

CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0106-14/15

Public Agency Nellie Meyer, Superintendent Mt. Diablo Unified School District 1936 Carlotta Drive Concord, CA 94519-1358	Complainant Robert Borrelle, Attorney 3075 Adeline Court, Suite 210 Berkeley, CA 94703
Special Education Director Wendi Aghily, Director, Special Education Mt. Diablo Unified School District	Parent Various
Special Education Local Plan Area (SELPA) Wendi Aghily, Director Mt. Diablo Unified SELPA	Student Name Various
Complaint Received August 29, 2014	Report Mailed October 28, 2014

INVESTIGATION PROCEDURES

Telephone interviews were conducted with the Complainant on September 9 and 11, and October 23, 2014.

An onsite investigation was conducted at the District on October 1, 2 and 3, 2014. The onsite investigation incorporated: one on one interviews with various levels of staff, student records review, and observations of the Sunrise Elementary school site. During the course of the onsite investigation, the CDE requested and received additional document requests.

Interviews of CDE staff were conducted on September 23, and October 14 and 23, 2014.

Telephone interviews were also conducted with the guardian of Jane Doe on Friday October 17, 2014, and the parent of John Doe on Thursday October 16, 2014.

All documentation obtained and submitted by the parties was reviewed in the preparation of this report.

Background: The Complainant, an attorney for Disability Rights Education & Defense Fund (DREDF) filed the complaint on behalf of two students identified in this report as Jane Doe and John Doe. Some of the allegations are alleged to involve other students similarly placed. The focus of the complaint investigation is the Mental Health

Collaborative (MHC) program, the District operates at Sunrise Elementary School, where Jane Doe and John Doe attended during the 2013-14 school year (including Extended School Year [ESY]).

In addition to the two students identified as Jane Doe and John Doe, the CDE selected six students randomly from the 2013-14 Sunrise Elementary School roster and reviewed their student files as part of the investigation. The students are identified as Student 1, Student 2, Student 3, Student 4, Student 5, and Student 6.

The CDE chose Student 7 for file review because he had the most documented restraints during the 2013-14 school year.

Allegations Four, Eight, Nine, Ten, Sixteen and Seventeen are combined as the findings of facts considered for the allegations are the same.

SUMMARY OF ALLEGATION ONE

The Complainant alleges the California Department of Education (CDE) has failed to monitor Mt. Diablo Unified School District (the District) in the provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE) and general supervision including child find and effective monitoring as required by Title 34, *Code of Federal Regulations* (34 CFR) Section 300.600, et al.

Specifically, the Complainant alleges there is a lack of oversight and monitoring over the activities of the District related to the operation of the Mental Health Collaborative (MHC) program at the Sunrise Elementary School. The Complaint alleges that the District does not follow the students' Behavior Intervention Plans (BIPs) and the MHC uses excessive restraint and locked seclusion in violation of state laws. The Complainant alleges the CDE should have exercised its oversight responsibilities and interceded.

APPLICABLE CITATION

34 CFR Section 300.600 requires

- (a) The State must—
 - (1) Monitor the implementation of this part;
 - (2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);
 - (3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or

in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and

(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).

(b) The primary focus of the State's monitoring activities must be on—

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.

(d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment.

(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

FINDINGS OF FACT

1. The CDE has a general supervision system statewide which, at the time this complaint was filed, was divided organizationally into five regional units called Focused Monitoring and Technical Assistance Units (FMTA). For Contra Costa County and more specifically, the District and its Special Education Local Planning Area (SELPA), FMTA III provided general and specific monitoring and technical assistance.
2. The general supervision system described in the CDE's State Performance Plan/ Accountability Progress Report (SPP/APR) includes the following key components:

- a. SPP/APR. The SPP/APR are central to the system of general supervision in California. The SPP includes 20 indicators addressing a broad range of both compliance processes and student outcomes. The indicators cover each of the priority areas identified in the Individuals with Disabilities Education Act (IDEA): Free Appropriate Public Education (FAPE) in the Least Restrictive Environment, Disproportionality, Effective General Supervision, including Child Find, and Effective Transitions. The SPP identifies the baselines, benchmarks, and targets in each of the 20 indicator areas and provides a structure for annually reporting at the state and local level.

The SPP/APR are developed through a stakeholder process using information from CDE's student and district-level data collections, integrated monitoring activities, and dispute resolution procedures. Similarly, the SPP/APR data are used for the selection of programs for review, identification of statewide and local needs, determination of monitoring activities, and provision of training and technical assistance. The SPP/APR and related calculations serve as the basis for additional state and local reporting for: public reporting of Local Educational Agency (LEA) indicators, LEA compliance determinations, and identification of districts having significant disproportionality.

- b. Policies, Procedures and Effective Implementation. The CDE reviews policies, procedures, and practices through its integrated monitoring activities, dispute resolution processes, and the evaluation of student and district-level data. Whenever policies, procedures, or practices are found noncompliant, districts are required to make corrections, and demonstrate that they are implementing the policies, procedures, and practices correctly (as verified by subsequent record review demonstrating compliance at the 100% level).
- c. Data California Special Education Management Information System (CASEMIS). The CDE draws on both General Education (GE) and Special Education (SE) data bases to implement California's system of general supervision. The data set is updated biannually and described in detail in the CASEMIS Technical Assistance Guide (see <http://www.cde.ca.gov/sp/se/ds/documents/casemistag1112.doc>). CASEMIS software contains internal data checks and requires certification by the submitting SELPA. The software also identifies data anomalies, which are unusual or substantial changes from one year to the next. SELPAs and districts are required to explain these changes that are often the result of changes in data collection practices or definitions. Lastly, CASEMIS data are verified on-site as a part of the monitoring processes.

Other Special Education Data. In addition, parent input data are collected through CASEMIS and also through a contract with the Sacramento County Office of Education (COE). The SED of the CDE maintains three data bases

related to (1) monitoring findings and correction, (2) complaints findings and correction, and (3) due process hearing findings and correction. A separate data system is maintained by the Office of Administrative Hearings (OAH) regarding the procedures, timelines and outcomes of due process hearings.

- d. The CDE statewide systems: California Longitudinal Pupil Achievement Data System (CALPADS) and the CASEMIS are the basis for IDEA reporting and accountability. APR indicators are used to comply with reporting requirements of 34 CFR 300.600 for monitoring including: SPP and APR; annual compliance determinations; data identified non-compliance; Disproportionality, and Significant Disproportionality. APR indicators are also used to select districts for Verification Reviews (VRs) and to form the nucleus of the compliance items reviewed in Special Education Self-Reviews (SESRs) and VRs. CDE reviews all compliance indicators for every District every year; conducts SESRs every four years, and selects Districts for VRs each year using a combination of indicators from the annual compliance determinations. Monitoring includes review of student records, policies and procedures, fiscal records, IEP implementation, Educational Benefits, and a review of the complaint history and individualized items selected for each district and included in a monitoring plan.
3. The CDE conducted a VR of Mt. Diablo in 2011. With respect to the three areas reviewed that related to behavior, one instance of noncompliance was found. As part of the monitoring of corrective actions, the CDE reviewed, assessed and approved documentary evidence of compliance submitted by the District, culminating in closure on January 18, 2012.
 4. Mt. Diablo conducted a SESR in 2012-13 that accounted for changes created by AB114 legislation. The SESR included a review of nineteen areas of behavior and identified one instance of noncompliance. The District submitted evidence of compliance that the CDE reviewed, assessed, and approved, and the SESR was closed on April 25, 2014.
 5. The CDE identified Mt. Diablo as having significant discrepancy regarding suspension and/or expulsion for greater than ten days for both 2010-11 and 2011-12. The CDE required the District review its policies, procedures and practices related to the development and implementation of IEPs; the use of positive behavioral interventions and supports; and procedural safeguards; and develop a coordinated early intervening services plan. The CDE reviewed and approved the plan on August 15, 2013, as well as reviewed quarterly budget reports to ensure appropriate expenditures.
 6. The CDE identified Mt. Diablo as having disproportionate representation in special education on race and ethnicity, both in general (SSP Indicator 9) and by disability (SPP Indicator 10) for both 2011 and 2012. The CDE reviewed the District to ensure

its policies, procedures and practices are compliant and do not lead to inappropriate identification. The CDE reviewed and approved the 2011 data submitted by the District on May 1, 2013. The CDE reviewed the 2012 data submitted by the District and approved it on October 21, 2013.

7. In addition to the monitoring and technical assistance provided by the FMTA III unit to the District and SELPA, the CDE investigated fourteen complaints filed against the District in 2013-14, which included a total of thirty-six separate allegations, none of which involved Sunrise MHC. The CDE found the District non-compliant on nine allegations and ordered corrective actions. The District satisfactorily performed all corrective actions by the required deadline and within the one year requirement. There were no special education complaints filed against Mount Diablo during the 2013-14 school year that involved Sunrise Elementary School.
8. The CDE held workgroup meetings which included parents, advocates, local educational agency staff, mental health experts, and legislative personnel to address the oversight and technical assistance to local education agencies pertaining to the transition from the provision of mental health services by county mental health agencies (AB3632) to the provision of related services by local education agencies under the IDEA (AB114) beginning August 2011 on a monthly basis.
9. Assembly Bill 86 (AB 86), the Education Omnibus Trailer Bill, Chapter 48, Statutes of 2013, repealed regulations and added state statute that addressed positive behavioral intervention plans. In accordance with Assembly Bill 110, the California Department of Education (CDE) was required to provide oversight of, and technical assistance and monitoring to, local educational agencies regarding changes to the requirements related to the identification and provision of behavioral intervention services included in AB 86. Behavioral Intervention Work Group meetings were held with stakeholders from LEA's, SELPA organizations, and advocacy organizations on eight occasions from October 21, 2013, to June 17, 2014. The Behavioral Intervention Work Group produced eleven separate guidance documents, including: "Changes to State Requirements for Behavioral Intervention Plans", "Local Educational Agency and Individualized Education Program Team Responses to the Behavior of Students with Disabilities", "Requirements for Behavioral Emergency Reports", "Requirements for Personnel Involved in Behavioral Intervention", "Frequently Asked Questions for Local Educational Agencies Behavioral Intervention Stakeholder Work Group", "Frequently Asked Questions for Parents and Guardians Behavioral Intervention Stakeholder Work Group", and "Peer-Reviewed Research".
10. There is no state or federal law that requires the SEA to implement monitoring and oversight specific to the operation of mental health collaborative programs. The CDE's general supervision system encompasses 34 *CFR* Section 300.600, which includes any and all related services for students under IDEA.

CONCLUSION

The CDE's monitoring efforts as applied to Mt. Diablo from August 29, 2013 to August 29, 2014, met the requirements of 34 *CFR* Section 300.600. **The CDE is in compliance.**

SUMMARY OF ALLEGATION TWO

The Complainant alleges the District failed to provide pupil records for Jane Doe and John Does within five business days, as required by *EC* Section 56504. Specifically, the Complainant alleges that Jane Doe's guardian requested student records on four separate occasions on May 1, 15, 23, and 30, 2014, but has yet to receive all of the requested records. In addition, the Complainant alleges John Doe's parent requested the student's cumulative file in a hand-delivered letter on July 21, 2014, and the District did not respond to the request.

APPLICABLE CITATION

EC Section 56504 requires, "The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies pursuant to this section . . . within five business days . . ."

FINDINGS OF FACT

Jane Doe

11. A letter dated May 1, 2014, from Jane Doe's guardian to the District requests a copy of the student's "educational records—both special education file and cumulative file maintained by [District]."
12. The District copied the student's cumulative file and the guardian picked up the file on May 8, 2014, as evidenced by the guardian's letter and record access log.
13. The guardian's May 14, 2014, letter to the school principal acknowledges receipt of the student's records, but requests specific records for the student that she states were not provided: documentation of school suspensions including in-school suspensions, daily behavior logs, incident reports, behavior report cards, date of the student's behavior support plan (BSP), standardized test scores, resource specialist service logs from 2013, progress report data for IEP goals, Sunrise policies on the use of restraint and use of the therapeutic learning center (TLC), student contracts and enrollment documents. The letter is not date stamped and there are no receipts for certified mail.

14. The Director of special education's October 15, 2014, e-mail to the CDE, states the parent was provided with all of the student's records which were maintained by the District on May 8, 2014. These records included: documentation of school suspensions including in-school suspensions, daily behavior logs, incident reports, behavior report cards, student's behavior support plan (BSP), standardized test scores, progress report data for IEP goals, student contracts and enrollment documents. She states that the logs of service for the resource specialist were not a part of the student's record, that school policies of restraint and the TLC were also not a part of the student's record, and that the school's handbook (containing policies) is available in the school office.
15. A declaration dated October 22, 2014, from the Sunrise School principal states that she did receive a second request for records on May 14, 2014. Following the request, the principal collected copies school suspensions, behavior incident reports, the behavior support plan, current academic data and current IEP progress data. These documents were provided to the parent at the May 28, 2014 IEP.

John Doe

16. The student's parent maintains she provided a hand-delivered letter on July 21, 2014, to the Program Administrator and Principal requesting the student's cumulative and special education file. The letter provided is not date stamped or signed.
17. The District maintains it did not receive the parent's July 21, 2014, letter requesting the student's records.
18. A declaration dated October 22, 2014, from the Program Administrator, states she met with the parent on July 22, 2014, to discuss placement options for John Doe. The administrator asserts that the parent made no request for records.

CONCLUSIONS

Jane Doe

The District met the requirements of *EC* Section 56504 for records requested on May 1, 2014, as the District made the student's records available on May 8, 2014, within the five business day timeline. However, a second request received by the school principal on May 14, 2014, was responded to by the District with copies of records on May 28, 2014, beyond the 5-day timeline. **The District is out of compliance.**

John Doe

The District met the requirements of *EC* Section 56504. The parent contends a July 21, 2014, letter was hand-delivered to the District requesting the student's cumulative and

special education file. The District contends that it did not receive the letter. **The District is in compliance.**

SUMMARY OF ALLEGATION THREE

The Complainant alleges the staff at Sunrise Elementary school use locked seclusion, in violation of EC Section 56521.1(d)(1). Specifically, the guardian of Jane Doe witnessed the student in a "locked seclusion" room on several occasions, and the parent of John Doe observed the student in a locked seclusion room (TLC) on or about May 27, 2014.

APPLICABLE CITATION

EC Section 56521.1(d)(1) states, "Emergency interventions shall not include: (1) Locked seclusion, unless in a facility otherwise licensed or permitted by state law to use locked seclusion."

