

**FINAL REPORT**  
**Complaint Investigation**  
**Garden Valley School District #71 / [REDACTED]**  
**C-23-09-28a**

The Idaho Department of Education (Department) received a state administrative complaint on September 28, 2023, from [REDACTED] (Complainant), on behalf of [REDACTED] (Student), against the Garden Valley School District #71 (District). The 60-day timeline for the investigation of this complaint began on September 28, 2023, and expires on November 27, 2023. The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA).

**Complaint Issues and Allegations**

The Idaho Department of Education accepted the following issues for investigation:

- 1. In the development of the Student’s individualized education program (IEP), did the District address the academic, developmental, and functional needs of the Student, including behaviors which may impede the learning of the Student or others? [34 CFR § 300.320, 34 CFR § 300.324]**

The Complainant alleges that the Student’s IEP was expired and lacked appropriate goals. Additionally, the Complainant alleges that the Student would be found asleep on the floor in a dark room, [REDACTED], that the Student reported doing nothing at school, and could not [REDACTED] when experiencing [REDACTED]. Finally, the Complainant alleges that the Student does not have a behavior intervention plan (BIP), and that staff provoke the Student and use aversive techniques, including seclusion.

- 2. Did the District determine the Student’s placement in consideration of the strengths of the Student, the concerns of the parent for enhancing the education of the Student, the results of the initial or most recent evaluation of the Student, and the academic, developmental, and functional needs of the Student; and did the District, to the maximum extent appropriate, educate the Student in the least restrictive environment (LRE)? [34 CFR § 300.116, 34 CFR § 300.327, 34 CFR § 300.114]**

The Complainant alleges that due to the severity of the Student’s disability and the District’s alleged inability to meet the needs of the Student, the IEP team determined that [REDACTED] was appropriate, yet the District did not hire a teacher for the Student for the 2023-2024 academic year and did not [REDACTED]. The Complainant alleges that, contrary to the IEP team’s decision, the Student attended [REDACTED] because the District did not hire a teacher to provide instruction for the [REDACTED].

- 3. Did the District consider the use of positive behavioral interventions and supports (PBIS) to address behavior that impedes the learning of a student with a disability**

**or the learning of other students, including conducting a functional behavioral assessment (FBA) and implementing an individualized behavior intervention plan (BIP)? [34 CFR § 300.323(c)(2), 34 CFR § 300.324]**

The Complainant alleges that the District used the school resource officer (SRO) and aversive techniques, including seclusion, by locking the Student alone in a windowless room or a closet [REDACTED]. The Complainant alleges that the District told the Student that they would be arrested and taken to jail, that the Student had been suspended multiple times, and that parents would be called to pick up the Student. Additionally, the Complainant alleges that the Student did not have a behavior intervention plan (BIP).

- 4. Did the District's removal of the Student constitute a change in placement, and did the District conduct a Manifestation Determination for the Student consistent with regulations? [34 CFR § 300.530]**

The Complainant alleges that the Student has been either formally suspended or informally removed from the classroom, with parents required to pick up the Student on multiple occasions without the District conducting a Manifestation Determination.

- 5. Did the District provide special education and related services that were in conformity with the Student's IEP? [34 CFR § 300.323(c)(2)]**

The Complainant alleges that the Student did nothing at school; did not receive work to complete at home; was left asleep on the floor of a dark room; [REDACTED]; needs but has not received [REDACTED] speech therapy services; and is owed compensatory education. Additionally, the Complainant alleges that the District required the parents to provide transportation [REDACTED]. Finally, the Complaint alleges that the District was professionally trained in appropriate [REDACTED] techniques by an outside provider but did not follow the agreed-upon protocols to support the Student; this led to the Student [REDACTED] and resulted in [REDACTED] the involvement of the SRO.

- 6. Did the District properly revise the Student's IEP in compliance with IDEA or convene an IEP team to consider revision of the Student's IEP to address any lack of expected progress? [34 CFR § 300.320(a)(2) 34 CFR § 300.324(6), 34 CFR § 300.324(b)]**

The Complainant alleges the IEP was expired, lacked appropriate goals, and that the District declined the parent's request for a reassessment. Additionally, the Complainant alleges that the Student was removed from the educational setting on multiple occasions [REDACTED] yet there was no behavior intervention plan in place.

- 7. Did the District provide an appropriately trained and supervised paraprofessional to assist in the provision of special education & related services? [34 CFR § 300.156(b)(2)(iii)]**

The Complainant alleges that when the parent was called to pick up the Student [REDACTED] they found the Student distressed, [REDACTED] without any appropriate interventions or support by the District. Additionally, the Complainant alleges that during an incident when the District called the parent to pick up the Student due to unwanted behavior, the District told the parent that they would arrest and jail the student; that they were talking to a judge and prosecutor; and at that time the parent found the Student in the road, [REDACTED].

### **Scope of the Idaho Department of Education Review and Authority**

The SDE administers federal and state regulations governing special education programming requirements for students with disabilities. Ensuring implementation of the federal regulations from the Individuals with Disabilities Education Act (IDEA) and any corresponding state rules requires the Idaho Department of Education to investigate state complaints regarding violations of these provisions. The Idaho Department of Education has investigated this complaint and now issues this report and Corrective Action Plan (CAP), if applicable, pursuant to 34 CFR § 300.152(a)(5).

Facts discussed that occurred prior to September 28, 2022, or after September 28, 2023, are for background information only. Federal regulations limit the investigation of state complaints to violations that occurred not more than one year prior to the date the complaint was received. 34 CFR § 300.153(c).

### **Complaint Investigation Review**

The Idaho Department of Education's complaint investigation included the following:

- Review of the submitted complaint and supporting documentation.
- Review of District-produced documents.
- Review of email communications between the Student's family and the District, provided by both the District and the family.
- An on-site investigation.
- In-person and virtual interviews with District staff and the sheriff serving as SRO.
- In-person interviews with the Student, the Complainant, and the Student's other parent.
- Review of the District's online Policy Manual.
- Review of the District's online service contracts.
- Review of the District's publicly available financial audit.
- Review of the School Board's publicly available online meeting agendas and meeting minutes.

