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[REDACTED]

[REDACTED], Superintendent
[REDACTED]
[REDACTED]
[REDACTED], NE [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED], NE [REDACTED]

Dear Mr. [REDACTED] and Mr. and Mrs. [REDACTED]:

The Nebraska Department of Education, Office of Special Education (OSE) received a letter of complaint on March 21, 2023, filed on behalf of [REDACTED], a student enrolled at [REDACTED] by [REDACTED], parents of [REDACTED]. The complaint included one allegation. Based on the allegations, the following individual issues were identified to be investigated:

1. Did the District properly develop the Student's IEP [92 NAC 51 § 007.07]?
2. Did the District properly implement the Student's IEP [92 NAC 51 § 007.02]?

Based on the allegations, the following systemic issue was identified to be investigated:

1. Did the District consider the use of positive behavioral interventions and supports and other strategies to address students' behavior needs [92 NAC 51 § 007.07B3; 92 NAC 51 § 004.01]?

Complaint Resolution

In its March 29, 2023, letter to the complainant and letter to the district, opening the complaint investigation, OSE indicated that one of the components of the complaint investigation requires OSE to permit the district to propose a resolution to OSE to resolve the complaint. The district has proposed a resolution to OSE to resolve the complaint and OSE has accepted that resolution. OSE Issues this written decision that addresses each allegation in the complaint and contains findings of fact and conclusions; and the reasons for OSE's final decision. OSE will follow up on this final decision ensuring and verifying that the district completes all resolution activities within stated timelines.

Findings of Fact

The Letter of Complaint that OSE received on March 20, 2023, included the following:

- [REDACTED] has not followed its district policy and NDE's guidance regarding the use of restraint and seclusion in schools.
- [REDACTED] School in [REDACTED] is using a lock on their seclusion room.
- Staff are using a key to secure the door closed when secluding a student.
- The door does not unlock unless a staff member utilizes the key to unlock the door.
- The seclusion room door has been locked when [REDACTED] was inside on multiple occasions.
- [REDACTED] restrained using a CPI hold 12 times between April 14, 2022, and February 13, 2023.
- [REDACTED] was placed in the Recovery Room 5 times between April 29, 2022, and February 10, 2022.
- [REDACTED] had access to the key on February 9, 2023, raising concern that there is a lack of supervision which is out of compliance with [REDACTED] IEP.
- [REDACTED] has asthma which contraindicates the use of restraint which is documented in [REDACTED] MDT and IEP.
- The parents would like the team to discuss and document procedures to address [REDACTED] current behavior needs due to [REDACTED] disability and for the lock on the seclusion room to be removed.

In a Letter of Response that OSE received on April 21, 2023, the District stated the following:

- [REDACTED] is verified as a student with Autism and an Intellectual Disability who expresses frustration through acts of physical aggression.
- The District has tried a variety of positive behavioral interventions and supports to address [REDACTED] needs.
- Multiple staff members have received training in Rage to Reason method and in Practical and Functional Assessment and Skill-based Treatment.
- The IEP Team convened on February 15, 2023, to discuss the student's lack of progress made on [REDACTED] behavior goals and what next steps are necessary.
- The IEP Team worked to develop a new functional behavior assessment (FBA) and behavior intervention plan (BIP) in collaboration with ESU [REDACTED] and the Autism Spectrum Disorders (ASD) Network.

Conclusions

The District made proposals related to each of the issues above. OSE provided additional conditions that the District agreed to implement. As a result, the following is the resolution that OSE and the District have reached:

Issue 1 Individual

1. By May 19, 2023, the IEP team will reconvene to take the following steps:
 - a. Ensure that [REDACTED] most recent behavioral intervention plan is properly incorporated into [REDACTED] IEP.
 - b. Review [REDACTED] behavior goal and determine whether the IEP team believes the goal needs to be revised.
 - c. Create a plan that specifies when restraint and/or seclusion can be utilized with [REDACTED]. This plan will specifically address when and how a door can be locked and who will have access to any key. Ensure restraint and/or seclusion is used for emergency and short-term circumstances as recommended by Question B-3 in [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions](#)
 - d. Discuss whether [REDACTED] is currently in the least restrictive environment while considering the information found in e below.
 - e. Discuss whether [REDACTED] placement was changed through the use of restraint and/or seclusion during the course of the 22-23 school year.
 - i. If the Team determines [REDACTED] placement was changed as a result of the use of restraint/seclusion, the Team must conduct a Manifestation Determination.
2. The District will send a copy of the following to NDE for review within 5 calendar days of the meeting:
 - a. A copy of [REDACTED] IEP.
 - b. A copy of the functional behavioral assessment (FBA) that was used to develop the behavior intervention plan (BIP).
 - c. A copy of the behavior intervention plan that was incorporated into the IEP.
 - d. If the IEP Team determines that revision to the Student's behavior goal was necessary pursuant to 1a above, a copy of the revised behavior goal and accompanying prior written notice (PWN). If the IEP Team determines that revision to the Student's behavior goal was not necessary to 1a above, IEP Team meeting notes explaining the decision.
 - e. A copy of the plan specifying when restraint and/or seclusion may be utilized with [REDACTED].
 - f. Meeting notes detailing the discussion regarding [REDACTED] least restrictive environment and accompanying PWN.
 - g. A copy of the behavior and/or attendance records detailing when [REDACTED] was restrained and/or secluded including the length of time each episode of restrain and/or seclusion was used.
 - i. A copy of the Manifestation Determination if applicable.

