STATE OF IOWA

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DEPARTMENT OF EDUCATION
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State Complaint Concerning Seclusion Rooms
Decision

Dear Parties and Counsel:

On December 21, 2016, the Iowa Department of Education ("Department") received a complaint from Attorney Mary Richard under the Individuals with Disabilities Education Act ("IDEA") against the Iowa City Community School District ("District") concerning the District's use of rooms for seclusion. The District has filed a response,

and Attorney Richard filed a rebuttal. The Department reviewed all materials submitted by the parties, requested and received seclusion and restraint documentation from the District for the relevant school years, and conducted an on-site visit of two of the District's school buildings, each containing two seclusion rooms. I have personally inspected those four seclusion rooms. I have reviewed special education records for selected students. I have also taken note of the findings and follow-up from the Department's visit to the District in May 2016.

After reviewing the evidence and considering the contentions of the parties, the complaint is CONFIRMED IN PART and NOT CONFIRMED IN PART.

I. Findings of Fact and Conclusions of Law: Jurisdiction and Timeliness

The Department has jurisdiction of the subject matter and of the parties. The allegations are properly resolved through a state complaint. Iowa Admin. Code r. 281—41.153(2). The complaint is timely filed. *Id.* r. 281—41.153(3).

Exceptional circumstances justify a delay in filing this decision. The allegation concerning the physical restraint and physical confinement and detention and

implementation of effective behavioral interventions required additional investigation beyond the ordinary course of investigations. For that reason, the Department had previously extended the decision deadline. *Id.* r. 281—41.152(2)"a". Due to the previous actions of the Department and the broad distribution the Department expects of this decision, finalizing this complaint decision to synchronize it with prior corrective action and to avoid revealing personally identifiable information required an extension to today's date.

II. Findings of Fact and Conclusions of Law: Scope of Investigative Review

IDEA regulations and state rules require the Iowa Department of Education to investigate any complaint alleging a public agency violated a provision of the IDEA or of Iowa Administrative Code chapter 281-41. Iowa Admin. Code r. 281—41.153(2). The Department is to make an independent assessment of the complaint. Iowa Admin. Code r. 281—41.152(1). I make the following findings of fact by a preponderance of the evidence when the record is considered as a whole. *Letter to Reilly*, 64 IDELR 219 (OSEP 2014). Consistent with *Letter to Reilly*, I do not assign the burden of producing evidence to either party.

The Department assesses the actions taken by the public agencies from the vantage point of when the public agencies acted. They are not judged with the benefit of hindsight. *K.E. v. Independent Sch. Dist. No. 15*, 647 F.3d 795 (8th Cir. 2011).

The actions of the public agencies are viewed through a compliance lens. The standard is "compliance with the law's basic requirements." *IDEA State Complaint Decision 14-01*, 26 D.o.E. App. Dec. 390, 400 (2013). Failure to implement recommended practices or best practices will not result in a finding of noncompliance, assuming that the law's mandatory minimum terms have been met. *Id.*

III. Findings of Fact and Conclusions of Law: Iowa Law on Seclusion

Iowa Administrative Code chapter 281-103 contains Iowa's administrative rules on corporal punishment and seclusion and restraint. Chapter 103 applies to all children, without regard to whether a child is eligible for special education. It regulates "physical restraint" and "physical confinement and detention" (seclusion). "Physical confinement and detention" is defined as "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. If a child's egress is not restricted, then Chapter 103's provisions on physical confinement and detention do not apply, regardless of whether a district's action is referred to as "time out." For example, if a child is given seat detention as part of a "time out," this is outside the scope of Chapter 103. *Id.* r. 281-103.3(4). Although Chapter 103 contains parent *notice* requirements whenever a district physically confines and detains a child, *see id.* r. 281-103.7(4), there is nothing in Chapter 103 that requires parent *consent*.

Violation of Chapter 103 may, in some cases, be a denial of the free appropriate public education guaranteed by the IDEA. *IDEA State Complaint*, 25 D.o.E. App. Dec. 192 (2009). The specific Chapter 103 violations found in this complaint are closely related to the potential for a denial of a free appropriate public education ("FAPE") under the IDEA. For that reason, and because the Department's investigation must focus on the future rights of all children with disabilities, *see* Iowa Admin. Code r. 281-41.151(2)"b", the Department will address Chapter 103 violations in the context of this IDEA complaint.