FINDINGS OF FACT

19. Both the guardian of Jane and the parent of John, report in telephone interview statements, seeing the TLC room locked from the outside.
20. CDE conducted an onsite investigation at Sunrise on October 1-3, 2014. The site utilizes an emergency behavior intervention room called Room 5, also identified as the TLC room. Just as all doors to all classrooms on campus are locked from the outside, Room 5 is also locked from the outside but has two smaller crisis rooms inside the room. The two smaller rooms measure about ten feet by ten feet; both have a doorway opening but no door. The rooms are utilized by staff placing the student in the room and blocking the doorway opening with either their body or a mat as needed. On some occasions the students calm down in the smaller rooms; on other occasions the staff use the room to restrain the student by blocking the doorways. At all times there are staff located within Room 5 when students are present, and the student is never left inside either the larger classroom or one of the two smaller rooms without direct staff supervision.
21. During the onsite investigation, CDE staff interviewed two special education assistants (SEAs) assigned to Room 5. One staff stated to CDE that he was not familiar with the content of the students' IEPs or Behavior Intervention Plans (BIPs), but was trained in "Pro-Act" techniques and used those to de-escalate the situation or to physically restrain a student when necessary. He also stated that he would block the doorway of the smaller rooms in Room 5 with his body. He stated that staff were always in Room 5 when students were brought to the room. The staff was asked about an incident in which John Doe hit staff with a chain necklace. The SEA stated that he was whipped by the metal chain, leaving a scar and welt, and the SEA grabbed the necklace and it broke. That is when John escalated and a prone restraint

was used. The other SEA stated that she worked in the classroom and also was assigned to Room 5 periodically during the school year. She stated that she was Pro-Act trained and was familiar with some of the IEPs/BIPs of the students she had worked with in the classroom. She also stated that she blocked students in the smaller rooms in Room 5 with a floor mat. She stated that the outside door to Room 5 was locked from the outside but students often left Room 5 on their own and had to be returned.

22. Several of the Behavior Emergency Reports (BERs) reviewed from the 2013-14 school year note that students left Room 5 while under supervision and had to be returned to the room. Specifically, Jane is reported to have eloped from Room 5 during the April 7 and 14, 2014, incidents as reported in the BERs.
23. A signed declaration by therapist Mark Heine states that he is a psychotherapist at Sunrise and is very familiar with the crisis management system used at the school. Mr. Heine is the lead trainer for Pro-Act and the use of behavior interventions onsite as stated by the Special Education Director. The therapist states that staff use many tiers of intervention and within each tier use many models and many intervention tactics. The therapist states the primary plans therapists use are IEP documents to provide mental health/behavioral treatment and academic interventions. The IEP mental health goals either match or are closely related to the Partnership Plan goals in the treatment plans located in the student's health record. The BSP/IEP goals are transcribed onto individual point sheets which are the data collection forms that track student progress on a period to period basis. The therapists do not include crisis behaviors on the student's BSP/BIP because they don't want emergency responses to become the primary plan to address behaviors. The therapist states the BSP/BIP targets the "lower level" behaviors that occur in the classroom interrupting the learning process, and successful attention and intervention in these areas prevents the emergence of the more serious behaviors. The therapist states they constantly track progress on these IEP/BIP goals on Point Sheets and report these to the Partnership Plan meetings during the Utilization Reviews and during the annual IEP team meetings in progress reporting on goals and the presentation of Mental Health Update reports.

The secondary plans include the use of interventions outside the classroom in secondary spaces like Room 3 or Room 5. These rooms are referred to interchangeably as the calming rooms or TLC rooms.. The therapist asserts these rooms are not seclusion rooms but rather support rooms. He states that Room 5 is an empty space designed for dissimulating, but can be utilized to provide one on one counseling to the student. Room 3 is a similar space that has more sensory-based regulatory tools for use after a crisis. Sunrise also uses emergency plans or procedures guided by Pro-Act. The therapist states he is a district Pro-Act trainer and asserts that 80% of Pro-Act involves the prevention of crisis behaviors including the use of crisis communication and only 20% emphasizes restraint. Restraint, according to Pro-Act, is to "forcibly limit (not totally immobilize) the movement of a student when

they are acting to assault themselves, or staff or other students. Assault means Aggravated Assault." Aggravated assault is the highest level of assault. Restraint is only to be used when there is sufficient danger i.e. "aggravated assault," and aggravated assault is successful or unsuccessful demonstrated intent or attempt to harm in a manner with could cause a serious injury requiring professional medical attention. Also the student must have the ability to injure due to size of student or location or mobility. The therapist asserts that aggravated assaults are more common at Sunrise than restraints, and that during every aggravated assault, staff are attempting to use evasion, crisis communication, knowledge of the student as evidenced in the safety plans, relationship with the student, and reducing the sense of threat. According to Mr. Heine, before restraint is used at Sunrise the following conditions must be met: 1) appropriate staff to student ratio (twice the height and weight of the student and a team of two or more); and 2) the use of restraint must meet the reasonable expectation to limit the potential harm to himself or others.

24. An October 7, 2014 signed declaration by Carmela Johnson, a therapist assigned to Room 5 during the 2013-14 school year states that she is aware of the students' behavior intervention plans (BIPs) and is a Pro-Act trainer of staff at Sunrise. Her duties in Room 5 include observing incidents in which restraint is used, documenting the incidents in which restraint is used for longer than fifteen minutes, talking the lead staff role during a crisis and when restraint is necessary, and ensuring that Pro-Act principles are used with "fidelity." The therapist states the crisis room is not the first step in addressing behavior (although some students request it to calm down), but if a student is assaulting staff and staff cannot control this behavior the student will be escorted per Pro-Act to Room 5. At Room 5, the student can go into the two smaller spaces to calm down. These two smaller spaces do not have actual doors or locks. The students are allowed to use the entire space of Room 5, but some prefer the smaller spaces.
25. The District's written response to the allegation states the TLC room or Room 5 is usually used as an emergency behavior intervention when all other crisis interventions fail. The TLC room at Sunrise is a full sized classroom with two smaller partitioned areas within it. The students are allowed to use the larger classroom to calm down but, if needed, the staff use the two smaller rooms. The District states the two smaller rooms are used by students in crisis with direct eyesight supervision at all times. When students are in danger of hurting themselves (such as by head banging), staff will use temporary barriers to maintain the students in the smaller rooms. The District asserts that at no time are students left unattended in the room and students are allowed to use the whole room as their behavior permits. The District states the incidents mentioned in the complaint involve a misunderstanding of the term "locked seclusion" as the door to enter Room 5 is locked but not from the inside.

CONCLUSION

The District met the requirements of *EC* 56521.1 (d)(1). Neither Room 5 nor either of the two smaller rooms inside Room 5 were locked from the inside as to prevent the student from exiting the room. **The District is in compliance.**

SUMMARY OF ALLEGATION FOUR

The Complainant alleges staff at Sunrise MHC use emergency interventions (restraint) to contain unwanted behaviors that do not warrant such a response, in violation on *EC* Section 56521.1(d)(3). The Complaint identifies several instances in which students were injured due to restraint. Specifically, the complaint alleges that, on May 8, 2014, Jane Doe was held in a floor-assisted prone restraint by an "above-average sized male" para-educator, causing unwarranted trauma including a swollen face, and that on July 15, 2014, John Doe was restrained and received a split lip, bloody nose, and marks on his face.

APPLICABLE CITATION

EC Section 56521.1(d)(3)–(d) states, "Emergency interventions shall not include: (3) An amount of force that exceeds that which is reasonable and necessary under the circumstances."

SUMMARY OF ALLEGATION EIGHT

The Complainant alleges that the District failed to notify the parent or guardian within one day of the use of an emergency intervention and failed to complete and maintain Behavior Emergency Reports (BERs) in the student's record as required by *EC* Section 56521.1 (e). Specifically, the Complainant alleges the District failed to contact the guardian within one day and presented a package of BERs to the guardian at the May 28, 2014, IEP team meeting that were signed weeks or months after the actual incidents to which they related. For John Doe, the Complainant alleges the parent was not contacted within one day and did not receive the BERs for emergency incidents on June 30, 2014 and July 14, 2014.

APPLICABLE CITATION

EC Section 56521.1(e) states:

To prevent emergency interventions from being used in lieu of planned, systemic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day, if an emergency intervention is used or serious property damage occurs. A

BER shall immediately be completed and maintained in the file of the individual with exceptional needs.

SUMMARY OF ALLEGATION NINE

The Complainant alleges the District failed to convene the IEP team to review the incident involving a student on a positive BIP to see if the BIP should be modified to reflect a previously unseen behavior, as required by *EC* Section 56521.1 (h). Specifically, the Complainant alleges Jane Doe was restrained thirteen times including floor-assisted prone restraint, her behaviors continued to escalate during a period of less than two months, and the District failed to convene an IEP team meeting to modify the BIP. The Complainant alleges John Doe was repeatedly restrained over ten times within a short period of time, placed in seclusion, bruised on the face and arms, and then placed in home instruction, but that at no time was an IEP convened to review the incidents and modify the student's BIP.

APPLICABLE CITATION

EC Section 56521.1(h) requires:

If a behavioral emergency report is written regarding an individual with exceptional needs who has a positive intervention plan, an incident involving a previously unseen serious behavior problem or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive behavioral intervention plan.

SUMMARY OF ALLEGATION TEN

The Complainant alleges the District failed to ensure that no emergency intervention is employed for longer than necessary to control behavior as required by *EC* Section 56521.1(c). Specifically, the Complainant alleges on May 8, 2014, Jane Doe was held in seclusion, a floor-assisted floor prone restraint, walking restraint, wall assisted restraint, and sitting restraint from 11:45 a.m. until 2:56 p.m.

APPLICABLE CITATION

EC Section 56521.1(c) requires:

No emergency interventions shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation.

SUMMARY OF ALLEGATION SIXTEEN

The Complainant alleges the District failed to ensure emergency interventions are only used to control unpredictable, spontaneous behavior that poses a clear and present danger of serious physical harm to the student that cannot be immediately prevented by a less restrictive response than the temporary application of a technique used to contain the behavior, as required by EC Section 56521.1(a). Specifically, the Complainant alleges the District continues to use restraint and seclusion on all students in the MHC, and not the appropriate less restrictive behavior intervention responses as outlined in the individual student's BIP.

APPLICABLE CITATION

EC Section 56521.1(a) requires:

Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses a clear and present danger or serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

SUMMARY OF ALLEGATION SEVENTEEN

The Complainant alleges the District failed to ensure emergency interventions are not used as a substitute for a systemic behavioral intervention plan that is designed to change, replace, modify, or eliminate the targeted behavior, as required by *EC* Section 56521.1(b). Specifically, the Complainant alleges the District failed to use the intervention strategies described in the students' BIPs, but rather resorted immediately to the use of emergency behavior interventions of restraint and seclusion.

APPLICABLE CITATION

EC Section 56521.1(b) requires, "Emergency interventions shall not be used as a substitute for a systemic behavioral intervention plan that is designed to change, replace, modify, or eliminate the targeted behavior."

FINDINGS OF FACT

Overall

Note: Findings Of Fact in previous allegations will not be repeated, but those applicable will be considered in subsequent allegations.

26. The District's policies and procedures (AR 6159.4 Instructions) "Behavior Interventions For Special Education" provides guidelines to staff for use of behavior

interventions. The document states: "More serious behavioral problems shall be addressed through the systematic use of behavioral and emergency interventions . . ." The document describes behavioral interventions as the implementation of procedures that result in lasting positive changes in the individual's behavior, provide the individual with greater access to a variety of community settings, social contacts, ensure placement in the least restrictive environment, and shall not cause pain or trauma, shall respect human dignity, personal freedom, social interaction and individual choice.

The guidelines state that if the behavior interferes with implementing the goals and objectives of the student's IEP, the student's IEP team shall determine whether the instructional/behavioral approaches specified in the IEP are effective, and if they are determined to be ineffective, a functional analysis shall be conducted. The guidelines discuss acceptable behavior interventions: behavior is ignored but not the student, student is verbally and physically redirected, student provided feedback, and brief physical prompt is used to interrupt or prevent aggression. The behavioral intervention plan (BIP) shall be reviewed and revised as needed by the IEP team to ensure effectiveness. Emergency interventions not specified in the student's BIP shall only be used to control unpredictable and spontaneous behavior which poses a clear and present danger of serious physical harm to the student or others and which cannot be controlled by other less restrictive techniques. If an emergency intervention is used an emergency intervention report is to be completed within one school day. If the incident involves unseen serious behavior problems or where previously designed interventions are not effective, the student's IEP team shall review the incident and determine whether the BIP needs to be modified.

27. The Sunrise student handbook indicates the school site serves TK (transitional kindergarten) through 5 (fifth grade), is part of the District's Mental Health Collaborative and provides special education and mental health services to students who have not been successful on a comprehensive elementary school campus due to their challenging behavioral and emotional needs. The school site consists of eight classrooms, including Room 3 (calming room) and Room 5 (TLC or crisis room), and six instructional classrooms. Four of the instructional classrooms are staffed with one teacher, two assistants (special education assistants [SEAs]) and one behavior health specialist (therapist) for up to nine students, and for the two "intensive" instructional classrooms staffing includes one teacher, one SEA and two therapists for up to nine students in each of the two intensive rooms. Rooms 3 and 5 are assigned two SEAs and two therapists.

The handbook describes Crisis Intervention and Use of Restraint. The handbook explains all staff are trained to deal with Crisis Intervention, but the therapists are on campus to address and assess the seriousness of the behavior. Dangerous behavior is identified as: hitting, kicking, biting, head-butting, or any aggressive physical activity directed toward staff or students; possession or use of a weapon; throwing or pushing over furniture that could injure another; throwing an item that could cause

injury to another; or self-abuse (cutting oneself, biting oneself, head banging). The handbook goes on to state that if a student continues to be a danger to self or others restraint may be used according to Pro-Act approved methods. Restraint is described as an emergency intervention used by trained staff to protect a person from immediate serious physical harm. The handbook states "if your student is restrained at school, school staff will notify you by phone. The district requires that all restraints be documented using the Behavioral Emergency Incident Report (BEIR). A copy of this form will be sent home to you following the incident. Restraint is only used as a last resort, to protect the safety of your child, as well as staff and other students. In the most severe cases, after all other strategies have been employed, parent may be called to pick up a child . . . or the police may be called. . . ."

28. Pro-Act is the student restraint system used by the District. The Pro-Act training manual the District uses to train staff states that Pro-Act is a crisis response only used when: "the primary plan does not work, the back-up plans do not work, and there is an immediate threat of injury." The Pro-Act training manual also states that the risks of assaultive behavior are many and the risks are minimized by closely supervising employee response to assaultive behavior; strongly wording and strictly enforcing policies regarding assaultive incidents; and providing regular in-service training and periodic review of the skills and knowledge necessary for the emergency response to assaultive behavior. The principles of Pro-Act restraint include: make restraint your last resort, protect breathing and circulation, avoid pain, restrain only as a team, and the safest restraint is no restraint.
29. From all BERs provided by the District for the 2013-14 school year at Sunrise , a list was developed with the names of thirty District staff that are listed as performing restraint on students. The list of thirty staff was compared to the list of Pro-Act training certification documents that the District provided. All thirty staff listed appear to have been Pro-ACT trained and certified for the 2013-14 school year.
30. The District was asked to provide additional evidence such as a telephone contact log indicating that parents and guardians were contacted after the behavior emergency. The District reports they do not maintain such a log, but do note the contact on the BER form.

