



Illinois State Board of Education

100 North First Street • Springfield, Illinois 62777-0001
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Darren Reisberg
Chairman

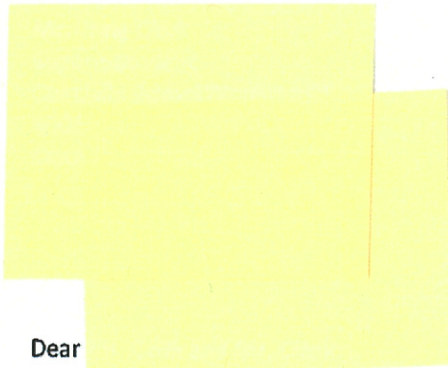
Dr. Carmen I. Ayala
State Superintendent of Education

January 21, 2020



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and



Re:



Dear

The Illinois State Board of Education (ISBE), Special Education Services Department, has completed its investigation of the complaint, dated November 20, 2019, lodged by Jesse Ruiz, a representative of the Office of the Governor, regarding the special education services for [REDACTED], a student enrolled in a public therapeutic day school operated by [REDACTED]. Authority for conducting this investigation is the Individuals with Disabilities Education Act, P.L. 108-446, 34 CFR, 300.151 - 300.153.

The review focused on the following requirements:

34 Code of Federal Regulations, §300.101, which states

- a) *General. A free appropriate public education must be available to all children residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).*

23 Illinois Administrative Code, 1.285 (IN EFFECT PRIOR TO NOVEMBER 20, 2019), which states in part
Isolated time out and physical restraint as defined in this Section shall be used only as means of maintaining discipline in schools (that is, as means of maintaining a safe and orderly environment for learning) and only to the extent that they are necessary to preserve the safety of students and others. Neither isolated time out nor physical restraint shall be used in administering discipline to individual students, (i.e., as a form of punishment). Nothing in this Section or in Section 1.280 of this Part shall be

construed as regulating the restriction of students' movement when that restriction is for a purpose other than the maintenance of an orderly environment (e.g., the appropriate use of safety belts in vehicles).

a) "Isolated time out" means 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. The use of isolated time out shall be subject to the following requirements.

1) Any enclosure used for isolated time out shall:

- A) have the same ceiling height as the surrounding room or rooms and be large enough to accommodate not only the student being isolated but also any other individual who is required to accompany that student;
 - B) be constructed of materials that cannot be used by students to harm themselves or others, be free of electrical outlets, exposed wiring, and other objects that could be used by students to harm themselves or others, and be designed so that students cannot climb up the walls (including walls far enough apart so as not to offer the student being isolated sufficient leverage for climbing); and
 - C) be designed to permit continuous visual monitoring of and communication with the student.
- 2) If an enclosure used for isolated time out is fitted with a door, either a steel door or a wooden door of solid-core construction shall be used. If the door includes a viewing panel, the panel shall be unbreakable.
- 3) An adult who is responsible for supervising the student shall remain within two feet of the enclosure.
- 4) The adult responsible for supervising the student must be able to see the student at all times. If a locking mechanism is used on the enclosure, the mechanism shall be constructed so that it will engage only when a key, handle, knob, or other similar device is being held in position by a person, unless the mechanism is an electrically or electronically controlled one that is automatically released when the building's fire alarm system is triggered. Upon release of the locking mechanism by the supervising adult, the door must be able to be opened readily.

e) Time Limits

- 1) A student shall not be kept in isolated time out for longer than is therapeutically necessary, which shall not be for more than 30 minutes after he or she ceases presenting the specific behavior for which isolated time out was imposed or any other behavior for which it would be an appropriate intervention.

f) Documentation and Evaluation

- 1) A written record of each episode of isolated time out or physical restraint shall be maintained in the student's temporary record. The official designated pursuant to Section 1.280(c)(3) of this Part shall also maintain a copy of these records. Each record shall include:
- A) the student's name;
 - B) the date of the incident;
 - C) the beginning and ending times of the incident;
 - D) a description of any relevant events leading up to the incident;
 - E) a description of any interventions used prior to the implementation of isolated time out or physical restraint;
 - F) a description of the incident and/or student behavior that resulted in isolated time out or physical restraint;
 - G) a log of the student's behavior in isolated time out or during physical restraint, including a description of the restraint techniques used and any other interaction between the student and staff;
 - H) a description of any injuries (whether to students, staff, or others) or property damage;
 - I) a description of any planned approach to dealing with the student's behavior in the future;