The following matters established by a preponderance of the evidence. *Letter to Reilly*, 64 IDELR 219.

Chapter 103 requires the District to maintain documentation of each instance of seclusion or restraint. Iowa Admin. Code r. 281-103.7(5). I examined the Chapter 103 documentation provided by the District for the relevant time period. After excluding entries that predated the one year limitations period for this complaint, *see id.* 281—41.153(3), and after excluding documentation that did not describe seclusion (e.g., time-out room's door not closed, student was restrained only), there were 455 reports concerning sixty-four children.[1] Figure One describes the number of times a child was secluded. Forty-six of the sixty-four children were secluded five or fewer times. Eighteen were secluded six or more times. Eighteen students accounted for more than three-quarters of the total number of seclusions in the district.

Figure One

Number of Times Secluded	Number of Children	Total Number of Seclusions
1	17	17
2	12	24

[1] The District's most recent certified enrollment for the time period at issue was 13,666.

3-5	17	64
6 or more	18	350
[redacted]	[redacted]	455

Figure Two describes the grade levels of each instance of seclusion. Prekindergarten and kindergarten were combined into one row to avoid revealing personally identifiable information, as were grades 8 through 12. This shows that seclusion is used predominantly in the early elementary grades: 277 of the 455 (60.88 %) instances occurred in grades PK through 3.

Figure Two

Grade(s)	Number of Instances
PK-K	46
1	59
2	128
3	44
4	55
5	37
6	55
7	21
8-12	10
[redacted]	455

Figure Three describes the length of each instance of restraint.[2] Twenty-eight percent of the instances lasted ten minutes or less; fifty-six percent of seclusion instances lasted twenty minutes or less. On the other end of the scale, 6.7 percent were longer than fifty-one minutes. I was unable to determine or reliably estimate the length of seclusion from three of the documents.

Figure Three

Length (In Minutes)	Number of Instances
1-5	48
6-10	80
11-15	60
16-20	68
21-25	46
26-30	40
31-35	25
36-40	23
41-45	19
46-50	13
51 or more	30
unknown	3

[2] In several forms, the District combined multiple seclusions onto the same form. Because the District treated these serial seclusions as essentially one instance, the Department will as well. This would include totaling the time for multiple seclusions.

[redacted]	455

Figure Four provides an average length of removal at each grade level. While all grades show short and long instances of seclusion, these data show an aggregate pattern of longer removals in the elementary grades. To provide protection of personally identifiable information,[3] these data are rounded to whole numbers. These data do not include the three instances for which the duration is unknown.

Figure Four

Grade(s)	Average Length of Seclusion
PK-K	28
1	28
2	20
3	29
4	22
5	24
6	20
7	19
8-12	18

[3] A cross-tabulation of Figures Two and Three would have yielded more specific information; however, it would have risked revealing personally identifiable information.

The District has constructed "time-out" rooms in school buildings serving all grade levels. As of December 7, 2016, the District maintained twenty-three "time-out" rooms. Most were "portable," in that they were temporary additions in a classroom, constructed of plywood and capable of removal; however, a portion were permanent, or were permanently attached to the building.

Twelve of the rooms have floor dimensions of six feet by six feet. Only one is smaller in floor dimension, and then only by one inch in dimension (5'11" x 6'). The remaining rooms are larger in floor dimension. Ceiling heights ranged from six feet, eleven inches to nine feet. The most common height was six feet, eleven inches, in eight rooms. The second most common height, in five rooms, was eight feet. Given these dimensions, and having personally inspected them, I find and conclude that they are "of reasonable dimensions" and comply with Iowa administrative rules. Iowa Admin. Code r. 281-103.6(1).

Each of the rooms has a light fixture, a vent, and a window. I find and conclude that the rooms have "sufficient light and adequate ventilation for human habitation." *Id.* r. 281-103.6(2).

