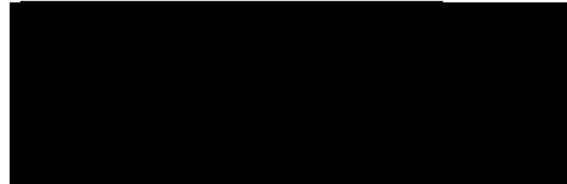


June 30, 2025

Sent via US Mail and SMFTS



THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION

RE: FINAL **REPORT**: In the Matter of [REDACTED], 2025-06, 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], (Complainants) filed the Complaint on behalf of their child, [REDACTED] (Student), a student in the [REDACTED] Public School District (District). The Complainants allege 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 regulation at 34 CFR Part 300 and ARM 10.16.3007 et seq. The Complaint alleged the following issue:

1. Whether the District improperly used aversive treatment procedures between November 2024 and April 2025 in violation of ARM 10.16.3346.

Procedural History

1. The Office of Public Instruction (OPI) Dispute Resolution Office received the signed Complaint filed by the Complainants on April 23, 2025.
2. The OPI Dispute Resolution Office contacted the District on April 23, 2025, and the District had not received a copy of the Complaint as required by the Code of Federal Regulations (CFR) 34 CFR. 300.153(d) and Administrative Rules of Montana (ARM) 10.16.3662(3).
3. The OPI Dispute Resolution Office issued a Notice of Filing on April 28, 2025. Because the District had not received a copy of the Complaint, OPI determined the filing date by adding three days from the date OPI mailed the Complaint to the District, citing to OPI's Frequently Asked Questions About IDEA State Complaints, Question 13.

<https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/IDEA%20Fiscal/2024.05>

Findings of Fact

1. During the 2024-25 school year, the Student was in the seventh grade and attended one of the District's middle schools (School). This school was new to the Student, as he had attended a different District middle school during the 2023-24 school year. The Student was previously identified as a learner eligible for services under the IDEA categories of Other Health Impairment and Emotional Disturbance. *District Response (p. 89); May 5, 2024 Evaluation Report and District Interviews.*
2. At the beginning of the Complaint timeframe, the Student received services according to a November 21, 2023 IEP which had been amended on May 7, 2024, to incorporate both the recommendations from a May 7, 2024 Evaluation Report, which included a functional behavior assessment (FBA), and the results of a May 7, 2024 Manifestation Determination Review (MDR). Relevant information from the IEP included:
 - a. School staff identified the Student's behavior as the biggest challenge. Educational concerns included that the Student rarely asked for help and was easily frustrated. The Student did not get along well with others and was hostile and aggressive when upset. Under special factors, it was noted the Student had behavior that impeded his learning or that of others.
 - b. Present Levels of academic achievement and functional performance outlined the Student demonstrated the need for instruction in two skills: completing non-preferred activities or assignments and following directions from teacher and staff.
 - c. All services were delivered in a special education setting and included 1500 minutes a week of social, emotional, and behavioral instruction. The Student also received transportation as a related service.
 - d. Measurable goals were developed to support the Student's behavioral needs. The Student had two social/emotional/behavioral goals:
 - i. GOAL 1: Emotional regulation.
 - ii. GOAL 2: Participation in non-preferred tasks.
 - e. Supplementary aids and services included: frequent check-ins with the Student to ensure he was meeting expectations for tasks and redirecting him when he was not; access to a calm down area/time when he was frustrated; ability to take a break; preferential seating; and a positive behavior intervention plan (PBIP).
District's Response (p.39-50); November 21, 2023 IEP amended on May 7, 2024.
3. School staff explained that prior to the start of the 2024-25 school year, the Student's IEP was reviewed in preparation for understanding needs and planning services. The Student attended

a BASE classroom, which was designed to provide specialized support for students with significant behavior, academic, social and emotional needs. *District Interviews.*