Jane Doe

31. On November 7, 2013, the BER states the student remained in Room 5 for entire school day. Restraint was used on the student, including prone restraint for five minutes. The two staff listed as involved in the incident are two SEAs. No other staff were listed as present. The justification for physical intervention is listed as: "charging at peers with fists clenched, open hand hitting staff, kicking staff, swinging zip up sweatshirt at staffs' face." The report was completed the next day and reviewed and signed by the supervisor on November 20, 2013. The parent notification section of the BER was left blank.

32. On January 29, 2014, a BER states the student did not want to do math and she ran out of the classroom. The student was spitting and hitting staff and classmates, and was placed in a standing restraint for five minutes until the student calmed and was able to walk to Room 5. At Room 5, the student continued to hit staff, throw objects, swear and use racial slurs. The student was placed in a restraint on two occasions for seven minutes. A teacher and a SEA performed the restraint, and a therapist (behavior health specialist) was listed as present and observing the incident. The parent notification section of the BER was left blank. The supervisor signed off on the report on March 3, 2014, and noted to review and revise the BSP.
33. On January 30, 2014, a BER states the student ran from class and ran around the school campus swearing at staff and peers, and then the student became assaultive with staff, punching and kicking. The student was placed in a walking restraint for two minutes and escorted to room 5. The student was able to return to class and ride the bus home. The parent notification section of the BER was left blank. The supervisor signed off on the report on February 4, 2014.
34. On March 4, 2014, the BER states the student refused to return to the classroom after morning recess. The student assaulted a younger student, spit on staff and other classmates, grabbed a staff walkie-talkie and threw it over the fence. The student was placed in a walking restraint and escorted to the TLC (Room 5). The report was completed on March 4, 2014, but the parent notification section of the BER was left blank.
35. A March 26, 2014, 2014, BER indicates that at 2:55 p.m., the student was chasing other students, assaulting staff, throwing objects, and provoking others. The incident was a reaction to an earlier direction the student did not like. The staff put the student into a sitting restraint and, after some time sitting and more spitting and kicking, the staff used a prone restraint. The total time for both restraints was twenty minutes. Staff involved in the restraint were the teacher and BHS. Under the section: "How could this incident have been prevented/recommended changes," the BER states: "Staff can further review her safety plan. More staff could switch out in order to avoid injury and inspire new approaches and energy to the situation/behaviors." The supervisor signed off on the report on April 2, 2014, with the comments: "continue to review BSP/safety plan and revise as needed." The parent notification section of the BER indicates the parent was notified, but the date indicated for the notification was ten days prior to the actual date of the incident.
36. On April 7, 2014, a BER states the student was spitting water and hitting another student on the playground. The therapist and staff employed a walking restraint to escort the student to Room 5 to calm down. The student ran out of Room 5 and the therapist supported her outside to avoid further conflict with other students. The student was unable to calm down and left school early. A two minute standing restraint was used by the SEA and BHS. The supervisor signed off on April 11, 2014.

37. On April 14, 2014, the BER states the student was restless in class, roaming the classroom and was unable to return to her seat when directed to do so. The student left the classroom without permission and a therapist accompanied her. While outside, the student was hitting and spitting on peers and was escorted to Room 5 for calming. In Room 5, the student could not calm and left the room with markers, began writing on walls and hit the therapist. The student then climbed the fence, left campus briefly and returned when directed to. The student's guardian was called to pick her up. The therapist explained to the guardian that the student appeared hyper, restless and unable to calm her body after lunch. The guardian stated that she would contact the student's psychiatrist to discuss possible medication changes. The therapist will continue to work with staff at Sunrise to make necessary changes to best support the student while in crisis and to help her calm more quickly. Two minutes of walking restraint was used to escort the student to Room 5. Staff involved in the restraint were two BHS. The parent notification section of the BER was left blank.
38. On April 28, 2014, a BER states the student did not earn a reward that other students earned, and left the classroom with a backpack. A therapist accompanied the student and when the student was "disrespectful" to staff, the therapist directed the student to Room 5 to calm her. When the student would escalate the therapist would talk to the student, ask her to sit and calm her body. This went on for several minutes and the student climbed on a cabinet and began throwing objects. The therapist continued to talk to her and calm her. One minute of walking restraint was used and the student was able to finish the school day and go home on the bus. The parent notification section of the BER was left blank.
39. On May 5, 2014, the BER states the student was spitting, kicking and hitting staff and peers when she was directed to the calming room. The student was not responding to redirection and became more aggressive and assaultive. BHS staff placed the student in a sitting restraint for nine minutes until she was calm and agreed to be safe. The BER states that the student is acting out due to over-stimulation and staff will review the student's safety plan and intervene earlier by seeking out less stimulating environments. The supervisor signed off on the report on May 15, 2014, and noted "review/revise BSP and safety plan as needed." The form indicates the parent was called on May 5, 2014.
40. On May 6, 2014, the BER states the student left the classroom and acted agitated when she was placed in Room 5. BHS staff placed the student in a sitting restraint for eight minutes and, when calm, she was released. The student immediately escalated with assaultive behavior and was placed in a sitting restraint for thirty-seven minutes. The justification for physical intervention was that the student was not able to calm, and was becoming increasingly assaultive. The staff involved in the restraint were two BHS. The supervisor signed off on the report on May 15, 2014. The form indicates the parent was called on May 6, 2014.

41. A District BER dated May 8, 2014, indicates that beginning at 11:45 a.m., the student refused to sit in class, then left the classroom and became assaultive with peers (hitting, kicking and spitting). At that time, two SEAs used a walking restraint to escort the student to Room 5. At Room 5, the student refused to sit and became assaultive toward staff – punching, hitting, and spitting and was placed in a prone restraint for three minutes. After release and calming for about five minutes, the student was provided lunch. The student ate some lunch and then began throwing lunch and became assaultive and was placed in a wall-assisted restraint, but kept kicking staff. Then a sitting restraint was employed, but that was not safe, and a prone restraint was used a second time.

The student was released when calm and became assaultive again and then was placed in floor-assisted prone restraint for a third time and then released when calm. The student became assaultive and was placed in a floor assisted restraint for thirteen minutes until 2:56 p.m. The BER states under the heading “Staff follow-up and Conclusion to Incident: Grandmother called to pick up due to unsafe behavior . . . Staff will encourage/refer for more supportive services, i.e., TBS.” Under the section: “How could this incident have been prevented/recommended changes,” the report states, “. . . Modify safety plan. Recommend consultation with psychiatrist.” The supervisor signed off on the BER on May 23, 2014, and indicated that no injuries were noticed. Under the section “This constitutes a Behavioral Emergency per Hughes Bill guidelines” the box is checked NO.” Staff involved in the restraint were two SEAs and one BHS.

42. In addition to references to a need to revise the BIP, some BERs for Jane referenced a need to revise her Safety Plan. The Student’s Safety Plan, last updated February 19, 2014, shows Known triggers: disappointments, limits, diminished effects of meds, refusing to eat snack or lunch, inability to master a task, presentation of low point sheet; Antecedent Behaviors: Argues with classmates (bossy), physically assaults peers (pushing, throwing objects, hitting), refuses to take direction, curses at staff, takes things from peers, disrupts classroom; Crisis Behaviors: assaults peers and staff, runs out of supervision, major disruption, self-injurious–pulling out hair, sexualized behavior; Interventions/Known Coping Skills (during antecedents): Focus on goal or reward, taking space, safe breaks, resets, individualized attention from staff; Interventions/Known Coping Skills (During Crisis): food or drink, reading a story, basic directions broken down into simple steps, reflecting on feelings; Special Plan Regarding Restraint/Seclusion/Crisis: Restraint and seclusion have occurred in the absence of meds, seems to further escalate her, requires a great deal of time to calm, seems to respond to planned ignoring and lack of interaction and very basic directions; Reintegration Plan: make a plan for returning to the classroom, coaching at her seat or provide a brief period of proximity.
43. In a May 28, 2014, letter to the District from the Contra Costa County Children and Family (CFS) Services, the CFS recommends a change of placement for the student due to the use of prone restraint on the student on May 8, 2014, and indications that

the student was witnessed to have injuries to her face and ear, and the student has asthma. The letter goes on to observe the student's behavior and academic abilities have significantly deteriorated since placement at Sunrise in October 2013.

44. A signed declaration by the student's classroom therapist dated October 9, 2014, states that she regularly communicated with Jane Doe's great grandmother, aunts, social worker, and CASA worker. The therapist states that over the six month period during which Jane attended Sunrise, the student had maladaptive coping skills in response to limit setting from staff. Jane would become oppositional and resistant in the classroom, often after receiving a direction that she did not like or being denied something that she wanted. This behavior often took the form of open defiance, such as taking the object she wanted and running away, or physically hurting a classmate or destroying property. She then would be asked to take breaks outside. The therapist reports that Jane seemed more capable of responding to interventions earlier in her behavior pattern through positive reinforcement, redirection, incentives, praise, negotiation, reminders of personal goals and rewards, modeling by a trusted adult, and calming activities such as deep breaths or reading a story.

But when Jane was in a state of heightened dysregulation, she often remained in such a state for the entire school day. The therapist reports that she attended IEP team meetings for Jane on March 28 and May 28, 2014, and supported her move from Room 2 to Room 7 (intensive classroom) at the March 28, 2014, IEP team meeting. The therapist reports that on April 14, 2014, she approached Jane while she was roaming the campus out of the classroom and encouraged her to return to the classroom, but Jane refused. The therapist then engaged Jane in a game of "Simon says" in an attempt to reset her behavior, and she relaxed and sat down. About that time another classroom was out at recess and Jane escalated again and went towards the group of students and staff. The therapist shadowed her and encouraged safety, but Jane continued to resist directions and then began hitting staff as the staff began to evade. The great grandmother was called to pick Jane up. The therapist reports similar incidents with Jane on April 15 and 30 and May 1, 5, and 6, 2014. Then on May 8, 2014, the therapist reports that she joined Jane in the calming room towards the end of the day. The other staff reported to her that Jane had been in several restraints during the day and at the time was being contained in one of the small rooms in the back. The therapist reports that she engaged Jane in a calm fashion and Jane tried to slam her head into the therapist's face. The therapist states she moved away from the doorway opening and other staff placed Jane into a sitting restraint. Jane was released when she calmed after thirteen minutes of restraint. When her great grandmother picked Jane up, the therapist explained what had happened during the day.

45. The October 7, 2014, signed declaration of the lead therapist at Sunrise states that she is part of the clinical supervision team (CARE team) and familiar with many of the behavior incidents involving Jane Doe at the school. The therapist reports that she was one of the staff who restrained Jane Doe on May 6, 2014, and investigated Jane

Doe's assault on another student on April 8, 2014, that led to a suspension from school. The lead therapist also reports she attended CARE team meetings for Jane on March 11 and April 2, 2014, and participated in a discussion on April 1, 2014, about transferring her to Room 7 (intensive classroom). The psychologist reports that on April 16, 2014, the student's safety plan was updated by the classroom teacher and the therapist. The therapist recounts the incident on May 8, 2104, in which Jane Doe left the classroom and hit and spit on several peers and was escorted by two staff to Room 5 using Pro-Act techniques. Prone restraint was later used as the student kicked staff in the face.

John Doe

46. A June 2, 2014, BER states the student was disruptive in the classroom and refused to take "think time" or take time outside. The student then began to throw objects at staff in the classroom when he was escorted to the TLC. While in the TLC he spit at staff, hit and kicked staff, and threatened to bring a gun to school and shoot staff. The student was placed in a prone restraint for ten minutes by the therapist and teacher. Then the student's mother was called to come and assist in calming student. The supervisor signed off on the report on June 11, 2014, and comments include to continue to monitor the BSP and safety plan.
47. A June 5, 2014, BER states the student was sent to the TLC for disruptive classroom behavior in which he continued to hit and kick staff event after numerous warnings and redirections. The student was placed in a prone restraint for fourteen minutes and sitting restraint for seven minutes. Four SEAs and one BHS (therapist) were involved in the restraint. The supervisor signed off on the report on June 14, 2014. The form indicates the parent was called on June 5, 2014.
48. A June 5, 2014, Medi-Cal billing form completed by the therapist documents the student was removed from class for disruptive and assaultive behavior towards students and staff and placed in the TLC where the behaviors continued. The student hit staff with his metal necklace, causing a mark on staff. The therapist notes indicate the student did not comply with simple directions, attempted to elope from the TLC room, was provided alternatives to behavior, and was not receptive to interventions or feedback. The student was placed in a prone restraint and after release continued to exhibit aggression towards staff. Staff called the parent to come to school and assist in calming the student.
49. A June 25, 2014, BER documents an incident in which, during circle time, the student was disruptive and when directed to stay in his seat the student began swearing, then refused to exit the classroom when directed. The student began throwing chairs and hitting and kicking staff. He was placed into a standing restraint and then a sitting restraint by the teacher and aide for nineteen minutes. The student ceased behaviors when the parent arrived to pick him up. The teacher and a SEA performed the

restraint in the classroom. The form indicates the parent was called on June 25, 2014.

50. A June 30, 2014, BER, states the student got into a fight with another student and then ran away from the classroom, tried to climb the school fence and when staff prevented him from doing this, he grabbed a basketball and threw it at staff, and kicked and punched staff. The incident included thirteen minutes of restraint by two SEA staff. The supervisor signed off on the report on July 7, 2014, and recommended a safety plan. The parent notification section of the BER was left blank.
51. A July 7, 2014, BER states the student was asked not to run and talk when transitioning back to the classroom. The student picked up his back pack and left the room and when a staff member tried to stop him, the student tried to bite him on the arm. The student continued to roam around the school campus throwing sticks and rocks at staff, banging on windows and swearing at staff. The student was asked to sit for fifteen minutes and was able to run laps to release energy. On his way back from lunch, the student began kicking cars in the parking lot and kicking at staff, pulling plants out of planters, and throwing rocks and sticks. He then began swinging a mop and trying to hit staff, and his parent came to the school. He dropped the mop and was able to calm down. The BER indicates the student is suspended on July 8, 2014, for the incident. The form indicates the guardian was called on July 7, 2014.
52. A July 15, 2014, BERs states the student was in the classroom and was requested to do his school work. The student began knocking over chairs and, when asked to leave the classroom, he obtained several pencils and, with one in each hand, made stabbing motions at staff. He was then removed from the classroom and placed in a sitting restraint. While in the sitting restraint, the student continued to try to head-but staff and spit at them. The student was then placed into a floor assisted prone restraint.

After his release the student climbed the school fence and exited the campus where he obtained sticks and rocks and began to assault the staff that were following him. The student was placed in a walking restraint and escorted back to campus. During the escort back to campus, the student continued to struggle and it was decided to exercise a floor assisted prone restraint again. During the restraint, the staff lost control of the student and he fell to the ground, causing a bloody nose and split lip. The student was in restraints for twenty-six minutes total, including two instances of prone restraint for sixteen minutes. The parent was called on July 15, 2014. The BER was signed by a supervisor on July 24, 2014, and the follow-up comments are to: "review and revise safety plan/BSP as needed."