The complaint notes that the walls and floors of rooms are lined with padding that is made of recycled rubber. The complaint refers to this padding as "foul-smelling black horse stall mats and flooring underlayment made from recycled tires." Having personally inspected the padding, I conclude it has a rubber odor but I cannot conclude that the odor is so strong that the rooms are unfit for student use. Furthermore, the District provided a convincing rationale for the material it selected: of all of the possible lining materials, this material is the easiest to sanitize and has lower risk of infection transmission than other types of lining, such as wrestling room mats or gymnastics mats. For one of many discussions of the risks associated with unsanitary padding, see James W. Hand & Randall R. Wroble, *Prevention of Tinea Corporis in Collegiate Wrestlers*, 34 J. Athletic Training 350 (1999). I further note that this padding has a relatively low risk of fire propagation. I find and conclude that the District's decision to use this particular variety of padding for the rooms it uses for physical confinement and detention is reasonable and consistent with Chapter 103. District staff informed me that the District would consider alternatives in specific cases, such as if a child had a

contact allergy to rubber. That case-by-case, data-driven approach is sufficient to address concerns about the rooms' padding.

The complaint appears to object to the location of these rooms in special education classrooms. The location of these rooms is committed to the District's sound discretion. While the rooms are not specifically restricted to children who receive special education services, and some of the incident reports reviewed were from children who were in general education, a large proportion of children who were physically confined are eligible for special education. The location of the rooms inside special education classrooms is a reasonable judgment that the Department will not disturb. Locating such a room in another portion of a school building would increase the distance and effort required to physically transport a child to the seclusion room, thereby increasing the risk of injury to students and staff. The Department will not question this reasoned judgment. *See generally M.M. v. District 0001 Lancaster County Sch.*, 702 F.3d 479 (8th Cir. 2012) (affirming school's decision to use seclusion, as opposed to the parent's preference for restraint, based in part on student and staff safety).

The complaint seeks a prohibition on physical confinement and detention except in "emergency situations in which a student's behavior poses imminent danger of serious physical injury to the student or others...." The authority the complaint cites for this prohibition is a guidance document from the United States Department of Education. United States Dep't of Educ., *Restraint and Seclusion: Resource Document* (2012). That document does not have the force of law and is framed in the language of recommendations ("should"), rather than requirements ("shall" or "must"). The Department is constrained to apply governing law, which allows:

> 1. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:
> - To quell a disturbance or prevent an act that threatens physical harm to any person.
> - To obtain possession of a weapon or other dangerous object within a pupil's control.
> - For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
> - For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
> - To remove a disruptive pupil from class or any area of school premises, or from school-sponsored activities off school premises.
> - To prevent a student from the self-infliction of harm.
> - To protect the safety of others.
>
> 2. Using incidental, minor, or reasonable physical contact to maintain order and control.
>
> An employee subject to these rules is not privileged to use unreasonable force to accomplish any

of the purposes listed above.

Iowa Admin. Code r. 281-103.4; *accord* Iowa Code § 280.21(2). This authority allows for the use of physical confinement in a manner broader than the non-binding recommendations contained in the federal guidance document. There is a meaningful check on staff actions in this rule: the contact with the student as part of physical confinement and detention must be reasonable. *See* Iowa Admin. Code r. 281-103.4. What is reasonable is determined based on the light of the severity of the actual or potential harm to be prevented. *Id.* r. 281-103.5 (describing multi-factor test for determining whether force was reasonable).

When viewed in this lens, the vast majority of the seclusions at issue met the standard contained in the Iowa Administrative Code. Examples include students engaging in self-harm, students who possessed weapons or weaponized objects (e.g., broken furniture), students who had injured others (up to and including broken bones of staff members), and students who had eloped from campus (up to and including into roadways and into construction sites). I specifically find and conclude that these instances of seclusion were specifically authorized by Iowa law.

I have considered the unintended consequences of a broad ban on seclusion. These would appear to be increased staff injuries, *cf.* Robert Paul Liberman, *Commentary: Interventions Based on Learning Principles Can Supplant Seclusion and Restraint*, 39 J. Am. Academy Psychiatry & L. 480 (2011) (hospital context), increased student injuries, increased referrals to law enforcement, increased placement in out-of-district settings, and increased suspension and expulsion. The proper focus is on developing a system of prevention and support where seclusion is not the first or only option, *see id.; see also* James M. Kauffman, *How We Prevent the Prevention of Emotional and Behavioral Disorders*, 65 Exceptional Child. 448, 449 (1999), rather than banning its use outright.

