



March 28, 2025

Sent via US Mail and/or SMFTS



**THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION**

RE: **FINAL REPORT:** In the Matter of [REDACTED], 2025-01, Alleged Violations of the Individuals with Disabilities Education Act (IDEA).

This is the Final Report pertaining to the above-referenced state special education complaint (Complaint) filed pursuant to the Administrative Rules of Montana (ARM) 10.16.3662. [REDACTED] (Complainant), filed the Complaint on behalf of her child, [REDACTED] (Student), a student in the [REDACTED] School District (District). The Complainant alleges the District violated the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq., Montana special education laws, Title 20, Ch. 7, Montana Code Annotated (MCA), and corresponding regulations at Code of Federal Regulations (CFR) 34 CFR Part 300 and Administrative Rules of Montana (ARM) 10.16.3007 et seq. The Complaint alleged the following issues:

1. Whether the District failed to address Student's behavior that impedes Student's learning or that of others in developing and implementing the IEP in violation of 34 CFR 300.324(a)(2)(i).
2. Whether the District improperly used aversive treatment procedures in violation of ARM 10.16.3346.
3. Whether the District amended the Student's IEP and implemented it without Complainant's consent in violation of ARM 10.16.3505.

### **Procedural History**

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint from the Complainant on January 21, 2025.
2. The OPI Dispute Resolution Office contacted the District on January 22, 2025, and the District did not receive a complete copy of the Complaint as required by 34 CFR. 300.153(d) and ARM 10.16.3662(3). The District received three pages of the 11-page Complaint.
3. The OPI Dispute Resolution Office issued a Notice of Filing on January 24, 2025. The OPI Dispute Resolution Office provided the District with a copy of the Complaint via United States Postal Service and a courtesy copy via the State of Montana File Transfer Service. The Complaint was deemed filed on January 27, 2025.
4. A Request for District Response, Appointment of Investigator and Scope of Proceedings was issued on January 29, 2025. It was noted that the Early Assistance Program (EAP) determined that any attempt to mutually resolve the matters alleged in the Complaint would be futile and therefore the Complaint process moved forward. The OPI Dispute Resolution Office requested the District prepare and submit a written response to the Complaint by February 10, 2025.
5. The District requested an extension to submit a written response. The OPI Dispute Resolution Office granted an extension to file the written response by February 13, 2025.
6. The District submitted a written response to the issues in the Complaint on February 13, 2025.
7. A written reply to the District's Response was received from the Complainant on March 12, 2025.

### **Investigatory Process**

The investigator reviewed the following records:

- The original letter of Complaint and all supporting documentation;
- The District's Response to the Complaint and all exhibits;
- The Complainant's reply to the District's Response and all exhibits; and
- The education records relevant to this investigation.

The investigator interviewed the Complainant telephonically.

The investigator interviewed the District Special Education Director and two District Special Education Teachers via Zoom with counsel present.

The OPI provided the Complainant and the District with the opportunity to submit additional information for consideration during the Complaint investigation.

### **Applicable Federal Regulations, State Statutes or Rules**

|                |  |
|----------------|--|
| 34 CFR 300.324 | Development, review, and revision of IEP |
| ARM 10.16.3346 | Aversive Treatment Procedures            |
| ARM 10.16.3505 | Parental Consent                         |
| 34 CFR 300.300 | Parental Consent                         |
| MCA 20-4-302   | Discipline and Punishment of Pupils      |

### **Relevant Time Period for Investigation**

Pursuant to 34 CFR 300.153(c) and ARM 10.16.3662, OPI has the authority to investigate alleged violations of IDEA and Montana special education laws that occurred within one year prior to the date the Complaint was filed. In accordance with this limitation, the investigation and any findings of noncompliance will be limited to the period of time commencing January 27, 2024, through January 27, 2025. Additional information beyond this timeframe was considered for the purpose of fully investigating the Complaint.