- J) a list of the school personnel who participated in the implementation, monitoring, and supervision of isolated time out or physical restraint;
- K) the date on which parental notification took place as required by subsection (g) of this Section.
- 2) The school official designated pursuant to Section 1.280(c)(3) of this Part shall be notified of the incident as soon as possible, but no later than the end of the school day on which it occurred.
- 3) The record described in subsection (f)(1) of this Section shall be completed by the beginning of the school day following the episode of isolated time out or physical restraint.
- 4) The requirements of this subsection (f)(4) shall apply whenever an episode of isolated time out exceeds 30 minutes, an episode of physical restraint exceeds 15 minutes, or repeated episodes have occurred during any three-hour period.
 - A) A licensed educator knowledgeable about the use of isolated time out or trained in the use of physical restraint, as applicable, shall evaluate the situation.
 - B) The evaluation shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for alternate strategies (e.g., assessment by a mental health crisis team, assistance from police, or transportation by ambulance).
 - C) The results of the evaluation shall be committed to writing and copies of this documentation shall be placed into the student's temporary student record and provided to the official designated pursuant to Section 1.280(c)(3) of this Part.
- 5) When a student has first experienced three instances of isolated time out or physical restraint, the school personnel who initiated, monitored, and supervised the incidents shall initiate a review of the effectiveness of the procedures used and prepare an individual behavior plan for the student that provides either for continued use of these interventions or for the use of other, specified interventions. The plan shall be placed into the student's temporary student record. The review shall also consider the student's potential need for an alternative program or for special education.
 - A) The district or other entity serving the student shall invite the student's parents or guardians to participate in this review and shall provide ten days' notice of its date, time, and location.
 - B) The notification shall inform the parents or guardians that the student's potential need for special education or an alternative program will be considered and that the results of the review will be entered into the temporary student record.
- g) Notification to Parents
 - 1) A district whose policies on the maintenance of discipline include the use of isolated time out or physical restraint shall notify parents to this effect as part of the information distributed annually or upon enrollment pursuant to Sections 10-20.14 and 14-8.05(c) of the School Code [105 ILCS 5/10-20.14 and 14-8.05(c)].
 - 2) Within 24 hours after any use of isolated time out or physical restraint, the school district or other entity serving the student shall send written notice of the incident to the student's parents, unless the parent has provided the district or other entity with a written waiver of this requirement for notification. The notification shall include the student's name, the date of the incident, a description of the intervention used, and the name of a contact person with a telephone number to be called for further information.
- h) Requirements for Training
 - 1) Isolated Time Out

Each district, cooperative, or joint agreement whose policy permits the use of isolated time out shall provide orientation to its staff members covering at least the written procedure established pursuant to Section 1.280(c)(2) of this Part.

Background and Summary of Allegations

The complaint referenced a November 19, 2019, newspaper article, which addressed the use of time out in schools within the state. Specifically, the article stated that [REDACTED] [REDACTED]

the article, the parent told administrators that [REDACTED] and is [REDACTED]. According to the article, [REDACTED]

Action Taken in Response to the Complaint

During the investigation, telephone and email communications regarding the issues in the complaint occurred with the director of the special education cooperative ("director").

An on-site visit occurred on [REDACTED] that comprised of a tour of the facility and separate interviews with the director and the principal of the therapeutic day school ("principal").

Further, a telephone interview was conducted with the parent on [REDACTED].

Student Information

[REDACTED]

Facility Information

During the [REDACTED], on-site visit, the principal and director reported that the facility houses two types of programs. Students with emotional disabilities and other disabilities that require social emotional learning supports are served in the main building. The Strategies for Teaching Based on Autism Research (STAR) program classrooms are located in modular classrooms behind the main building and serve students with autism and developmental needs.

