agencies worried about how much of a burden the data collection would be for the therapists. The honest answer proved to be 'a fair amount of burden'. It was decided, therefore, whenever possible to use measures and data that were already being collected by either the mental health agency or the school district. In collaboration with stakeholders and partners, the MPS ESMH program was able to develop a minimum set of variables critical to evaluating the outcomes identified by stakeholders. This minimum set of variables included:

- demographic information on each student served
- service data as recorded for third-party reimbursement
- data on ancillary services such as teacher consultation and care coordination
- a standard mental health outcome measure
- individual student suspension, attendance and academic achievement records.

The program developers selected this set of variables because it is existing data already collected by either the mental health provider or the school district, so was a limited additional burden on the organizations. The parent version of the Strength and Difficulties Questionnaire (SDQ; Goodman, 1997) was already being used by the mental health agencies, but the program evaluators wanted multiple informants, so the program also used the teacher version of the SDQ and the self-report version of the SDQ of students 11 years old or older (Goodman *et al*, 1998). For most of the student demographic data, parts of that data were already being collected by either the mental health agency or the school district and only a few additional questions had to be added to the database. The program also collected data on several process variables that were important to the partners and stakeholders regarding the impact of the program on access and effective engagement in treatment. These variables were percentage of students who were referred and seen, percentage of students for whom this was their first time receiving mental health services, time from referral to first visit, and effective engagement in services (the number of treatment services in a school year).

How do you build it?

It was critical that the partners and stakeholders were committed to developing an evaluation framework and data collection system that was feasible, flexible and sustainable. The development of the system was a multi-phase process. The first phase was to develop a set of evaluation questions important to stakeholders and the minimum set of evaluation variables (see above). Also during the first phase, we needed to create a data-collection system that was low-cost and could be replicated (discussed in more detail below). Finally, we needed to build the internal capacity to conduct our own program evaluation, including reliable evaluation design, consultation on statistical analysis, and setting up analyses that could be repeated over time. To build our internal capacity, we partnered with researchers at the University of Minnesota and the Minneapolis Public School Department of Research, Evaluation and Assessment (REA), but made it clear that, in addition to their help with conducting the first program evaluation, we wanted consultation to enable us to continue the program evaluation on our own.

An important component of how we built it was reducing the data collection burden as much as possible and using the data that was collected. The program developers were committed to reducing or eliminating duplicate entry of data whenever possible, using all the data elements that were collected, and developing

a system that would inform program development at multiple levels (for example student, clinician, district, and county-wide system). In the first four years of the program, data was collected through the use of a Microsoft Office Access database developed specifically for the MPS ESMH program. Each clinician would enter data on his or her students (such as student demographic data, clinical and ancillary service data, and data from the parent and teacher SDQ). The program evaluator would routinely collect copies of the data from each clinician and would merge and clean the data twice a year. This system worked well for several years until the program grew in size. The advantage of this database system was the low cost of its development and the flexibility the program developers had to add additional variables to the database. The disadvantages were that the program evaluator had to travel to each school to collect the data and, once the data was cleaned, it was difficult to transfer the cleaned data back to the individual clinicians' databases. The process was time-intensive, making it difficult to use the data to quickly inform program design and guide program implementation.

The next two phases of development built on the evaluation system already developed. The second phase involved exploring the program's impact on educational variables. After consultation with REA, it was determined that we should examine the program's impact on out-of-school suspensions and percent annual attendance. The preliminary results are described below. The third phase involved beginning to standardize the data collection system, developing a new database and conducting two quasi-experimental studies.

The challenges of the Access database were continuing to frustrate the program partners. A possible solution to these challenges was to put the database online. In 2008, several mental health agencies, Hennepin County, Wilder Research and the Hennepin County Children's Mental Health Collaborative created a partnership to collaboratively develop an online data management system (named the MN Kids' Database) that was modeled in part on the Microsoft Access database developed from the MPS ESMH program. ***Table 1***, below, shows a timeline of the development of the MPS ESMH evaluation and research system. The partners were able to start using the online data management system from School Year 2010. The development of the database took over a year and reconfirmed the partners' commitment to developing an evaluation and research system that could both inform program development and implementation and provide the outcome data to make the case for ESMH.