Review of the Idaho *Special Education Manual* (2018), the IDEA and the applicable Code of Federal Regulations, and relevant case law.

### **Findings of Facts**

1. The Complainant filed a complaint on September 28, 2023. No issues raised in this complaint are currently subject to a due process hearing, nor have these issues been previously decided in a due process hearing.

2. The Student has been enrolled in the District for all time periods relevant to this investigation.
3. The Student is [REDACTED] and in Grade [REDACTED]
4. At the time of the filing of this complaint, the District had not adopted the Idaho *Special Education Manual* (2018).
5. At the time of the filing of this complaint, the District had not adopted any policy on the use of restraint and seclusion.
6. At the time of the filing of this complaint, the District used the services of a county sheriff in the capacity of School Resource Officer (SRO) for the entire time period relevant to this complaint investigation. The SRO was not a District employee.
7. At the time of the filing of this complaint, the SRO had not been trained in de-escalation of students outside of a law enforcement context. The SRO had not been trained in how to work with students whose disabilities manifest in escalated or aggressive behaviors.
8. The 2022-23 In-Service Agenda reflected seven hours of “MANDT System Training” was scheduled for special education staff on August 8, 2022. The instructor did not hold a current Mandt-endorsed training certificate at that time but had in the past. The participating staff received certificates of completion from Arete-Trainings.com; no reference to “Mandt” was included on the certificates, which were signed by the instructor whose credentials were represented as “LMFT.” The training covered four primary topics: Self Development, Building Relationships, Technical Concepts, and Technical Skills. Subcategories of the four domains included such topics as positive behavior supports, stress management, managing triggers, and de-escalation and crisis management, nonverbal communication, risk factors and signs of distress, and prohibited practices. The record contained certificates of completion for the special education staff with the exception of a paraprofessional who worked extensively with the Student while the Student was in-person on campus.
9. During the relevant time period of this investigation, the Student was placed in a room that interviewed staff referred to by many different names, a few of which are, “the padded room,” “the [Student]’s classroom,” and “the safe room.” District documents, emails, and interviews reflect that this space was used as both a setting in which the Student received instruction alone with a paraprofessional and apart from peers, and also as a seclusion room. Hereinafter the room will be referred to as “the self-contained classroom.”
10. Prior to being renovated and repurposed in the summer of 2023, the self-contained classroom was a utility space. The door locked from the inside and with the exception of a small viewing window in the door, there were no windows in the room. The room was described as a “padded room” because pads were mounted on the walls at some point.
11. District staff took the Student to this self-contained classroom at least one to three times per week in response to the Student’s unwanted behaviors, and the Student would be left alone in the room, with the door closed and held on the other side by a District employee, to “scream it out.” At times, the Student would be restrained and carried by staff to the self-contained classroom. The District did not conduct a Functional Behavior Assessment (FBA) of the Student, and staff indicated they did not feel qualified to do one.
12. An IEP meeting was to take place on August 15, 2022, but there was no documentation of the formulation of an IEP around this time period.

13. The IEP for the relevant time period is dated January 10, 2023, approximately six months later. Whether there was an IEP in place from September 28, 2022, through January 10, 2023, cannot be determined because the record is incomplete, including a lack of progress reports on IEP goals.
14. The record includes an unsigned initial eligibility report dated January 12, 2022<sup>1</sup>. The report noted that on May 20, 2021, the Student underwent a neuropsychological evaluation. The report falls outside of the investigation timeframe but includes information relevant to IEP team meetings and decision making that occurred during the last 12 months, including identifying the Student's [REDACTED]
15. The Student [REDACTED] in the classroom setting with peers, and there was a [REDACTED], as the Student had incidents [REDACTED]
16. The Student had a history of suspensions during the 2021-22, 2022-23, and 2023-24 school years. However, the Student's attendance log does not reflect any suspensions at all, whether in or out-of-school, or formal or informal. Nevertheless, District staff reported during interviews that the Student had received formal out of school suspensions on several occasions, as well as informal removals when a parent was called to come pick up the Student.
17. The District never held a manifestation determination review. The suspensions were due to disruptive behaviors.
18. In February 2022, the Complainant emailed the District about their concerns regarding the District's implementation of the Student's IEP. On February 9, 2022, the District emailed the Complainant the following:

... [the Student]'s goals and plan are written in a manner to give us flexibility to do what we need to do to help [the Student] be successful in [their] [REDACTED] classroom. ... [the Student] struggles to be successful in the least restrictive environment so we need to [REDACTED] instead of continuing with what we know does not work for [them]. In order to do this, we cannot try to [REDACTED] That does not work. Therefore, the approach we are taking, which involves working closely with a [REDACTED] is to control [the Student]'s environment... This space allows us to do what we need to do to focus 100% on [REDACTED] so [they] can move to the [REDACTED] room and into the classroom in a way that allows [them] to have positive peer interactions, effective learning experiences, and an overall positive self image...

19. Emails from February 2022 reflected that the District used the self-contained classroom as part of the [REDACTED]
20. On April 11, 2022, the Complainant notified the District via email that the Student had been [REDACTED]. The email also

---

<sup>1</sup> The Evaluation team consisted of parents, special education director, and speech-language pathologist. The team did not include a general education teacher, a special education teacher, or a school psychologist. The report formed the basis of the Student's eligibility category of [REDACTED].

[REDACTED]. Emails from early 2022

reflected that the Student tested [REDACTED] for dyslexia. The Complainant requested a meeting to make changes to the IEP. A meeting was not scheduled as requested by the Complainant.