Based upon the information provided, the student currently participates in the [REDACTED] program. Per the cooperative's website, the [REDACTED], as follows:

[REDACTED]



Findings/Conclusions

Issue 1—Free Appropriate Public Education {34 CFR §300.101}

No violation is found as explained below:

Allegation by Complainant

The complaint referenced a November 19, 2019, newspaper article, which addressed the use of time out in schools within the state. Specifically, the article stated that during school meetings, the parent of the above-referenced student saw time out booths at the therapeutic day school the student attended. Per the article, the parent told administrators that time out should never be used with [REDACTED] who has [REDACTED] and is [REDACTED]. According to the article, the parent was assured that the student would not be put in time out, but [REDACTED] began to worry when [REDACTED] came home."

Response from Cooperative

In its [REDACTED], written response, the [REDACTED] denied the allegation, stating that the allegation is baseless. The [REDACTED] contends that the student has never been subjected to an isolated time out. Further, the [REDACTED] stated, in part:

"The Complaint is based upon a recent news report that misstates facts and misrepresents the purpose of an isolated time out. Contrary to the bleak picture painted within the report, an isolated time out was and is for an express therapeutic purpose: to prevent a student from injuring himself/herself or others. See 23 Ill. Admin. Code 1.285. The District expresses profound disappointment and frustration that its compliance with state regulations—which include documenting each instance of isolated time out and physical restraint—and baseless speculation by parents and journalists have resulted in it being demonized as an institution that frightens and harms children with disabilities.

There is no truth to the allegation leveled against the District. [Student] has never been subjected to an isolated time out. The District has attempted to work cooperatively with [student's] mother regarding his education, engaging in mediation with her twice within the past calendar year, and utilizing ISBE's facilitated IEP process for all meetings. The district is currently providing special education and related services to [student] at [public therapeutic day school], a placement expressly chosen by [student's] mother after an initial agreement had been reached and (paradoxically) where [student's] mother alleges the alleged isolated time out occurred. The District lacks understanding as to why false allegations have been made against it, and again expresses its disappointment and frustration regarding the manner in which it has been painfully misrepresented by the media and within the instant Complaint."

Interviews

Both the director and the principal reported in separate interviews on [REDACTED] that isolated time out has not been utilized with the student, as the student does not exhibit behaviors that would

warrant the use of such intervention. Further, it was reported that the time out rooms located in the main building are not utilized with any students in the [REDACTED] program unless there is a safety concern.

Both administrators also reported that the classroom the student is enrolled in utilizes a non-exclusionary time out area within the classroom as a behavior management technique.

A telephone interview was conducted with the parent on [REDACTED], at which time the parent acknowledged that [REDACTED] did not know if [REDACTED] child had ever been placed in isolated time out. In a follow up email on [REDACTED], the parent stated, "... Throughout the last school year, [the student] said "time out" and "blue" any time anyone asked about school..."

The parent was offered the opportunity to submit supporting documentation of [REDACTED] concerns regarding the use of isolated time out with [REDACTED] child. This notification occurred verbally on [REDACTED], and in writing, via email, on [REDACTED]. To date, no documentation has been received from the parent.

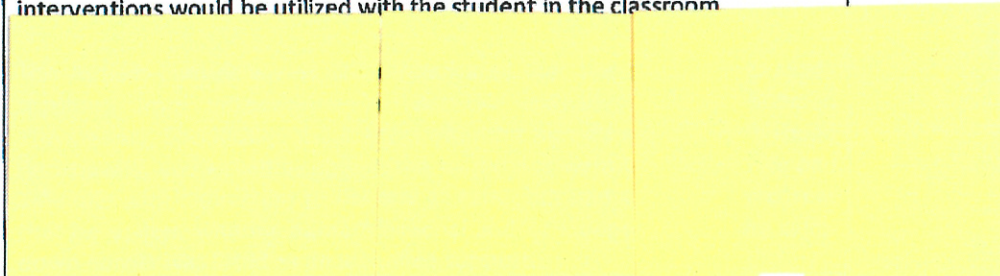
Tour of Facility

As previously stated, an on-site visit was conducted on [REDACTED]. It was observed that the facility has five time out rooms located in the main building. However, no rooms used for isolated time out were observed in the modular building where the student's classroom is located or within the student's classroom. While observing the student's classroom, the principal pointed out an area that is utilized for non-exclusionary time out. The unenclosed area consists of a student's chair located next to a teacher's desk within the classroom.

