

Settlement Agreement
between
The United States of America
and
Montcalm Area Intermediate
School District

INTRODUCTION

The parties to this Settlement Agreement (Agreement) are the United States and Montcalm Area Intermediate School District (MAISD or the District) (collectively, the Parties).

On March 22, 2023, the U.S. Department of Justice, through the Educational Opportunities Section of the Civil Rights Division and the United States Attorney's Office for the Western District of Michigan (collectively, the United States), notified MAISD that it had opened an investigation to determine whether the District's seclusion and restraint practices deny students with disabilities access to the District's programs and services in violation of Title II of the Americans with Disabilities Act (Title II), 42 U.S.C. § 12132. The United States' investigation determined that the District discriminated against students on the basis of disability by denying them the opportunity to participate in or benefit from the District's education program, *see* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), (b)(1)(i); and failing to make reasonable modifications to avoid disability discrimination in the District's program, *see* 28 C.F.R. § 35.130(b)(7).

The District denies the United States' allegations of discrimination, but wishes to avoid the costs, time-burdens, and risks of further legal proceedings. The District also approves this Agreement because it believes that programmatic changes are in the best interest of the students educated by the District.

The District agrees that it is in its best interest, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The purpose of this Agreement is to address discrimination on the basis of disability in the use of seclusion or restraint, and to ensure access to educational opportunities and a safe learning environment for students with disabilities in the District.

DEFINITIONS

- A. **“Administrators”** refers to all principals, assistant principals and District-level supervisors who oversee or evaluate District-operated programs.
- B. **“Behavior Intervention Plan”** or **“BIP”** refers to a plan created by appropriately trained professionals for an individual student, composed of positive behavioral interventions, strategies, and supports, which may include reasonable modifications to the nature of instruction, curriculum, or school routine. Such plans are typically developed based on the outcome of a Functional Behavioral Assessment, and in consultation with and reflect feedback from parents/guardians, regarding the emotional, mental, and physical health of the student, as well as other relevant data.
- C. **“CPT”** refers to Crisis Prevention Techniques. Crisis Prevention Techniques refers to Restraint and De-escalation techniques that are designed to permit the District to prevent and de-escalate behavior crises and to respond safely and effectively to incidents of acute behavior crisis that place the student or others at imminent and substantial risk of serious physical injury. CPT training must be provided in accordance with the standards of an appropriate, recognized organization that provides such training such as the Crisis Prevention Institute, Inc.
- D. **“Days”** means instructional/school days at the Seiter Education Center, unless specifically indicated otherwise. If a deadline falls on a weekend; a District, state, or federal holiday; or a date when the Seiter Education Center is otherwise closed, that deadline will be extended to the first regular instructional/school day following.
- E. **“De-escalation Techniques”** refers to a progression of non-verbal (e.g., body language, physical cues, and allowing personal space), verbal, and environmental interventions used to reduce student behavior that may pose a danger to the student or others.
- F. **“Emergency Intervention Plans”** or **“EIPs”** are plans included as part of a student’s special education documents if the District, in consultation with parents/guardians, decides that a student requires more than a BIP. EIPs must be created on an individual basis and only when the documented history of a student’s behaviors in the past demonstrates a pattern of behavior that poses a substantial risk of creating an emergency situation in the future that could result in the use of physical restraint. The EIP will be developed in accordance with state law and guidance from the Michigan Department of Education relative to the development of EIPs and may be used only in the case of emergencies that pose an imminent danger of serious physical harm to self or others but may not be used as a substitute for a student’s BIP. EIPs may be developed concurrently with FBAs and BIPs, if behaviors arise that require an EIP but a BIP is not already in place.
- G. **“Functional Behavioral Assessment”** or **“FBA”** refers to a systematic process that is used to operationally define a behavior, identify factors that support the behavior, and determine the underlying function or purpose of a behavior, so that an effective BIP can be developed. An FBA describes the problem behavior, identifies preceding and subsequent events that control the behavior, and develops and tests a theory of the behavior.

- H. **“Guided Movement”** refers to the temporary touching of the hand, wrist, arm, shoulder, or back without applying pressure or force for the purpose of guiding or directing a student to a safe location, provided such contact occurs only for such purpose and only for so long as necessary to guide the student to safety.
- I. **“Incident Report”** refers to the District document(s) titled “Draft Discipline Referral,” or “Montcalm Area Intermediate School District Notice of Use of Seclusion & Restraint,” including attachments, and all its subsequent iterations which the District uses to record what happened during a Seclusion and/or Restraint.
- J. **“Instructional Staff”** refers to certified staff (e.g., teachers and counselors) and non-certified staff (e.g., teacher aides or paraprofessionals) who work directly with students.
- K. **“ISD/Local Programs”** refers to classrooms operated and staffed by the District within local independent school districts that pair specialized instruction for students with Autism Spectrum Disorders, Emotional Impairments, and Moderate/Severe Cognitive Impairments with inclusion in general education classes and activities.
- L. **“Multi-Tiered Systems and Supports Specialists”** or **“MTSS Specialists”** are District employees responsible for overseeing the District’s implementation of MTSS interventions. MTSS Specialists assist and support building staff and administration in improving student performance in academic, behavior, and social skills for all students who need accommodations or are struggling in the school setting. MTSS refers to a three-tiered framework, such as Positive Behavior Interventions and Supports, to enhance the use of a continuum of evidence-based practices to achieve important outcomes for every student.
- M. **“Qualified Behavior Interventionist”** refers to an individual (including a Board Certified Behavior Analyst, qualified licensed social worker as defined by MARSE R.340.1799 and Administrative Rules for School Social Workers, R340.1001-1016, or qualified licensed school psychologist as defined by MARSE 340.1799e and School Psychologists Certification Code, R380.201-380-214) who has expertise, by education, or licensure, in:
 - (i) evidence-based class-wide, school-wide, and targeted behavior prevention and management strategies (i.e., tier 1 and tier 2 systems of support);
 - (ii) Functional Behavioral Assessment procedures and components, results analysis, and report generation;
 - (iii) writing function-based Behavior Intervention Plans based on Functional Behavioral Assessment results, including developing and implementing function-based antecedent and consequence strategies;;
 - (iv) behavioral data collection methods and data-based decision-making; and
 - (v) monitoring the fidelity of interventions and developing and implementing remedies when interventions are not implemented with fidelity.
- N. **“Restraint”** refers to any physical contact between any District employee or contractor and a student in which the student involuntarily participates and that immobilizes a student or reduces the ability of that student to move the student’s torso, arms, legs, or head freely. The term includes holding or grabbing a student to escort, compel, or coerce the student to move to another location. It does not include a voluntary Guided Movement or consensual,