The record reflects the District using seclusion on a small number of occasions for minor infractions, and not to prevent injuries to self or others or damage to property. In its response to the complaint, the District estimated that four percent of incident reports included seclusion for minor infractions. This percentage is borne out in the Department's review of the documentation. The Department noted restraint used for minor infractions (stepping out of a line of students, having "attitude," being out of

"instructional control," foul language, etc.) or solely for threats that the student had no capability of carrying out (saying "I'll kill you" without having the means to do so). Seclusion for minor infractions is not a reasonable response under rule 281-103.4. Furthermore, this is specifically prohibited by rule 281-103.7(1), which provides: "Physical restraint and physical confinement and detention shall not be used as discipline for minor infractions and may be used only after other disciplinary techniques have been attempted, if reasonable under the circumstances...." Because the District engaged in a small but measurable use of seclusion for minor disciplinary infractions, the Department confirms that portion of the state complaint. Corrective action will be ordered, as discussed below in Part V.

The complaint seeks a restriction on the use of "time out" as a synonym for "physical confinement and detention." This is not something that the law would require. As noted by the District in its response to the complaint, the definition of physical confinement and detention includes the term "time out room." Iowa Admin. Code r. 281-103.6. This conclusion is supported by the following language from rule 281-103.1: "The applicability of this chapter to ...

physical confinement and detention does not depend on the terminology employed by the organization to describe ... physical confinement and detention." Chapter 103 is agnostic as to terminology. Should the District determine to voluntarily undertake the project suggested in the complaint as a matter of local governance, this would be its choice. Also, additional clarity of language could reduce the likelihood that children who need time out or time away are not placed in physical confinement and detention in a "time-out room" when the prerequisites for physical confinement have not been met. Not all time-out needs to occur in a time-out room. That being said, there is no violation.

The complaint asserts that the use of seclusion rooms acts as a threat of incarceration and "serves as a formidable visual indicator that they are people who may expect incarceration in the future."[4] The school-to-prison

[4] In addressing this portion of the state complaint, I rely on my prior specialized knowledge in this area of the law. *See, e.g.*, Thomas A. Mayes, *Persons with Autism and Criminal Justice: Core Concepts and Leading Cases*, 5 J. Positive Behav. Interventions 92 (2003); Thomas A. Mayes, *Denying Special Education in Adult Correctional Facilities: A Brief Critique of* Tunstall v. Bergeson, 2003 BYU Educ. & L.J. 193; Perry A. Zirkel & Thomas A. Mayes, *Are Inmates with Disabilities Entitled to Special Education?*, The

pipeline is an issue of major public concern and efforts to disrupt that pipeline are to be encouraged; however, a broad-spectrum prohibition of seclusion rooms may have unintended consequences. In lieu of physical confinement and detention, schools may resort to calls to law enforcement, which would widen the school-to-prison pipeline. In lieu of physical confinement and detention, schools may resort to exclusionary discipline, such as suspension and expulsion. The use of exclusionary discipline has a demonstrated link to lower graduation rates, lower academic achievement, and higher degrees of involvement in the juvenile justice and adult criminal justice systems. *See, e.g.*, Council of State Governments Justice Center, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement* (2011). The Department would have grave concerns about any broad-spectrum order that would have the unintended effect of widening, not narrowing, any school-to-prison pipeline.

The complaint alleges that children who are subjected to seclusion are stigmatized. While stigma is an

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Special Educator, Aug. 25, 2000, at 3.

appropriate concern, *cf.* daniel zeno, student note, *Shackling Children During Court Appearances: Fairness and Security in Juvenile Courtrooms*, 12 J. Gender Race & Just. 257 (2008), it is not the sole concern. The risk of stigma is one of many reasons to restrict the use of seclusion to instances of great magnitude; however, concerns about stigma must yield to countervailing concerns. If a child may injure self or others, then the risk of stigma must yield to the need to protect human health and life. *Cf. id.* Concerns about possible stigma, when not weighted correctly with other concerns, may interfere with needed interventions and delay effective and necessary responses. *Cf.* Kauffman, 65 Exceptional Child. at 452-53. The state board's rules on seclusion, if implemented with fidelity, provide the law's current check on unnecessary stigma.