Review of Time Out Records

A review of time out forms submitted to this agency by the [REDACTED] indicated that there were no records of isolated time out for this particular student between November 20, 2018, and November 20, 2019.

Review of Relevant Information

[REDACTED] IEP	The Additional Notes section indicates that during the meeting, school administration shared information regarding non-violent crisis intervention, including time out and restraint. The notes state that the team discussed how interventions would be utilized with the student in the classroom. 
[REDACTED] Daily Point Sheet	During fifth period, the daily point sheet indicates that the student when [REDACTED] needed to take turns with peers. Staff redirected [REDACTED] but a few moments later, the student spilled all the objects on the floor. Staff asked the student to help pick up the

	objects, but [REDACTED] ists. As a result, the student sat in the corner for five minutes.
Daily Point Sheet	According to the daily point sheet, the student continually wanted activities that [REDACTED] peers had during first period. As a result, the student [REDACTED] and was [REDACTED] toward staff. Staff tried calming and redirecting the student, but, after 15 minutes of the student exhibiting this behavior, the teacher had the student sit in the corner.
Daily Point Sheet	After lunch, the daily point sheet indicates that the student started pouting. Staff tried redirecting [REDACTED] several times, but [REDACTED] continually [REDACTED]. Staff used planned ignoring and had the student move to a different area in the room. Staff explained that once [REDACTED] stopped [REDACTED] could come back to the table. It was reported that [REDACTED] immediately stopped and did a good job following directions when [REDACTED] returned to the table. During sixth period, it was documented that the student started [REDACTED] the table, so staff used planned ignoring and continually tried to redirect the student. Ultimately, the teacher had the student sit in the corner for a couple of minutes.
Daily Point Sheet	It was documented that, during seventh period, the student was put in the corner for redirection.
Daily Point Sheet	It was documented that the student had to sit in the corner to be redirected during fourth period.
Daily Point Sheet	During first period, it was documented that the student had to sit in the corner after multiple prompts for redirection.
Daily Point Sheet	The daily point sheet indicates that the student had to be redirected and had to sit down for not following directions during fourth period.
Daily Point Sheet	It was documented that the student did not follow directions, despite multiple prompts. The student did not comply and was sent to the corner for redirection during third period.
Daily Point Sheet	During [REDACTED] the daily point sheet indicates that the student required a lot of prompts to work and follow directions. The [REDACTED] had the student sit in the corner for redirection.
IEP	The IEP includes a Functional Behavioral Assessment (FBA) and a Behavior Intervention Plan (BIP). The target behavior states that the student does not [REDACTED] with peers and staff and [REDACTED] to comply with school expectations and staff directives. The student likes one-on-one attention and becomes defiant and stubborn when [REDACTED] is not receiving enough attention. [REDACTED] while working on this skill. [REDACTED] be a little more difficult for [REDACTED] and [REDACTED] lack of compliance/willingness to try. Time out is listed as a restrictive disciplinary measure in the BIP. Time out is also listed as an identified support to address the student's need for [REDACTED] the [REDACTED] other supports documented include [REDACTED]

	<p>FBA/BIP, positive reinforcement, token economy, and</p> <p>Attached to the IEP were documents submitted by the parent, including concerns and goals for the meeting. One of the concerns listed was the use of time out or restraint as punishment. The explanation from the parent states the following:</p> <p><i>"Time outs and restraints are not used as a form of punishments-says [public therapeutic day school] handbook. I understand that restraints are not applicable, but time outs do [sic]. I've been confused about how time outs are actually used (standing in corner, or on the wall, or in a chair). I have asked about this time and time again. I get a differ[en]t response from each person. So, I would like to have it discussed now and put in [redacted] IEP in a way that we can agree on it."</i></p> <p>In the Additional Notes, it was documented that the parent wanted the student to go to a soft area if [redacted] was going to hurt [redacted] or others. Per the notes, the parent also stated that that [redacted] wanted [redacted] to move to an area to calm down.</p>
IEP	According to the Additional Notes, the meeting was reconvened from February 8, 2019. The notes indicate that the parent asked about time out and the principal explained that the "time out" in the main building is different than the "time out" in the student's classroom.
Mediation Agreement	As part of the agreement, the parent and the resident district agreed to change the student's placement from a public therapeutic day school to a private therapeutic day school.
IEP	The Additional Notes indicate that the meeting was convened to address the student's transportation needs as a result of the [redacted] mediation agreement, in which the parties agreed to a change of placement to a private therapeutic day school. No revisions regarding the use of time out were documented.
IEP	<p>The meeting was convened to continue to address the student's placement that resulted from the [redacted] mediation agreement. The Additional Notes indicate that the private therapeutic day school required the parent and the public school district to sign a document regarding crisis intervention procedures, but the parent refused to sign. Per the notes, the private therapeutic day school agreed to admit/serve the student without the signed document, but noted that, in the event of an emergency situation, they would enact any behavioral measures that were needed in order to ensure the safety of the student and others.</p> <p>The Additional Notes further indicate the parent's ongoing concerns regarding transportation to the private placement. The district offered to provide transportation to and from the private facility. The district also offered to provide a bus monitor and a backup bus monitor with training on the</p> <p>j. The parent provided a note fi...</p>