solicited, or unintentional contact to provide comfort, assistance, or instruction. An action need not be a trained technique to be a Physical Restraint.

- O. **“Seclusion”** refers to the involuntary confinement of a student in any room or area, from which the student may not leave or are blocked from leaving (including if they are told they may not leave) regardless of its name (including “safety room,” “chill area,” “chill zone,” “calming room,” “break room,” “quiet room,” or “regulation room”). This includes any practice that would constitute Seclusion under Michigan law, MCL § 380.1307h(s), and Seclusion through use of soft blocking materials. It does not include a student’s voluntary use of a quiet space for self-calming, or the temporary and voluntary removal of a student from their regular instructional area to an unlocked area from which they are free to leave with a staff member for purposes of carrying out an appropriate positive behavior intervention plan. Seclusion also does not include a timeout, which is a behavior management technique that is part of an approved program, involves the monitored separation of the student in a non-locked setting, is implemented for the purpose of calming, and from which the student is free to leave at any time. Nor does seclusion include supervised in-school detentions or out-of-school suspensions.
- P. **“Special Education Program”** refers to all District-run classes/programs in which the District provides services to Students with Disabilities.
- Q. **“Student with a Disability”** refers to a student who has or would qualify to receive accommodations, reasonable modifications of policy, and/or disability-related services or supports under the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act (“ADA”), and/or Section 504 of the Rehabilitation Act of 1975 (“Section 504”).

TERMS OF AGREEMENT

I. GENERAL TERMS

- A. The District agrees that it will administer its education programs, services, and activities in a manner that does not discriminate on the basis of disability and comply with Title II, 42 U.S.C. §§ 12132-1234, and its implementing regulation, 28 C.F.R. Pt. 35.

II. INTERVENTION COORDINATOR

- A. Within 45 days of the effective date of this Agreement, the District will appoint an Intervention Coordinator (“Coordinator”) who is qualified to carry out all the responsibilities of that position. The Coordinator will be separate from the District’s Special Education Supervisor. Before appointing any Coordinator, the District will provide the United States with advanced notice of the qualifications of any proposed Coordinator. The United States agrees to work in good faith with the District to approve any Coordinator proposed by the District during the term of this Agreement who meets the qualifications contained in the job posting previously approved by the United States. The United States must approve of the individual hired to be Coordinator, but

such approval will not be unreasonably withheld as long as the proposed Coordinator meets the requirements for that position as contained in this Agreement. The United States will approve or reject the proposed Coordinator candidate within one week of receiving the District's notice.

- B. The Coordinator will carry out the responsibilities described below, including reviewing Incident Reports, ensuring required follow-up occurs after each incident, evaluating and improving the District's Restraint practices, overseeing training, and submitting status reports to the United States.
- C. In order to assure compliance with the terms of the Agreement, the Coordinator will oversee and assign compliance responsibilities to other staff and contractors as needed (e.g., to the Qualified Behavior Interventionists) and work closely with the; Superintendent (or their designee); Qualified Behavior Interventionists; and Instructional Staff to implement FBAs and BIPs, proactive behavioral interventions, and responsive behavioral supports. The Coordinator will ensure that all staff, including Qualified Behavior Interventionists, understand their job responsibilities as they relate to Restraints, as well as their additional responsibilities under this Agreement.

III. CLASSROOM-WIDE BEHAVIOR MANAGEMENT PLANS

- A. The District will create Classroom-Wide Behavior Management Plans ("Classroom Plans") for all classrooms in the District's Special Education Program. The Classroom Plans will document consistent and developmentally appropriate systems, rules, routines, and techniques used by Instructional Staff in classrooms and will govern both activities in the classroom and, for students in ISD/Local Programs, the integration of students into the general education programming of local districts. The Classroom Plans will be based on data analysis and evidence-based practices. The District will ensure that the Classroom Plans do not discriminate against Students with Disabilities; will ensure equal opportunities to all students to participate in and benefit from programs, services, or activities; and will discourage over-reliance on Restraint. Classroom management plans will include anticipated implementation timelines. A Classroom Plan is distinguishable from a student's individualized plan(s), including BIPs and EIPs.
- B. The Classroom Plans will be based on data analysis of the factors that influence student and staff behavior, including time, location, and academic activity (including the subject and its difficulty); identify behavior problems using analysis of context; and include information about the antecedents and consequences regarding student behavior.
- C. To the extent the Classroom Plans set generally applicable behavior goals for students in the class, those goals must be reasonable in light of the abilities of the students in the class.
- D. Within 45 calendar days of the District's appointment and training of the Coordinator, the District will submit the Classroom Plans to the United States for review and

approval. If the United States does not approve the Classroom Plans, it will provide comments and edits to guide the District's revisions. The District will implement the approved Classroom Plans according to each Plan's anticipated implementation timeline upon receipt of notice of approval of the Plans from the DOJ.