4. The District did not provide a copy of the PBIP referred to in the supplementary aids and services section of the November 21, 2023 IEP amended on May 7, 2024. When asked about the PBIP, School staff indicated that the Student had the supports outlined in the IEP and his behavior plan was the BASE program which used trauma informed care as the behavior interventions. *District Interviews.*
5. The School documented a series of behavioral incidents. A summary of these events is provided:
 - a. DATE: September 19, 2024
 - Behavior: Disorderly before school.
 - Consequence: OSS for two days.
 - NOTE: Incident happened during breakfast.
 - b. DATE: September 23, 2024
 - Behavior: Punched a peer.
 - Consequence: Sent to the regulation room.
 - NOTE: In School Suspension (ISS) with supports.
 - c. DATE: October 11, 2024
 - Behavior: Hit a peer.
 - Consequence: Sent to the regulation room. Used punching bag in weight room.
 - NOTE: Student was not immediately compliant but given time complied and returned to class.
 - d. DATE: October 14, 2024
 - Behavior: Slapped another student.
 - Consequence: Student will not be allowed to eat lunch in lunchroom with other students.
 - NOTE: Lunch detention was assigned.
 - e. DATE: October 23, 2024
 - Behavior: Arguing with peers.
 - Consequence: Conversation about keeping hands to self.
 - NOTE: Both students were engaged in saying negative things.
 - f. DATE: October 29, 2024

- Behavior: Defiance, Profanity.
- Consequence: Student sent to regulation room.
- NOTE: Student was triggered by a word his peer was using. The Student was stopped from leaving the regulation room. After the Student regulated, he participated in a conversation with the Assistant Principal.

g. DATE: October 30, 2024

- Behavior: Aggressive actions.
- Consequence: Seclusion.
- NOTE: Student was transported to safety room. The Student remained in the safety room with the door engaged for 15 minutes. After the door was opened, Assistant Principal entered room and talked with Student.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had no PBIP or aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion and physical transport. The Complainants were notified on October 30, 2024.

District Response (p.124-129); Behavior Log.

6. District staff explained that the regulation room was a large room where students had access to sensory objects and was designed for co-regulation. The safety room (occasionally referred to as time out room) was attached to the regulation room and had a door which could be closed and physically held shut when a person was holding with the handle or swing bar. It was explained there was no latching mechanism on the door. If the door was not held, it could swing freely.
7. On November 1, 2024, the MDR Team convened and conducted an MDR due to the Student’s physical aggression that resulted in the Student’s seclusion and physical transport on October 31, 2024, removing him from his educational environment. The MDR indicated the behavior represented a pattern of behavior. After reviewing all documentation, the Team determined that the Student’s conduct was caused by or had a direct and substantial relation to the Student’s disability. The MDR Notes indicated the IEP Team would review the current functional behavioral assessment (FBA) or create a new one and create a Positive Behavior Intervention Plan (PBIP). Additionally, the IEP Team would reconvene to go over the results of the FBA and amend the IEP if necessary. *District Response (p. 61); November 1, 2024 Manifestation Determination.*

8. On November 18, 2024, the IEP Team, including the Complainants and staff from the group home where the Student lived, met and developed the Student's annual IEP. A summary of relevant portions included:
 - a. The Complainants explained the Student was extremely bright but struggled with social, emotional behavioral skills, including being under control. Complainants suggested the Student needed to learn coping skills for impulsivity and anger management.
 - b. It was noted under special factors the Student's behavior impeded his learning or that of others.
 - c. Present Levels of academic achievement and functional performance explained the Student demonstrated a need for specially designed instruction in social, emotional behavioral areas. It was stated the Student tried extremely hard to follow expectations, and when regulated, he was able to do so. According to progress reports the Student met one out of two of his previous IEP goals.
 - d. Three measurable goals were developed.
 - i. Reduce aggressive responses.
 - ii. Build and maintain peer relationships.
 - iii. Anger management.
 - e. Special education services include 1500 minutes of social/emotion/behavior/services in a special education setting. Additionally, the Student received 30 minutes a week of social work services and transportation.
 - f. Supplementary Aids and Services included classroom and instructional supports such as breaks, separate settings, flexible seating, frequent checks for understanding, use of the regulation room when escalated, option to speak to staff when escalating, offer choices for a sense of autonomy, and utilizing incentives.
 - g. Meeting notes indicated that the team was in the process of collecting data for the Student's functional behavior assessment (FBA). This information would allow for the development of a Positive Behavior Intervention Plan to meet the Student's needs.
 - h. Parent approved the IEP by signature on November 18, 2024.