### **Findings of Fact**

1. During the 2023-24 school year, the Student was in the second grade and attended a K-4 elementary school (School). The Student is identified as a learner eligible for services under the IDEA category of Autism. *District Response, p. 1.*
2. The Complainant described the Student as nonverbal, using gestures to communicate his needs. The School explained the Student used a combination of verbalizations and alternative augmentative communication (AAC). The Student did not independently use words or gestures to acknowledge a comment or answer a question. He sometimes recognized his own name in writing. *Complainant Interview, and District Response, Exhibit 4, p. 7, May 18, 2023 IEP.*
3. At the beginning of the Complaint timeframe, the Student received services according to his May 18, 2023 IEP. Relevant information included:
  - a. School staff indicated the Student's disability impacted him throughout his school day. He demonstrated behavior needs during non-preferred task. He had significant delays in speech/language, social/emotional/behavioral and communication. Complainant indicated he had a hard time maintaining and regulating during breaks and transitioning from one activity to another.
  - b. All services were delivered in a special education setting, including math, reading, written expression, self-help independence, social/emotional/behavior and speech language.

- c. Measurable goals and objectives were developed in the areas of math, reading, written expression, self-help/independence, and speech language. The social/emotional/behavioral goal included the following:
  - i. PRESENT LEVEL: Student spends about 40 minutes each week in a general education classroom and has lunch and recess with peers. Student can do 5-10 minutes morning work with peers before starting to roam the classroom. Some mornings he is too dysregulated to attend and instead works 1 to 1 in the classroom. If a video is playing, Student can attend circle time. However, he will try and leave or start to tantrum if no video is playing. Student does not engage in play. Student demonstrates affection toward adults when entering classroom. When prompted, the Student can communicate hi and goodbye 40% of time.
  - ii. GOAL: By May 2024, when given a non-preferred task, Student will remain calm (e.g., refrain from crying, yelling, and/or throwing a tantrum), in 4 of 5 activities for at least 5 minutes across the school day with minimal teacher support, as measured by teacher observation and data.
  - iii. OBJECTIVES: Three short-term objectives included the Student remaining calm in activities across the school day with decreased prompts from the teacher when Student is given a non preferred task.
- d. Supplementary aids and services included: one to one assistance, performing receptive and performance-based assessments, visual schedules, sensory items, communication support with ACC, Picture Exchange Communication System (PECS), verbal prompting or signing, wireless keyboard, potty watch, line of sight supervision and making sure staff were trained in autism spectrum learning characteristics.
- e. The IEP was signed on May 18, 2023, with the exception that the School consider a better summer program.

*District Response, Exhibit 4, pp. 1-15, May 18, 2023 IEP.*

- 4. The Student's most recent reevaluation was completed in December 2023. According to the Prior Written Notice (PWN), the Student was reevaluated to determine his current cognitive ability. *District Response, Exhibit 8, p. 7, December 19, 2023 Evaluation Report.* During an interview with the Complainant, she indicated that a reevaluation was necessary for the Developmental Disabilities Program waiver. *Complainant Interview.*

5. In the Evaluation Report Notes, the Complainant expressed concern with the Student's safety when staff need to consider utilizing Crisis Prevention Institute (CPI) techniques. In addition to discussing different strategies to motivate, reinforce, and assist with decreasing the Student's aggression, the Team considered an aversive treatment plan to address specific unsafe behaviors and reviewed the CPI standing holding skill that was utilized to transport the Student. School Staff stated school to home communication would increase and would include Student behaviors and techniques that are used by School Staff. *District Response, Exhibit 8, p. 9, December 19, 2023 Prior Written Notice.*
6. The District explained that all Staff working with the Student had been appropriately trained. One of the Student's Special Education Teachers was the districtwide trainer for CPI and was a nationally certified behavior analyst (BCBA). It was noted by District staff that a BCBA is highly trained professional who uses principles of applied behavior analysis (ABA) to assess, develop, and implement individualized behavioral interventions for students with disabilities. *District Interviews.*
7. A communication log provided by the District indicated the Complainant and School Staff regularly communicated through a District communication application. There are several entries each month, and at least once per week, during the months of January through May of 2024. There were entries on nineteen days and two of the entries reported behavior incidents. *District Response, Exhibit 1, pp.113-118, Instant Messages.*
8. On May 1, 2024, the IEP Team convened and developed the Student's annual IEP. Salient portions included:
  - a. Educational concerns from the Complainant and school staff focused on the Student's emotional regulation and communicating his needs, wants and emotions. Specifically, School Staff indicated the Student didn't have a consistent way to communicate when frustrated. When he was dysregulated or angry, he reacted through physical aggression.
  - b. Annual goals and objectives were developed in the areas of communication, math, reading, written expression and self-help/independence. The Student also had a social/emotional/behavioral goal, specifically:
    - i. PRESENT LEVEL: Student made social growth and more actively participated in academic learning activities. It was noted the Student required reinforcement during the majority of learning activities. Great challenges existed with emotional regulation. On average, the Student engaged in high level tantrums (physical aggression towards self and