- E. The District will explain to parents/guardians the Classroom Plans, and all subsequent updates, for each classroom to which their child is assigned, and provide them with a copy of all such Classroom Plans. Parents/guardians will have an opportunity to ask questions and to request reasonable modifications that allow individual students to deviate from the Classroom Plan. The District will provide reasonable modifications to its Classroom Plans for individual students when necessary to accommodate their disabilities and integrate them into the classroom population. The District may approve or deny requested modifications, as appropriate, in accordance with individual student needs.

IV. SECLUSION PRACTICES

- A. The District will prohibit the use of Seclusion.
- B. The District will prohibit the use of any rooms or areas in any school buildings for the Seclusion of District students.
- C. The District will not construct any new rooms or areas for use as Seclusion rooms.
- D. Within 10 days of the effective date of this Agreement, the District will notify all staff regarding the prohibition on Secluding students. The District will also notify each local partner school district of its Seclusion prohibition.
- E. Within 60 days of the effective date of this Agreement, the District will revise its Seclusion policies to reflect the terms of this Agreement and will submit all policies revised under this Section to the United States for review and approval. If the United States does not approve any such policies, it will provide comments and edits to guide the District's revisions.

V. RESTRAINT PRACTICES

- A. Restraint is prohibited unless the student's behavior poses an imminent risk of serious physical harm to the individual student or others. Restraint may not be used as a form of discipline or punishment, to prevent property destruction where there is no imminent risk of serious physical harm to the student or others, to force compliance with staff directions to a student, as a convenience to staff, or as a substitute for appropriate educational support.
- B. Restraint may not be used to move a student from one location to another or prevent a student from leaving a classroom or any other physical space, unless the staff person reasonably believes the failure to move that student or to prevent that student from leaving the classroom or other physical space will create an imminent risk of serious physical harm to the individual student or others.

- C. Restraint may be used to protect staff and students only after all appropriate De-escalation Techniques have been implemented without success in addressing the immediate behavior crisis and District staff reasonably believes that less restrictive interventions would be ineffective to prevent the imminent risk of serious physical harm to the individual student or others.
- D. Only a staff member who is trained in CPT and who is using a certified, approved restraint technique may conduct a Restraint of a student. In the event there is an imminent likelihood of serious harm and no certified trained staff members are available, then a staff member who is not trained in CPT may conduct a Restraint. Following such Restraint, the District will take all reasonable steps to ensure that staff members trained in CPT are available.
- E. Restraint of a student must end when the student's behavior no longer poses an imminent likelihood of serious harm to the student or others, or when a less restrictive intervention would prevent/eliminate the imminent likelihood of serious harm. A predetermined length of time or a timer may not be used to determine the end of a Restraint.
- F. Following every Restraint of a student, and not later than two school days, the school's nurse and/or social worker or counselor, as appropriate, will conduct a wellness check of the student's physical and mental health.
- G. The District will revise its Restraint policies to reflect the terms of this Agreement and develop a guidance document summarizing the Restraint policy, including definitions of key terms and examples and non-examples of Seclusion and Restraint. Within 60 days of the effective date of this Agreement, the District will submit its guidance and all policies revised under this Section to the United States for review and approval. If the United States does not approve any such policies or guidance, it will provide comments and edits to guide the District's revisions.

VI. DOCUMENTATION AND MONITORING

- A. For any instance of Seclusion¹ or Restraint, the District must complete an Incident Report.
- B. The District will revise its Incident Report form to ensure documentation of the following information:
 - i. Location(s) of the behavioral incident from beginning to end, including location of the Seclusion or Restraint;

¹ Under this agreement, the District agrees to prohibit the use of Seclusion; however, any future prohibited uses of Seclusion must be documented and reported to the United States.

- ii. The precipitating events to the behavior that led to the Seclusion or Restraint, including antecedents, contextual variables, and staff and student behaviors leading up to the incident;
 - iii. All De-escalation Techniques used or other actions taken prior to the use of Seclusion or Restraint that demonstrate that less restrictive interventions would have been ineffective, the student's response to each technique, and, if the student has a BIP, whether those techniques and interventions are aligned with the student's current BIP;
 - iv. Separately list each instance of Seclusion or Restraint during an incident, and for each, the action by the student that prompted each use of Seclusion or Restraint, the start and stop time of the Seclusion or Restraint, the technique used, and the student and staff behavior during the Seclusion or Restraint, including the student's physical condition during the Seclusion or Restraint. All Seclusions or Restraints that occur during one instance may be recorded on one form as long as each instance contains the above information;
 - v. All staff involved in the incident, including, but not limited to, staff involved in administering the Restraint or any De-escalation Techniques, and the role each staff person played in the incident. Each Incident Report will also accurately document the name of the staff member(s) who filled out the report;
 - vi. How the Seclusion or Restraint was resolved (i.e., whether the student returned to class and, if so, at what time, or whether the student was suspended, expelled, or picked up by a parent/guardian);
 - vii. Narrative notes from staff, student, and parent/guardian debriefs, and the results of each debrief, including any decisions made, any action plan for follow-up and the timeline for implementation, and who is responsible for the follow-up. All staff debriefs must include discussion of whether the Restraint was aligned with CPT; whether effective, alternative options other than using a Restraint were utilized; and whether any opportunities for defusing or redirection were missed;
 - viii. Whether a related disciplinary form has also been completed for the same incident (and on the disciplinary form, whether an Incident Report has also been completed); and
 - ix. Timeline for reviewing the student's FBA and BIP (in accordance with Paragraph IV(F)), and who is responsible for reviewing it.
- C. Within 90 days of the effective date of this Agreement, the District will submit the revised Incident Report form to the United States for review and approval. If the United States does not approve the revised Incident Report form, it will provide comments and edits to guide the District's revisions. While the District is waiting for the DOJ's approval on any revisions made to the District's existing Incident Form or similarly named form to document incidences of the use of restraint and seclusion in the District, the District will use its existing incident form(s).