53. The school principal's declaration dated October 10, 2014, states that John attended Sunrise from May 13, 2014, through June 12, 2014, and then ESY from June 23 through July 24, 2014. On July 15, 2014, the principal states she was notified that John was injured during a prone restraint (bloody nose and lip.) She states that she

immediately called the parent on that date, and then met with the parent, friend and therapist on July 17, 2014. The principal states she explained the incident (as told to her by staff) to student's parent, including the fight in front of the school, the escort towards Room 5, and, after John tried to bite and hit staff, a prone restraint in which John pulled his arm out of the sweatshirt, staff lost control of him and he fell to the floor, hitting his nose and lip and drawing blood. The principal notes that she arrived on the scene when the student was calmly sitting in a chair in the pod area as the staff were administering First Aid. The principal states that during the meeting, the parent voiced concerns with the number of restraints despite the student being in a more structured classroom, as well as continued behaviors and continued phone calls home. The principal states the parent understood the school's needs for restraint but her hope was to find a school that uses different ways to manage his behavior. The principal states she understands and that the school only uses restraint as a last resort. The principal notes that the parent agreed to leave the student at Sunrise and continue with communication between home and school.

54. The signed declaration of an SEA dated October 9, 2014, states that she was involved in the July 15, 2014, incident involving John. The aide reports that her job is to support the students in the classroom and on campus. The aide reports that she was in front of the school and two students were in a fight. Staff separated the students and then John began assaulting staff. The aide states that she and another staff escorted John towards Room 5 when he kicked, hit and attempted to bit the two staff. He was then placed in a prone restraint. During the restraint, John pulled his arm out of his sweatshirt and hit his head on the floor, bloodying his nose. The staff moved him to a chair and applied First Aid. The principal was then informed.
55. John has been suspended from school eight times, for one day each, as evidenced by the following suspension letters: November 1 and 9, 2012, defiance; May 2, 2013, use of force, defiance of authority or disrespectful or disruptive behavior; May 2, 2013, leaving class without permission and disrespectful and disruptive behavior; May 17, 2014, violence, causing damage, obscene act, and assault of staff; January 9, 2014, physical injury to another, possession of dangerous object, and defiance of authority; January 9, 2014, threats against students or staff, and defiance of school authority.

Other Similarly Placed Students

56. The BERs for all students similarly placed at Sunrise for the 2013-14 school year were obtained and reviewed. The total number of restraints used at Sunrise for the 2013-14 school year totaled 292 for students other than Jane and John, and over 300 when including Jane and John. This includes the following types of restraint: escort, prone, sitting, standing and wall restraint. One student was restrained fifty-seven times (the most identified in the BERs) during the school year. The next highest total is forty-four and then thirty-two restraints for the school year.

57. According to BERs obtained from the District for a student identified in this report as Student 7, the following was found: On January 31, 2014, Student 7 was given thirty-two minutes of sitting restraint with several short breaks. On February 18, 2014, Student 7 received thirty-four minutes of restraint including ten minutes of prone restraint. On February 19, 2014, Student 7 received thirty-one minutes of restraint. On February 20, 2014, Student 7 was given seventy-seven minutes of standing restraint with several one minute breaks. The restraint was administered by therapists and there was no supervisor review signature or follow-up done. On February 24, 2014, Student 7 was given thirty-four minutes of standing restraint, There was no supervisor signature and no follow-up. On April 7, 2014, Student 7 was given fifty-seven minutes of prone restraint with no breaks with four staff administering the restraint. The supervisor comments states: schedule a meeting. On April 17, 2014, Student 7 received sixty-three minutes of restraint (forty minutes of prone restraint) over the course of seventy-five minutes. Supervisor comments stated "continue to meet as a team to discuss how to best [meet] Student 7 needs." On May 28, 2014, Student 7 was provided sixty-seven minutes of restraint with no breaks and the supervisor comments are to continue to implement BSP and safety plan..." The BERs were reviewed for parent contact and it was found that for the February 19, 2014, incident, a message was left for the parent.

CONCLUSION FOR ALLEGATION FOUR

The evidence was insufficient to show a violation of *EC 56521.1 (d)(1)* regarding the amount of force reasonable and necessary under the circumstances. Although Jane's guardian reported that Jane's face was swollen and she had pain in her ear after a floor restraint, and John received a bloody nose and cut lip when staff temporarily lost control of him during a restraint, the evidence was insufficient to show that the District used an amount of force that exceeded that which was reasonable and necessary under the particular circumstances involved in the significant emergency behavioral incidents. **The District is in compliance.**

CONCLUSION FOR ALLEGATION EIGHT

The District failed to meet the requirements of *EC section 56521.1 (e)*, regarding: (1) the notification of the parent or guardian within one school day if an emergency intervention is used, and (2) the completion of a BER immediately and placing it in the student's file. The evidence did not demonstrate that for every emergency intervention used at Sunrise for the 2013–14 school year the parent or guardian was notified. Many of the BER forms for Jane indicate no contact of the guardian as that section of the form is left blank, and many of the other forms examined show the name of the parent typed in but no indication (by an initial or date and time called) that the parent was in fact called. The District was asked for a telephone contact log for behavior emergencies but none existed. In addition, from a review of 2013–14 BERs, the District failed to notify parents or complete BERs in numerous instances in which students were placed in Rooms 5 as an emergency intervention. **The District is out of compliance.**

CONCLUSION FOR ALLEGATION NINE

The District failed to meet the requirements of EC 56521.1 (h) regarding if: (1) a BER is written for a student with a BIP, or (2) there is an incident involving a previously unseen serious behavior problem, or (3) when a previously designed intervention is ineffective, there shall be a referral to the IEP team to review and determine if the incident constitutes a need to modify the BIP. A review of the BERs from the 2013–14 school year shows there were numerous instances in which the criteria were present requiring a referral to the IEP team to review and determine if there was a need to modify the student's BIP, but there was no evidence that such a referral, review and determination occurred. **The District is out of compliance.**

CONCLUSION FOR ALLEGATION TEN

The District failed to meet the requirements of EC 56521.1 (c) regarding no emergency intervention shall be employed for longer than is necessary to contain the behavior, and that a situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement. Jane was placed in the TLC on May 8, 2014 for over three hours and in five different restraints for thirty-two minutes. The BER indicates two SEA staff were present during the incident and neither the administrator nor the police were called. The BERs for Student 7 show a continued pattern of prolonged restraint, and no calls to police or administrator. In these situations either the restraints were employed longer than necessary or, if prolonged restraint was necessary, staff should have sought the assistance of an administrator or law enforcement. **The District is out of compliance.**

CONCLUSION FOR ALLEGATION SIXTEEN

The District failed to meet the requirements of EC 56521.1 (a) regarding emergency interventions may only be used to control unpredictable, spontaneous behavior that poses a clear and present danger or serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a techniques used to contain the behavior. A review of the BERs for the 2013–14 school year at Sunrise shows that for many of the incidents documented, the student was engaging in a pattern of repetitive behavior. It was not demonstrated in a review of the 300 restraints used for the school year that in all instances the behavior exhibited by the students could not be immediately prevented by a response less restrictive than the temporary application of techniques used to contain the behavior **The District is out of compliance.**

CONCLUSION FOR ALLEGATION SEVENTEEN

There is insufficient evidence to find a violation of EC 56521.1 (b) regarding emergency interventions shall not be used as a substitute for a systemic behavioral intervention plan that is designed to change, replace, modify, or eliminate the targeted behavior. The

review of the BERs for the 2013–14 school year and evidence presented shows that the staff at Sunrise tried to de-escalate the behavior incidents using a variety of methods and techniques before restraint was used, including interventions in the student's BIP, the student's safety plan, the classroom BEST program, and the Pro-Act de-escalation techniques. **The District is in compliance.**

SUMMARY OF ALLEGATION FIVE

The Complainant alleges the District systematically and unilaterally places students into the MHC in violation of *EC* Section 56342.5. Specifically, it is alleged that both Jane and John's placement into the Sunrise MHC were made without parental/guardian input.

APPLICABLE CITATION

EC Section 56342.5, requires, "A local educational agency shall ensure that the parent of each individual with exceptional needs is a member of any group that makes decisions on the educational placement of the individual with exceptional needs."

FINDINGS OF FACT

Note: Findings Of Fact in previous allegations will not be repeated, but those applicable will be considered in subsequent allegations.

Jane Doe

58. Jane's initial March 25, 2013, IEP indicates she was referred for special education due to academic and behavioral concerns. Academic assessment results show weaknesses in reading, writing, spelling, and math. Psychological assessment shows the student is impulsive, has difficulty in following directions, gets frustrated with tasks, and is struggling with auditory awareness. The team found that she qualified for special education services as a student with a specific learning disability (SLD). The team considered general education with support. The IEP provides accommodations and modifications (preferential seating, small groups, frequent checks for understanding, positive reinforcement, visual cues, multisensory approaches, repeat directions, adjust length of time of assignments, consistent expectations, and use of time out room.) Services are listed as Specialized Academic Instruction (SAI), group and individual, thirty minutes two times per week with no ESY. The IEP provides 96% of the school day in the general education environment and trimester report cards. The IEP states that the IEP team will consider a change of placement for the second grade. A BSP was developed. The parent consented to the IEP.
59. Jane's September 23, 2013, IEP indicates she is seven years old and in the second grade. The purpose of the IEP team meeting is to add educationally related mental

health services (ERMHS) to the student's IEP. The student's eligibility for special education is listed as (primary) specific learning disability (SLD) and (secondary) other health impairment (OHI). The student receives accommodations and modifications (preferential seating, small groups, frequent checks for understanding, positive reinforcement, repeat directions, adjust length of time of assignments, use of time out room, among others.) Services are listed as Specialized Academic Instruction (SAI), group and individual, thirty minutes two times per week with no ESY. The IEP provides for 96% of the school day in the general education environment and trimester report cards.

The IEP states the student's behavior impedes learning and elaborates: "[Student] struggles with attention, hyperactivity, and impulsivity. These behaviors impede her ability to pay attention and complete academic tasks. It also affects her ability to appropriately function in the classroom without disrupting her peers and her ability to develop relationships . . . [Student] is eager to please and desires to be successful; she responds well to positive praise and attention." The IEP indicates a behavior goal is part of the IEP and goals will be written for areas of need: Reading, Writing, and Math. The health section indicates the student takes medication for ADHD and anxiety and has a history of asthma but has not used an inhaler in two years. There are no indications of asthma at school, per the school nurse. The IEP contains two goals for English Language Arts and one for Math.

The IEP notes state that the general education teacher reports the student is not interested in school, the teacher has to ask 3-4 times for the student to respond, the student does 1:1 work but shuts down, her attention span is ten minutes maximum, the student is disruptive and uncooperative, and classmates are afraid of her and don't know what to do. The guardian reports the student takes medication and she wants to change doctors and adjust the medication. The advocate states the student is frustrated with school, does not know how to make friends, and the student has not been successful in any environment (1st grade, 2nd grade, resource, 1:1 intervention).

The therapist (assessor) went over the ERMHS assessment report. The report recommends individual therapy, group therapy, family therapy, collateral, crisis management, and County case management. The guardian states that she does not want a certain named non-public school. The advocate does not want academics to go away. The guardian is told that if the student were to attend certain schools a therapist would be there. A referral to a psychologist is suggested. The IEP team agrees a higher level of counseling is needed. The teacher will talk to the student to explain why she is being moved to a new placement. The guardian signs in agreement on September 23, 2014.

60. An ERMHS report dated September 13, 2013 (presented at the September 23, 2013, IEP team meeting) describes the student's special education eligibility and her strengths: curious, smart, energetic, likes to be helpful, enjoys singing, dancing, puzzles, and playing teacher. The report notes the student's medical ADHD

diagnosis, previous visits with a county psychiatrist for one and one half years, and then previous visits with a therapist for one and one half years. The report indicates academic skills are far below grade level, cognitive abilities are average, and there are deficits in phonological processing and attention. With tutoring and resource support, the student has made some progress but is still below grade level.

The student's first grade teacher made the following observations: has difficulties functioning in a large classroom, very disruptive in that environment and has made very little academic and behavioral progress; student refuses to do most of the work given, even if she does do some by the end of the day she would destroy it; the reading specialist has excluded her from the reading group because she demanded all the attention, and interfered with the learning of the other students; student did best when working one on one with an adult; student often made noises, struggled to remain seated, often off-task, and was defiant 90 percent of the time.

The student's second grade teacher observes: the student requires one to one assistance on every assignment, and has negative behaviors in the classroom and on the playground. The teacher indicates the student needs a smaller class size, smaller teacher-student ratio and needs counseling support in the classroom.

The student's guardian (grandmother) believes the student is making progress at school and she is getting a lot of help. The guardian indicates the student is very volatile at home and often makes up stories.

61. The October 23, 2013, IEP indicates a change of placement and a support is added to the September 23, 2013, IEP: "All staff at Sunrise MHC will be trained in crisis intervention and prevention (i.e. Pro-Act). Services provided are SAI for 360 daily, Agency linkages (County Mental Health Case Management at 600 minutes yearly, individual counseling 60 minutes weekly and counseling and guidance 120 minutes daily. The IEP notes state: Goals will continue from prior IEP, effective strategies to use on student discussed, service delivery model discussed, and the IEP team is in agreement to change the student's placement to Sunrise School effective October 24, 2014. The guardian signed consent on October 23, 2013.
62. In the student's March 28, 2014, annual IEP, the teacher reports the student has not mastered all her goals but has made good progress. There was discussion about the student's behavior and proposed goals for keeping the student on task. The guardian expressed concerns with the TLC room and calming rooms with male staff. Concerns with the placement at Sunrise were discussed. It was discussed the student should be moved to the intensive classroom at Sunrise. The teacher discussed the structure and the service delivery model was discussed. Goals include to improve reading, writing and math which is baseline at below grade level, and a behavior goal is to stay in class 95% of the time. A BIP was developed by the teacher and therapist on March 20, 2014, and added to the IEP. The parent consented to the IEP.

63. A May 13, 2014, letter from the student's guardian requests an emergency IEP team meeting. The letter states concerns with restraint, trauma and stress as a result of the treatment of the student. The guardian reports her concerns that the student is removed from the classroom frequently and put into seclusion.
64. The October 7, 2014, signed declaration of the lead therapist at Sunrise states that she is part of the clinical supervision team (CARE team) and familiar with many of the behavior incidents involving Jane at the school. The therapist reports that she was one of the staff who restrained Jane on May 6, 2014, and investigated Jane Doe's assault on another student on April 8, 2014, that led to a suspension from school. The lead therapist also reports she attended CARE team meetings for Jane on March 11 and April 2, 2014, and participated in the discussion on April 1, 2014, to transfer her to Room 7 (intensive classroom). The psychologist reports that on April 16, 2014, the student's safety plan was updated by the classroom teacher and the therapist. Then the therapist recounts the incident on May 8, 2014, in which Jane left the classroom, hit and spit on several peers and was escorted by two staff to Room 5 using Pro-Act techniques. Prone restraint was later used as the student kicked staff in the face.