others) 4 times per day. Although, the Student is attending more, he was not able to remain calm during non-preferred activities.

- ii. GOAL: By April 2025, when the Student is feeling mad, frustrated, hurt, etc., [Student] will express his emotions appropriately (e.g., asking for a break, telling adults what is wrong) and refrain from physical aggression towards self or adults, 80% of the time, as measured by teacher data tracking. Objectives were developed to assist the Student in attaining his goal.
- c. The Student would continue to receive special education and related services in math, reading, communication, written expression, speech/language and social/emotional/behavioral throughout his school day.
- d. Supplementary aids included instructional supports described as visual cues and pictures, behavior/safety plan, AAC device, hand over hand for writing and fine motor activities, adaptive scissors, shortened/modified assignments, sensory supports, and adult supervision throughout his school day.
- e. PWN proposed the annual IEP and indicated that it would be in effect on May 2, 2024. Complainant signed the IEP on May 1, 2024.

*District Response, Exhibit 4, pp. 16 - 40, May 1, 2024 IEP.*

- 9. The Complainant provided notes taken during the May 2024 IEP meeting. The Complainant indicated she did not recall the behavior/safety plan being developed at the IEP meeting. *Complainant Interview, and Complainant Reply p. 2.*
- 10. On May 7, 2024, an office referral described an incident where the Student had an unsafe outburst in class which led to the Student attacking adults for the third time that day. School Staff recorded that a CPI chair hold was performed, and the Complainant was contacted and notified of the incident. The District Special Education Director explained a chair hold as sitting in a chair next to the Student, interlocking arms with the Student and leaning into the Student. *District Interviews, and District Response, Exhibit 6, p.21, May 7, 2024 Office Referral.*
- 11. The Student's record contained another incident report dated May 20, 2024. After morning drop off, School Staff reported that the Student was unable to safely engage in the morning routine. School Staff used a CPI transport to assist the Student to the quiet room, described as a room located near the School Administrator's office. School Staff attempted several strategies to return the Student to calm. After he was unable to regulate, a CPI child safety hold was completed twice for less than one minute each in duration. It was stated the Student continued to escalate and was placed in "eyes on isolation" with the lights off during the

interaction. The Student was left in the room with the door closed but was continually observed by staff through the glass window in the door. The District reported the door was never locked and the Student maintained the ability to exit the room. After this, the Student had short moments of calm but still exhibited aggression. Staff reported the Student had removed his clothes during the incident. The Complainant was called to the school. *Complainant Interview, and District Response, Exhibit 6, pp.19-20, May 20, 2024 Office Referral.*

12. The Complainant explained when she arrived, the Student and School Staff were engaged and struggling. She stepped in and was able to assist the Student with regaining calm. After the Student gathered his belongings, he went home with the Complainant for the remainder of the day. *District Response, Exhibit 6, p. 19, May 19, 2024 Office Referral, and Complainant Interview.*
13. On August 21, 2024, prior to the start of the 2024-25 school year, the Complainant asked for a copy of the Student's IEP. *District Response, Exhibit 1, p. 81, August 21, 2024 Email.* The Complainant explained she wanted to see the Student's behavior/safety plan that had been described to her during extended school year (ESY) services in August 2024. After a series of emails, the Complainant received a copy of the IEP, which included the Student's Escalation Cycle and Safety Plan (Plan). *District Response Exhibit 1, pp. 4-5, August 27-28 Emails, and Complainant Interview.*
14. After reviewing the Plan, the Complainant contacted the District and described her issues with it. She indicated she didn't recall ever reviewing the Plan. She requested an IEP meeting as soon as possible. She specifically noted that she did not want CPI holds used with the Student. She expressed confusion with CPI transport and escort. Finally, she indicated that the Student was afraid of the dark and noted that lights needed to be on when the Student was isolated or calming. She stated that if she had reviewed the plan previously, she would not have agreed to the Student being held or put in the dark. *District Response Exhibit 1, pp. 3-5, August 27-28, 2024 Emails.*
15. District staff explained that there was no difference between CPI transport or escort. The terms were interchangeable. Both terms meant that staff physically guided the Student by walking next to him. Sometimes it required Staff to hold the Student's hand or arm. *District Interviews.*
16. The Student did not attend the first day of School on August 27, 2024. The Complainant explained she wanted the opportunity to discuss her concerns with the Plan prior to sending the Student back to school. Complainant also asked for a report any time a CPI maneuver was used with the Student. *Complainant Interview, and District Response Exhibit 1, pp. 2-3, August 28-29, 2024 Emails.*

