



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF EDUCATION  
JUDY A. JEFFREY, DIRECTOR

October 30, 2009

Personally identifiable information about the student is redacted, as required by federal special education law.

Cite as *IDEA State Complaint*, 25 D.o.E. App. Dec. 192 (2009)

Beth Rydberg  
Bonnie McDougall  
Iowa Protection & Advocacy Services, Inc.  
950 Office Park Road, Suite 221  
West Des Moines, IA 50265

*Decision in Complaint Concerning* [REDACTED] *Schools &* [REDACTED]

Dear Ms. Rydberg and Ms. McDougall:

On June 8, 2009, you filed a state complaint under the Individuals with Disabilities Education Act ("IDEA") with the Iowa Department of Education ("Department") on behalf of [REDACTED] and his family, against the [District] [REDACTED] School District ([District]). You alleged that [REDACTED] was injured when he was dragged across a carpeted floor by a substitute 1:1 associate to a time-out area located in his classroom. You proposed several corrective actions. In a letter received by the Department on June 24, 2009, [District] conceded that the alleged incident occurred, and agreed in principle to the corrective action proposed by you. You and [District] engaged in voluntary discussions about the specifics of the corrective action. Due to this ongoing discussion, the file reflects an agreement to extend the deadline for resolving this matter to October 30, 2009.

Several of the corrective actions you proposed have been accepted by [District] and performed. Many of the remedies were agreed to in principle; however, the parties appear to differ as to the precise nature of those remedies. The remaining issues concern staff training and board policies.

### *I. Findings of Fact*

The complaint is proper in form and within the scope of the Department's jurisdiction. The material facts alleged in the complaint are true.

### *II. Conclusion of Law*

I conclude that the confirmed allegations constitute a denial of a free appropriate education ("FAPE") under the IDEA.

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One necessary element of a FAPE is an education consistent with state standards. Iowa Admin. Code r. 281—41.17. This would include state statutes, regulations, and standards concerning seclusion and restraint. *See, e.g., Letter to Anonymous*, 50 IDELR 228 (OSEP 2008). The actions taken by [District]'s employee were unreasonable in light of the circumstances and a violation of Iowa's administrative rules on corporal punishment, physical restraint, and physical confinement and detention ("Chapter 103"). Iowa Admin. Code rr. 281—103.2, -103.5. These particular rules were not subjected to recent amendments of Chapter 103 and are identical to rules first adopted by the State Board in 1990.

### *III. Remedies*

Because I conclude that the confirmed allegations constitute a violation of the IDEA, I order the following remedial actions.

First, I confirm the remedies negotiated by the parties and already completed. These remedies are substantial and address the needs of the parties and of children with disabilities.

I now turn to the issues raised in your letter of September 24, 2009, as well as your further communication with the Department and [District]'s response of October 15, 2009.

#### *A. Training for All Staff on the Requirements of Chapter 103.*

1. Discussion. [District] provided the Department of Education with materials distributed to elementary school staff on August 18, 2009, as well as a sign-in sheet for that training. I have reviewed the materials, which consist of the first two pages of Chapter 103. I note that Chapter 103 requires training on these matters, but also requires training on several other matters including crisis prevention and positive behavior interventions and supports (PBIS). Iowa Admin. Code r. 281—103.7(2).

The documents in the file reflect that the school has been receiving extensive technical assistance from the Department concerning PBIS and will continue to receive and benefit from such training throughout the academic year. It is important to note that the IDEA requires IEP teams to consider PBIS "and other strategies" to address a child's difficult behavior. Iowa Admin. Code r. 281—41.324(1)"b". While "other strategies" are permitted, PBIS may be required if PBIS is the only strategy that is reasonably calculated to provide educational benefit to an eligible individual. *Board of Educ. v. Rowley*, 458 U. S. 176 (1982).

The Department concludes that the [District]'s receipt of technical assistance on PBIS, in conjunction with the BIST program, is an appropriate large-scale strategy to transform school climate and student behavior.

You request that all substitutes receive the training required by Chapter 103. [District] resists this request in its most recent letter. After having reviewed Chapter 103, I conclude that it does not require training for all employees, but only employees who engage in physical restraint or physical confinement and detention. Iowa Admin. Code r. 281 – 103.7(2). Nevertheless, I am mindful of the fact that the employee who committed this violation was a substitute 1:1 associate. If [District] plans on not training its substitute staff members, it must inform them that they are not to engage in physical restraint or physical confinement and detention. As a suggestion, it might be better practice to train a certain number substitute teachers and associates so that the services described in IEPs may be delivered. I remind all parties that substitutes must be advised of the IEP terms of each eligible individual served during their substitute assignments. Iowa Admin. Code r. 281 – 41.323(4).