District Response (p. 29-37); November 18, 2024 IEP.

9. The District continued to document the Student's behavior incidents. A summary of each incident is described:

- a. DATE: November 20, 2024
- Behavior: Refusal to comply.
 - Consequence: Staff went “hands on” and removed the Student.
 - NOTE: The Student refused to eat lunch in ISS. The Student was taken to the regulation room and processed with staff through the situation.
- b. DATE: November 21, 2024
- Behavior: Refusal to follow expectations.
 - Consequence: Lunch detention.
 - NOTE: The Student refused to complete writing assignment and was distracting his classmate.
- c. DATE: November 26, 2024
- Behavior: Violence, kicking door and throwing another student’s desk.
 - Consequence: Seclusion.
 - NOTE: Student escalated in the regulation room. Escorted to the safety room. Door engaged for 32 minutes. The Student was pounding on door, kicking walls and using bad language. The Student requested to speak to Assistant Principal. The Student returned to class after speaking to Assistant Principal.
 - WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had no PBIP or aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion and physical transport. No contact with the Complainants was noted.
- d. DATE: December 2, 2024
- Behavior: Oppositional, defiant, quick to anger.
 - Consequence: Time in regulation room.
 - NOTE: The Student initially walked to the regulation room. Later he eloped to the school office but returned to the regulation room on his own. Similar incident in the afternoon on this same day.
- e. DATE: December 3, 2024
- Behavior: Leaving the classroom without permission.
 - Consequence: Time in regulation room.

- NOTE: The Student left the classroom and went to the school office due to frustration with a schedule change. The Assistant Principal and Student had a positive conversation in the regulation room. The Student returned to class.

f. DATE: December 11, 2024

- Behavior: Aggressive/defiance, screaming.
- Consequence: Seclusion
- NOTE: Student was in safety room with door engaged for 13 minutes. The Assistant Principal had a conversation with the Student. Student used punching boxes to deescalate and returned to the classroom.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had no PBIP or aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion and physical transport. No contact with the Complainants was noted.

g. DATE: December 12, 2024

- Behavior: Profanity, and defiance.
- Consequence: Seclusion
- NOTE: Student escalated while in the regulation room. The Student was assisted to time out room. The Student attempted to strike and kick staff. The door was engaged for 14 minutes. The Student fell asleep.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had no PBIP or aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion. Complainant was contacted by email on December 13, 2024.

h. DATE: January 2, 2025

- Behavior: The Student walked out of the classroom without permission.
- Consequence: Student walked to regulation room.
- NOTE: Teacher had a conversation with Student. After he regulated, he returned to class.

District Response (p. 124-152); Behavior Log.