17. On August 28, 2024, after School Staff and the Complainant met, the Plan was updated. A summary of the updates include:

- a. During the “peak time” of escalation, specifically, when the Student was red in the face, crying, hitting himself in the head, falling to the floor, hitting the floor, attempting to bite, or quick and intense physical aggression towards adults, the Staff was to respond with the following steps:
  - i. Block and move away from [Student], use disengagement strategies, use blocking strategies with soft mat/pillow/beanbag, keep voice calm but firm, short directives, and redirect with visuals if possible.
  - ii. Short CPI 2-person transport to a separate room with low stimuli (adults/kids/noise). Keep lights on. Give space. Little to no verbal input.
  - iii. If physical targeted aggression continues and adults are unable to be safe, try eyes on isolation FIRST through a window before a CPI hold/restraint.
  - iv. If a restraint is required as a last resort for safety, use CPI Child Safety Hold. If this happens, [Student] will require longer de-escalation time.
- b. School Staff explained that the Complainant did not want the Staff to perform holds if the Student was engaged in self-injurious behavior. Rather, the preference was to use eyes on isolation in these instances.

*District Response, Exhibit 5, p.4, May 2024 revised August 28, 2024 Escalation Cycle and Safety Plan, and District Interviews.*

18. The Student returned to school on August 29, 2024. After dropping off the Student, Complainant followed up with emails suggesting items and strategies that might assist the Student when he was in the isolation room to regulate. *District Response Exhibit 1, p. 7, August 29, 2024 Email.*

19. District staff explained communication with the Complainant happened through various channels. Daily communication occurred at drop off and pick up. Additionally, the District communication applications were used to send messages, and email correspondence, and various forms of daily communication logs were exchanged with the Complainant throughout the 2024-25 school year. It was explained by School Staff and the Complainant that the daily communication trackers went through several revisions during the school year to improve how the information was collected and reported. *District Response, Exhibit 1, pp.89-110 and 111-112, Tracking Forms, pp. 113-118; Instant Messages; Complainant and District Interviews; and September 10, 2024 Email.*

20. During the 2024-25 school year, the District recorded the following incidents in the school information system:

- |    |          |   |
|----|----------|---|
| a. | 8.29.24  | CPI Transport & Eyes on Isolation       |
| b. | 10.8.24  | Escorted to Break spot                  |
| c. | 10.22.24 | Self Harm & Escort                      |
| d. | 10.31.24 | Physical Escort                         |
| e. | 11.5.24  | Physical Aggression & Escort            |
| f. | 11.12.24 | Physical Aggression                     |
| g. | 11.14.24 | Physical Aggression & Escort            |
| h. | 12.6.24  | Physical Aggression & Escort            |
| i. | 12.11.24 | Biting & Escort                         |
| j. | 12.12.24 | Biting & Escort                         |
| k. | 12.18.24 | Physical Aggression, Elopement & Escort |
| l. | 12.19.24 | Biting & Escort                         |
| m. | 12.20.24 | Biting & Escort                         |

*District's Response Exhibit 6, Office Referrals.*

21. The Complainant picked up the Student during 8 out of 13 incidents because the Student was dysregulated and had become aggressive. *District Response, Exhibit 6, Office Referrals.* Most often the Student was picked up at 2:00 pm or later. It is noted that the Complainant requested that she be called if the Student is unable to regulate. *District Response, Exhibit 1, p. 19, Email.*