Preliminary results

Phase I

The initial program evaluation was conducted in the summer of 2006 in partnership with researchers from the University of Minnesota. The evaluation focused on four main areas: access to services, parent report on mental health symptoms, teacher report on mental health symptoms, and assessing the frequency of both clinical and ancillary services. The evaluation data for the one and a half years (February 2005 – June 2006) of the program showed that 346 students had been identified for services and 82.7% of students had been seen once face-to-face by a clinician. Of these students 66.5% were seen within 14 days, and for 63.7% of the students this was the first time of receiving mental health services (***Table 2***, opposite). This preliminary data suggested an increase in access to services, which for

TABLE 1 *Timeline of Development of Evaluation and Rresearch System in Minneapolis Expanded School Mental Health Program*

Year	Activity
2005–2006	Development and implementation of initial program evaluation including measurement selection and creation of Access database
2005–2007	Partnership with University of Minnesota to implement and ongoing refinement of initial program evaluation design
2007–2011	Ongoing use, refinement and expansion of MPS ESMH program evaluation
2008–2010	Began development of MN Kids' Database (online database for collection and reporting of ESMH program data)
2008–2009	First quasi-experimental study through collaboration with graduate student doctoral dissertation
2009–2010	Further analysis of doctoral dissertation study data set
2010	Began collecting data electronically through MN Kids' Database
2010–2011	Second quasi-experimental longitudinal study through collaboration with graduate student doctoral dissertation
2011–2013	Further analysis of 2nd doctoral dissertation study data set; continued development and expansion of MN Kids' Database

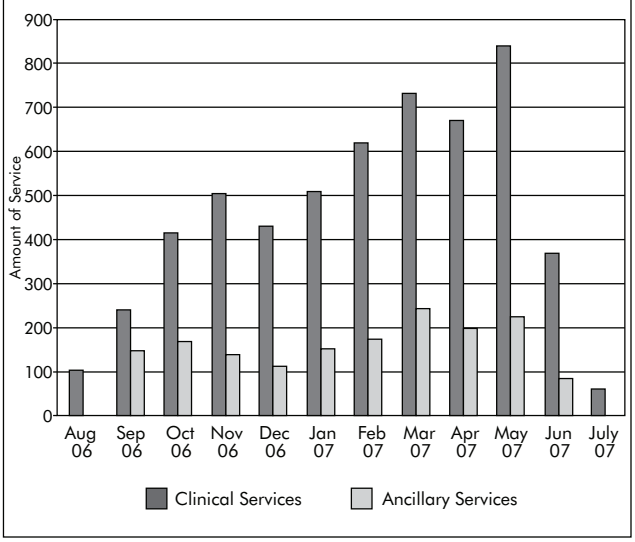
TABLE 2 *February 2005–June 2006 Demographic Data*

Characteristic	2/2005–6/2006 N	N (%)
Gender	**346**	
Male		203 (58.7)
Female		138 (39.9)
Missing		5 (1.4)
Ethnicity	**346**	
African American		117 (33.8)
African Immigrant		36 (10.4)
Hispanic		82 (23.7)
White/non-Hispanic		55 (15.9)
American Indian/Alaskan Native		27 (7.8)
Asian/Pacific Islander		10 (2.9)
Unknown/Missing		19 (5.5)
Special Education	**346**	
Yes		89 (25.7)
No		251 (72.5)
Referred/seen	**346**	
Student Seen		286 (82.7)
1st time receiving mental health services	**215**	
Yes		137 (63.7)
No		55 (25.6)
No Answer		23 (10.7)

stakeholders was an important finding. Stakeholders wondered whether student and families remained involved in services. The evaluation showed that the mean number of clinical visits during a school year was 12, providing some limited evidence that students and families were staying engaged in services over time.

The analysis of the SDQ showed that both parent and teacher responses showed decreases in emotional and behavioral problems from the beginning of treatment. Since this was a formative evaluation, developers were interested in the balance of clinical services to ancillary and support services (for example consultation with school staff, classroom presentations, training for school staff on mental health topics). The analyses found that about 63.8% of the services were clinical, which was similar to what had been hypothesized by the developers. The volume of clinical services provided per month increased over the course of the school year (***Figure 1***, below). The analysis also found an interesting trend in student referrals over the course of the school year (***Figure 2***, below). Both of these pieces of information were critical in program planning, especially of how clinicians spend their time at the beginning of each school year. When the program developers investigated the monthly referrals trends for SY2009 for established school sites, the analysis showed a change in referral patterns,

FIGURE 1 *School Year 2007 Service Trends by Month*



especially for the months of September, October, and November (***Figure 3***, overleaf). This potential change in referral patterns after a clinician has become established in a school site suggests that a shift in program planning might be necessary to make best use of a clinician's time.