	indicating that the student could not be on the bus for an hour and subsequently objected to the student's private placement, despite the [REDACTED]
Mediation Agreement	<p>Per the [REDACTED], the parties agreed to change the student's placement from a private therapeutic day school back to [REDACTED] previous public therapeutic day school.</p> <p>Further, as part of the [REDACTED], the parent and the district agreed to a communication plan. The [REDACTED] stated, in part, that in the event that the student was involved in a physical restraint or isolated time out, the district would provide written notification to the parent within 24 hours.</p>
IEP Amendment	The Additional Notes indicate that, per the [REDACTED], [REDACTED] IEP was amended to reflect the student's change of placement from a private therapeutic day school to a public therapeutic day school.
Facilitated IEP	The notes indicate that the parent requested a specific list of behavior interventions, which the principal provided. The notes state that the team discussed behavior interventions and the principal added that non-exclusionary time out is an intervention that may be used in which a student is moved to a different area in the classroom, but still allowed to participate in class.
Email	<p>In an email to ISBE, the parent stated, in part:</p> <p><i>"...Also, as I said in the article, I would never be 100% sure if they placed my [REDACTED] in the seclusion rooms. I do know that my [REDACTED] came home multiple occasions [REDACTED] have documentation of my consistent asking [sic] staff why [REDACTED] would be saying this, because I have been in the class for observation and there is no blue time out area. I was never given a logical answer..."</i></p>

Summary and Discussion

According to information provided by the director and the principal, a non-exclusionary time out area is utilized within the student's classroom as a behavior management technique. Based upon a review of the student's Daily Point Sheet from [REDACTED] to [REDACTED], non-exclusionary time out (i.e., sit in corner, move to another area in classroom, sit down) was utilized with this student on 10 occasions. Each of these incidents occurred between [REDACTED] and [REDACTED] and the IEP in effect at that time, dated [REDACTED] allowed for the use of a calm-down corner.

Based upon the documentation provided, there is no record that isolated time out has been utilized with the student. Rather, the use of a calm down corner was utilized as a support to address the student's needs in accordance with the requirements of [REDACTED] IEP.

Issue 2—Requirements for the Use of Isolated Time Out and Physical Restraint {23 IAC 1.285}

No violation is found as explained below:

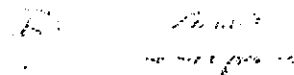
As previously stated in Issue 1, there is no record that isolated time out was utilized with this student during the time frame of this investigation ([REDACTED]). Therefore, no violation of 23 IAC 1.285 occurred with regard to this student.

Corrective Action

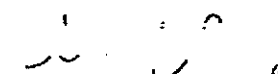
Based upon this information, no corrective action will be required. This complaint investigation is considered closed.

Cooperation from both parties during this investigation is appreciated. Use of this complaint process does not preclude an eligible party such as a parent, school district, or a student from requesting a special education due process hearing. If you have any questions regarding this response, I can be reached at 217-782-5589 or khandy@isbe.net.

Sincerely,



Barbara A. Moore
Director of Special Education



Karen Handy
Principal Education Consultant
Special Education Department

cc: Mr. Jesse Ruiz, Office of the Governor
orney for