22. School Staff stated that the Student's dysregulation increased, became very consistent in length, and resulted from non-preferred tasks over the course of the 2024-25 school year. The IEP Team reconvened on October 30, 2024, and reviewed historical data regarding the Student's behavior and communication needs. The increased frequency of the Student's aggression prompted the District to suggest the development of an aversive treatment plan. The IEP Team reconvened on November 6, 2024, and continued to propose amendments to the Student's IEP and address the Complainant's questions. The Complainant requested time to review the plans. *District Response, Exhibit 4, p. 46, November 14, 2024 Prior Written Notice.*

23. Through an email dated November 14, 2024, the School contacted the Complainant to inquire about the Aversive Treatment Plan that was discussed during the IEP meeting on November 6, 2024. School Staff notified the Complainant that the Student is having very intensive

escalations, and they are using the strategies listed in the Plan and in the Aversive Treatment Plan out of necessity for his safety and the classroom teachers' safety as well. *District Response, Exhibit 1, p. 88, November 14, 2024 Email.*

24. A PWN dated November 14, 2024 proposed amending the IEP to include the Aversive Treatment Plan and increase the minutes in self-help independence services to support the Student's need for continuous supervision services. The purpose of the proposal stated:

*[Student] is already requiring physical restraints (physical restraint to move his hands and arms away from grasping an adult, transporting him to a safe cool down spot) very frequently due to his unsafe behavior. The outline of these procedures are in his school Escalation Cycle and Safety plan document. Trained staff implementing these interventions as last resort. It is important this need is documented and tracked through an aversive treatment plan for the success of the student and adults working with him.*

*District Response, Exhibit 4, pp. 46, 47, November 14, 2024 Prior Written Notice.*

25. On November 26, 2024, the Complainant requested the proposed amended IEP and all associated documents be sent electronically to assist with her continued review. *District Response, Exhibit 4, p. 46, November 14, 2024 Prior Written Notice.*

26. During this time, as the Student's behavior continued to escalate, the District consulted with an outside expert, who had extensive experience working with students with complex and difficult behavioral challenges. The District continued to communicate with the Complainant and communicated suggestions for at-home strategies that might be helpful. One of the suggestions the consultant provided was the possibility the Student may have a medical issue that was causing him discomfort and increasing his agitation. Just prior to the holiday break, the Complainant contacted the Student's medical provider. The doctor diagnosed that the Student had some urinary and bowel issues that may have been affecting his health and impacting his behavior. The School recognized this was something the Team needed to consider when responding to the Student's behavior. The School worked through the District Health Liaison to support the Complainant. *District Response, Exhibit 1, pp. 36-43, December 16-20, 2024 Emails.*

27. The Complainant and District reported the Student has not been back to school since December 20, 2024, the last day of school before the holiday break. *District Interviews, and Complainant Interview.*

28. On January 6, 2025, the School emailed the Complainant to check on the Student's health and school status. The Complainant stated that the Student had been doctoring over break and improving but would not be returning to school due to her ongoing concerns with the Student's IEP. *District Response, Exhibit 1, p.33, January 6, 2025 Email.*
29. The District Special Education Director explained she made attempts by email and telephone to contact the Complainant but has not spoken to the Complainant. The Complainant has requested that the automated District attendance system stop calling regarding the Student's absences. *District Interviews.*

## **Conclusions**

1. The overarching purpose of the IDEA is to ensure that an eligible student with a disability has Free Appropriate Public Education (FAPE) available to them, including special education and related services that meet the unique needs of the individual student. 34 CFR 300.1.