John Doe

65. The student's November 5, 2013, Section 504 Plan has three parts. The initial eligibility worksheet shows the student was in the second grade at a local elementary school when he was referred for Section 504 assessment. He has a BSP and is sent to the office "almost daily." The Student is "often" sent home early." He takes medication twice per day for ADD. The assessment worksheet indicates the student's learning has not been limited by his behavior. The Section 504 Identification and Eligibility form states the student's impairment is diagnosis of ADD, and he is very distracted and gets upset to the point where he can't calm down and must be sent home early from school. He has recently started to see therapists for calming techniques. The Section 504 Accommodations form states the student is eligible for accommodations (standing near desk, seated near teacher or model peer, allowed to take breaks when he requests). The form is signed by the parent, administrator, teachers, mental health therapist and school psychologist. The portion of the Section 504 form entitled Accommodation Plan is not completed thoroughly, and the notes say: "See IEP notes."
66. The student's November 5, 2013, IEP indicates this is the initial IEP and the purpose is to determine special education eligibility. The results of the Psycho-educational Report were presented by the School Psychologist, indicating the student has been diagnosed with Attention Deficit Hyperactive Disorder (ADHD) which affects his ability to access the general education curriculum, and he has a BSP.. Almost all assessment results fell in the average range. The academic evaluation was reviewed by the resource specialist and the scores fell in the average range. The assessment report finds the student qualifies for special education under other health impairment

(OHI) for his ADHD behaviors and does not meet the eligibility criteria for specific learning disability (SLD) even though the student has difficulty with comprehending verbal instructions and processes oral instructions more slowly than his peers. The student's classroom teacher reports the student is capable of grade level work if he is on proper medication. Although the student qualifies for special education under OHI, the team recommends a Section 504 plan with accommodations. The parent asked for a behavior specialist and the district responded that the behavior is not extreme enough to warrant direct behaviorist intervention. The parent agreed and declined services at this time. The Section 504 plan was reviewed and agreed to by the parent.

67. The student's February 7, 2014, IEP, states the purpose of the meeting is to officially qualify the student for special education services under the category of OHI. The IEP provides two behavior goals (asking for help and accepting disappointment) and includes an October 13, 2013, BSP. The parent inquired about independent study and home and hospital services as the parent is interested in finding another placement for the student. The team agreed to complete a "Triage" packet to find out about other placements. The parent consented to the IEP.
68. A student withdrawal form dated February 20, 2014, shows the student withdrew from the District school and began "Home Hospital" instruction.
69. The District uses a Triage Team and a ERMHS report to assess whether a student would benefit from placement in the District's MHC program. The February 18/21, 2014, Triage Team worksheet for the student gathers information such as whether the student has an IEP, current services, type of insurance, family information, community resources used (including county mental health services), and psychological/social/medical data. The Triage report indicates the student assaults other students, throws objects at staff, destroys school property when angry, refuses to take his medication for ADHD, that when seen by counselor or school psychologist the results are not positive, he comes to school to play, his behavior has escalated, he elopes from the classroom and he is aggressive with the teacher. The parent has had to pick him up from school many times. The May 2, 2014, Triage report recommends placement at Sunrise with ESY.
70. The student's May 7, 2014, IEP indicates the purpose of the meeting is to discuss placement at Sunrise MHC. The IEP notes state the family visited Sunrise this morning; the student can start attending there on May 13, 2014. The IEP states that Special Education and Related Services include Specialized Academic Instruction (SAI) 360 minutes daily; Counseling and Guidance (a range of ERMHS services including individual therapy, group therapy, family therapy, crisis management, case management and collateral) 180 minutes daily; and agency linkages with Children's Mental Health 600 minutes yearly. ESY is approved. The parent consented to the IEP.

Other Similarly Placed Students

Student 1

71. The student was initially found eligible for special education services (SAI 300 minutes per week) under the primary disability of Emotional Disturbance (ED) and secondarily OHI at a December 7, 2012, IEP meeting. The IEP notes and assessment report state the student suffers from anxiety, mood swings, aggression and ADHD which can cause him to elope from the classroom. The student was receiving County Mental Health services prior to the IEP and will not receive counseling at the school site. An IEP amendment meeting was convened on October 11, 2013, to discuss his academic difficulties. The parent reports the psychiatrist removed an ADHD diagnosis and replaced it with anxiety disorder. The student is taking medication three times per day. The teacher reports the student does not participate in classroom work and hides under the table. The IEP team adds thirty minutes of individual counseling. The student's annual December 6, 2013, IEP notes state the student is struggling academically and is having trouble completing his school work. The parent asks about a different placement. The District offers a Triage package but the parent needs a Medi-Cal card and social security card to complete it. The parent consents and will complete the referral forms. The ERMHS report was completed on January 24, 2014, and the report indicates ED is interfering with the student's education; the Triage Team report was completed on February 14, 2014, and recommends a placement at Sunrise Elementary MHC; the student's March 13, 2014, IEP amendment changed placement to Sunrise MHC, developed a BIP, provided ESY, and individual, group and family therapy services. There are no notes regarding LRE. The parent consented to the IEP.

Student 2

72. The student's May 23, 2012, interim IEP provides occupational therapy (OT), SAI, speech and language (S/L) and psychological services from the Department of Mental Health at a District elementary school. A February 22, 2013, amendment IEP provides ERMHS services to the student at Sunrise MHC. A partial, incomplete June 5, 2013, IEP was obtained from the student's educational file and provides little information except for his goals. The student's April 28, 2014, triennial IEP indicates he attends the Sunrise MHC with OT, counseling, SAI, S/L and ESY. The student's eligibility is specific learning disability (SLD) and S/L with a behavior goal and a BIP. The IEP section regarding LRE is left blank. The April 8, 2014, Psychoeducational Assessment Report data show significant asthma, food allergies, vision problems, attention problems, academic issues and interpersonal difficulties. The parent consented to the IEP.

Student 3

73. The student's June 21, 2012 triennial IEP provides 1500 minutes a week of SAI, four fifteen minute sessions of S/L, counseling and guidance for 1500 minutes per week, and ESY. The LRE section of the IEP is not completed. The student has a BIP. The student's June 7, 2012, Psychoeducational assessment report provides the student was identified in the first grade in 2010 for special education as a student with ED and S/L. He attended Bel Air Elementary for the start of the first grade. In December 2010, he transferred to Sunrise. While the IEP notes indicate the parent attended and agreed to IEP, the signature page is blank. The student's October 18, 2012, IEP discussed the parent's concerns with the program at Sunrise. The parent is concerned about his behaviors at school as she does not see these at home. The student reports that staff are mean to him. The student's teacher reports on his progress in class: he refuses to follow directions in class and ends up spending little time there, once in class he does not follow directions and his behavior escalates thus resulting in no academics are completed. Once he is directed to the TLC process he does not react well to hands being placed on him. Self-harm statements have increased and the police have been called. A change in therapists was offered. The process for changing placement was explained. The student's annual IEP held on March 3, 2013, indicates the student still qualifies for special education services at Sunrise, the LRE section is blank, and the parent signed in agreement. The student's February 26, 2014, and March 21, 2014, annual IEP continues to qualify the student as ED to receive services at Sunrise, and the LRE section is left blank. The IEP indicates the student is not meeting his IEP goals. Parent consent was received.

Student 4

74. The student's June 10, 2014, Manifestation Determination report indicates the student was first identified in 2009 in Kindergarten as a student with a SLD. He was retained in Kindergarten at Bel Air Elementary and attended 1st grade and partially the second grade at Rio Vista where he showed significant difficulties following directions, running from class, and completing school work. The student transferred to Sunrise in December 2011. The IEP from December 2011 was not provided by the District. The November 16, 2012, annual IEP indicates the student qualifies for special education services as a student with a SLD and S/L impairment, the LRE section is blank, the student receives S/L 60 minutes monthly, wrap around service 120 minutes yearly, counseling and guidance 1200 weekly, SAI 1500 weekly, and ESY. The student has a BIP. The student's annual November 13, 2013, IEP, contains a discussion of LRE in general education, exits the student out of S/L, continues SAI and counseling services, BIP and ESY. The District convened a manifestation determination hearing on June 18, 2014. The report indicates the student has twelve days of suspension and follows an incident on June 3, 2014, when the student left the classroom, climbed onto the school roof, and was assaultive with staff and students. Prior to the last incident in which he received a three-day suspension, the student was suspended for one-day on October 3, 2013 for hitting and biting staff; on

October 7, 2013, he hit several staff with a tree branch, the police were called and he received a three day suspension; on February 7, 2014, student received a one-day suspension for assaults on staff, throwing rocks at staff and leaving the campus several times; and on March 24, 2014, the student assaulted and injured another student and received a two-day suspension. The manifestation determination found the student's assaultive behavior was not a manifestation of his disability because he is eligible for special education as SLD.

Student 5

75. The student's annual October 18, 2012, IEP states the student was retained in first grade last year and did not have any behavioral outbursts which the parent indicates is due to medication management. The parent also states the student has a history of suicidal thoughts and depression. The student is under the care of a psychiatrist and neurologist. The IEP indicates the student is eligible due to a SLD and places the student in general education with 160 minutes per week of SAI. The student's December 17, 2013, triennial IEP considers LRE and continued general education or home hospital instruction, which, it is noted, is not a long term solution. The student's behavior (having emotional issues and meltdowns) is impeding learning. The IEP has two behavior goals relating to "self-management", but no BSP. The eligibility has changed to ED (primary disability) with a secondary disability of SLD. The student is receiving 135 minutes of SAI weekly. The student's Psychoeducational assessment report states the student is making academic progress in his home and hospital placement, but is in need of an academic program that would assist him with grade level school work and his mental health and behavioral needs. The purpose of the student's February 11, 2014, meeting is to discuss the recommendations of the Triage Team. The ERMHS report was discussed with the team including the parent and the Triage Team recommends Sunrise MHC. The parent is happy with the placement and wished to move forward with the placement. The parent signed consent to the IEP.

Student 6

76. The student's October 24, 2012, initial IEP indicates that the student has a SLD disability and a S/L impairment. Services include SAI for 90 minutes weekly and S/L for 60 minutes weekly. The student's February 21, 2013, IEP adds OT services for the student based on assessment results. The student's October 23, 2013, annual IEP notes a discussion of services options considered by the IEP team. The IEP team also notes the student's behavior is impeding his learning. The team developed a BSP and included two behavior goals. The student's January 28, 2014, IEP states the student exhibits aggressive behavior with peers including punching, choking, slapping, hitting, kicking, spitting, verbal threats, and talking of gun violence. The student's ERMHS report was presented and the IEP team, including the parent, agreed to place the student at Sunrise MHC. The parent consented to the placement change.

CONCLUSION

The District met the requirements of *EC 56342.5*. From a review of the IEPs, the District included the parent or guardian in the IEP discussions for placement decisions to Sunrise Elementary School MHC, and obtained consent for placement decisions to the Sunrise MHC for the two students identified and the six students randomly selected. **The District is in compliance.**

SUMMARY OF ALLEGATION SIX

The Complainant alleges the District failed to assess the students in all areas of suspected disability as required by 34 *CFR* 300.304(c)(4). Specifically, the Complainant alleges that Jane was not assessed in all areas of her suspected disability, including speech and language. Furthermore, the Complainant alleges that John's parent requested a Functional Behavior Assessment (FBA) on several occasions to assess his behavior, but the District did not respond to the request.

APPLICABLE CITATION

34 *CFR* Section 300.304(c) requires, "Each public agency must ensure that – (4) The child is assessed in all areas related to the suspected disability, including, if appropriate: health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities[.]"

FINDINGS OF FACT

Jane Doe

77. There was no evidence presented indicating that the student had a suspected disability in the area of speech and language. None of her previous assessments or IEPs indicated concerns in that area.

John Doe

78. The District received the parent's permission to assess the student on September 11, 2013, in the areas of academic achievement, motor development, social/emotional development and adaptive behavior.
79. The November 5, 2013, initial IEP team meeting identified the student as eligible for special education services, but the parent declined the services because the student was having his needs met with a Section 504 service plan.

80. In February 2014, after a behavioral incident, the student received a ERMHS and qualified for special education and was given a home/hospital instruction IEP placement. The IEP included behavior goals and a BSP.
81. The May 2, 2014, Triage report recommended placement at Sunrise Elementary School MHC with Specialized Academic Instruction; Counseling and Guidance (a variety of educationally-related mental health services including individual therapy, group therapy, family therapy, crisis management, case management and collateral); and Agency linkages with Children's Mental Health.

CONCLUSIONS

Jane Doe

The District met the requirements of 34 *CFR* Section 300.304(c). The District assessed the student in all areas of suspected disability. **The District is in compliance.**

John Doe

The District met the requirements of 34 *CFR* Section 300.304(c). The District assessed the student in all areas of suspected disability. **The District is in compliance.**

SUMMARY OF ALLEGATION SEVEN

The Complainant alleges the District did not consider the use of positive behavior interventions, supports and other strategies when developing the IEPs for the two named students as required by 34 *CFR* 300.324 (a)(2)(i). Specifically, the Complainant alleges that Jane's BIP was not specific to her unique needs.

APPLICABLE CITATION

34 *CFR* Section 300.324 (a) states:

In the developing the IEP of each child's IEP, the IEP team must consider—(2) Consideration of special factors. The team must—(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.

FINDINGS OF FACT

Note: Findings Of Fact in previous allegations will not be repeated, but those applicable will be considered in subsequent allegations.

Jane Doe

82. The student's BSP dated March 25, 2013, describes the behavior impeding learning as "off-task behavior, out of seat, walking around the room, looking around the room; student is missing instruction by not completing her work and her behavior also disrupts the learning of others, takes teacher time away from other students; the BSP is noted as "early stage intervention"; and the teacher reports the frequency or duration of the behavior: "Occurs throughout the day to a degree in which student is completing little or no work."

Prevention: The predictors of behavior (situations where behavior likely to occur): during Independent work time and less-structured time student needs consistent monitoring of progress to begin and continue an assignment; student struggles to focus her attention to listen to instruction and she fatigues easily and needs consistent novelty throughout the day. What needs to change in the environment: student needs consistent and constant reminders of expected behavior that is reinforced throughout the day. She needs monitoring to complete the task. Student needs a "first/then" model to help relieve fatigue and provide novelty throughout the day. Student may need to separate space in the classroom.

Alternatives: Student is avoiding difficult work and fatigue and getting novelty. Student should engage in expected behavior including attempting to work independently to gain access to preferred tasks and rewards. Student should be reminded of expected behavior. Teacher should check for understanding of materials, teacher should provide feedback to student on her behavior, and institute an expected behavior chart and a reward system for good behavior.

Effective Reaction: Prompt student to switch the replacement behavior, staff should give student the opportunity to have a fresh start to earn a reward, positive discussion with student after behavior ends.

Outcome: Behavior goals: engage in expected behavior and complete work independently to gain access to preferred tasks and rewards at 80% proficient by March 25, 2014.

Communication: Teacher or admin. will communicate daily to discuss progress with behavior with use of behavior chart. Guardian may contact school as well.