21. On August 16, 2022, the District emailed staff regarding [REDACTED] strategies, tracking the Student's [REDACTED] identifying a safe adult, and notifying staff that there may be days that the Student needs to [REDACTED].
22. On October 18, 2022, the Complainant notified the District that the Student [REDACTED] [REDACTED] which were consistent with the Student's disorder, and the student may need additional time, patience and empathy.
23. On October 24, 2022, the District emailed the Complainant about the Student's [REDACTED] day. The email detailed the [REDACTED]. The Student wanted to call parents and to see a parent.
24. On November 14, 2022, the District emailed the Complainant that the Student was [REDACTED] with the paraprofessional. The Student was [REDACTED].
25. On November 16, 2022, the Complainant informed the District that they were going to look for a tutor to help the Student with [REDACTED]. No action was taken by the District regarding this information.
26. On November 16, 2022, the District emailed the Complainant that the Student [REDACTED] and indicated that the student would not be allowed to ride the bus.
27. The District emailed the Complainant on multiple occasions detailing the Student's [REDACTED]. On November 28, 2022, the District emailed the Complainant that the Student had [REDACTED] with the paraprofessional; in class, the Student was [REDACTED].
28. Through the relevant time period, and on several occasions, emails reflected that the Complainant was providing positive reinforcement ideas to the District to reward student for doing work. No documentation showed the use of positive behavioral interventions by the District prior to the Student working in the [REDACTED] setting with a [REDACTED] [REDACTED] at the end of September 2023, just days prior to the filing of this complaint.
29. On December 5, 2022, the Complainant emailed the District requesting to return the Student to [REDACTED] indicating that they did not know why it stopped, and asked for this to be arranged. [REDACTED] was not a related service that was included on the Student's January 10, 2023 IEP, nor was [REDACTED] set forth in the options considered and rejected in any written notice.

[REDACTED]

30. On multiple occasions during the relevant time period, the Complainant emailed the District that the Student was [REDACTED] that took place at school, and struggled with [REDACTED].
31. On January 4, 2023, the District emailed that Complainant that the Student had [REDACTED] [REDACTED] which resulted in the paraprofessional carrying the Student to the self-contained classroom, at which point the Student [REDACTED]. Earlier that day, the Student had [REDACTED].
32. The record included a draft IEP dated January 10, 2023. This was an annual review. The Student's eligibility category was [REDACTED]. The medical history reflected that in 2021 the Student was diagnosed with [REDACTED].
33. Emails reflect that the Student was subsequently diagnosed with [REDACTED] [REDACTED] without a specific date identified.
34. The IEP team members invited to the January 10, 2023 IEP team meeting included the Student's parents, two District representatives, the Speech-Language Pathologist (SLP), special education teacher, general education teacher, and "other" (the Student's paraprofessional). The IEP team did not include a District social worker, counselor, or [REDACTED]. The actual attendance of participants was not noted.
35. Goal 1 was for [REDACTED]. The goal was to be measured by weekly observation.
36. Goal 2 was for [REDACTED] while the Student need identified the need for specialized instruction in [REDACTED].
37. Goal 3 was for [REDACTED] while the Student's need reflected the Student "needs specialized instruction to [REDACTED]."
38. Goal 4 was for [REDACTED]. The Student need reflected the Student "needs specialized instruction in [REDACTED]."
39. Goal 5 was for [REDACTED]. Strengths were identified as the Student "has made the most growth in this area [...] is starting to [REDACTED]. Parental concerns reflected the concern for Student to [REDACTED]. The area of adverse impact noted that the Student "struggles with [REDACTED]. The Student need identified that the Student "struggles with [REDACTED] makes it extremely difficult for [the Student] to be independently successful in the general education setting." The goal read "[g]iven a task [the Student] will [REDACTED] respond 50% of the time by 1/10/2024" while the baseline data reflected a 15% success rate.
40. [REDACTED] data was to be collected via a rubric weekly.
41. All progress would be reported with report cards.

42. The services grid reflected [REDACTED] minutes weekly of [REDACTED] to occur in the [REDACTED] room, while “Other Spec Ed Services” would be delivered by a “Paraprofessional Special Education” for [REDACTED] minutes per week in the general education classroom.
43. The Optional Statement of Service Delivery states in part: “Other sped services will be [REDACTED] provided by a specialist, BI, or para professional under the direction of the SpEd teacher, inside and outside of the classroom.”
44. The Least Restrictive Environment (LRE) section of the IEP did not include any discussion that the Student would not participate in the general education classroom or general education curriculum.
45. The IEP stated that the Student would be in the general education environment 100% of the time, totaling 1,920 minutes. However, the IEP services grid reflecting [REDACTED] minutes per week of paraprofessional support and [REDACTED] minutes of [REDACTED] services in the [REDACTED] room.
46. The IEP identified the Student’s educational environment as being in the general education setting for 80% or more in a school day. The box that reflected that the Student was in a district self-contained classroom in a separate special education school for more than 50% of the time was *not* checked. The IEP provided that the only time the student would be out of the general education classroom was for “specially designed instruction in [the Student’s] [REDACTED] in an environment that allows for multiple opportunities for practice, immediate feedback, and varied prompts which are not provided within the general education setting.”
47. The IEP reflects that the team did consider the harmful effects of the educational placement. The Student did not qualify for extended school year. The Student did have [REDACTED] needs, which were handled by the [REDACTED] during the 2022-23 school year, and by a [REDACTED] during the current school year. The IEP listed that the Student [REDACTED]
48. The IEP included the following as the Student’s behavior intervention plan:

Preventative Strategies Teaching Responding			
Setting Event Strategies	Antecedent Strategies	Replacement Behavior	Consequence Strategies
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



--	--	--	--

49. The [redacted] IEP provided: “If [the Student] is [redacted] [they] will go to the extended room and parents will be called to determine how they want to proceed.”

50. Accommodations in the IEP were the following: [redacted]

51. A four-page document entitled IEP Amendment dated January 10, 2023 was included in the record, with an embedded written notice. The IEP amendment meeting, amendment details, and amended section were blank. The written notice section checked the “other” box, that [the Student] will continue to receive services as outlined in the IEP.” Nothing was refused, and the Student required special education services.