### **Behavioral Concerns**

2. When a child's behavior impedes 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. 34 CFR 300.324 (a)(2)(i). "The IEP Team may also elect to address behavior through annual goals in the IEP. 34 CFR 300.320(a)(2)(i). The child's team may include modifications to the child's program, supports for the child's teachers or other school personnel, and any special education and related services and supplementary aids and services necessary to enable the child to advance appropriately toward attaining those behavioral goals. 34 CFR 300.320(a)(4)." *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Question A-3, 81 IDELR 138 (OSEP, July 19, 2022).
3. The IEP Team must consider information about a child's current functional behavioral performance provided by parents and teachers or other service providers. 34 CFR 300.321 and 300.324. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Question A-2, 81 IDELR 138 (OSEP July 19, 2022). Once an IEP is developed, the IEP Team must review the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved, and when appropriate revise the IEP. 34 CFR 300.324(b)(1)). *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Question A-2, 81 IDELR 138 (OSEP, July 19, 2022).
4. In this case, the Student's May 18, 2023 IEP included a social/emotional/behavioral goal

that was developed based on the Student's current needs. The District used a variety of data to develop a measurable annual goal, supporting the Student with special education, related services and supplementary aids and services to enable the Student to make progress. As the Student's needs changed, the IEP Team reconvened on May 1, 2024, to make necessary adjustments.

5. In May 2024, the District developed the Student's IEP with a clear understanding that the Student's behavior had significantly intensified since the start of the academic year. Consequently, the Plan was devised to address the Student's behavioral challenges and served to complement the goals, services and other supplementary aids and services the District had in place to support the Student.
6. When Student's behavioral needs continued to escalate in the fall of 2024, the School Staff proactively sought out an external consultant to explore additional strategies for intervention. It is important to note throughout the duration of the Complaint timeframe, the District ensured the Student's IEP met his specific needs, particularly in terms of behavior supports. The record supports the Student's IEP was implemented, reviewed and refined based on the Student's unique needs.

#### **Aversive Treatment Procedures**

7. The IDEA does not specifically address the use of aversive treatment procedures. The United States Department of Education has opined that "[p]hysical restraint or seclusion should be reserved for situations or conditions where there is imminent danger of serious physical harm to the child, other children, or school or program staff." *Restraint and Seclusion: Resource Document* (US DOE, May 15, 2012, pp. 14-15).
8. Montana law provides that "[a]versive treatment procedures may be appropriate for an individual student who exhibits behaviors that pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions." ARM 10.16.3346(1).
9. IEPs may include aversive treatment procedures, physical restraint and isolation time-outs, only when subsequent to a functional behavioral assessment:
  - a. a series of no less than two written positive behavioral intervention strategies, designed to target the behavior be changed, were previously implemented;

- b. the IEP team includes a person trained and knowledgeable about best practices in the application of positive behavioral interventions; and aversive treatment procedures and nonaversive alternatives for de-escalation; and
- c. a written behavioral intervention plan using aversive treatment procedures is developed and incorporated as part of the IEP.

ARM 10.16.3346(1) and (6).

9. A behavioral intervention plan that includes aversive treatment procedures must be in writing and contain several criteria as set out in ARM 10.16.3346(7), which provide for exact specification of the use of the aversive treatment procedure and close monitoring and analyzing the data of use of the aversive treatment procedures and keeping parents informed of the progress. Additionally, parents must be informed no less than 24 hours after the aversive treatment procedure is implemented on their child. ARM 10.16.3346(9).

10. A person employed or engaged by a school district may use physical restraint, placing hands on a student in a manner that is reasonable and necessary to quell a disturbance, provide self-protection, protect the student or others from physical injury, obtain possession of a weapon or other dangerous object, maintain orderly conduct of a student, or protect property from serious harm. MCA 20-4-302(4). Additionally, other than as provided by MCA 20-4-302, an IEP team may determine that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure. ARM 10.16.3346(2)(a).

11. The District acknowledged that there were instances that the Student was put into CPI holds by trained and certified Staff to prevent the Student from continuing to harm Staff. This was done in a manner that was reasonably necessary to provide self-protection and is permitted under MCA 20-4-302(4). The CPI hold was utilized only after de-escalation methods were used without success and the safety of the Staff and Student was at risk.

12. Isolation time-outs result in removal of a student to an isolation room where the student is: alone in the isolation room during the period of isolation, prevented from exiting the isolation room during the period of isolation, the door to the isolation room remains closed during the period of isolation, and the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation. ARM 10.16.3346(2)(b). A student in an isolation time-out must be under the direct and constant visual observation of a designated staff person throughout the entire period of isolation. ARM 10.16.3346(3). Isolation in a locked room or mechanical restraint is prohibited. ARM 10.16.3346(4)(b).