- D. The Incident Report will be completed by a staff member who was involved in the incident. When staff complete the Incident Report, they will:
- i. Include complete information for each field on the form, including all of the information described in Paragraph IV(B);
 - ii. Provide objective descriptions of the student's behavior and use action words instead of characterizing the behavior (e.g., "student was yelling" rather than "student was angry"); and
 - iii. Make all reasonable attempts to ensure that all staff members involved in administering the Seclusion or Restraint review and sign the Incident Report.
- E. The District will maintain a central database that captures all relevant information on Restraints and Seclusions, including from the Incident Reports, disciplinary forms, and staff-made forms and notes on student behavior, and that supports the review and analysis provided for below. This database will allow the District to sort the data by all of the relevant variables (e.g., school, program, date, student name, grade level, type of disability, Restraint technique used, length of Seclusion and/or Restraint, and staff member(s) involved) and run reports that show the frequency of Seclusions or Restraints meeting those criteria, accurately capturing multiple Seclusions or Restraints recorded in a single Incident Report. The Coordinator, Qualified Behavior Interventionists, and MTSS Specialists will have access to the information and forms stored in this database; all school Administrators will have access to the information and forms stored in this database related to their schools; and certified Instructional Staff will have access to the information and forms stored in this database related to their students. This database will be a standard source of data used in developing FBAs and BIPs.
- F. All Incident Reports will be submitted to the Special Education Supervisor for review and approval. The Special Education Supervisor (or, if that individual is directly involved in the incident, the Coordinator or another Administrator who was not involved in the incident) will review the Incident Report with the relevant staff within 3 school days² to identify:
- i. Any failure to properly complete the Incident Report (including failing to provide all required information on the form). The Special Education Supervisor will immediately work with staff to correct failures to properly complete the Incident Report; and
 - ii. Any instance where the use of Seclusion or Restraint did not comply with District policy (as modified by this Agreement). If the Special Education Supervisor identifies any such issue, the Special Education Supervisor will immediately notify the Coordinator in writing and work with the Coordinator

² If, due to extenuating circumstances, the District is unable to meet the 3 school days deadline in this Paragraph or the 5 school days deadline in Paragraph VI(G), the District will ensure the task is completed within 5 school days of the respective deadline to complete the task identified.

to take appropriate corrective action (e.g., additional guidance or training to the involved staff or putting in place additional monitoring). The Special Education Supervisor will submit the form to the Coordinator with a description of suggested follow-up steps.

- iii. The date, staff involved, and result of each Incident Report review will be documented on each Incident Report.
- G. All Incident Reports will be reviewed by the Coordinator within 5 school days of receipt of the incident reports from the Special Education Supervisor to:
- i. Ensure that all Restraints met the requirements of Section V of this Agreement. The Coordinator will evaluate and note in writing whether the use of Seclusion or Restraint met each requirement of this Agreement, including whether staff completed the forms properly, conducted required debriefs, and determined appropriate follow-up. Should the Coordinator determine that a use of Seclusion or Restraint did not comply with this Agreement, or the report was not properly completed, the District will take immediate appropriate remedial action, and the Coordinator will meet with the Special Education Supervisor and other relevant staff to discuss the issue and remedial action. After review and debriefs are complete, the Coordinator will sign the Incident Report to signify its review and completion. All notes from debriefs and action items from any remedial action taken will be recorded in the central database described in Paragraph VI(E); and
 - ii. Determine if the student has a current BIP, and, if so, whether it was implemented consistent with its stated purpose and terms during the incident (including during the actions by staff that preceded the use of Restraint).
 - (a) If the BIP was not implemented consistent with its purpose and terms, the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching, and monitoring.
 - (b) If no BIP was in place, or the BIP was implemented consistent with its purpose and terms, except for in the event of an isolated incident,³ the District will immediately seek parental/guardian consent to conduct an FBA; upon receipt of parent consent, begin conducting an FBA; and, if the results of the FBA show a BIP is necessary, develop an accompanying BIP for that student.

³ “Isolated incident” means the behavior that prompted the Restraint was unprecedented for that student or the result of a unique circumstance that is unlikely to recur or have a lasting impact on the student’s behavior. To determine if the behavior was an isolated incident the school must review the student’s behavioral history and gather information from District staff and the student’s parents/guardians. In such a case the school must explain in writing on the Restraint incident form why it has determined this standard is met and the Coordinator must approve that explanation.