52. On February 14, 2023, the District sent an email to the parents with proposed education options:

- a. Option One proposed [redacted]
- b. Option Two proposed [redacted]
- c. Option Three proposed [redacted]
- d. Option Four proposed [redacted]

The email reflected that the District could blend any of the proposed models. The District stated that they did not have the staff to perform one-to-one instruction [redacted] and that they would have to hire an individual, and could not guarantee the speed of the hiring process.

53. On February 16, 2023, the Complainant emailed the District outlining the Student’s educational plan in a hybrid format. The email included that the [redacted] On February 26, 2023, the District emailed the Complainant that they were working to get someone lined up, but that the District could not require a [redacted]

The District did not hire staff [REDACTED]. The Student's educational plan consisted mainly of a hybrid model for the remainder of the 2022-23 school year. The Student's IEP was not amended to reflect the change in placement.

54. The record included an undated Invitation to a Meeting for a meeting on April 17, 2023, with the purpose of reviewing and revising the IEP. The invitation did not include a general education teacher, District representative, speech language pathologist, or intervention specialist. The actual attendees at the April 17, 2023 IEP meeting cannot be confirmed.
55. The record included a written notice dated April 17, 2023; no IEP amendment accompanied the notice. Under "other," actions proposed are "continued use of proactive [REDACTED] strategies. [REDACTED] then schedule would include [REDACTED] Monday and Tuesdays from 9:00 to 11:00 am and then [REDACTED] Wednesday and Thursday from 10:00 am to 12:00 pm." The box indicating that the District was not refusing any actions was checked. The rest of the written notice is blank.
56. Emails reflected that the proactive [REDACTED] strategies consisted [REDACTED]. There was no outlined protocol in the IEP. Emails from the Complainant to the District reflected concerns that the [REDACTED] protocols were not being followed correctly by staff. Staff interviews reflected that they would provide the Student with the [REDACTED] items, but the Student would [REDACTED].
57. Multiple email communications throughout the school year reflected the Complainant requesting [REDACTED] accommodations [REDACTED] due to [REDACTED] and the Student's [REDACTED]. Emails also reflected the request to use [REDACTED] techniques [REDACTED]. Nothing was memorialized in the Student's IEP.
58. Multiple emails between the Complainant and District reflected that placing the Student in the general education classroom was counterproductive; some emails suggested the use of a "private classroom" due to the level of [REDACTED] in a classroom with peers. Emails showed that the Complainant repeatedly requested that the District "re-evaluate the current scenario." Multiple emails from the Complainant informed the District that the Student found school to be [REDACTED] including a communication dated February 8, 2023, and requested to meet. The record does not reflect a meeting corresponding with the request.
59. On February 6, 2023, the Complainant emailed the District that the Student [REDACTED].
60. Speech and language services were provided to the Student as follows:
  - [REDACTED]
  - Documentation of SLP services for August - September 2023 was not provided by District, and the Complainant was required to drive to a different school district in order for the Student to receive those services.

61. Emails reflect that during the spring, 2023, the Student’s educational placement was constantly changing. On some days, the Student was in the extended resource room, and on other days the Student was in the self-contained classroom. Seldom, if ever, was the Student in the general education classroom.
62. The Student’s file contained a variety of [REDACTED] reports, including [REDACTED]. [REDACTED] Emails from the District to the Complainant identified a “pattern every day from 10:00-11:00,” during which time the Student [REDACTED].
63. The District responded to the Student’s [REDACTED] by using restraint and seclusion in an isolated room, requesting that the parents take the Student out of school for the remainder of the day, and by suspension.
64. A District interview reflected that in the fall, 2023, the Student [REDACTED]. [REDACTED] Interviews reflected that the Student [REDACTED].
65. Emails dated August 27, 2023 between the District and the Complainant reflected that the parties were “brainstorming our schedule.” They decided that the Student would be at school [REDACTED].
66. The Student began [REDACTED] on August 21, 2023. Attendance records reflected that the Student had [REDACTED] in [REDACTED] 2023. Emails reflected that at least five of those days were suspensions. The Student had [REDACTED]. [REDACTED] The number of days that the District contacted the parents to pick the Student up early [REDACTED] is not reflected in the Student’s school file, but emails and interviews reflected that this occurred several times.
67. On September 14, 2023, the Complainant emailed the District asking about the status of a [REDACTED] paraprofessional/teacher.
68. The record included an invitation to an IEP meeting dated September 20, 2023 to take place the next day, on September 21, 2023. The purpose of the meeting was to develop an annual IEP, review and revise the IEP as appropriate, and consider the need for an FBA and development of a BIP.
69. A facilitated meeting occurred on September 21, 2023, and was attended by a fully constituted IEP team. The purpose of the meeting was to discuss [REDACTED] services, [REDACTED].
70. The Student began their education in [REDACTED] placement with a skilled behavior interventionist (BI) around September 26, 2023, but based on documentation provided, this placement is not reflective of an IEP team decision or pursuant to the IEP during the relevant time period of this investigation.

### *Analysis and Decision*

- 1. In the development of the Student’s individualized education program (IEP), did the District address the academic, developmental, and functional needs of the Student, including behaviors which may impede the learning of the Student or others? [34 CFR § 300.320, 34 CFR § 300.324]**

The IDEA requires a district to identify a student’s needs and develop an IEP with specific, measurable goals designed to enable the student to make adequate progress in the general education curriculum. Specifically, the District’s offer of Free Appropriate Public Education (FAPE) by way of an IEP must ensure that the IEP be reasonably calculated to enable the student to make progress in light of their circumstances. To do so, the IDEA requires districts to use a variety of assessment tools and strategies, including information provided by the parent, to identify the functional, developmental, and academic needs of the student in the development, review, and revision of the IEP. The development, review, and revision of the IEP is a comprehensive, collaborative, IEP team process. The Idaho *Special Education Manual* (2018, p. 40) mandates that “the evaluation shall be full and individualized and sufficiently comprehensive to identify all of the child’s special education and related service needs, whether or not commonly linked to the disability category.”

