

Complaint Investigation Report

██████████ v. MSAD #3

Complaint 19.110CS

Complaint Investigator: Jeannette Sedgwick

June 28, 2018

The Department of Education received this complaint on May 10, 2019. The District submitted documentation regarding the allegations on May 31, 2019, and the complaint investigator interviewed the following District staff about the systemic allegations: the District's special education director, principals from the District's four elementary schools, the principal of the District's middle school, the principal of the high school, and the teacher in the elementary school's transition room.¹

No District practice or policy of seclusion has resulted in a violation of Maine Unified Special Education Regulations (MUSER) on a system-wide basis. Based on information gathered in on-site visit, personal interviews, the District's detailed response, a careful review of the District's restraint and seclusion policy, and documentation of seclusions within the District, the Department finds the District's policies and practices have not resulted in a systemic violation of law and regulation or a systemic deprivation of FAPE to students with disabilities. However, the Department orders corrective action for an individual student whose access to education may have been affected by improper seclusion.

FACTUAL FINDINGS

1. The District offers several types of programming for students with disabilities who receive special education and related services. At the Troy Elementary School, Walker Elementary School, Morse Memorial Elementary School and Monroe Elementary School, the District offers specially designed instruction for children with disabilities primarily as push-in services, with other related services offered in a resource room setting. At the Mount View Elementary School, the District has a resource room setting for children receiving special education instruction and has created a transition room for students whose behavior impacts their own learning or the learning of others.²

¹ The complainant's request for an IDEA State systemic investigation also included a request that the Department of Education conduct an investigation pursuant to 05-071 CMR Chapter 33 ("Chapter 33") Review. That law states that a parent must file a complaint regarding restraints first to their local District, and then may file a complaint at the Department of Education through a Chapter 33 review, a process different than the one here. Because the complainant is not a parent, a Chapter 33 review is not available as filed. The Department notes that individual complaints can be filed by interested parties.

² The transition room is where students with IEPs containing behavioral goals receive specially designed instruction (SDI) in conflict resolution, coping skills and social skills through formal instruction.

2. At the elementary schools, the principals and transition room teacher stated that they utilize several strategies when the students' behaviors impact their ability to access the curriculum. These strategies include utilizing de-escalation strategies such as waiting, leaving the classroom to walk in the hall, and personalized interaction with school staff regarding safety procedures and expectations. The principal of the Troy and Walker Elementary Schools is trained in Safety-Care behavioral safety program ("Safety-Care"), and the teacher of the special education in the elementary school transition room has completed the Safety-Care course in order to instruct others.
3. District staff at the elementary level stated that employees utilize seclusion only as a last resort and do not isolate a child alone in a classroom while holding the door closed to prevent exiting that room. One District staff at the elementary level stated that the concept of seclusion was unknown to her because the students always need supervision and direct guidance from adults.
4. The Mount View Middle School offers four educational placements for students with disabilities, a life skills class, a day treatment program, and a life skills classroom.
5. During the past year at the middle school, District staff observed special education staff practicing seclusion techniques as a therapeutic intervention on multiple occasions within the past year. At the time, this staff member was not trained in Safety-Care methods and did not know this practice was not in keeping with 05-071 CMR Chapter 33 ("Chapter 33").³ The District's special education director stated that this kind of seclusion occurred only with one particular student who moved from the middle school to the high school in the past year. This student's behavioral plan, which was written by an outside consultant, instructed District staff to seclude the student as a behavioral intervention.
6. At the high school, classroom settings include day treatment program, resource room setting, or life skills class. In the high school, the life skills class was taught this year by the same District personnel who taught the middle school life skills class during the previous school year.

³ Maine law defines seclusion as "the involuntary confinement of a student alone in a room or clearly defined area from which the student is physically prevented from leaving." Seclusion may not be used for punitive purposes, staff convenience or to control challenging behavior. It also may not be used to prevent property destruction or disruption of the environment in the absence of a risk of injury or harm. Seclusion may not be used as a therapeutic or educational intervention and may not take place in a locked room.

7. In the past year, the District staff have used seclusion to prevent a student from exiting a room at the high school.⁴ This student who was secluded in the high school is the same student as the student in the middle school who was improperly secluded in the middle school. District personnel were relying on the student's behavioral plan to implement seclusion as part of the student's behavioral plan.
8. After learning about this student's experience in the middle and high schools, the District ensured that staff understood law and regulation regarding seclusion. District sought advice from the Department to learn more about the requirements of Chapter 33 and in March 2019, the child's team worked together to create other behavioral options for the individual student.
9. As a part of this investigation, the District provided two policy documents, "Use of Physical Restraint and Seclusion" and "Procedures on Physical Restraint and Seclusion," both of which were adopted and implemented in the District in November 2013. Neither policy prohibits seclusion as a therapeutic intervention in accordance with Chapter 33.

DETERMINATIONS

The complainant alleged that the District

- (a) has a practice of secluding students alone in a room while leaving the door ajar; and
- (b) that unreported practice of seclusion denies students who receive special education and related services a free appropriate public education (FAPE).