- (c) The FBA and any resulting BIP must be properly completed in conjunction with a Qualified Behavior Interventionist as soon as possible and implemented within two school days of the finalization of the developed document(s). During this process, the District will take all reasonable steps to avoid the recurrence of Seclusion or Restraint. All BIPs will be individualized. The District will document this determination and any action steps taken as a result in the student's files and in the central database described in Paragraph VI(E). The Coordinator will also ensure that all FBAs and BIPs required because of the use of Seclusion or Restraint are properly completed by the deadlines provided in this Agreement.
 - iii. For all remedial action issued by the Coordinator, the District will document how it has implemented the remedial action. Should the nature of the remedial action issued by the Coordinator include school or District level changes, within 14 days of the issuance of the remedial action, the school Administrator(s) will submit a written report to the Coordinator which will include all changes being made at the school level, all changes the school recommends be made at the District level, and all training needs identified. For each recommended change at the District level, including the identification of training needs, the District will document how it has implemented the recommended change or record the reasons why it has not implemented the change.
- H. At least every 3 months, the Coordinator will meet with the Special Education Supervisor and relevant staff from each component of the District's Special Education Program. During the review meeting, the attendees will examine the District's Seclusion and Restraint practices by reviewing Incident Reports and all relevant discipline data in order to:
- i. Discuss incidents of restraint, including what went well and what could be improved;
 - ii. Evaluate incident reports for missing or insufficient information;
 - iii. Identify patterns involving particular students, staff (including action by staff that escalated student misbehavior), classrooms, or programs; patterns among students at the school in general (e.g., high rates of elopement or patterns by disability classification, behavior type, or grade level); and particular risks at the school (e.g., near a high-traffic street) and determine how to address those patterns and risks to implement the prohibition on Seclusion and reduce the use of Restraint;
 - iv. Assess the effectiveness of the De-escalation Techniques used and devise ways to improve those techniques;
 - v. Evaluate whether staff are using appropriate CPT Restraint techniques;

- vi. Discuss ways to improve the District's staff, student, and parent/guardian debrief process;
 - vii. Evaluate the quality of the FBAs conducted and BIPs developed, and identify ways to improve their effectiveness;
 - viii. Simulate the events leading up to incidents of restraint to practice alternative interventions, restraint procedures, and CPT.
 - ix. Evaluate whether interventions put in place for students were implemented consistent with the purpose and terms of the student's individualized plans and whether the interventions proved effective, and identify ways to increase the effectiveness of interventions and promote consistent and full implementation of the plan; and
 - x. Ensure that District Administrators are not using discriminatory exclusionary discipline, including in-school suspension, out-of-school suspension, and shortened school days, as a substitute for Seclusion or Restraint.
- I. At the end of each school year, the Coordinator will review Seclusion and Restraint data from the preceding school year, including from the central database described in Paragraph VI(E) and complaints received under the District's complaint procedures to identify patterns at particular schools, within particular programs, or among students (e.g., students who have attended multiple District schools). The Coordinator will work with the Special Education Supervisor to identify any remedial action needed in the District, such as needs for additional training, hiring additional staff, policy revisions, increased monitoring and observation, or any other effort to reduce rates of Seclusion and Restraint. The Coordinator will submit a written report to the Superintendent identifying the results of the review and any remedial action recommended. For each recommended action, the District will document how it implemented the action or record why it is not implementing the recommended action.

VII. STUDENT BEHAVIOR PLANS

- A. The District will conduct FBAs and create BIPs according to the standards listed in Appendix A of this Agreement.
- B. The District will review the BIPs of each currently enrolled District student who was subjected to Seclusion and/or Restraint from August 2020 through the effective date of this Agreement. If the District determines that any BIP is inadequate (e.g., not current, not individualized, not aligned with the functions of a student's target behaviors, or otherwise not in compliance with the terms of this Agreement), it will revise that BIP and conduct a new FBA to inform development of the revised BIP, if necessary. If a BIP was recently updated, the District may wait for the BIP to be in place for one month before assessing whether it needs to be revised. If it is determined that a new FBA should be conducted, the District will seek consent from the student's parent/guardian. If the District determines that a currently enrolled student who was subjected to

Seclusion and/or Restraint during this time lacks a current BIP, and if the District receives parental/guardian consent to do so, the District will conduct an FBA of that student and create a BIP, if necessary. All BIPs will be individualized. By September 1, 2025, the District will provide to the United States in writing the total number of BIPs that were updated or created on the basis of this review. To the extent that the District has not completed its review of the BIPs by the end the 2025 calendar year, the District will complete this review and will provide to the United States in writing the total number of BIPs that were updated or created based on this review after its initial submission.

- C. To the extent that the District continues to use EIPs that permit use of Restraint, the District will create EIPs on an individual basis and only when the documented history of the intensity of the student's behaviors in the past demonstrate a pattern of behavior that poses a substantial risk of creating an emergency situation in the future that could result in the use of physical restraint. EIPs may be developed concurrently with FBAs and BIPs, if behaviors arise that require an EIP but a BIP is not already in place. The EIP will be developed in accordance with state law and guidance from the Michigan Department of Education relative to the development of EIPs. To avoid improper use of Restraint, the EIP will provide an explanation of what constitutes an emergency situation, including examples of situations that would fall within the definition and situations that would fall outside the definition and will require use of De-escalation Techniques. All staff who may be in a position to Restrain the student under this protocol must be familiar with the student's individualized EIP (including triggers, De-escalation Techniques, and history of self-harm) and BIP. EIPs will be individualized and added to the end of a student's special education documents.
- D. Before the start of the 2025-2026 school year, the District will review all EIPs of current District students to ensure they comply with the terms of this Agreement. To the extent that an EIP does not comply with the terms of this Agreement, the District will promptly revise the EIP or will remove it from a student's special education documents if the District's review suggests that an EIP is no longer necessary. Once completed, the District will provide to the United States in writing the total number of EIPs reviewed and, where applicable, updated, and/or removed based on this review.