Issue 2 Individual

3. Meeting with all individuals responsible for the implementation of [REDACTED] IEP and BIP should be within 5 business days of the IEP meeting.
 - a. Documentation must be sent to NDE within 5 calendar days of the date of this letter and include the following:
 - i. Copy of the IEP and BIP in effect at the time this complaint was filed;
 - ii. Copies of service logs for the duration of time this IEP and BIP were in effect showing the provision of special education services related services; supplementary aids, services, program modifications, and supports for school personnel related to the BIP and behavior goals including the location, frequency, and duration of each.
 - iii. The District's determination on whether any services, modifications, and supports were not provided according to the BIP, which NDE will verify.
 - b. The District must provide compensatory service for any behavior intervention services that NDE verifies were not implemented.
 - i. The IEP team, including the Parent(s), shall determine the schedule for which the compensatory services will be provided. If the district is unable to convince the Parent to attend the IEP Team meeting, the district will document the attempts to contact the parent as required by 92 NAC 007.06D and hold the meeting without the parent.
 - ii. The schedule for compensatory services must be provided to NDE within 10 calendar days of the IEP Team meeting.
 - iii. Compensatory services shall be completed by the date agreed upon by the District and NDE. Student absence or refusal of the parent to make the child available shall result in a waiver of service scheduled for that day. Staff absences must be rescheduled. Any compensatory services declined or not used by the agreed-upon date shall be deemed waived (assuming the district has made a good-faith effort to timely commence and provide all compensatory services).
 - iv. The District must submit service provider logs verifying the completion of all compensatory services to NDE by the last business day of each month until the service is complete and all service has been verified.
 - c. From the date of this letter until December 31, 2023, the District shall send to NDE, within two school days of each occurrence of restraint or seclusion for the Student, a copy of the recovery log including the length of time the Student was involved in restraint and/or seclusion and the steps the District took prior to utilizing the restraint and/or seclusion.
4. The IEP Team will reconvene at the end of the first quarter of the 2023-2024 school year or after the 10th day of the use of restraint or seclusion of [REDACTED] (whichever occurs first) to review the progress of [REDACTED] behavior goal and determine whether any changes need to be made to ensure that [REDACTED] BIP had been implemented with fidelity.
 - a. A copy of the IEP, PWN, and meeting agenda will be sent to NDE within 5 calendar days of the meeting.

Issue 3 Systemic

5. By October 30, 2023, the District will conduct training with all staff that currently or may serve on an IEP Team:
 - a. The use of positive behavioral supports and interventions;
 - b. How to document appropriate use of restraint and seclusion in a student's IEP;
 - c. How to properly document behavioral incidents to adequately reflect fidelity with a BIP; and
 - d. How to adequately communicate expectations of all other staff who help implement a student's IEP of their specific role within an IEP.
6. By October 30, 2023, the District will conduct training with all staff who are responsible for implementing IEPs for students on how to read an IEP and understand their role in implementation.

- a. Training materials must be sent to NDE 14 calendar days prior to the training for approval. Sign-in sheets or other verification of attendance must be provided to NDE within 5 calendar days of the training.
7. A copy of the behavior and/or attendance records detailing when the following students were restrained and/or secluded including the length of time each episode of restraint and/or seclusion was used.
 - a. 2455173682
 - b. 4667258381
 - c. 5452161929
 - d. 7303349670
 - e. 8324868577
8. Copies of Manifestation Determination meeting notes for any of the students listed above, if applicable.

Decision and Rationale

As part of the State Complaint process, Rule 51 (92 NAC § 51-009.11C2a) allows the district the opportunity to respond to the complaint including making a proposal to OSE to resolve the complaint. Upon review of the issues within the complaint, the Nebraska Department of Education has determined the District's resolutions put forth in this letter have resolved this complaint and this complaint investigation is now considered closed. If concerns remain on these issues upon the conclusion of revision of the FBA and BIP; reconvening of the IEP in the fall (or earlier if required after the 10th use of restraint or seclusion; and the completion of training required by all staff who currently serve or may serve on an IEP team by October 30, 2023, a new complaint may be filed.

If you have any questions concerning the information within this letter, please contact Kelly Wojcik at 531-207-9986. As the Director of Accountability, she will be able to respond to any questions you may have regarding the information contained in this report. Mary Lenser and Christopher Chambers will be following up with the District to ensure the resolution activities have occurred as stated.

Sincerely,



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CC: [REDACTED], Director of Special Services, Auburn Public Schools
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