10. The Evaluation Report Team met on January 9, 2025, and reviewed the Evaluation Report, which included the results of the FBA, classroom based assessments conducted in November and December 2024. The prior written notice (PWN) documented the Student's continued eligibility and made recommendations regarding the Student's behavior. No IEP amendments were required. The Evaluation Report Team agreed that the Student's current IEP fit his needs. *District Supplemental Information (p.186); January 9, 2025 PWN.*
11. A Behavior Intervention Plan (BIP) dated January 15, 2025, included the following salient information:
- a. Target Behaviors: Physical aggression when triggered and when asked to use the regulation room; disrespectful language, refusal or noncompliance when triggered and inability to regulate emotions.
 - b. Function: Attention seeking and escape.
 - c. Possible triggers: feeling tired, negative interactions, unpreferred tasks, overstimulation, feeling ignored, loud voices, feeling surprised and rude responses from staff and peers.
 - d. Replacement behaviors: request a walk, call home, juice cubes, break, follow instructions, and use self-regulation strategies.
 - e. Positive Supports/Interventions: provide structure, increase supervision, foster relationship, verbal praise, teach and provide instruction in self-regulation and replacement behaviors, pre-teach and use when/then strategies.
 - f. Procedure for Staff Intervention for Behaviors:
 - i. Notice when the Student is frustrated and intervene early
 - ii. Use when/then
 - iii. Use calm, non-confrontational verbal prompts
 - iv. Provide choices and 1 minute pause
 - v. Set a 5 minute timer when the student refuses
 - vi. When the student is disruptive in classroom, let him know he can stay as long as he isn't disrupting others
 - vii. Redirect [Student] to a safe staff member or calm down area if behavior escalates
 - viii. Follow through with restorative practices
 - ix. Offer a PRN (psychotropic medication)-Group home staff would have to come give it to the Student.
 - g. Procedure for Staff Interaction when physically unsafe:

- i. Call specific staff, teacher, assistant principal, or school resource officer
 - ii. Follow the Student but provide a safe distance
 - iii. Calmly remind the Student of expectations
 - iv. No hands on unless Student becomes physically aggressive
 - v. If Student runs, do not run after him, walk quickly and call for assistance
- h. Home Intervention/Support
- i. Provide consistent responses aligned to BIP
 - ii. Maintain neutrality and avoid reinforcing attention-seeking behaviors during incidents
 - iii. Acknowledge and celebrate Student's progress
 - iv. Collaborate with stakeholders, including family, and staff, to ensure consistency and shared expectations

District Response (p.51-53); January 15, 2025 BIP.

12. The District continued to document behavioral events. The events are summarized:

- a. DATE: January 21, 2025
- Behavior: Non-compliance, violence, and inappropriate language.
 - Consequence: Seclusion.
 - NOTE: Student was sent to regulation room for inappropriate conversations in classroom. Student tried to leave the regulation room without "being ready". Student became violent and staff went "hands on" to place student in time out. The door was engaged for two minutes. The Student's nose started bleeding, and Staff went in room to assist him.
 - WRITTEN REPORT: School staff documented the incident as "harm to others", noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion. The Complainants were notified on January 21, 2025.
- b. DATE: January 30, 2025
- Behavior: Acting aggressively, and cussing.
 - Consequence: Attending classes in the regulation room.
 - NOTE: The Student was helped to the regulation room. While in the room the Student kicked Staff. The Student went into the safety room with the door open. The Student shut the door. Staff continued to communicate

with the Student. The door was closed but not engaged during any part of the 30 minutes the Student sat in the safety room.

c. DATE: January 30, 2025

- Behavior: Defiance inappropriate language, pacing around and violence.
- Consequence: Seclusion.
- NOTE: After school, Staff was asking questions about how Student was getting home. The Student escalated and was assisted to the safety room. Door engaged for 6 minutes. Student walked out of school with the school resource officer.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion and physical transport. The Complainants were notified on January 30, 2025.

District Response (p.140-143); Behavior Log.