2. Order. Based on the foregoing considerations, I order the following corrective actions:

- [District] shall provide evidence to the Department, with copies to Iowa Protection and Advocacy Services, Inc., that staff receive training in all required elements of Chapter 103. If such training has not been completed, [District] shall provide to the Department a date certain by which such training will be completed. Consistent with the IDEA's requirements, said correction shall occur as soon as possible but no later than one year from today's date. 34 C.F.R. § 300.600(e).
- [District] shall provide evidence to the Department, with copies to Iowa Protection and Advocacy Services, Inc., that substitute teachers and associates have either been trained in the required elements of Chapter 103 or have been advised that they are not to engage in physical restraint and physical confinement and detention. If such has not been done, [District] shall provide to the Department a date certain by which such training will be completed. Consistent with the IDEA's requirements, said correction shall occur as soon as possible but no later than one year from today's date. 34 C.F.R. § 300.600(e).

*B. Board Review of Policies.*

1. Discussion. You requested [District]'s board of directors review and revise any board policy on Chapter 103. Having reviewed this request, I cannot conclude the law requires it. Chapter 103 was drafted to be self-executing. It requires no board action to be binding on districts, AEAs, and accredited nonpublic schools. Schools are bound by it even if they choose to ignore it. For that reason, I need not order a review of district policies.

[District] did provide a substantial amount of evidence concerning its review of district procedures and practices, including restructuring of the use of time-out rooms (as evidenced by an addendum to the staff handbooks, dated October 12, 2009), documentation of the use of such rooms, and documentation forms for instances of physical restraint. Most of these revisions are educationally and legally sound.

After reviewing this documentation, I have residual concerns about [District]'s use of time-out rooms. I am unclear whether such rooms meet the definition of "physical confinement and detention" in Chapter 103: "the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted." Iowa Admin. Code r. 281 – 103.6 (emphasis added). If the timeout room meets the definition in Chapter 103, including the highlighted part, documentation similar to [District]'s documentation of physical restraint is required. Iowa Admin. Code r. 281 – 103.7(5). Furthermore, documentation of each instance of physical restraint or physical confinement and detention must be provided to parents. Iowa Admin. Code r. 281 – 103.7(7). In light of these questions, I require additional corrective action.

2. Order. Based on the foregoing considerations, I order the following corrective actions:

- [District] shall provide to the Department, with copies to Iowa Protection and Advocacy Services, Inc., with further description of the time-out rooms it uses, including whether such rooms meet Chapter 103's definition of "physical confinement and detention." If such rooms do meet this definition, [District] shall provide the Department, with copies to Iowa Protection and Advocacy Services, Inc., with the manner it documents use of such rooms, which shall be consistent with the requirements of Chapter 103. This corrective action shall be completed within sixty days of the date of this letter.

- [District] shall provide to the Department, with copies to Iowa Protection and Advocacy Services, Inc., with its procedures for providing notice to parents of each instance of physical restraint and physical confinement and detention. This shall be done within sixty days of the date of this letter.

*C. Review & Revision of Child's IEP.*

1. Discussion. In your complaint, you noted that the child's IEP did not call for use of restraint. The law contemplates instances where restraint or seclusion may be used even though not described in an IEP; however, the restraint used in this instance would not have been appropriate even had it been described in an IEP. After having reviewed the file, including the child's most recent IEP, the totality of the circumstances suggests that an IEP team meeting should be convened to discuss the matters at issue in this complaint.

2. Order. Based on the foregoing, I order the following corrective action:

- [redacted]'s IEP team shall convene to review his IEP in light of the confirmed allegations in this complaint and with particular attention to his behavior and supports needed by staff. The IEP team shall revise his IEP, if appropriate. This meeting shall occur within sixty days of the date of this letter, at a time and location convenient to all parties.

*IV. Use of Dispute Resolution Process*

I commend the parties for their voluntary resolution of many of the issues raised in this complaint. I understand that [District] is concerned that this matter was pursued through a state complaint. While I understand those concerns, and the Department remains committed to fostering a climate where parties may resolve their special education disputes quickly, locally, and comprehensively, I must reiterate that any party may elect to file a state complaint or exercise any other procedural safeguard without resorting to any preliminary or prerequisite step, unless otherwise specifically required by the IDEA.

*V. Summary of Decision*

For the reasons stated in this letter, the Department confirms that a violation of the IDEA occurred. Ordered corrective action shall be completed within the time provided. There are no costs or fees to be ordered or awarded.

Because several of the matters discussed in this decision may be of broad public import, I am directing that a redacted copy of this decision be provided to the director of special education for each area education agency. I also shall seek to have a redacted copy included in the Department's appeal decision book.

Any party that disagrees with the Department's decision may file a petition for judicial review under section 17A.19 of the Iowa Administrative Procedure Act. That provision give a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for judicial review in the Iowa District Court for Polk County (home of state government) or in the district court in the county in which the party lives or has its primary office.

I offer my assurance to you that every attempt has been made to address this complaint in a neutral and fair manner, and in compliance with state and federal special education law. I sincerely wish the best for all involved.

Sincerely,

Lana Michelson, Chief  
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