Participation in development of plan: School Psychologist and teacher.

83. Jane also has a Safety Plan. Her BERs often suggested a need to revise it, along with the BSP or BIP. The Student's Sunrise Elementary Safety Plan last updated February 19, 2014, shows Known triggers: disappointments, limits, diminished effects of meds, refusing to eat snack or lunch, inability to master a task, presentation of low point sheet; Antecedent Behaviors: Argues with classmates (bossy), physically assaults peers (pushing, throwing objects, hitting), refuses to take direction, curses at staff, takes things from peers, disrupts classroom; Crisis Behaviors: assaults peers and staff, runs out of supervision, major disruption, self-injurious – pulling out hair, sexualized behavior; Interventions/Known Coping Skills (during antecedents): Focus on goal or reward, taking space, safe breaks, resets, individualized attention from staff; Interventions/Known Coping Skills (During Crisis): food or drink, reading a story,

basic directions broken down into simple steps, reflecting on feelings; Special Plan Regarding Restraint/Seclusion/Crisis: Restraint and seclusion have occurred in the absence of meds, seems to further escalate her, requires a great deal of time to calm, seems to respond to planned ignoring and lack of interaction and very basic directions; Reintegration Plan: make a plan for returning to the classroom, coaching at her seat or provide a brief period of proximity.

John Doe

84. The student's October 31, 2013, behavior support plan (BSP) states the behavior impeding learning is: 1) inattentive behavior making noises during instruction, frequent talking at inappropriate times and 2) moving around the room without permission. The behavior impedes learning because of missed instruction and the behavior disrupts his and others learning. The need for the BSP is serious. The frequency of the behaviors are: 1) inattentive behaviors 2-3 times per week, 2) non-compliance 1-4 incidents monthly.
- Prevention: Predictors of behavior: 1. Faced with non-preferred tasks. 2. Transitions within and outside of the classroom. 3. Expected to quietly attend to instruction for longer than 20 minutes. 4. Not allowed freedom of movement. 5. Appropriate behavior is not immediately reinforced by adults. What is needed: 1) additional one on one attention when needed. 2) individual reinforcement plan. 3) additional social skills instruction. 4) opportunities to practice social skills with adult supervision. What interventions are needed: Use a positive behavior chart, allow student to earn individual points towards preferred rewards; establish a nonverbal signal to alert student that his behavior needs correcting; frequent positive reinforcement; opportunities to share stories with classmates and frequent movement breaks throughout the day.
- Alternatives: Frequent positive comments from trusted adults, smiles, positive comments, pat on the back. Stand near student, maintain eye contact. Develop a signaling system that will alert him when his behavior is becoming problematic. Provide daily reminders about behavior expectations. Help student identify when he needs to take a break. Opportunities to earn school wide rewards and recognition for positive behavior.
- Effective Reaction: Remind student of reward system; If behavior escalates call for support from office; normal disciplinary procedures including suspension and phone call home.
- Outcome: behavior goals: demonstrate active listening skills and raised hand to speak; and do not talk during instruction.
- Communication: None listed.
- Participation: The BSP was developed by the parent, teacher, principal and school psychologist.

CONCLUSION

The District met the requirements of 34 *CFR* 300.324 (a)(2)(i). The District convened IEP meetings at which it considered the use of positive behavioral interventions and supports, and other strategies, to address Jane's and John 's behavior that was impeding their learning and that of others. The District developed BIPs for the students that addressed their behavior needs, were individually developed and laid out a set of behavior interventions, supports and strategies that encompassed the unique needs of each student. **The District is in compliance.**

SUMMARY OF ALLEGATION ELEVEN

The Complainant alleges the District failed to adhere to required procedures when a parent requests an independent education evaluation (IEE), as required by 34 *CFR* Section 300.502. Specifically, the Complainant alleges the guardian of Jane Doe requested an IEE on June 5, 2014, and John Doe requested an IEE on July 21, 2014, with no District response.

APPLICABLE CITATION

34 *CFR* Section 300.502 requires:

. . . (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart--

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and (ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with [section] 300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

- (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
- (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to [sections] 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria . . .

FINDINGS OF FACT

Jane Doe

85. A June 5, 2014, letter addressed to the District program specialist and ADR administrator requests an IEE for the following assessments: psychoeducational, academic, occupational therapy, and ERMHS assessments. The letter is not signed, date stamped received, nor are there mail delivery receipts provided.
86. The District asserts it has no record of and never received an IEE request from the guardian.

John Doe

87. The parent's July 21, 2014, letter to the Director of Special Education, and school site principal disputes the District's assessments and requests IEEs for psycho-educational, academic, and ERMHS assessments. The letter is not date stamped or signed and there are no receipts for certified mail.
88. A declaration dated October 22, 2014, from the Special Education Program Administrator states that she did not received an IEE request from the guardian.

CONCLUSION

The District met the requirements of 34 *CFR* Section 300.502. The evidence is insufficient to support a finding the District received IEE requests on June 5, 2014, from Jane Doe's guardian, and a July 21, 2014, IEE request from John Doe's parent. **The District is in compliance.**

SUMMARY OF ALLEGATION TWELVE

The Complainant alleges the District failed to provide written notice before refusing, initiating, or changing the identification, evaluation, or educational placement of a student, as required by 34 *CFR* Section 300.503(a). Specifically, the Complainant alleges the District failed to provide a written notice or respond to requests from Jane Doe's guardian on June 5, 2014, for a speech and language assessment, and a request for a FBA from John Doe's parent on April 23, 2014, and July 18, 2014.

APPLICABLE CITATION

34 *CFR* Section 300.503 states:

- (a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- Failure to provide written notice before refusing, initiating, or changing the identification, evaluation, or educational placement of a student.

FINDINGS OF FACT

Jane Doe

89. A June 5, 2014, letter addressed to the District program specialist and ADR administrator requests a speech and language assessment. The letter is not signed, date stamped received by the District, nor are there mail delivery receipts provided.
90. The District asserts it has no record of and never received an IEE request from the guardian.

John Doe

91. The parent submitted two letters dated April 23, 2014, and July 18, 2014, to the Director of special services, principal, and Ms. Melissa Fail, requesting the District conduct a FBA. The letters are not date stamped or signed and there are no receipts for certified mail.
92. A declaration dated October 22, 2014 from the Special Education Program Administrator states that she did not receive an request from the guardian.

CONCLUSIONS

Jane Doe

The District met the requirements of 34 *CFR* Section 300.503. The evidence is insufficient to support a finding the District received a request from the parent for the District to conduct a speech-language assessment on June 5, 2014. **The District is in compliance.**

John Doe

The District met the requirements of 34 *CFR* Section 300.503. The evidence is insufficient to support a finding the District received a request for a FBA from John Doe's parent on April 23, 2014. **The District is in compliance.**

SUMMARY OF ALLEGATION THIRTEEN

The Complainant alleges the District is not implementing the IEPs (BIPs) for Jane and John, and for other students similarly situated at the Sunrise MHC placement, as required by *EC* Section 56043(i). Specifically, the Complainant alleges that rather than using the less restrictive behavior intervention strategies identified in the student's BIPs, the District uses emergency interventions of restraint and seclusion.

APPLICABLE CITATION

EC Section 56043(i) states, "A pupil's [IEP] shall be implemented as soon as possible following the [IEP] team meeting, pursuant to Section 3040 of Title 5 of the California Code of Regulations."

FINDINGS OF FACT

Note: Findings Of Fact in previous allegations will not be repeated, but those applicable will be considered in subsequent allegations.

Overall

93. The District's complaint response states Sunrise staff use a broad range of behavior interventions including verbal redirection, verbal reminders, verbal warnings, reinforcement, token economy, options chart, time out, leveling system, feelings groups, counseling services, calming rooms, parental phone calls, administrator visits, and office interventions. The District concludes that after reviewing all BIRs, the District cannot find evidence to suggest the BIPs were not followed.

The Sunrise program teachers, principal and therapists convene periodic CARE team meetings to discuss student treatment plans, referrals for services, transfers to other programs, transfers to more intensive classrooms, behavior intervention techniques, IEP planning, mental health issues, increased services including "wrap-around" family services, and medical issues that need to be addressed. On November 12, 2013, the CARE team met about Jane Doe. The team discussed the student's off-task behavior including roaming the campus and use of foul language targeting specific peers with verbal and physical aggression. The team discussed the importance of having staff near the classroom door to redirect her from leaving the classroom. On April 1, 2014, the CARE team met and discussed that Jane is

struggling to remain in the classroom and was often off-task for the entire school day. The team discussed that the student's behavior is becoming more and more erratic and has had a recent medication change. The CARE team discussed her sexualized behavior and how to make sure all school staff is aware of these behaviors. It was discussed that Jane will be moving to the intensive classroom on April 14, 2014, for more therapeutic support and that she was making some progress in building connections with staff members.

94. Classroom teacher Gerald Hewitt provided an October 9, 2014, signed declaration. The teacher declares that he is in charge of providing academic instruction to students at Sunrise and he is familiar with the strategies used as interventions for students as they escalate and exhibit unsafe behaviors in the classroom and on campus. Mr. Hewitt states the school is comprised of small special day classes with up to nine students, one teacher, one BHS and two SEAs, or the more intensive classes have one teacher, two BHS and one SEA for up to nine students. The teacher states the school uses the BEST approach in which the staff directly teaches, models and guides practice in choosing and using safe, respectful and responsible choices and strategies and skills in real situations. BEST is a school wide approach that emphasizes proactive strategies for defining, teaching, and supporting appropriate student behaviors to create a positive school environment. Sunrise also uses Pro-Act crisis communication strategies to counsel, teach, aid and guide and model positive student choices around behaviors. The teacher also states school staff are familiar with, follow and regularly communicate about the student's IEP and BSP. Strategies used for positive student behavior choices include BEST tickets earned by students for exhibiting pro-social behaviors at school, BEST drawings which reward students that earn the most BEST tickets with breakfasts and lunches as well as family events with ice cream or spaghetti to reward students for good behavior. Strategies used in the classroom for positive student behavior choices include: verbal and visual praise, classroom monetary rewards used in the classroom store, clear visual schedule with frequent short movement breaks, delivery of academic instruction in multiple modalities individualized to student's needs, knowing learning profiles, preferential seating which might include a walled desk, intermittent food and sticker rewards, staff proximity, use of frequent scheduled and impromptu team communication and collaborative intervals to best address the student maladaptive behavior.
95. A review of the 2013–14 school year BERs completed by the District for behavior incidents shows eighteen emergency behavior incidents in which restraint was used by two particular staff identified on the BER as the only staff present during the incidents. The majority of these incidents involved one SEA (initials ER) who is assigned to the TLC (Room 5). When interviewed during the onsite investigation, he stated he did not know the content of the BIPs or BSPs of the students but that he was trained in Pro-Act and that is what he used. On November 7, 2013, Jane Doe was involved in emergency behavior incident involving the SEA in question and was in a prone restraint for five minutes. On January 7, 2014, Student 2 was placed in a

prone restraint for nine minutes by two SEA staff, including the SEA in question. On February 11, 2014, Student 7 was restrained by two SEA staff including ER. Another student on October 23, 2013, was restrained by two SEA staff including ER. On May 1, 2014, two SEAs including ER placed Student 3 into a prone restraint for a total of eighteen minutes. On January 17, 2014, Student 4 was placed into a prone restraint by the SEA and another SEA. Student 4 was placed in a sitting restraint for twenty-three minutes by two SEA staff without supervision. On March 21, 2014, Student 4 was placed in a prone restraint for seven minutes by SEA (ER) and another SEA staff. On June 5, 2014, John Doe was placed in a prone restraint by SEA ER for fourteen minutes. This is the incident in which the SEA was hit by a metal necklace.

Jane Doe

96. The school psychologist signed declaration dated October 9, 2014, states that she is the school psychologist for the Sunrise Elementary School. The psychologist explains that she facilitates the CARE team (multidisciplinary school site team) meetings for the students to address concerns about students and to develop specific action plans to address these concerns with school site staff. On November 12, 2013, the school psychologist, states she facilitated a CARE team meeting for Jane Doe concerning classroom behavior. These behaviors included off-task behavior of roaming the campus, using foul language, and verbal and physical aggression against peers and staff. The CARE team action plan was to continue to teach and model Sunrise rules, use firm limits and boundaries, and use positive praise. The CARE team members present at this meeting were the psychologist, principal, therapist, and teacher (also members of the IEP team). The psychologist explains the CARE team does not include the family members. The school psychologist reports that she presented an updated BSP to the student's March 28, 2014, IEP team and a mental health update was provided. The IEP team included Grandmother, Aunt, CASA worker, Classroom teacher, therapist, and principal. On April 1, 2014, (three days after the IEP team meeting) the school psychologist reports that she facilitated another CARE team meeting. Concerns discussed included escalated behavior, including increased sexualized behavior that the team had not seen before. The team discussed an action plan to make all staff aware of the behaviors and to move the student to the intensive classroom beginning on April 14, 2014. The team members at the meeting were the psychologist, lead therapist, therapist in the intensive classroom, current classroom teacher and SEA. On April 14, 2014, the psychologist reports, Jane Doe was moved to the intensive classroom at Sunrise MHC, and the student's safety plan was updated. The school psychologist reports that Jane Doe stopped attending Sunrise on May 12, 2014, after several absences.
97. Jane Doe's Daily Report Cards (point sheets) were obtained. The District provided twenty of the daily report cards. The documents list Goals on one side and activities throughout the day across the top of the report card. The goals listed for Jane Doe are: "[Jane Doe] will use school appropriate strategies to gain teacher and peer attention; [student] will ask appropriately for a break when frustrated by academic

work”; [student] will focus on the task at hand; Personal interactions.” There is also a comments section and a parent signature block. The point totals are as follows: 90-100 (Green day), 80-89 (orange day), 70-79 (yellow day), and 0-69 (red day). The student is rated for each goal during ten activities throughout the day. The report cards show very good behavior on January 13, 14, and 15, 2014 (90 or above points); behavior is slipping on January 21, 2014 (86 points); behavior is very good on January 22, 23, and 24, 2014 (90 or above points); January 28, 2014, is a bad behavior day (59 points); March 17 and 19, 2014 shows good behavior days (90 or above points); April 4, 2014, is a good behavior day (90 or above points); April 7, 2014 is a bad behavior day, off-task in TLC for most of the day; April 11, 2014, is a poor behavior day (87 points), threw objects at staff; April 14, 2014, is a poor behavior day, in the afternoon off-task, could not concentrate or return to class; April 16, 2014, is a very poor day (29 points); May 1, 2014, is a poor behavior day (50 points); May 5, 2014, (19 points) is a bad day; and May 8, 2014, is a very bad day. Parent places a note on the point sheet that states to Mr. Hewitt: “I don’t like Mr. Eric pushing her face down on the floor. Her face was swollen and her ears and legs were hurting.”