13. A Manifestation Determination Review (MDR) dated January 30, 2025, was conducted. The Team determined the Student’s conduct was caused by or had a direct and substantial relations to the Student’s disability. Notes taken during the MDR indicated the Team was reviewing the current functional behavioral assessment (FBA) and Positive Behavior Intervention Plan (PBIP) that had been in place for a couple of weeks. The Team discussed the Student’s behaviors and agreed there had been an increase in the severity of the behaviors and recommended moving student to half days. Participants signed the MDR on February 4, 2025. *District Response (p. 56-58); January 30, 2025 Manifestation Determination.*

14. Student’s November 18, 2024 IEP was amended on February 5, 2025, and Student was placed on half days to allow access to education while addressing social-emotional-behavioral needs. The adjustment was aimed at reducing events that may cause Student to escalate by lowering expectations and stress levels. The Team planned to reconvene in two weeks to discuss option of increasing Student’s day based on behavior data. *District Response (p. 25); November 18, 2204 IEP amended February 5, 2025.*

15. The District continued to document behavioral events. The events are summarized as follows:

a. DATE: February 10, 2025

- Behavior: Defiance.

- Consequence: Seclusion.
 - NOTE: The student was in the safety room with the door engaged for 7 minutes until he regulated. The Student participated in a conversation with the Assistant Principal. The Student left school for the afternoon.
 - WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion. The Complainants were notified on February 11, 2025.
- b. DATE: February 19, 2025
- Behavior: Non-Compliant. Falling asleep during class.
 - Consequence: Regulation Room.
 - NOTE: The Student couldn’t follow expectations. He took a break in the regulation room and fell asleep.
- c. DATE: February 20, 2025
- Behavior: Non-compliant, yelling and violence.
 - Consequence: Seclusion.
 - NOTE: The Student refused to go to class. The Student was sleeping and wouldn’t wake up. The Student started to harm himself and acted aggressive with Staff. Student was placed in the safety room with door engaged for 14 minutes. The Student went back to regulation room and worked at his desk once he regulated.
 - WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion and physical transport. The Complainant was notified on February 20, 2025.
- d. DATE: March 10, 2025
- Behavior: Non-compliance.
 - Consequence: Regulation Room.
 - NOTE: The Student placed himself in the safety room and closed the door. The door was not engaged, but the student wanted the door shut.

After two hours the student exited, had a snack, used the bathroom and finished his day in the regulation room.

e. DATE: March 21, 2025

- Behavior: Biting staff, kicking, and yelling.
- Consequence: Seclusion.
- NOTE: The Student left the classroom without permission and was evading Staff in the hallways. The Student was escorted from the regulation room to the timeout room. The door was engaged for 11 minutes. After the student exited, he completed his 12 minutes in the regulation room before going home.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion. The Complainant was notified by email on March 21, 2025.

f. DATE: March 27, 2025

- Behavior: Defiance, noncompliance, violence, and cussing.
- Consequence: Seclusion.
- NOTE: The Student used profanities with Staff and walked out of classroom without permission. The Student became aggressive with staff. The Student was put in safety room with door engaged for 15 minutes. The Student left with the school resource officer and was delivered to the hospital.
- WRITTEN REPORT: School staff documented the incident as “harm to others”, noted the student had a PBIP but no aversive treatment plan, identified the two positive interventions tried before crisis, and reported the use of seclusion. Complainant was notified through a phone call on March 27, 2025.

g. DATE: March 28, 2025

- Behavior: Noncompliance.
- Consequence: Regulation room.
- NOTE: The Student spent day in regulation room due to his aggressive behavior on March 27, 2025. The Student apologized to Staff.

District Response (p.124-152); Behavior Log.

16. A Manifestation Determination Review (MDR) was conducted and Team members signed indicating their participation on April 1, 2025. PWN documented the Team's determination that the Student's behavior was "causal". The District special education director indicated causal meant the Student's conduct was caused by or had a direct and substantial relations to the Student's disability. At the conclusion of the MDR, the Team proposed a different educational placement. The IEP Team convened on April 7, 2025, and recommended homebound for three to four weeks. It was noted that the Student was transitioning from the group home where he currently lived back to the Complainants' home, which required the Student to change school districts. *District Response (p. 10); April 1, 2025 PWN*. The Complainant approved the amended IEP on April 7, 2025. *District Response (p.13); November 18, 2024 IEP amended on April 7, 2025*.