I have considered the allegation that children may be traumatized by seclusion. Like concerns of stigma, concerns of trauma are part of a broader decision calculus and must be weighed along with the rules' concerns. Whether a particular student is susceptible to harm, due to trauma or adverse childhood experiences, is a legitimate factor in determining whether a school's actions in secluding a student are reasonable. The rules require that

these particular questions are answered on a student-by-student basis. Trauma is a legitimate consideration in determining whether seclusion is needed and proper, and may be a reason to place restrictions on its use for a particular child (such as through the IEP process, see Part IV, below), but is not a reason to broadly limit the availability of seclusion as a tool in education's collective tool box.

The Department had additional information available to it that is not available to the complainant; however, this information relates to the allegations in the complaint. This information is from the 455 incident reports that the Department reviewed. In those incident reports, the Department noted two patterns of violations that appeared in a small but discernible minority of reports: incomplete documentation and failure to obtain authorization for seclusion longer than fifty minutes. The Department will order corrective action, in the form of staff training, as discussed below in Part V.

Roughly thirty of the reviewed incident reports had some missing page or information. While some of the missing content could be inferred from context, some could not. The missing information most often related to the

length of the seclusion and the analysis of the seclusion after the fact (e.g., "Did the instance match the hypothesis in the child's functional behavioral assessment?", "Did the adult intervention reinforce the function?"). This information is necessary to comply with Chapter 103, to provide parents with important information about their children, and to make reasonable educational decisions. The District will be required to take corrective action to reduce the future risk of incomplete documentation.

At least three instances of seclusion that were longer than fifty minutes and lacked parent or administrator approval that the District's form requires.[5] While this is a small number of incident reports, it is roughly ten percent of the total number of incident reports containing seclusion of longer than fifty minutes. The rules require administrator (or designee) approval of seclusion exceeding sixty minutes or a school's typical class period, whichever

[5] The District's form requires *either* parental or administrator approval. While requiring parental approval might provide additional protections to students and families, the language of the rules compel a conclusion that parent approval must be in addition to, not in lieu of, administrator approval. Iowa Admin. Code r. 281-103.6(5).

is shorter. Iowa Admin. Code r. 281-103.6(5). This required administrator oversight provides a critical check in favor of student safety. The District will be required to take corrective action to reduce the future risk of future lengthy seclusion without administrator approval.

IV. Findings of Fact and Conclusions of Law: Interaction of Iowa Law on Seclusion and the IDEA

The parties differ on the relationship between chapter 103 and the IDEA. Briefly summarized, the complaint alleges that seclusion may be used only if seclusion is necessary to provide a FAPE. The District correctly notes that Chapter 103 is an "all child" chapter and that a child's individualized education program ("IEP") or behavior intervention plan ("BIP") need not specifically name seclusion before seclusion is used. That being said, if an IEP or a BIP lists seclusion as a planned intervention, the IEP or BIP must meet the standard for substantive appropriateness: "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999 (2017). The specific reference to seclusion in a child's

IEP or BIP as well as the circumstances under which seclusion is used or is not to be used, as opposed to reliance on Chapter 103 as an "all child" law, must be necessary for the child to receive a FAPE. While the IDEA does not require seclusionary time-out to be included in a child's IEP, *see OSEP Staff Memorandum 95-16*, 22 IDELR 531 (OSEP 1995) (apparently citing *Honig v. Doe*, 484 U.S. 305, 326 (1988)), a child's IEP team may elect to do, *id.* If it elects to do so, that decision is reviewed through the *Endrew F.* lens. Seclusion may violate the IDEA in two circumstances: its use is inconsistent with a child's IEP or BIP, *see OSEP Staff Memorandum*, 22 IDELR 531, or its inclusion in a child's IEP is not reasonably calculated ... in light of the child's circumstances," *Endrew F.*, 137 S. Ct. at 999.

For most children, seclusion is effective only as a means to protect safety. As a general rule, seclusion is not an effective way to teach pro-social replacement behaviors.[6] Seclusion as a planned intervention in an IEP

[6] "There is no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques." United States Dep't of Educ., *Restraint and Seclusion: Resource Document* 2 (2012).

or BIP, when viewed in light of the IEP as a whole, must be reasonably calculated to address the child's safety needs and must cohere with the child's present levels and assessment data. Furthermore, it must be individualized and not part of a one-size-fits-all BIP or safety plan. *IDEA State Complaint Decision 14-01*, 26 D.o.E. App. Dec. at 437.