NO SYSTEMIC VIOLATION FOUND; POLICY NON-COMPLIANCE FOUND.

The dispute resolution systems set forth in the IDEA apply to allegations that State or federal special education law or regulations have been violated, or when there is a dispute regarding the identification, evaluation, or provision of appropriate services to a child. MUSER XVI(1). This report addresses the allegation that the District has systematically deprived FAPE to all District students because of a District-wide practice of seclusion.

Review of the District's policies regarding seclusion shows that the definition of seclusion in District's policies aligns with the definition of seclusion in 05-071 CMR Ch. 33 ("Chapter 33"). The District's policy regarding the prohibited use of seclusion mirrors the language of State law in most respects. In the District's policies regarding implementation of seclusion; however, the District's policies have omitted Section 2C of Chapter 33, which states

⁴ Under Chapter 33, seclusion may not be used for staff convenience or to control challenging behavior. Seclusion is not a therapeutic intervention.

that seclusion may not be used as a therapeutic or educational intervention. Based on this gap in policy, the investigator interviewed District staff regarding the provision of FAPE to students with special education needs.⁵

When interviewed, District staff explained that seclusion had been used as a therapeutic intervention for a single student within the District during the past year. The student's behavioral plan recommended removing the children in the student's class when the student engaged in targeted behavior, after which the teachers would leave the room and hold the door closed from the outside of the room in order to prevent the Student from leaving the classroom. In some instances, the behavior that precipitated the seclusion was pulling teachers' and students' hair. District staff, not believing those actions constituted seclusion, did not report them as seclusions. One member of the administration saw this improper seclusion occurring to this single student, and not knowing that the actions constituted seclusion, did not ensure it was reported. The District's response indicated that District personnel entrusted the behavior specialists who recommended a particular behavioral practice and followed the behavioral plan.

District staff did not use improper seclusions on a system-wide basis. District staff who were interviewed recounted several instances where the staff implemented highly individualized behavioral strategies and interventions that did not involve restraint or seclusion. None of those strategies involved keeping children with disabilities alone in a classroom or prevented them from leaving an area. Those interviewed stated that other than the improper seclusion of that one student, they do not have knowledge of other kinds of seclusions that were improper because they were used as behavioral interventions. Information gathered during the investigation did not reveal any other times improper seclusions took place in the past year.

The District took steps in the last months of the 2018-2019 school year to ensure staff actions comply with Chapter 33. The District has at least 10 District staff at Mount View Elementary School who are currently certified in Safety-Care techniques. At Troy Elementary School at least five staff are certified. At Walker Elementary School, four staff are certified, and at Morse Memorial Elementary School at least four staff certified. At Mount View Middle School, which houses various substantially separate special education classrooms, at least ten staff members currently certified. At Mount View High School, 14 staff members currently hold certification in Safety-Care. The District has issued instructions to staff that seclusion is not a therapeutic intervention.⁶ Once the special education director knew of the situation of improper

⁵ The U.S. Department of Education has issued guidance regarding the potential of repeated use of restraint and seclusion denying FAPE. It is possible that a student would not receive FAPE if that student was removed from academic instruction because of restraint and seclusion so often that no progress on the student's goals could be made. Additionally, repeated use of seclusion can result in the school's failure to comply with the special education, related aids and services, or supplemental services and modifications that the student needs, causing a denial of FAPE. *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, U.S. Department of Education, Office for Civil Rights (December 16, 2016).

⁶ The special education director and the high school principal stated that the special education teachers and educational technicians have been educated and trained in prevention and de-escalation and that those practices are benefiting the individual student discussed in this report.

seclusion by staff in the middle, and then the high school, she took action to gain information. Certain staffing changes created by the District's immediate personnel needs also impacted events regarding this student.

No documentation or information supports the allegation that seclusions have denied FAPE to students with disabilities in a systemic way. The Department orders corrective action for the individual student whose situation came to light during the investigation.

CORRECTIVE ACTION ORDERED BY THE DEPARTMENT

1. Immediately upon receipt of this report, the portion of the student's behavioral plan regarding seclusions is invalid and must not be implemented.
2. The special education director, who will be new to the District during the 2019-2020 school year, must review this report with other new administrators and provide written assurance to the Department that it has done so before **September 15, 2019**.
3. The IEP Team for the student named in this report must convene no later than **September 15, 2019** to discuss the following and amend the Student's IEP:
 - Whether the student was secluded to the extent that he was denied FAPE.
 - Which behavioral and communication strategies that will be utilized to allow the Student to access the general education curriculum and make progress in the Student's goals.

Written notice from the student's IEP Team meeting should be sent to David Emberley, Due Process Consultant, Office of Special Services, Maine Department of Education by **October 1, 2019**.

4. The student's case manager must meet with all District personnel who work with the student, including ed. techs, by **September 15, 2019** to discuss the new behavioral and communication strategies for the student that will be implemented.
5. By **October 1, 2019**, the District must revise its policies regarding Chapter 33 in include the prohibition of seclusion as a therapeutic intervention.