17. The District reported the Student transferred to a different school district on April 4, 2025. *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.
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. The IEP 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 C.F.R. 300.320(a)(4)." *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, Question A-3 (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 (OSEP, July 19, 2022).
4. The Student had an Individualized Education Plan (IEP) focused on addressing social, emotional, and behavioral needs, which was the only service area listed on the IEP. The District used a variety of data to formulate measurable annual goals for the Student, as well

as outlining the provision of special education services, related services, and supplementary aids to support his progress.

5. The IDEA does not specifically address the use of aversive treatment procedures. The U.S. 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 2012).
6. 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).
7. Aversive treatment procedures include either physical restraint or isolation time out and are defined at ARM 10.16.3346(2) as:
 - a. Physical restraint, other than as provided in MCA 20-4-302, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and
 - b. Isolation time-out which results in the removal of a student to an isolation room under the following conditions:
 1. the student is alone in the isolation room during the period of isolation;
 2. the student is prevented from exiting the isolation room during the period of isolation;
 3. the door to the isolation room remains closed during the period of isolation; and
 4. the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.
8. Montana law applicable to all students provides that 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). Regarding students with disabilities, an IEP team may determine that the frequency, intensity or duration of the physical restraint warrants an aversive treatment procedure. ARM 10.16.3346(2)(a).

9. 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 staff person throughout the entire period of isolation. ARM 10.16.3346(3). Isolation in a locked room is prohibited. ARM 10.16.3346(4)(b).
10. 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 room under all of the conditions described in ARM 10.16.3346(2)(b). ARM 10.16.3346(5).
11. IEPs may include aversive treatment procedures only when:
 - a. Subsequent to an FBA, a series of no less than two written positive behavior intervention strategies, which were designed to target the behavior to be changed, were previously implemented;
 - b. The IEP team includes a person trained and knowledgeable about best practices in the application of positive behavior interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors; and
 - c. A written behavioral intervention plan using aversive treatment procedures is developed and incorporated as part of the IEP.

ARM 10.16. 3346(6).

12. The behavior intervention plan using aversive treatment procedures must be in writing and contain the following:
 - a. A statement describing no less than two positive behavioral intervention strategies previously attempted and the results;
 - b. Describe target behavior(s) that will be consequented [sic] with the use of the aversive treatment procedure(s);
 - c. Include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);

- d. Provide a written description of the aversive treatment procedure(s);
- e. Specify a time limit for the use of the aversive treatment procedure for any one instance;
- f. Include data collection procedures for recording each application of the aversive treatment procedure(s).
- g. State when the IEP team will meet to review the ongoing use, modification or termination of the aversive procedure;
- h. Designate an individual responsible for ongoing review and analysis of the data on the target behavior;
- i. State how the student's parents will be regularly informed of the progress toward the short-term objectives in the IEP at a frequency no less than is required in 34 CFR 300.347; and
- j. State whether any standard school disciplinary measures are waived.

ARM 10.16.3346(7).

13. The Student's IEPs noted concerns with physically aggressive behaviors but did not include aversive treatment procedures. During instances when Staff interaction with Student was physically unsafe, the January 15, 2025 BIP outlined the Staff would respond as follows:
- a. Call specific staff, teacher, assistant principal, or school resource officer
 - b. Follow the Student but provide a safe distance
 - c. Calmly remind the Student of expectations
 - d. *No hands on unless Student becomes physically aggressive* (emphasis added)
 - e. If Student runs, do not run after him, walk quickly and call for assistance.

The BIP did not include aversive treatment procedures but did indicate that placing hands on Student was a possibility.