The Department's visit to the District in May 2016 revealed a need to improve functional assessments of behavior and BIPs. This state complaint investigation found similar issues with seclusion. Some of these issues are evident at the surface level. For example, a notable number of reports listed the function of the child's aggressive behavior as escape from challenging or unpreferred tasks. Those reports indicated that, after seclusion, the child was sent home with a parent. This results in complete avoidance of challenging or unpreferred tasks. The adult intervention provided reinforcement of the behavior of concern by completely gratifying its function. *Cf. id.* at 446.

When considered as a whole and giving weight to the Department's May 2016 site visit, the Department concludes that some of the District's use of seclusion runs contrary

to the IDEA in at least two ways: the District uses seclusion as a planned intervention in IEPs in a way that does not meet minimum standards of compliance and uses seclusion in a way that runs contrary to the purposes of the IDEA. Including seclusion as a planned intervention does not appear to be individualized. Furthermore, the May 2016 site visit and a review of seclusion documentation in the present case reveal a need for improved decision-making. This is supported in the documentation on the relationship between seclusion and FBA data. As noted above, some of that information was incomplete. While some of the completed forms revealed a thoughtful view of the relationship between seclusion and a child's behavior (e.g., need to reconvene team, need to reconsider FBA or BIP), others appear to be completed pro forma. The violations found pose a risk of future FAPE violations.

To the extent that the complaint asserts that parents must be shown the seclusion rooms before they are included in the IEP, nothing in the IDEA requires this level of specificity. Parents must be reasonably informed of the IEP services their children are to be provided, and for some parents this may mean showing them the room at issue.

However, nothing in fact or law would compel the Department to require this of the District in all instances.

To the extent that the complaint alleges racial disproportionality in the use of seclusion, that portion of the complaint was withdrawn during a telephone scheduling conference in January 2017. Notwithstanding this withdrawal, the District is urged to attend to racial disproportionality in seclusion.

V. Corrective Action

Because the Department found violations of the IDEA, it must order corrective action. Iowa Admin. Code r. 281-41.151(2). This includes "corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement." *Id.* Corrective action may also include technical assistance activities and negotiations. *Id.* r. 281-41.152(2). In developing corrective action, the Department must consider the rights of other children with disabilities who are served by the District and AEA. *Id.* r. 281-41.151(2).

I am aware that the District has undertaken substantial work on its approaches to seclusion and restraint, some of which was prompted by the May 2016 site visit, some prompted by the school community, and some

initiated by District professionals. The Department acknowledges the importance of this collaborative work.

A. Review and Revision of Policies, Practices, and Procedures. The District shall review its policies, practices, and procedures on seclusion. This review shall focus on compliance with Chapter 103 and the intersection of Chapter 103 and the IDEA. The District's attention is directed toward the use of seclusion for minor infractions, the use of seclusion in a manner that may reinforce the function of the behavior of concern, the length of seclusion, alternatives to seclusion, the proper completion of documentation forms, and proper decision-making regarding whether seclusion is effective for the child considering the child's data.

The District shall provide its review to the Department within ninety days of the date of this decision, which shall include proposed corrective actions for any deficiencies identified. The review and proposed corrective actions are subject to the Department's approval. Any approved or required revision to policies, practices, and procedures must be completed within 180 days of the date of this decision.

If the District has already undertaken similar work, either voluntarily or in light of the Department's May 2016 site visit, it may submit some or all of that work to meet all or part of this corrective action item.

B. Staff Training. While the District staff have been trained regarding seclusion and restraint, the Department finds and concludes additional training is necessary.

The District shall propose a plan of training to the Department within ninety days of the date of this decision, identifying which groups of individuals are to be trained and the content of the training. Mandatory minimum training content shall be (1) training on items necessary to implement revised policies, practices, and procedures, (2) more detailed training on using seclusion for proper purposes, (3) more detailed training on proper documentation, (4) more detailed training on reviewing seclusion data to inform instructional planning and IEP team decision-making, and (5) classroom management training with ongoing support for teachers in early elementary grades. The training plan is subject to Department approval. Any approved or required staff training must be completed within 270 days of the date of this decision.

If the District has already undertaken similar work, either voluntarily or in light of the Department's May 2016 site visit, it may submit some or all of that work to meet all or part of this corrective action item.