Phase II and Phase III

After the initial promising findings of the program, the evaluators examined the program's impact on school variables, specifically out-of-school suspensions. The analysis examined SY2007. During that year 298 students were seen at least once, but the program wanted to investigate students who were seen at least four times

FIGURE 2 *Monthly Referral Patterns School Year 2006*

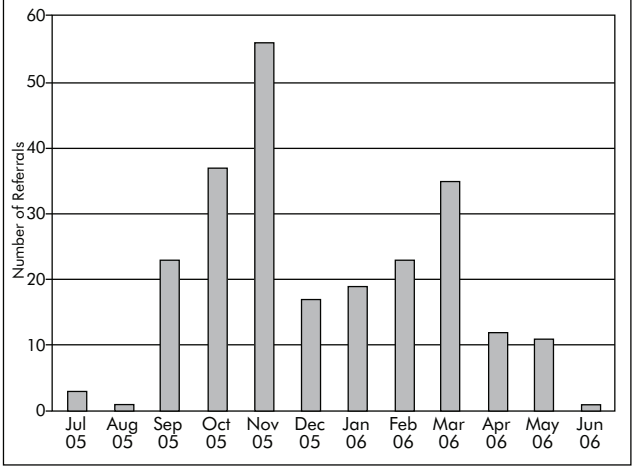
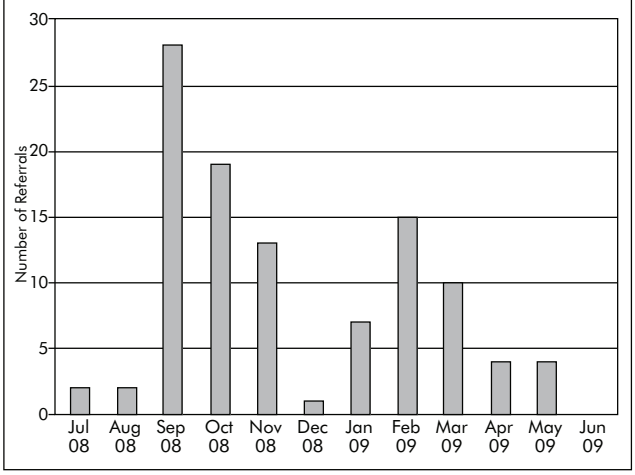


FIGURE 3 *Monthly Referral Patterns School Year 2009 in Established Schools*



(minimum dosage) and students who had one or more out-of-school suspensions and SY2006 (indicator of risk for future suspensions). The findings were that only 82 students (27.5%) were seen four times or more and had a suspension in SY2006. The analysis then examined the reduction in suspensions for those 82 students from SY2006 to SY2007 and found that 50% had between one and six fewer suspensions in SY2007.

In 2008–2009, the first quasi-experimental study was conducted on the MPS ESMH program as part of a doctoral dissertation (Ballard, 2009). The researchers collaborated with the REA to identify 159 students who had participated in the MPS ESMH program and matched them with 133 non-participant students. The researchers first matched ESMH schools with non-ESMH schools, and then matched students within those schools on several variables, which were (in order of priority) grade, gender, free/reduced lunch status, race/ethnicity, number of suspensions, special education classification, achievement test scores, English language learner (ELL) status, and attendance rates. The study compared students at baseline (School Year 2006) and one school year after treatment began (School Year 2007). The results depicted in ***Figure 4***, below, show that the treatment group significantly decreased their mean number of out-of-school suspensions, while the comparison group increased their mean number of suspensions from school year 2006 to school year 2007 (Ballard, 2009).

In 2010–2011, a second doctoral dissertation study on the MPS ESMH program used a repeated measures longitudinal cohort design to detect changes in social/emotional symptoms, suspension rates, attendance rates, and standardized test scores over a four-year cumulative sample (Everts, 2011). For each school year from 2005–2006 (SY2006) to 2008–2009 (SY2009), baseline and follow-up data was analyzed for students who had received ESMH services. For the 805 ESMH participants in this study who had received at least four services, dosage ranged from four to 180 sessions, with an average dosage of 25.16 (median = 17 sessions) over the four years from SY06 to SY09. Seventy-five percent of the sample had some family involvement in ESMH treatment, with a mean dosage of 6.69 family services (for example family therapy, family therapy without client present, and parent consultation). This study found support for the Minneapolis Public Schools' ESMH program in its primary target outcome, reduced mental health symptoms (***Figure 5***, opposite), and moderate support for improving some academic outcomes, specifically reducing out-of-school suspensions. The program was successful in reaching low-income and under-served minority populations, and the fact that 72.3% of all referred students received four or more face-to-face services indicates a high level of engagement in mental health services. Receiving ESMH services had positive effects on suspension rates, though changes were delayed after treatment began (***Figure 6***, opposite).