14. On ten occasions between October 30, 2024, and March 27, 2025, the School placed the Student in isolation time out as defined in ARM.10.16.3346(2)(b). The Student was taken into the safety room, the Student was alone in the room, the Student was prevented from leaving the room, the door was closed (engaged by School staff), and the Student was prohibited from participating in activities outside of the room. On average, the length of the isolation time out was 10 minutes, excluding one instance of 32 minutes and one instance two minutes.
15. On seven out of 10 occasions between October 30, 2024, and March 27, 2025, the School used physical transport/restraint. Staff reported all instances of physical restraint were

reasonable and necessary to provide self-protection and protect the Student and others from physical injury as provided under MCA 20-4-302.

16. The IEP Team met multiple times during the 2024-2025 school year, reconvening four times between November and April. Three MDRs were conducted, along with one reevaluation that included an FBA that focused on developing a BIP to address the Student's persistent behaviors. However, the topic of aversive treatment procedures never occurred during an IEP Team discussion. This was despite the School documenting the use of seclusion and restraint on 10 occasions. The severity of the Student's behavior eventually led the IEP Team to agree to decrease in the Student's school day and a subsequent change in his educational placement to homebound.
17. The District stated the Student's aggressive actions posed a safety concern and necessitated the use of seclusion and physical restraint by Staff to provide self-protection and protect the Student and other students from physical injury. However, at some point, the consistent use of restraint and isolation time out should have been discussed by the IEP Team to determine whether the use of aversive treatment procedures was approved as required in ARM 10.16.3346(1), and if so, they should be designed to address the individual behavioral needs of Student and incorporated into the IEP and BIP as required by ARM 10.16.3346(6) and (7).

Decision

Whether the District improperly used aversive treatment procedures between November 2024 and April 2025 in violation of ARM 10.16.3346.

The OPI finds a violation. The District consistently used aversive treatment procedures between November 2024 and April 2025 without approval of the IEP Team. The IEP Team should have determined if aversive treatment procedures were necessary to address the behavioral needs of the student, and if so, whether aversive treatment procedures needed to be added to the Student's IEP and BIP as required by ARM 10.16.3346.

Corrective Actions

1. The District shall review and revise its policies, procedures and practices on the use of aversive treatment procedures to include the following:
 - a. Defining aversive treatment procedures;

- b. Specifying the limited circumstances when aversive treatment procedures may be used with students with disabilities;
 - c. Ensuring all staff are trained in the use of positive behavioral intervention strategies, de-escalation techniques and aversive treatment procedures;
 - d. Documenting procedures for when any aversive treatment procedures are used; and
 - e. Ensuring IEP teams are making individualized determinations as to what aversive treatment procedures are appropriate and necessary in accordance with the requirements in ARM 10.16.3346.
 - f. The District shall provide the revised policies, procedures and practices to OPI's Early Assistance Director by August 15, 2025.
2. The District shall provide all special education staff working in the BASE classrooms and administrators with training on aversive treatment procedures including the District's revised policies and procedures. The District shall comply with the following conditions:
 - a. The training shall be conducted by an independent professional with expertise in the use of aversive treatment procedures and application of behavior interventions. The name and credentials of the trainer shall be provided to OPI's Early Assistance Program Director by August 1, 2025.
 - b. The training shall be completed by September 15, 2025.
 - c. The District shall submit evidence of completion, including sign-in sheets with the name of all participants, date(s) of training, and copies of all training material to OPI's Early Assistance Program Director by October 1, 2025.
3. The District shall review student records for all students in the BASE classroom to locate students where physical restraint or seclusion was used during the 2024-2025 school year.
 - a. For all students identified above, the District shall provide documentation to OPI's Early Assistance Director by August 15, 2025, on how the IEP team is making individualized determinations as to what aversive treatment procedures are appropriate and necessary in accordance with the requirements in ARM 10.16.3346, and if not already doing so, provide a plan with a specified timeline (no longer than 90 days) of how the District will ensure compliance for each student.

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

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)
- ██████████, Attorney for District (via SMFTS only)
- ██████████, District Special Education Director (via SMFTS only)