



Via encrypted email and US Mail

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[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.
- 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 staff¹ 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 complete 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.

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]. [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]. [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] meeting⁶ 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] [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]—[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, subsd. 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]

Via encrypted email and US mail

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]
[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] ([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.

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]
[REDACTED] holds, taught to all staff administering holds through [REDACTED] training:

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 District's "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] IEP 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.

⁵ IEPs for [REDACTED]

[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

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

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]

[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] [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.

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

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, seclusion¹⁴
- [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.

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

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 restrictive 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

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]
[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]

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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 include 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 hold¹
 - [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."

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 medication[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] EP 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] IEP 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 medication 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 restrictive 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.

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]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Re.: Complaint Decision File [REDACTED] on behalf of [REDACTED] from [REDACTED]
[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] [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 program¹ 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]

[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]

[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]

[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 seclusion² 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.

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]
- [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]

[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]

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]

[REDACTED]

[REDACTED]

[REDACTED]

[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] [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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[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.

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.

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.

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]

[REDACTED]

[REDACTED]

[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]
[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 Education⁶ 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 Education⁷ 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,

A handwritten signature in black ink, appearing to read "Sonia R. Smith". The signature is fluid and cursive, with the first name "Sonia" being more prominent than the last name "Smith".

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]

[REDACTED]

[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] [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 appropriately 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]
[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]
[REDACTED]
[REDACTED]
[REDACTED]
[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.

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 [REDACTED] [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]
[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 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,

A handwritten signature in black ink, appearing to read "Sonia R. Smith". The signature is fluid and cursive, with the first name "Sonia" being the most prominent part.

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]
[REDACTED]
[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] [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]
[REDACTED]
[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, [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] [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 regulation³ 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. § 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]

[REDACTED]

[REDACTED]

[REDACTED]

[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] [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]nstructional 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 programming 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] [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 meaningfully 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 Complainant's 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]

[REDACTED]

[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 [REDACTED] 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 [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, subs. 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]



Via encrypted email

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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]
[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]
[REDACTED]
[REDACTED]

[REDACTED]
[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] [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 of 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 oversight 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 seclusion 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 wobble 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 tongue 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.

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.

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 turn 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.”

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/after school 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 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 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]



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]
[REDACTED]
[REDACTED]
[REDACTED]

[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] [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]
[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



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]
[REDACTED]
[REDACTED]
[REDACTED]

[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) 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

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]

[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 yesterday⁷ 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]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [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]
[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] [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]
[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.

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 began 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]
[REDACTED]
[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]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

66. [REDACTED]
[REDACTED]
[REDACTED]

67. [REDACTED]
[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]
[REDACTED]
[REDACTED]
[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 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]

[REDACTED]

[REDACTED]

[REDACTED]

[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] [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 your 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

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]

[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] [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] [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 its 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]