John Doe

98. The student’s October 31, 2013, behavior support plan (BSP) states the behavior impeding learning is: (1) inattentive behavior making noises during instruction, frequent talking at inappropriate times and (2) moving around the room without permission. The behavior impedes learning because of missed instruction and the behavior disrupts his and others learning. The need for the BSP is serious. The frequency of the behaviors are: (1) inattentive behaviors 2-3 times per week and (2) non-compliance 1-4 incidents monthly.
- Prevention: Predictors of behavior: 1. Faced with non-preferred tasks. 2. Transitions within and outside of the classroom. 3. Expected to quietly attend to instruction for longer than 20 minutes. 4. Not allowed freedom of movement. 5. Appropriate behavior is not immediately reinforced by adults. What is needed: (1) additional one on one attention when needed, (2) individual reinforcement plan, (3) additional social skills instruction, and (4) opportunities to practice social skills with adult supervision. What interventions are needed: Use a positive behavior chart, allow student to earn individual points towards preferred rewards; establish a nonverbal signal to alert student that his behavior needs correcting; frequent positive reinforcement; opportunities to share stories with classmates and frequent movement breaks throughout the day.
- Alternatives: Frequent positive comments from trusted adults, smiles, positive comments, pat on the back. Stand near student, maintain eye contact. Develop a signaling system that will alert him when his behavior is becoming problematic.
- Provide daily reminders about behavior expectations. Help student identify when he needs to take a break. Opportunities to earn school wide rewards and recognition for positive behavior.

Effective Reaction: Remind student of reward system; If behavior escalates call for support from office; normal disciplinary procedures including suspension and phone call home.

Outcome: behavior goals: demonstrate active listening skills and raised hand to speak; and do not talk during instruction.

Communication: None listed.

Participation: The BSP was developed by the parent, teacher, principal and school psychologist.

CONCLUSION

The District failed to meet the requirements of *EC* Section 56043(i), regarding the implementation of the student's BIPs. While conducting the onsite investigation it was determined that one SEA (ER) assigned to Room 5 was not knowledgeable of student BIPs, and he was involved in many emergency behavioral interventions in which the student specific de-escalation techniques found in the student's individually crafted BIPs would have been appropriate. The SEA used Pro-Act techniques which are not individually crafted behavioral responses. **The District is out of compliance.**

SUMMARY OF ALLEGATION FOURTEEN

The Complainant alleges the District failed to identify, locate, and assess all individuals with exceptional needs (Child Find) as required by, *EC* Section 56301(a). Specifically, the Complainant alleges that although John Doe exhibited problematic behaviors for two years at school, the District's response was insufficient in that the District suspended the student from school, called the parent for early pick-up from school and referred the student to the principal's office for discipline.

APPLICABLE CITATION

EC Section 56301 requires:

All children with disabilities residing in the state . . . who are in need of special education and related services, shall be identified, located, and assessed and a practical method [shall be] developed and implemented to determine which children with disabilities are currently receiving needed special education and related services . . .

FINDINGS OF FACT

Note: The complaint was filed on August 29, 2014; therefore, the investigation concerns the one year time period beginning on August 29, 2013, through August 28, 2014.

John Doe

99. The District received the parent's permission to assess the student on September 11, 2013, in the areas of academic achievement, motor development, social/emotional development and adaptive behavior.
100. The academic assessment was completed on October 16, 2013.
101. The psycho-educational assessment was completed on November 5, 2013. The psychologist states, when the student was in first grade (last year), the student received a "response to intervention" (RTI) curriculum, along with a behavior support plan (BSP) dated December 11, 2012, and weekly visits from a therapist on the school campus.
102. The student's November 5, 2013, initial IEP team meeting identified the student for special education services, but the parent declined the services because the student was having his needs met with a Section 504 service plan.
103. The student received two school suspensions in January 2014.
104. In February 2014, after a behavioral incident with a police officer, the student was placed on an IEP that included behavior goals, a BSP, and a home/hospital placement.
105. In May 2014, the IEP team recommended placement at Sunrise MHC.
106. The District provided its policies and procedures for child find and these address the identification, location, and assessment of all individuals with exceptional needs.

CONCLUSION

The District met the requirements of *EC* Section 56301. During the relevant time period examined in this complaint, the District had child find policies and procedures in place and assessed the student, found him eligible, and provided him with an IEP once the parent consented. **The District is in compliance.**

SUMMARY OF ALLEGATION FIFTEEN

The Complainant alleges the District failed to adhere to the requirements of Least Restrictive Environment (LRE) for Jane and John Doe and other similarly placed students at the Sunrise MHC, as required by 34 *CFR* Section 300.116. Specifically, the Complainant alleges the District improperly placed the students into the MHC without less restrictive educational placement alternatives discussed at the IEP team meetings or proposed, and when the restrictive placement did not work, Jane Doe was placed in a

more restrictive intensive MHC placement, and John Doe was placed back into home instruction.

APPLICABLE CITATION

ADDED CITATION:

34 *CFR* Section 300.115(a) requires, "(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services."

34 *CFR* Section 300.116 requires:

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that – (a) the placement decision – (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (2) Is made in conformity with the least restrictive environment (LRE) provisions of this subpart, including [sections] 300.114 through 300.118; (b) The child's placement - (1) Is determined at least annually; (2) Is based on the child's IEP; and (3) Is as close as possible to the child's home; (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled; (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and . . .

FINDINGS OF FACT

Note: Findings of Fact in previous allegations will not be repeated, but those applicable will be considered in subsequent allegations.

Overall

107. The District Director of special education and joint SELPA attests in a written declaration that the District provides a full continuum of placement options for students in the Mt. Diablo Unified School District, including: pre-referral intervention services like the Second Step program and Response to Intervention (RTI) with a resource specialist; counseling services at all sites provided by school psychologists; a mobile counseling clinic with county mental health to provide direct counseling and therapeutic wrap around services for families; a counseling enriched program (CEP) at two classrooms at Sun Terrace Elementary for both special education and general education students; MHC programs on comprehensive campuses in the District and on a separate campus at Sunrise Elementary school; a District/Seneca nonpublic

school (NPS) collaborative placement; County Office of Education placements; NPS placements; and in and out of state residential placements. The director declares the IEP team and the parents (holder of educational rights) place the student in the least restrictive environment form which the student can receive educational benefit.

Jane Doe

108. Jane Doe's initial March 25, 2013, IEP indicates she was referred for special education due to academic and behavioral concerns. Academic assessment results show weaknesses in reading, writing, spelling, and math. Psychology assessment show the student is impulsive, difficulty in following directions, frustrated with tasks, and struggling with auditory awareness. The team found that she qualifies for special education services as a student with a specific learning disability (SLD). The team under the LRE section considered general education with support only and provides accommodations and modifications (preferential seating, small groups, frequent checks for understanding, positive reinforcement, visual cues, multisensory approaches, repeat directions, adjust length of time of assignments, consistent expectations, and use of time out room.) Services are listed a Specialized Academic Instruction (SAI), group and individual, 30 minutes 2 times a week with no ESY. The IEP provides 96 percent of the school day in the general education environment and trimester report cards. The team will look into a change of placement for the second grade. A March 25, 2013, BSP was developed. The parent consented to the IEP.

109. Jane Doe's September 23, 2013, IEP indicates she is seven years old and in the second grade. The purpose of the IEP team meeting is to add educationally related mental health services (ERMHS) to the student's IEP. The student's eligibility for special education is listed as specific learning disability (SLD) and secondary is other health impairment (OHI). The LRE discussion section of the IEP ("In selecting LRE (least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs) is left blank. The student receives accommodations and modifications (preferential seating, small groups, frequent checks for understanding, positive reinforcement, repeat directions, adjust length of time of assignments, use of time out room, among others.) Services are listed a Specialized Academic Instruction (SAI), group and individual, 30 minutes 2 times a week with no ESY. The IEP provides 96% of the school day in the general education environment and trimester report cards. The IEP states the student's behavior does impede learning and elaborates: "[Student] struggles with attention, hyperactivity, and impulsivity. These behaviors impede her ability to pay attention and complete academic tasks. It also affects her ability to appropriately function in the classroom without disrupting her peers and her ability to develop relationships. Student] is eager to please and desires to be successful; she responds well to positive praise and attention." The IEP indicates a behavior goal is part of the IEP and goals will be written for areas of need: Reading, Writing, Math. Health section indicates student takes medication for ADHD and anxiety and has a history of asthma but has not used an inhaler in two years. No indications of asthma at school

per school nurse. The IEP contains two goals for English Language Arts and one for Math. From the IEP notes the general education teacher reports student is not interested in school, teacher has to ask 3-4 times to respond, does 1:1 work but shuts down, attention span is 10 minutes maximum, student is disruptive and uncooperative, classmates are afraid of her and don't know what to do. Guardian reports student takes medication and she wants to change doctors and adjust the medication. Advocate states student is frustrated with school, does not know how to make friends, and student is not successful in any environment (1st grade, 2nd grade, resource, 1:1 intervention). The therapist (assessor) went over the ERMHS assessment report. The report recommends individual therapy, group therapy, family therapy, collateral, crisis management, and County case Management. Guardian states that she does not want named nonpublic school. Advocate does not want academics to go away. Guardian is told if she goes to these schools a therapist will be there. A referral to a psychologist is suggested. Team agrees a higher level of counseling is needed. Teacher will talk to student to explain why she is being moved to a new placement. Guardian signs in agreement on September 23, 2014.

110. The student's October 23, 2013, amendment IEP indicates a change of placement and a support is added to the September 23, 2013, IEP. The additional support that was added: "All staff at Sunrise MHC will be trained in crisis intervention and prevention (i.e. Pro-Act). In the IEP notes: "The IEP team was in agreement to change [Jane Doe's] placement from Mt. Diablo Elementary to Sunrise School effective October 24, 2013." Services provided are SAI for 360 daily, Agency linkages (County Mental Health Case Management at 600 minutes yearly, individual counseling 60 minutes weekly and counseling and guidance 120 minutes daily. The IEP notes state: Goals will continue from prior IEP, effective strategies to use on student discussed, service delivery model discussed. The LRE discussion section of the IEP ("In selecting LRE (least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs) is left blank. Guardian signed consent on October 23, 2013.
111. The student's March 28, 2014, IEP is the student's annual IEP review, the teacher reports student has not mastered all her goals but has made good progress. There was discussion about the student's behavior and proposed goals keeping the student on task. The LRE discussion section of the IEP ("In selecting LRE (least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs") is left blank. The guardian expressed concerns with the TLC room and calming rooms with male staff. Concerns with the placement at Sunrise were discussed. It was discussed the student be moved to the intensive classroom at Sunrise. The teacher discussed the structure and service delivery model was discussed. Goals include to improve reading, writing and math which is baseline at below grade level, and one a behavior goal to stay in class 95% of the time. A Behavior Intervention Plan (BIP) was developed on March 20, 2014, by the teacher and therapist and added to the IEP. Consent to the IEP by the parent was obtained.

112. Progress on goals report: Math Goal by March 2014: Period 1: student needs more practice; Period 2: student is slowly improving; Period 3: [Student] continues to use fingers for single digit addition and struggles even more with subtraction; Behavior Goal by March 26: report period 1: student continues to struggle with this goal. She is often sent out of class due to impulsive, destructive and retaliatory behavior; report period 2: Although student has made some progress in the area of focus, she continues to fatigue quickly when given non preferred direction or tasks; and report period 3: student continues to struggle with this goal. She is often out of the classroom due to impulsive, destructive and retaliatory behavior. Language Arts goal by March 26, 2014: Report period 1: student can read short a words such as at, ap, am. This goal continues to focus on sounds; Report period 2: student is inconsistent in recognizing and remembering the sounds of short vowels; Report period 3: continues to make progress in this area.
113. A May 13, 2014, letter from student's guardian request an emergency IEP team meeting as soon as possible. The letter states concerns with restraint, trauma and stress as a result of the treatment of the student. The guardian reports her concerns the student is removed from the classroom frequently and put into seclusion.
114. The student's 2013-14 "Report of Student Progress" shows attendance: 1st trimester there was enrolled for 61 days and the student was absent 7 days and tardy 8 days; for the 2nd trimester the student was enrolled for 61 days, absent 0 days and tardy 1 day; and for the 3rd trimester the student was enrolled for 53 days and absent for 21 days and tardy for 1 day. For English language arts the student is receiving "2" which is basic. For math the student receives "1" below basic. For Life Long learning skills the student receives "needs improvement."
115. According to testimony provided by the student's guardian, a review of the findings of fact presented earlier, and a timeline prepared by the student's advocate, after the May 8, 2014, emergency behavior incident, the student did not return to school and was placed on home hospital at or about June 1, 2014. On home hospital the student received instruction two times a week for two hours per session, and according to the Complainant and guardian, the instruction has been ineffective. According to documents provided by a volunteer, the student has been receiving 1:1 Barton reading tutoring and has been thriving and making significant progress.

John Doe

116. The student's November 5, 2013, Section 504 Plan has three parts. The initial eligibility worksheet shows the student is in the second grade at a local elementary school when he was referred for Section 504 assessment. He has a BSP and is sent to the office "almost daily". The Student is sent home early "often". He takes medication twice a day for ADD. The assessment worksheet indicates the student's learning has not been limited by his behavior. The Section 504 Identification and

Eligibility form states the student's impairment is diagnosis of ADD, and he is very distracted and gets upset to the point where he can't calm down and must be sent home early from school. He has recently started to see therapists for calming techniques. The Section 504 Accommodations form states the student is eligible for accommodations (standing near desk, seated near teacher or model peer, allowed to take breaks when he requests). The form is signed by the parent, administrator, teachers, mental health therapist and school psychologist. The Section 504 form portion titled: Accommodation Plan is not completed thoroughly and the notes say—"See IEP notes."

117. The student's November 5, 2013, IEP indicates this is the initial IEP and the purpose is to determine special education eligibility. The results of the Psycho-educational Report were presented by the School Psychologist indicating the student has been diagnosed with Attention Deficit Hyperactive Disorder (ADHD) which affects his ability to access the general education curriculum, and he has a BSP. The LRE discussion section of the IEP ("In selecting LRE (least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs) is left blank. The school psychologist presented the psycho-educational assessments. Almost all results fell in the average range. The academic evaluation was reviewed by the resource specialist; the scores fell in the average range. The assessment report finds the student qualifies for special education under other health impairment (OHI) for his ADHD behaviors and does not meet the eligibility for specific learning disability (SLD) even though the student has difficulty with comprehending verbal instructions and processes oral instructions slower than his peers. The student's classroom teacher reports the student is capable of grade level work if he is on proper medication. Although the student qualifies for special education under OHI, the team recommends a Section 504 plan with accommodations. The parent asked for a behavior specialist and the district responded the behavior is not extreme enough to warrant direct behaviorist intervention. The parent agreed and declined services at this time. The Section 504 plan was reviewed with and agreed to by the parent
118. The student's February 7, 2014, IEP, states the purpose of the meeting is to officially qualify the student for special education services under the category of OHI. The IEP provides 100% in the regular education classroom, two behavior goals (asking for help and accepting disappointment) and includes an October 13, 2013, BSP. The LRE discussion section of the IEP ("In selecting LRE least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs") is left blank. The parent inquired about independent study and home and hospital services as the parent is interested in finding another placement for the student. The team agreed to complete a Triage packet to find out about other placements. The parent consented to the IEP.
119. A student withdrawal form dated February 20, 2014, shows the student withdraws from the District school and goes on "Home Hospital."