VIII. COMPLAINT PROCEDURE

- A. The District will update its complaint procedure⁴ to ensure that it responds in a timely fashion to all complaints regarding the use of Seclusion and Restraint. The complaint procedure will:
 - i. Allow complaints to be made orally or in writing by any student, parent, guardian, advocate, staff member, or other individual;

⁴ This complaint procedure is a separate process and in no way impacts the District's obligations to respond to complaints under any other statute, including, but not limited to, the IDEA.

- ii. Designate the individual(s) who will accept, process, and adjudicate complaints and require all District employees to refer complaints to the individual(s) designated;
 - iii. Require the District to include, in its policies and procedures on Seclusion and Restraint and everywhere else information about Seclusion and Restraint is provided (e.g., the District's website, Incident Reports, and student handbooks), a notice informing students, parents, guardians, staff members, and other individuals of their ability to file a complaint and of the complaint procedure;
 - iv. Ensure that verbal complaints are documented in writing and that all complaints are maintained in a central District database;
 - v. Ensure that all complaints will be adjudicated within 60 school days of receipt by the District and that, as a part of the adjudication, a written explanation of the resolution is provided simultaneously to all parties involved;
 - vi. Ensure that the District will take all appropriate remedial action in response to each complaint and will document all remedial action taken; and
 - vii. Prohibit any adverse action including, but not limited to, retaliation, harassment, or negative educational consequence, against the student or complainant (or any member of their family) or any other individual (or any member of their family) for filing the complaint or otherwise participating in the complaint process.
- B. Within 60 days of the effective date of this Agreement, the District will submit the complaint procedure to the United States for review and approval. If the United States does not approve the complaint procedure it will provide comments and edits to guide the District's revisions.

IX. NOTICE TO PARENTS/GUARDIANS

- A. Within 20 days of the effective date of this Agreement, the District will publish on the home page of its public website a summary of this Agreement agreed to by the Parties, with a link to the United States' website to access the full text of this Agreement.
- B. Within 20 days of the effective date of this Agreement, the District will disseminate this summary to every District employee via email and confirm dissemination in writing to the United States.
- C. Within 20 days of the effective date of this Agreement, the District will notify in writing all parent(s)/guardian(s) of currently enrolled students who were subjected to Seclusion and/or Restraint, from August 2020 through the effective date of this Agreement, of the number of times the student was subjected to each of these practices during that period. The notice will include information about the District scheduling an educational benefit review meeting to determine what, if any, compensatory education or other remedial services the student may be entitled to receive.

- D. When a student is subjected to Seclusion or Restraint, the Special Education Supervisor, principal, or a designee must make every reasonable effort to notify the student's parent or guardian either orally or in writing by the end of the school day. A copy of the official, completed Incident Report will be directly provided to the student's parent(s) or guardian(s) within the earlier of one school day or seven calendar days.
- E. If District staff request that a parent or guardian of a Student with a Disability come to the student's school because of that student's behavior, the District may not require the parent or guardian to take a student home from school (or encourage the parent or guardian to do so) unless the student has been assigned an out-of-school suspension or expulsion, provided, however, that a parent who is called to school because of a student's behavior and requests (without any prompting or coercion) to take the student home may be permitted to take the student home from school. Any requests made to a parent or guardian of a Student with a Disability to come to the student's school will be documented on the relevant incident report.

X. COMPENSATORY EDUCATION AND COUNSELING

- A. For each currently enrolled District student who was subjected to Restraint from August 2020 through the effective date of this Agreement, the District will hold an educational benefit review meeting. The purpose of the educational benefit review meeting will be to determine whether the student was restrained unnecessarily and, if so, whether they were deprived of educational opportunities. If it is determined that the student was restrained unnecessarily and deprived of educational opportunities, the team will determine what compensatory education or other remedial services, which could include counseling, should be provided to the student. The parent/guardian will be invited to participate in the educational benefit review meeting. If it is determined that the student is entitled to compensatory education or other remedial services, the District, in collaboration with the student's parent/guardian, will make an individualized determination regarding the nature, type, and amount of service(s) the student will receive. The District will ensure that any services offered are provided by a qualified provider.
- B. For each District student subjected to Seclusion since August 2020 through the effective date of this Agreement, the District will hold an educational benefit review meeting. The purpose of the educational benefit review meeting will be to determine whether the student was secluded unnecessarily and, if so, whether they were deprived of educational opportunities. If it is determined that the student was secluded unnecessarily and deprived of educational opportunities, the team will determine what compensatory education or other remedial services, which could include counseling, should be provided to the student. The parent/guardian will be invited to participate in the educational benefit review meeting. If it is determined that the student is entitled to compensatory education or other remedial services, the District, in collaboration with the student's parent/guardian, will make an individualized determination regarding the nature, type, and amount of service(s) the student will receive. The District will ensure that any services offered are provided by a qualified provider.

- C. The District will designate a point of contact to facilitate such services who will serve as a liaison for families.