Summary and future directions for research and evaluation

The MPS ESMH evaluation and research system has taken many years to establish and has been successful

FIGURE 4 *Matched Comparison Analysis of Impact on Out-of-School Suspensions in School Year 2006-2007*

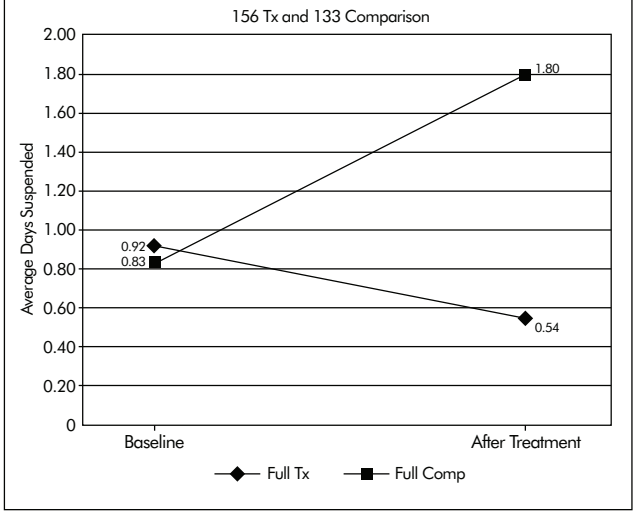
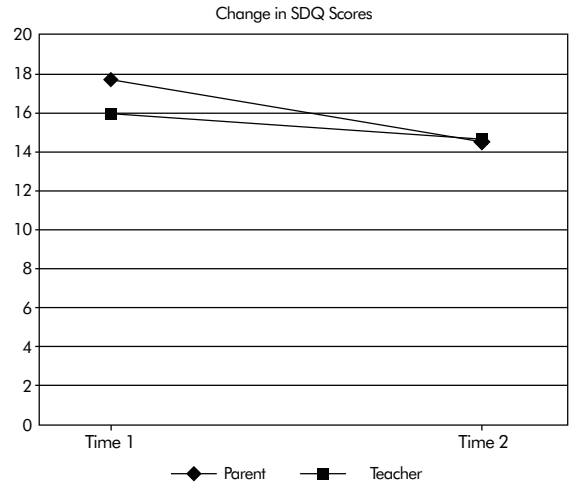


FIGURE 5 ***Changes in Parent and Teacher Strengths and Difficulties Questionnaire (SDQ) Scores from Baseline to First Follow-Up***



because of the strong partnerships and collaborations. These partnerships have been committed to creating feasible systems to collect and analyze program data and developing a data-driven program. The major partners making this evaluation system work have been mental health agencies, Hennepin County, Wilder Research, University of Minnesota, Hennepin County Children's Mental Health Collaborative, and the Minneapolis Public Schools. For the MPS program, ongoing use of data, evaluation and research has been critical to the success of the program. The program has analyzed and reviewed its data and outcomes routinely with program partners and stakeholders. The evaluation and research findings have helped the program secure and sustain critical program and funding support from stakeholders in health care, education, mental health and local and state government. Having reliable process and outcome data has been vital to making the case for school mental health. The program is continuing to develop ways to use the data collected by clinicians on individual students to provide better information on student progress and help with treatment planning, and to measure our results.

This article has described the development and implementation of an evaluation and research system, and provide preliminary data from the past five years. We hope that more ESMH programs will begin publishing descriptions of their evaluation and research systems to better inform the field on how programs can develop and sustain these critical components of ESMH. Further research is needed to understand the impact of ESMH on school variables like school suspensions, attendance and academic achievement. Given our experience, these studies should be longitudinal, spanning at least three to four years, because it can take that long to detect changes in those school variables.

Further research is needed to determine how and why ESMH treatment might influence academic and social/emotional outcomes. ESMH programs could benefit from further exploration of the complex relationships between presenting problem (or cluster of symptoms), intervention type, dosage, family involvement, and mental health and academic outcomes. ESMH programs that develop their own capacity to conduct evaluation and research studies of this type would greatly benefit the field.

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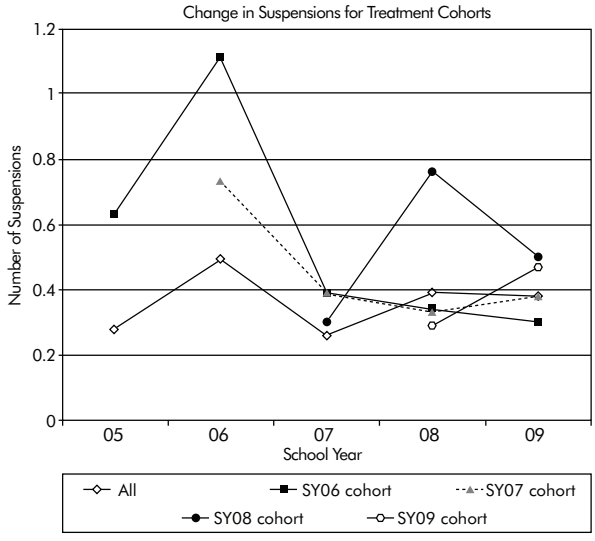
FIGURE 6 ***Change in Number of Suspensions from SY05 to SY09 for all ESMH Participants and by Cohort***



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