The record is void of an IEP that would have been current and covered the period from September 28, 2022 through January 10, 2023. Further, there are no progress reports. During this time period, the District failed to make an offer of FAPE to the Student, even though it is clear the Student qualified for and was in need of specially designed instruction and related services.

During the relevant time period of this investigation, the Student exhibited [REDACTED] maladaptive behaviors. The Student was reported to be [REDACTED]. The Complainant reported that the Student had been diagnosed with [REDACTED] reiterated the need for [REDACTED] strategies, [REDACTED]. The District repeatedly used restraint and seclusion as a behavior management tool during which time the Student would be enclosed alone in the self-contained classroom for undocumented periods of time, and for unknown frequency. Additionally, the [Student] had very little interaction with peers when receiving instruction, alone, in that same room.

Despite all of this information, including the significant pattern of [REDACTED], and parent concerns and request for [REDACTED] the District did not hold an IEP team meeting until January, 2023. Even then, the District did not consider all of the relevant information available, including the information provided by the parents. The District did not consider the need for additional assessments, including a functional behavior assessment (FBA), nor did the District consider positive behavioral interventions and supports (PBIS) or other strategies to address the Student’s behavior. Instead, the District used the Student’s “padded room” to manage maladaptive behaviors, including the use of restraint and seclusion on multiple occasions. The Student’s BIP failed to address all of the Student’s behavioral needs and was inadequate to meet the identified needs. The District’s response to the Student’s behaviors from January to May, 2023, which

consisted of constantly changing the Student's educational services and placement without going through the formal IEP process, rises to the denial of a FAPE.

**The allegation is *founded* and the District is *out of compliance*.**

- 2. Did the District determine the Student's placement in consideration of the strengths of the Student, the concerns of the parent for enhancing the education of the Student, the results of the initial or most recent evaluation of the Student, and the academic, developmental, and functional needs of the Student; and did the District, to the maximum extent appropriate, educate the Student in the least restrictive environment (LRE)? [34 CFR § 300.116, 34 CFR § 300.327, 34 CFR § 300.114]**

The IDEA requires that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled and removal from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The IEP team determines what constitutes the least restrictive environment (LRE) for the individual student. The LRE is the appropriate balance of settings and services to meet the student's needs. The district "shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student<sup>3</sup>."

Placement decisions are made following an evaluation that assessed a student in all areas of suspected disability. Placement is the last decision to be made by the IEP team and occurs after the determination of needs, goals, and required services have been identified.

In this case, the record lacks a comprehensive evaluation. Further, the IEP team did not convene and determine that the Student's LRE was the self-contained classroom that also served as a seclusion room. Further, the self-contained classroom was in direct conflict with the January 10, 2023 IEP that stated the Student would be full-time in the general education environment with the exception of receiving speech and language services in a [REDACTED] setting. A review of the record shows that the District unilaterally placed the Student in a more restrictive setting without IEP team input and without following the IDEA's procedural process. The same is true when the Student was placed in a [REDACTED] model. An exchange of emails does not fulfill the IDEA's requirements regarding IEP team decision making. Further, there is nothing in the record to support that the District considered a continuum of options; it appears that the only options proposed by the District were either [REDACTED] or in a self-contained classroom. There is nothing to support that the District considered the academic, functional, and developmental needs of the Student when considering the placement, or that the District considered the use of supplementary aids and services. Although emails from the parents reflected that the Student was terrified of school, terrified of the self-contained classroom, and that the use of the self-contained room caused harm to the Student, this information was not considered by the District.

**The allegation is *founded* and the District is *out of compliance*.**

---

<sup>3</sup> The Idaho *Special Education Manual* (2018, p. 97).

**3. Did the District consider the use of positive behavioral interventions and supports (PBIS) to address behavior that impedes the learning of a student with a disability or the learning of other students, including conducting a functional behavioral assessment (FBA) and implementing an individualized behavior intervention plan (BIP)? [34 CFR § 300.323(c)(2), 34 CFR § 300.324]**

In the case where a child's behavior impedes the child's learning or the learning of others, the IEP team must consider the use of positive behavioral interventions and supports (PBIS) and other strategies, to address the behavior. PBIS is defined in the Idaho *Special Education Manual* (2018) as "positive reinforcement, rewards or consequences provided to a child for specific instance of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks."

The District did not appropriately consider the use of PBIS to address the Student's [REDACTED] behaviors that impeded the learning of the Student and others. In fact, the record is void of any documentation of the use of PBIS; instead, the District regularly used restraint and seclusion as a behavior management tool.

In Idaho, physical restraint is defined as the "personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely."<sup>4</sup> Picking up and carrying a student for the purpose of immobilizing or reducing the student's ability to move can qualify as restraint. Seclusion is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving.<sup>5</sup> Placing a student in a room alone and closing the door to prevent the student from leaving qualifies as seclusion.

District interviews reflected that the Student would be locked in the self-contained classroom between [REDACTED] times a week. District documents and emails to the Complainant reflected the use of restraining the Student, by "carrying" the Student to the room. Additionally, emails and District documents reflect that the Student would be secluded in the self-contained classroom, as District interviews reflected that staff would hold the door shut. The record is void of any formal log of frequency or duration. Although incidents were reported via a log, the log is incomplete, as emails to the Complainant included additional incidents. When the Student was not secluded in the self-contained classroom, the Student remained isolated from peers.

The District did not consider the need for a functional behavior assessment (FBA), despite the Students' [REDACTED] behaviors, which led to formal and informal suspensions and disciplinary removals.