XI. TRAINING

- A. All training provided under this Agreement will be conducted live (in person or via videoconference) and will include instruction for participants with examples (and non-examples), modeling, opportunities for practice and feedback, and time for review and reflection.
- B. Within 90 days of the date the District appoints the Coordinator, the District will provide the Coordinator with all training required to fulfill the responsibilities of that position.
- C. The Coordinator will ensure implementation of annual training for Qualified Behavior Interventionists, MTSS Specialists, and Administrators. The Coordinator will also ensure annual training for certified staff in each component of the Special Education Program, supplemented with ongoing observation and in-service coaching in coordination with the Qualified Behavior Interventionists. The training will cover federal laws prohibiting discrimination on the basis of disability, including Title II of the ADA and Section 504 and how to develop reasonable modifications requested by families; the District's Seclusion and Restraint policies; conducting FBAs and developing and implementing individualized BIPs; and the terms of this Agreement, including all procedures, forms, and responsibilities described herein.
- D. The Coordinator will ensure that Qualified Behavior Interventionists that do not have prior education or training on functional communication receive effective functional communication training within 6 months of the date of this Agreement for existing interventionists, or within 60 days of new interventionists being hired.
- E. In addition to the training described in Paragraph XI(C), the Coordinator will ensure implementation of annual training to MTSS Specialists and Instructional Staff in each component of the Special Education Program on topics including the proper use of Restraint, with opportunities to practice techniques; non-intrusive alternatives to Seclusion and Restraint that address underlying behaviors that lead to Seclusion and Restraint (including De-escalation Techniques, when the "take a break" or "timeout" directive is appropriate, and discussion of principles and functions of behavior); and all aspects of Positive Behavioral Interventions and Supports as a method of behavior management (including how to provide and evaluate the effectiveness of individualized supports and interventions).
- F. Before the 30th day of each school year, the District will train bus drivers and transportation assistants in the use of behavior management supports and de-escalation techniques; IEP accommodations; BIPs; or other individualized considerations relevant

to bus conduct for any student they transport. Any bus driver or transportation assistant assigned to a bus after the school year begins will receive such training within 30 days of being assigned to work on a bus.

- G. For each training required by this Agreement, the District will maintain:
 - i. An attendance log reflecting the date of the training, name and title of the instructor, and names and titles of attendees; and
 - ii. A log of employees who were required to, but did not, attend the training and the date the employee subsequently completed the required training.
- H. The Coordinator will ensure that all staff attend the required training outlined in this Agreement. If a staff member misses the training for any reason, the Coordinator will promptly notify the delinquent staff member and ensure that the training is completed within 3 months.
- I. All newly hired staff will complete the mandatory training for their position within 3 months of being hired.
- J. Within 120 days of the effective date of this Agreement, the District will submit a detailed overview of the training described in this Section to the United States for review and approval. If the United States does not approve the trainings, it will provide comments and edits to guide the District's revisions.

XII. REPORTING

- A. On or before January 31 and July 31 of each year this Agreement is in effect, the District will provide a status report to the United States that includes all information below. The January status report will cover the preceding July through December; the July status report will cover the preceding January through June.
- B. Each District status report will provide, for each paragraph in Sections II through XI, a narrative describing the District's efforts to comply with that paragraph since the last status report (or since the effective date of the Agreement in the case of the first status report) and all documents that demonstrate the District's efforts to comply with that paragraph, including, but not limited to:
 - i. A spreadsheet of every instance in which a student was subjected to Seclusion or Restraint, including, for each incident, the student's name, a unique student identifier, the student's disability status, the student's disability (if applicable), the student's grade level, the date and location of the incident, the school at which the incident occurred, and the name(s) of the staff member(s) who performed the Seclusion or Restraint;
 - ii. Copies of all Incident Reports regarding the use of Seclusion and/or Restraint from every component of the Special Education Program completed in the prior

6 months, the written evaluations of those reports, and documentation of any remedial action taken as a result of that evaluation as required by Section VI

- iii. Copies of all complaints received under Section VIII and their resolutions;
- iv. A spreadsheet of each student receiving compensatory education or other remedial services in accordance with Section X, including the student's name, grade, and school, and a description of the compensatory education or other remedial services;
- v. A list, date, and description of all trainings conducted in the prior 6 months to satisfy the requirements of Section XI, including, for each school, the number of staff members who were required to complete the training and the number who successfully completed the training;
- vi. A list, date, and description of all training the District plans to conduct in the following 6 months to satisfy the requirements of Section XI;
- vii. Copies of the most recent versions of all new or revised FBAs and BIPs completed for students who were Secluded or Restrained during the prior six months; and
- viii. Copies of all EIPs permitting Restraint completed during the prior six months.

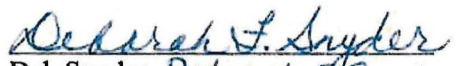
XIII. TERMS & ENFORCEMENT

- A. Upon reasonable notice to the District, the United States may request additional documents or data, tour schools, monitor trainings for quality and substance, and conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of the Agreement.
- B. For any term of this Agreement that requires the District to submit policies, training materials, notices, or other documents to the United States for review and approval, if the United States does not approve any such policies, training materials, notices, or other documents, it will provide comments and edits to guide the District's revisions and the Parties will in good faith negotiate new timelines under which the District must complete the relevant task. The United States agrees to work in good faith with the District to provide such comments and edits and to agree on adjusted timelines as needed to ensure compliance with the Agreement.
- C. In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this investigation or from filing a civil action alleging discrimination based on the findings of the United States' investigation, except as provided in Paragraph X(D).
- D. If the United States determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any term of the Agreement it will so notify the District in writing. If the Parties are unable reach a