13. Exclusion time-outs are not considered an aversive treatment procedure and are defined as removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation time-out. ARM 10.16.3346(5).
14. The Student was placed in a quiet room with Staff watching from the door window. Staff reported the door was closed on occasion, but it was never locked, and the Student was not prevented from leaving the room. Therefore, although the Student was placed in exclusion time-outs, the Student was never put in an isolation time-out.
15. The United States Department of Education Office of Special Education and Rehabilitative Services (OSERS) defines physical restraint as: A physical restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs or head freely. The term “physical restraint” does not include a physical escort. Physical escort means a temporary touch, or hold of the hand, wrist, arm should or back of the person for the purpose of inducing a student who is acting out, to walk to a safe location. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, Appendix I, p. 54, Question*, 81 IDELR 138 (OSEP, July 19, 2022).
16. The District clarified that the phrases CPI transport and escort were used interchangeably, which may have caused confusion. However, when describing the technique used to assist the Student when he was moving to the quiet room or other safe location, School Staff physically guided the Student by walking next to him or holding the Student’s hand or arm. The escorts, which included Staff placing hands on the Student, were reasonable and necessary to provide self-protection, protect the Student and others from physical injury, and maintain the orderly conduct of Student which is permitted under MCA 20-4-302(4).

### **Parental Consent for IEP Services**

17. Montana law goes beyond the parental consent for services requirements of the IDEA set out in 34 CFR 300.300(b), which require informed consent for the initial provision of special education and related services and requires parental consent prior to implementing any changes to an IEP. ARM 10.16.3505.
18. If parental consent has not been obtained, then the district should work with the parent to obtain their consent. ARM 10.16.3505(2)(c). If the district cannot obtain parental consent within a reasonable time and the parent has not specifically refused the IEP, the district shall send written notice requesting approval and stating that the student will be provided services in accordance with the new IEP as developed by the district 15 days from the date of the notice. ARM 10.16.3505(2)(c)(i). If the parent does not respond, then the district may

implement the new IEP without parental consent subject to the parent's right to an impartial due process hearing. ARM 10.16.3505(2)(c)(ii).

19. Parents may also choose to sign an IEP with exceptions. If the district and the parent cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP can be implemented in the areas of agreement and the student's last agreed upon IEP would remain in effect in the areas of disagreement. ARM 10.16.3505(2)(b).
20. Additionally, when an aversive treatment plan is incorporated in an IEP, Montana law specifically requires that parents be informed that consenting to the IEP includes consent for the aversive treatment plan. ARM 10.16.3346(8).
21. In the fall of 2024, the District proposed amendments to the Student's May 1, 2024 IEP, which included adding an Aversive Treatment Plan and additional service minutes in the area of Self-help Independence, due to the increase in frequency and intensity of the Student's behavior. The IEP Team met twice in the fall of 2024; however, the Complainant did not sign the amended IEP or provide her consent to any of the changes. The District properly provided Complainant with prior written notice of the proposed changes and continued to communicate regarding the proposed amendments, but her consent was not obtained and was specifically refused. The District continued to implement the Student's May 18, 2024 IEP, therefore no IDEA violation resulted.

## **Decision**

1. Whether the District failed to address Student's behavior that impedes Student's learning or that of others in developing and implementing the IEP in violation of 34 CFR 300.324(a)(2)(i).

**The OPI finds no violation. At all times during the time period relevant to the Complaint, the Student had an IEP that was developed and implemented to address the Student's behavior.**

2. Whether the District improperly used aversive treatment procedures in violation of ARM 10.16.3346.

**The OPI finds no violation.** A thorough review of the record concludes that the District did not improperly use physical restraint or isolation time out.

3. Whether the District amended the Student's IEP and implemented it without Complainant's consent in violation of ARM 10.16.3505.

**The OPI finds no violation. The District proposed an IEP amendment but never implemented the amendment.**

**Note:** This Final Report is final and is not subject to appeal. ARM 10.16.3662(13). Both parties retain their right to file a due process complaint after a state complaint final report is issued on the same or different issues, provided the due process complaint meets the requirements set out in 34 CFR 300.507.

*Danielle McCarthy*

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Danielle McCarthy  
OPI State Director of Special Education

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