The record also showed that the District relied on the SRO in many instances to address the Student's behavior. While the IDEA does not prohibit a district from referring a student to law enforcement for alleged criminal behavior, a district cannot use such referral as a means to circumvent its obligation to consider the use of positive behavioral interventions and supports

---

<sup>4</sup> Idaho Code § 33-1224(1)(c)(i).

<sup>5</sup> Idaho Code § 33-1224(1)(d).

and other strategies to address a student's behavior that impedes the student's learning, or the learning of others.

**The allegation is *founded* and the District is *out of compliance*.**

**4. Did the District's removal of the Student constitute a change in placement, and did the District conduct a Manifestation Determination for the Student consistent with regulations? [34 CFR § 300.530]**

A change of placement is a removal from the student's current educational placement for more than ten consecutive school days, or a series of removals that constitute a pattern when they total more than ten cumulative days in a school year. Removals include in-school suspensions, out of school suspensions, informal removals, such as asking parents to keep a student home from school or picking the student up early due to unwanted behaviors, long term suspensions, and expulsions.

When a disciplinary action will result in a change of placement, the district must 1) notify the parent of the disciplinary action and provide a copy of the Procedural Safeguards and 2) hold a meeting no later than 10 school days after the date on which the decision to change the student's placement is made. The meeting, referred to as a manifestation determination review, must include the parent and relevant IEP team members. The meeting's purpose is to review all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parent. Based on that review, the team must determine whether the conduct in question was caused by or had a substantial relationship to the student's disability; OR was the direct result of the district's failure to implement the IEP. If it is determined that the student's behavior was a manifestation of the student's disability, a change in placement may not occur, and all identified deficiencies must be immediately remedied.

If the conduct is a manifestation of the student's disability, the district must conduct an FBA (unless an FBA was already conducted) and implement a BIP (or review and modify an existing BIP, if appropriate) to address the behavior. The district must return the student to the placement from which the student was removed.

In this matter, the Student received out of school suspensions for disruptive behaviors. The Student was subjected to informal removals in the form of the District calling parents to pick up the Student. There is no formal log in the record to reflect the frequency, but hundreds of pages of email exchanges provided by both the parents and the District reflect that the frequency of informal removals, coupled with formal suspensions, exceeded a cumulative ten school days. It is clear that all of the removals were due to a similar pattern of behaviors. Additionally, the Student was regularly removed from both the general education classroom and extended resource room and placed in a self-contained space/seclusion room that was used as both the Student's self-contained classroom as well as a seclusion room. The excessive removals for disruptive behavior were punitive at times and cumulatively constituted a change in placement<sup>6</sup>. In light of

---

<sup>6</sup> The Office for Special Education and Rehabilitative Services (OSERS) does not consider restraint or seclusion to be appropriate for disciplining for behavior related to disability, except when a student's behavior poses imminent

the totality of all of the removals, related to a consistent pattern of behavior, a manifestation determination meeting was required to be held. The District failed to do so.

The disciplinary removals from the classroom without a manifestation determination meeting or an IEP team meeting to determine a change of placement was a substantive denial of FAPE.

**The allegation is *founded* and the District is *out of compliance*.**

**5. Did the District provide special education and related services that were in conformity with the Student's IEP? [34 CFR § 300.323(c)(2)]**

The IDEA requires a district to implement a student's IEP in its entirety. In this matter, the District substantially deviated from the IEP.

As discussed throughout this report, the District did not provide a copy of an IEP for the period of September 28, 2022 through January 10, 2023. Thus, it is unknown what, if any, special education and related services were provided. The only record of [REDACTED] services delivery occurred from January to May, 2023; there is no record of [REDACTED] in the first quarter of the 2022-23 school year. Although emails from the Complainant to the District reflected repeated requests to resume [REDACTED] it is unknown whether [REDACTED] was in the Student's IEP prior to January 10, 2023. [REDACTED] as a related service was not provided during the fall, 2022, nor was it included as a related service in 2023.

The District did not comply with the IEP dated January 10, 2023 that provided the Student would be in the general education environment 100% of the time, with the exception of speech language services in a [REDACTED] setting. The record reflects that the Student spent a significant portion of the school day in either a self-contained classroom with little to no peer interaction, or in [REDACTED] setting starting in February 2023.

The failure to follow the IEP, and the District's unilateral placement of the Student in a self-contained classroom, which doubled as a seclusion room, resulted in the denial of FAPE.

**The allegation is *founded* and the District is *out of compliance*.**

**6. Did the District properly revise the Student's IEP in compliance with IDEA or convene an IEP team to consider revision of the Student's IEP to address any lack of expected progress? [34 CFR § 300.320(a)(2) 34 CFR § 300.324(6), 34 CFR § 300.324(b)]**

The IDEA requires that a district ensure that the IEP team reviews a student's IEP periodically, but not less than annually, to determine whether goals for the child are being achieved. An

---

danger of serious physical harm to the student or others, and never as punishment or discipline. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022).



annual meeting is the minimum requirement, but a single IEP team meeting may not discharge the district's obligations if the student's changing needs demand more frequent review and revision. Specifically, the IDEA requires revisions to the IEP, as appropriate, to address: 1) any lack of expected progress towards the annual goals and in the general education curriculum, where appropriate; 2) the results of any reevaluation; 3) information about the child provided to or by the parent concerning evaluation data; 4) the child's anticipated needs; or 5) other matters.

In this matter, the District failed to properly review and revise the Student's IEP to consider the Student's [REDACTED] progress. While the record includes the mention of an IEP team meeting via an email in August 2023, there is no other record of a meeting that complies with IDEA's procedural requirements. Furthermore, the record is void of documenting what, if any, IEP was in place as of September 28, 2023.

Throughout the Fall semester of 2023, there was substantial information shared via email between the parents and the District that triggered multiple opportunities for the IEP team's need to either have an IEP team meeting to discuss the Student's pattern of [REDACTED] behaviors, coupled with information about [REDACTED] progress the Student was making in the classroom, or to amend the IEP, with or without a meeting. Over the course of the 2022-23 school year, the Student regressed [REDACTED] [REDACTED], as evidenced by the increased removals and calls to parents outlined above. The several hundred emails exchanged between the District and the Complainant, and an educational program that cannot be tracked, resulted in the District failing to offer FAPE to the Student.