- satisfactory resolution of the issue(s) within 30 days of the United States providing notice to the District, the United States may initiate civil proceedings in federal court to enforce the Agreement and/or the District's underlying obligations under Title II. Prior to initiating civil proceedings in federal court, the United States will consider the scope, severity, and frequency of the noncompliance and whether the District is acting in good faith to implement the Agreement in a timely manner.
- E. Subject to paragraph XIII(B), the Parties anticipate that the District will have complied with this Agreement by the end of the two full school years. When the District provides the United States with the last status report, due July 31, 2027, the United States will have 90 days to raise any remaining concerns regarding the District's compliance with the Agreement.
 - i. If the United States does not raise any concerns regarding the District's compliance, the Agreement will terminate.
 - ii. If the United States does raise any concerns regarding the District's compliance, the Parties will attempt to resolve those concerns cooperatively. If the Parties are unable to reach a negotiated resolution, the enforcement mechanism in Paragraph XIII(D) will apply.
 - F. To the extent that the District uses contractors or other providers to serve its students, it is the responsibility of the District to ensure those entities fully comply with the terms of this Agreement.
 - G. If any part of this Agreement is held to be unlawful, or otherwise unenforceable for any reason by a court of competent jurisdiction, such decision will not affect the validity of any other part of this Agreement.
 - H. This Agreement constitutes the entire agreement by the Parties, and no other statement, promise, or agreement, whether written or oral, made by any party or agents of any party, that is not contained in this written Agreement will be enforceable regarding the matters raised in this Agreement.
 - I. This Agreement is between the United States and the District and is not enforceable by third parties.
 - J. This Agreement is applicable to and binding on the District, including its officers, agents, employees, successors, and assigns.
 - K. The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.
 - L. The effective date of this Agreement is the date of signature below.


SIGNATURES OF PARTIES TO THE AGREEMENT

**For Montcalm Area Intermediate
School District:**


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Date:

June 27, 2025

APPENDIX A: STANDARDS FOR FBAs AND BIPs

The process of conducting an **FBA** will include:

- A review and analysis of discipline data, behavioral data,² attendance data, MTSS data, grades, and other relevant data;
- Interviews of the student, District staff who serve the student, family or caregivers of the student, and other professionals who are responsible for serving the student;
- The completion of informal checklists (e.g., Questions about Behavior Function (QABF), a Functional Assessment Checklist for Teachers and Staff (FACTS)) by the relevant Individualized Education Program (IEP) team or child study team members, as applicable, responsible for serving the student;
- Multiple direct observations of the student in multiple settings, at multiple times and across multiple days. The direct observations will include times and settings when the behavior is anticipated to occur, as well as times and settings the behavior is not anticipated to occur; and
- Direct observation data that identifies the antecedents and consequences of the student's behaviors.

The District will ensure that written FBA reports include the following:

- A clear and operationalized description of the target behavior(s);
- An identification of the contexts that predict the target behavior(s), including times the behavior occurs, locations the behavior occurs, people associated with the behavior, and the conditions under which the behaviors occur;
- An identification of the consequences that follow the target behavior(s); and
- A functional analysis of the target behavior(s) derived from the FBA results.

The District will ensure that FBAs are consistently reviewed to verify FBA procedures were followed and the conclusions about the function of the target behavior are consistent with assessment results. A new FBA will be conducted when circumstances suggest that there is a need to complete an updated FBA. These circumstances could include changes in settings, and/or programs, or when the student continues to engage in the target behavior, despite implementation of identified interventions with fidelity for not longer than one month since the interventions were added to the student's current BIP.

² Behavioral data will include clearly described observable actions that can be counted or timed. Data will be reported as a count, rate, duration, or percentage of time.

All **BIPs** will:

- Be limited to a single behavior or set of functionally related behaviors. The BIP must specify the target behavior or behaviors to be replaced;
- Include a clear, concise, and operationalized description of the target behavior consistent with the description of the target behavior from the FBA;
- Explicitly state the hypothesized function of the target behavior that was identified in the FBA report and explicitly describe the data collection method to be used for evaluating the BIP's effectiveness (e.g., frequency, duration, latency data, time sampling, partial interval data, whole interval data, etc.);
- Include: (1) a clearly described individualized antecedent-based intervention to reduce the frequency, duration, rate, and/or intensity of the target behavior, and/or (2) a clearly described replacement behavior intervention (supported by evidence) in which the replacement behavior is functionally equivalent or functionally superior to the target behavior and is socially desirable to the student.
 - When the BIP includes an antecedent-based intervention, it will include step-by-step instructions on how the antecedent-based intervention will be implemented, including any instruction that will take place with the student, and will also include a clear and concise description of how to reinforce appropriate behavior when that behavior occurs.
 - When a BIP includes a replacement behavior, it will include a step-by-step set of instructions on how the replacement behavior will be taught to the student and will also include a clear and concise description of how the replacement behavior will be reinforced when it occurs.
- Include a clear and concise description of the response employees will use when the target behavior and replacement behavior occur. The identified response will not reinforce the target behavior or undermine the antecedent-based intervention or the replacement behavior intervention.
- Describe how to monitor fidelity to the BIP, including a formal process for measuring adherence to antecedent strategies, replacement behavior instructional procedures, and consequence strategies, and state how often such monitoring and measuring will occur.
- Include a system for collecting data on the target behavior and replacement behavior, including how often such data should be collected and the format in which the data is reported.
- Specify the date by which data-based decisions about BIP effectiveness will be made and the steps to be taken if the BIP does not result in the desired outcome by that date.
- Describe the steps to be taken if the target behavior improves, worsens, or does not change within the specified timeline.