C. IEP Team Meetings and Child-Specific Corrective Action. Given the data reviewed in this investigation as well as the data developed during the May 2016 site visit, the Department finds and concludes that the violations noted creates the potential for FAPE violations. For that reason and as a means of implementing the staff training requirements ordered in this decision, the Department orders the Respondents to consider the need for compensatory education for selected children. By this order the Department does not conclude that District definitely owes any compensatory education, only that conditions exist where the Department's obligation to consider the rights of all children with disabilities served by the District compel consideration of compensatory education.

The Department orders the District to convene IEP team meetings for any child secluded ten or more times from December 22, 2015, to December 21, 2016. The team will review each child's assessment and evaluation data

(including FBAs, if applicable), each child's IEP (including BIPs, if applicable), each child's seclusion documentation, and any other information the child's team deems relevant. If the team determines that the child was denied a FAPE, the team will consider what corrective is necessary to remedy the FAPE denial, using the following framework: (1) "What would the child's expected performance have been if the child had received legally compliant special education?" and (2) "What was the child's actual performance?"

The team may determine that compensatory education is appropriate. The measure of compensatory education required is the special education and support and related services reasonably required to close the gap between the answers to the first and second questions.

In initially calculating compensatory education if determined necessary, each child's IEP team shall consider the factors identified in this decision and the May 2016 site visit. If the child's IEP team is in agreement with the plan for compensatory education, the District shall report the plan to the Department for its review, and implement it unless questioned by the Department. If the child's IEP team is in disagreement about compensatory

education, the District shall refer this matter back to the Department, which shall consider whether to award compensatory education based on the child's specific facts. The Department retains jurisdiction over all determinations of compensatory education.

Any compensatory education awarded shall be reasonably calculated to place the student in the position she or he would have occupied but for the District's violations.

If the District offers to calculate compensatory education, and a child's parent (or child who is making her own educational decisions) declines the offer, the District shall provide documentation of such to the Department. If the District offers to implement an award of compensatory education calculated by a child's IEP team, and that offer is declined, the District shall provide documentation of such to the Department.

Compensatory education shall be supplemental to all present or future educational services required to receive a FAPE, and shall not supplant or displace those required services.

The compensatory services shall be reasonably to close that "gap" between expected and actual performance. Any compensatory services are to be provided in a manner and

location determined by the IEP team. The parents or child are not entitled to require services in a particular location or manner, or to request monetary compensation.

If the child is no longer enrolled in the District, the child's IEP team shall determine a plan for compensatory education that is reasonable in light of the child's current educational environment. That may include providing compensatory education on a contract basis with another school district, school, AEA, or other type of provider relevant to the child's needs.

The Department is available to provide technical assistance, including assistance in determining whether a particular item or service was compliant. The Department reserves the right to require technical assistance based on progress reports it receives from the District.

If the parties are unable to establish eligibility for compensatory education services or, if necessary, a plan for compensatory education services within one hundred and twenty days of the date of the Department's order, the Department will make such determination for each child.

Compensatory education shall be completed as soon as possible, but no later than one year from the date of this decision.

The District and AEA shall consider the results of the compensatory education review in developing and evaluating the on-going need for the professional development ordered in Part V.B of this decision.

If the District has already undertaken similar work, either voluntarily or in light of the Department's May 2016 site visit, it may submit some or all of that work to meet this corrective action item.

VI. Conclusion

For the reasons stated above, this complaint is CONFIRMED IN PART and NOT CONFIRMED IN PART. Corrective action is ordered as described.

Any pending matter or motion is overruled. Any allegation not specifically addressed in this decision is either incorporated into an allegation that is specifically addressed or is overruled. Any legal contention not specifically addressed is either addressed by implication in legal decision contained herein or is deemed to be without merit. Any matter considered a finding of fact that is more appropriately considered a conclusion of law shall be so considered. Any matter considered a conclusion of law that is more appropriately considered a finding of fact shall be so considered. The Department reserves

jurisdiction to enter supplemental orders to implement this decision.

There are no fees or costs to be awarded in this matter.

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 gives 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 which the party lives or has its primary office. A party may also have the right to seek review through an administrative law judge.

Because of the broad public importance of these questions, this decision will be published in the Department's appeal book. I would like to compliment counsel for the skill in which they presented their positions.

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

Sincerely,

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Concur,

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