There is little to no information regarding the Student's academic progress, as there are no progress reports. Additionally, there were no report cards in the record. The majority of the information in the record relates to Student's [REDACTED], including [REDACTED] [REDACTED]. The team did not convene in order to consider the use of PBIS and the offer of FAPE; the team did not consider whether additional personnel [REDACTED] [REDACTED] were needed as part of the IEP team to contribute appropriate input and provide related services. Further, the District failed to develop an appropriate IEP with measurable goals and failed to identify needed related services. Instead, the January and April 2023 meetings focused on plans that were driven by [REDACTED] placement, [REDACTED] model. Placement is determined only after the development of appropriate IEP goals; placement does not drive IEP services or the offer of FAPE.

The team did not revisit the academic goals and did not appropriately consider supports and services to address the Student's [REDACTED] needs. Instead, the District excluded the Student from the general education classroom, the extended resource room, and the campus entirely.

**The allegation is *founded* and the District is *out of compliance*.**

- 7. Did the District provide an appropriately trained and supervised paraprofessional to assist in the provision of special education & related services? [34 CFR § 300.156(b)(2)(iii)]**

The District must establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. Related services personnel and paraprofessionals must be appropriately trained and supervised.

The actions and reactions of the paraprofessionals, including information contained in emails to the Complainant, as well as data in the Student's education file in the form of [REDACTED] reports and behavioral data, demonstrated that the paraprofessionals were not adequately trained and supervised to assist in the provision of special education and related services for this Student's unique needs.

The paraprofessional staff engaged in power struggles with the Student, as was evidenced by emails by the District to the Complainant. There was no record of training and incorporation of PBIS. There was no information in the record to support the use of de-escalation strategies, the teaching of coping skills, or the use of redirection of maladaptive behaviors. The collected data reflected that the paraprofessional was not trained to collect data objectively, but instead included judgments about the Student's behavior.

The staff regularly used aversive techniques including restraint and seclusion as behavior management, as well as the use of the SRO, which are not appropriate. Restraint or seclusion is intended to be a last resort. A staff member who restrained and secluded the Student on multiple occasions did not participate in the District's in-service training, as evidenced by a lack of a training certificate in the file. The means by which the paraprofessional staff restrained and secluded the Student, by carrying them and locking them in the self-contained classroom with unknown frequency and duration, is not consistent with an appropriate use of PBIS. This is underscored by the District's lack of a policy on restraint and seclusion during the relevant period. A review of the data for the 2022-23 school year, as well as [REDACTED] reports from August and September 2023, demonstrate a pattern of the Student's repeated [REDACTED] behavior and the District's static response that did not yield any improvement.

Additionally, there were occasions when the District used restraint and seclusion as a punitive measure, or out of convenience, as opposed to understanding the threshold that would trigger the permissive use of such techniques. Secluding the Student in such instances is not appropriate. Staff actions such as engaging in power struggles, and noting [REDACTED] behaviors [REDACTED], without acknowledging a potential link of the behaviors to the disability and providing appropriate documentation reveals a lack of training.

The staff working with the Student were not appropriately trained to meet the Student's needs.

**The allegation is *founded* and the District is *out of compliance*.**

### **Corrective Action Plan**

The District is out of compliance in seven (7) of seven (7) allegations and is in violation of the IDEA. The following corrective actions are ordered by the Idaho Department of Education to address the findings of noncompliance addressed in this report.

## Staff Training

### **1. SESTA Training**

The District shall participate in professional development training with Idaho Special Education Support and Technical Assistance (SESTA) prior to **March 8, 2024**, including the following:

- A. Superintendent
- B. Special education director
- C. Any past and current special education staff currently employed by the District (case managers, paraprofessionals), related service providers (SLP, OT, PT, BI), support staff (classroom aides, detention monitor, SRO), general education teachers, and coaches who were or are involved or included in the development and implementation of any aspect of the Student's eligibility and IEP
- D. Other staff, identified by the District, SESTA, or the Idaho Department of Education prior to the training, whose participation in this training could benefit the Student.

The professional development training shall consist of the following topics

- Evaluation process, including:
  - Obtaining releases and parental consent for assessment
  - Determining appropriate assessments
  - Interpreting the instructional implications of evaluation results
- The legally-constituted IEP team, including
  - Appropriate and necessary team members
  - Inclusion of related service providers based on student need
  - Meaningful parent participation before, during, and after meetings
- IEP team meeting documentation
  - Invitations to
  - Excusals from
    - In advance of meeting
    - Written advance approval from parent
    - Written report provided to all team members in advance
  - Meeting notes
- Designing IEPs to meet the unique needs of students, including
  - Specialized instruction
  - Related services
  - Least Restrictive Environment (LRE)
    - Placement considerations
    - Continuum of services
  - Positive behavior supports and interventions
    - Schoolwide PBIS and students with IEPs
    - Functional behavior assessment (FBA)
      - When is an FBA necessary?
      - Who creates the FBA, and how?
      - When is it necessary to create a new FBA?
    - Behavior Intervention Plan (BIP)

- Development
- Implementation
- Monitoring
- Updating
- With whom should it be shared, and how, and when?
- Culminating with the completion of a case study
- Prior Written Notice requirements
- Progress monitoring and reporting
  - Appropriate, objective data collection
  - How to analyze and incorporate data
  - When to revisit, review, and revise
- Manifestation Determination Review (MDR) process
- Confidentiality of education records
- Idaho requirements related to Restraint and Seclusion

## 2. **SESTA Training Documentation**

The District shall consult with SESTA and the Idaho Department of Education Dispute Resolution Coordinator to determine the appropriate format for the training. **It is the District's responsibility** to contact the SESTA Coordinator and schedule training dates, times, and topics no later than **December 15, 2023**. Following the training, the District shall provide the agenda for the training, the training materials presented, and the sign-in sheet with original signatures of the participants to the Dispute Resolution office no later than **March 15, 2024**. The District shall upload the documents to the secure server and notify the Dispute Resolution office that the documents have been uploaded.

## 3. **Six-Month Follow-Up**

By **August 2024** (approximately six months after the SESTA staff training ordered above), the District's Special Education Director and Superintendent shall meet with the SESTA Coordinator to review the progress and implementation of the training outlined above and discuss any next steps.

*Note:* It is the District's responsibility to initiate contact, allowing adequate time for calendaring, with the SESTA Coordinator who provided the staff training.

The District shall upload the meeting minutes from the six-month follow-up to the secure server **within seven (7) calendar days** of the meeting and **no later than August 30, 2024** (whichever date is earlier), providing same-day notification of the upload to the Dispute Resolution office.

## 4. **Certified De-escalation Training (i.e. Mandt, CPI, Right Response, etc.)**

By January 31, 2024, the District shall provide the Dispute Resolution Coordinator with a proposed plan, for approval, that outlines how the District plans to implement the requirements as outlined in Idaho House Bill 281. A summary can be found at <https://sde.idaho.gov/sped/files/announcement/Restraint-and-Seclusion-Legislation-Implementation-Summary.pdf>.

It is the District's responsibility to contact the DR office to request approval.

Once approved, the District will provide documentation of the completion of the outlined requirements as they are completed.

### Policy Adoption

#### **5. Documentation of Adoption:**

The District shall provide a copy of the Board Meeting Minutes to the Dispute Resolution Coordinator that demonstrates the District's Board has adopted the Idaho *Special Education Manual* (2018) and a restraint and seclusion policy by **March 15, 2024**.

### Facilitated Meetings

#### **6. Special Education Meetings**

The District shall convene several legally constituted special education meetings, as defined by the IDEA and facilitated by an Idaho Department of Education assigned facilitator. The purpose of the meetings includes:

- Update and *expedite* assessments needed to ensure a comprehensive evaluation that considers the unique needs of the Student
- Develop appropriate IEP goals and services for the Student in light of their current circumstances
- Consider the possible need for a functional behavior assessment (FBA) and behavior intervention plan (BIP)
- Development of a plan for providing compensatory services

The first meeting for the team to determine appropriate assessments shall be convened no later than **December 15, 2023**. An *expedited* eligibility meeting shall take place no later than **January 26, 2024**.

The District shall contact the Dispute Resolution office **at least 10 days prior to the first team meeting** to schedule a facilitator.

The special education team shall include an impartial **school psychologist assigned by the Idaho Department of Education and funded by the District**. For the purposes of this CAP, the Department-assigned school psychologist will function as a member of the special education teams and will support them in determining appropriate assessments, conducting and/or coordinating needed assessments, providing written results for the eligibility report, and recommendations regarding eligibility determination and special education goals and services.

The District shall enter into a contract with and be financially responsible for all costs associated with the services conducted by the Department-assigned school psychologist (such as time, travel, accommodations, and other reasonable costs).

7. **Meeting Documentation**

No later than seven (7) days after the completion of each special education meeting, the District shall upload copies of the following documents to the secure server and notify the Dispute Resolution Coordinator:

- Invitation to the meeting
- Any updated special education documents, such as eligibility report, IEP, BIP
- Prior Written Notice of all decisions made
- Meeting Notes

**Compensatory Services:**

8. **Team Meeting to Develop Proposal**

Following the updated eligibility meeting and no later than **February 9, 2024**, the team shall meet to develop a plan for compensatory services. The team shall include a legally constituted IEP team, a Department-assigned facilitator, the impartial Department-assigned school psychologist, and the District's assigned SESTA coordinator.

Based on the information from the updated eligibility report, the proposed Compensatory Service Plan shall consider any and all deficient services missed by the Student since September 28, 2022 (not including the time the Student was not enrolled in the District) and include:

- Areas of specialized instruction to be provided
- Proposed dates and times that work for the Student and their family (after school, summer, Fridays)
- Location of services, taking into account where the Student currently resides (the District can consider entering into an agreement and compensating another district or Department-approved independent contractors to provide the services)
- Proposed setting of services (such as an alternative school or community-based setting)
- Required qualifications of service providers (must be highly qualified to provide the specific services)
- A reasonable number of hours to be provided, taking into account the amount of education time missed as well as the desire of the family to participate
- The expected cost of the proposed Compensatory Service Plan, including the cost for contracted services.

9. **Submission of Compensatory Services Proposal for Approval**

The Compensatory Services **proposal shall be submitted** to the Idaho Department of Education's Dispute Resolution office **by or before February 16, 2024, for approval.** *It is the District's responsibility to inform the Dispute Resolution office that the proposal is ready for review.*

Once approved, the District shall make the compensatory services available to the Student within 14 days.

Student absence or refusal of the parent to make the Student available shall result in a waiver of service scheduled for that day. Provider absences must be rescheduled. Any compensatory services declined or not utilized by **October 15, 2024**, shall be deemed waived, provided the District demonstrates it has made a good faith effort to provide all compensatory services in a timely manner.

**10. Compensatory Services Log Submissions**

Logs of compensatory services provided to date shall be submitted to the Dispute Resolution office no later than **April 5, May 15, and August 15, 2024**; a final log shall be submitted at the completion of services and **no later than October 30, 2024**. The District shall upload these documents to the secure server and notify the Dispute Resolution office at the time of the upload.

**After the District completes the corrective actions above, this complaint will be formally closed.**

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

Dated this 27<sup>th</sup> day of November, 2023.

Submitted by:



---

COURTNEY WUCETICH  
Complaint Investigator

Accepted by:



---

CHYNNA HIRASAKI  
Special Education Director, Idaho Department of Education