120. The student's May 7, 2014, amendment IEP indicates the purpose is to discuss placement at Sunrise MHC. The IEP notes state the family visited Sunrise Elementary this morning; the student can start on May 13, 2014. The LRE discussion section of the IEP ("In selecting LRE (least restrictive environment, describe the consideration given to any potential harmful effect on the child or on the quality of services that he or she needs) is left blank. Special Education and Related Services: Specialized Academic Instruction (SAI) 360 minutes daily; Counseling and Guidance (a range of ERMHS services including individual therapy, group therapy, family therapy, crisis management, case management and collateral) 180 minutes daily; and Agency linkages with Children's Mental Health 600 minutes yearly. ESY is approved. The parent consented to the IEP.
121. The student's 2013-2014 Report of Student Progress provides the attendance record: trimester: 1 61 days enrolled, 2 days absent and 9 days tardy; trimester 2: not enrolled; trimester 3: 53 days enrolled 1 day absent and 0 days tardy. The progress report: English Language Arts: mostly 2 (basic) and one 3 (proficient) in listening and speaking; Mathematics: 2 (basic); Science 2 (basic); and Life Long Learning Skills: mostly needs improvement. Comments and Suggestions: First period (November 22, 2013) student actively participates in class discussion. Improved relationships with peers. Student is making slow but steady progress. Strong math skills. Second reporting period: blank. Third reporting period: Student is new to the classroom and program. He frequently runs out of the classroom or refuses to participate in class, especially in Math.
122. Progress on IEP goals reported on June 7, 2014: Goal #1 (behavior – ask for help when feeling angry or frustrated 90% of the time): Student continues to struggle with this goal. He is unable to access support at school at this time. Goal #2 (behavior – Accepting disappointment – when participating in a group activity student will accept not getting his own way without arguing or becoming upset with 90 percent accuracy: student has only been able to participate in 2 group activities since his arrival at Sunrise and continues to struggle with appropriate peer interactions.

Other Similarly Placed Students

Student 1

123. The student was initially found eligible for special education services (SAI 300 minutes per week) under the primary disability of Emotional Disturbance (ED) and secondarily OHI at a December 7, 2012, IEP. IEP notes and assessment report state student suffers from anxiety, mood swings, aggression and ADHD which can cause him to elope from the classroom. Student was receiving County Mental Health services prior to the IEP and will not receive counseling at the school site. An IEP amendment was convened on October 11, 2013, to discuss his academic difficulties. Parent reports Psychiatrist removed ADHD diagnosis and replaced with anxiety

disorder. Taking medication 3 times a day. Teacher reports he does not participate in classroom work and hides under table. IEP team adds 30 minutes of individual counseling. The student's annual December 6, 2013, IEP notes state the student struggling academically and is having trouble completing his school work. Parent asks about a different placement. District offers a Triage package but parent needs medi-cal card and social security card to complete. Parent consents and will complete referral forms. The ERMHS report was completed on January 24, 2014, and report indicates ED is interfering with education; the Triage Team report was completed on February 14, 2014, and recommends a placement at Sunrise Elementary MHC; the student's March 13, 2014, IEP amendment changed placement to Sunrise MHC, developed a BIP, provided ESY, and individual, group and family therapy services. There is no discussion of LRE. Parent consented to the IEP.

Student 2

124. The student's May 23, 2012, interim IEP provides occupational therapy (OT), SAI, speech and language (S/L) and Psychological services from the Department of Mental Health at a District elementary school. A February 22, 2013, amendment IEP provides ERMHS services to student at Sunrise MHC. A partial incomplete June 5, 2013, IEP was obtained from the student's educational file and provides little information but his goals. The student's April 28, 2014, triennial IEP indicates he attends the Sunrise MHC with OT, counseling, SAI, S/L and ESY. The student's eligibility is specific learning disability (SLD) and S/L with a behavior goal and a BIP. The IEP provides no discussion of LRE as the IEP section is left blank. The April 8, 2014, Psychoeducational Assessment Report data show significant asthma, food allergies, vision problems, attention problems, academic issues and interpersonal difficulties. The parent consented to the IEP.

Student 3

125. The student's June 21, 2102 triennial provides 1500 minutes a week of SAI, four 15 minute sessions of S/L, counseling and guidance for 1500 minutes per week, and ESY. The LRE section of the IEP is not completed. The student has a BIP. The student's June 7, 2012, psychoeducational assessment report provides student was identified in the first grade in 2010 for special education as a student with ED and S/L. He attended Bel Air Elementary for the start of the first grade. In December 2010, he transferred to Sunrise Elementary. While the IEP notes indicate parent attended and agreed to IEP, the signature page is blank. The student's October 18, 2012, IEP discussed the mother's concerns with the program at Sunrise. The parent is concerned about his behaviors at school as she does not see these at home. The student reports that staff are mean to him. The student's teacher reports on his progress in class: he refuses to follow directions in class and ends up spending little time there, once in class he does not follow directions and his behavior escalates thus resulting in no academics are completed. Once he is directed to the TLC process he does not react well to hands being placed on him. Self-harm statements

have increased and the police have been called. A change in therapist was offered. The process for changing placement was explained. The student's annual IEP held on March 3, 2013, indicates the student still qualifies for special education services at Sunrise, the LRE section is blank, and the parent signed in agreement. The student's February 26, 2014, and March 21, 2014, annual IEP continues to qualify the student as ED to receive services at Sunrise, the LRE section is left blank, student is not meeting his IEP goals and parental consent was received.

Student 4

126. The student's June 10, 2014, Manifestation Determination report indicates the student was first identified in 2009 in Kindergarten as a student with a SLD. He was retained in Kindergarten at Bel Air Elementary and attended first grade and partially the second grade at Rio Vista where he showed significant difficulties following directions, running from class, and completing school work. The student transferred to Sunrise Elementary in December 2011. The IEP from December 2011 was not provided by the District. The November 16, 2012, annual IEP indicates the student qualifies for special education services as a student with a SLD and S/L impairment, the LRE section is blank, the student receives S/L 60 minutes monthly, wrap around service 120 minutes yearly, counseling and guidance 1200 weekly, SAI 1500 weekly, and ESY. The student has a BIP. The student's annual November 13, 2013, IEP, contains a discussion of LRE in general education, exits student out of S/L, continues SAI and counseling services, BIP and ESY. The District convened a manifestation determination hearing on June 18, 2014. The report indicates the student has 12 days of suspension and follows an incident on June 3, 2014, when the student left the classroom, climbed onto the school roof, and was assaultive with staff and students. Prior to the last incident where he received a 3-day suspension, the student was suspended for one-day on October 3, 2013, for hitting and biting staff; on October 7, 2013, he hit several staff with a tree branch, the police were called and he received a three day suspension; on February 7, 2014, student received a one-day suspension for assaults on staff, throw rocks at staff and left the campus several times; and on March 24, 2014, student assaulted and injured another student and received a 2-day suspension. The manifestation determination found the student's assaultive behavior was not a manifestation of his disability because he is eligible for SLD.

Student 5

127. The student's annual October 18, 2012, IEP states student was retained in first grade last year and did not have any behavioral outbursts which Mom indicates is medication management. Mom also states student has a history of suicidal thoughts and depression. The student is under the care of a psychiatrist and neurologist. The IEP indicates student is eligible due to a SLD and places the student in general education with 160 minutes a week of SAI. The student's December 17, 2013, triennial considers LRE and continued general education or home hospital which is not a long term solution. The student's behavior is impeding learning by having

emotional issues and meltdowns. The IEP has a two behavior goals of "self-management", but no BSP. The eligibility has changed to ED with a secondary of SLD. The student is receiving 135 minutes of SAI weekly. The student's Psychoeducational assessment report states the student is making academic progress in his home and hospital placement, but is in need of an academic program that would assist him with grade level school work and assist him with his mental health and behavioral needs. The student's February 11, 2014, IEP purpose is to discuss the recommendations of the Triage Team. The ERMHS report was discussed with the team including the parent and the Triage Team recommends Sunrise MHC. Mom is happy with the placement and wished to move forward with the placement. Parent signed consent to the IEP

Student 6

128. The student's October 24 2012, initial IEP indicates the student has a SLD disability and a S/L impairment. Services include SAI for 90 minutes weekly and S/L for 60 minutes weekly. The student's February 21, 2013, IEP adds OT services for the student based on assessment results. The student's October 23, 2013, annual IEP has a discussion under services options considered by the IEP team. The IEP team also notes the student's behavior is impeding his learning. The team developed a BSP and included two behavior goals. The student's January 28, 2014, IEP states the student exhibits aggressive behavior with peers including punching, choking, slapping, hitting, kicking, spitting, verbal threats, and talking of gun violence. The student's ERMHS report was presented and the IEP agreed including the parent to place the student at Sunrise MHC. The parent consented to the placement change.

CONCLUSION

The District met the requirements of 34 *CFR* Section 300.115 because the evidence showed it had available a continuum of placements. However, the District did not meet the requirements of Section 300.116 which requires the district to ensure that placement decisions are made in conformity with LRE provisions and that in selecting the LRE placement, consideration is given to any potential harmful effects a placement may have on the child. The evidence showed that Sunrise MHC placements were recommended for students who had struggled in less restrictive environments, but the evidence did not show that, in each instance in which a Sunrise MHC placement was recommended, appropriate consideration was given to whether the student could have been successfully educated in a less restrictive placement with appropriate supports, and there was no documented discussion of potential harmful effects of the more restrictive Sunrise MHC placement. For Jane Doe and John Doe the restrictive placement at Sunrise MHC did not allow both students to make progress either academically or behaviorally. **The District is out of compliance (with respect to 34 *CFR* Section 300.116).**

REQUIRED CORRECTIVE ACTIONS

Allegation Two (Jane Doe)

1. On or before December 1, 2014, the District shall provide the guardian of Jane Doe the following student records: copies of all IEPs; assessment reports; IEP goal progress reports including data collection; grade reports; all discipline records, including behavior incident reports, all suspensions documents both in school and out of school, and daily behavior report cards; all standardized school and state testing results; copies of resource specialist service logs; and copies of Sunrise School policies and procedures for restraint, parent brochures, and student specific contracts agreed to by the guardian. Acceptable evidence shall include a list of all records provided to the guardian by certified mail and the certified mail receipt.
2. On or before December 1, 2014, the District shall send a memorandum to all District special education staff reminding them of the requirements of *EC 56504*, and for staff to comply. Acceptable evidence shall be a copy of the memorandum and a list of recipients.

Allegation Eight

3. On or before December 1, 2014, the District shall provide evidence that its District-wide policies and procedures mandate the contact of the parent or guardian within one school day of the use of a behavior emergency intervention. In addition, the District shall require a written record of the parental contact made by the school site principal/administrator indicating the date, time, who was contacted and notes from the conversation for every mandated call regarding a behavior emergency intervention on the BER document. Acceptable evidence should include: (1) a copy of a written policy and procedures reflecting the mandated parental contact for reporting behavior emergencies intervention incidents within one day, (2) an accompanying district directive to school site administrators and principals to comply with the policy to record the contact information (date, time, person contacted and summary of the discussion) on the BER; and (3) a list of District-wide staff recipients.
4. On or before December 1, 2014, the District shall provide evidence that its District-wide policies and procedures mandate the completion of a BER every time a student is placed in seclusion. Since the District uses seclusion in Room 5, a BER must be completed every time it is used. Acceptable evidence should include: (1) a copy of a written policy and procedures reflecting that a BER must be completed every time seclusion is used, (2) an accompanying district directive to all school site staff the restraint policy, (3) a list of District-wide staff recipients of the directive, and (4) identification of staff responsible for ensuring BERs are completed.

5. On or before May 31, 2014, the District shall send the CDE a copy of all BERs completed for the period January 1, 2015, through May 31, 2015. Acceptable evidence shall include a copy of every BER completed by the District January 1, 2015, through May 31, 2015.

Allegation Nine

6. On or before December 31, 2014, the District shall provide evidence that its policies and procedures require a referral to the IEP team to review and determine if the incident constitutes a need to modify the BIP if: (1) a BER is written for a student with a BIP, or (2) there is an incident involving a previously unseen serious behavior problem, or (3) when a previously designed intervention is ineffective. Acceptable evidence shall include: (1) a copy of the written policy reflecting the above policy, (2) a description of how it will be documented on the BER that a referral to the IEP team has been made, that the IEP team was convened, and the results of the IEP team meeting, and (3) a copy of the directive sent to all special education administrative staff mandating staff follow the above policy, and (4) a list of District staff recipients of the directive.

Allegation Ten and Sixteen

7. On or before December 31, 2014, the District shall provide evidence that its policies and procedures regarding the use of restraint as an emergency behavior intervention District-wide requires that for every restraint utilized at the District, at least one staff involved in the emergency behavior intervention shall be a trained therapist, teacher or administrator. There shall be no restraint of students, including seclusion by only unsupervised SEA staff. Acceptable evidence would include a copy of the above policy and procedure, a memorandum memorializing the policy sent to all special education staff, and a list of all recipients.

Allegation Thirteen

8. On or before December 31, 2014, The District shall provide evidence that all staff assigned to the District MHC program including all SEA staff are knowledgeable about each student's BSP or BIP. Acceptable evidence should include: (1) meeting agendas and meeting notes documenting periodic (at least monthly) meetings with staff including SEAs about the student's BSP and BIPs under their care, including behavior triggers and behavior intervention techniques unique to that student, and (2) sign in sheets for these periodic meetings.

Allegation Fifteen

9. On or before January 30, 2015, the District shall provide evidence that every IEP team meeting held District-wide, proposing a more restrictive environment addresses the requirements of 34 *CFR* Section 300.116, ensuring that every placement decision

is in conformity with the least restrictive environment (LRE) provisions, of section 300.116, and in selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs. Acceptable evidence shall include a memorandum sent to all special education staff directing staff to comply with the LRE provisions and to document in narrative form, not just a checkbox the discussion about LRE (sections 300.114 through 300.118) in the IEP. The District shall provide a copy of the memorandum and a list of staff recipients to CDE.

10. On or before May 31, 2015, the District shall also provide a copy of all IEPs held recommending or placing new students at Sunrise MHC, beginning February 1, 2015 through May 31, 2015, for the CDE to review. Acceptable evidence shall include copies of all IEPs held recommending placement or placing students at Sunrise MHC Elementary School for the months of February, March, April and May, 2015, to be delivered to the CDE each month for review.
11. On or before April 30, 2015, the District shall provide District-wide training on LRE requirements (e.g., how to address LRE requirements in student placement decisions) from an outside contractor or entity with expertise in the area for all special education staff responsible for conducting IEP team meetings including special education coordinators and administrators. Acceptable evidence shall be a copy of the training agenda, training materials and a list of attendees.
12. By January 31, 2014, for students Jane Doe and John Doe, the District shall offer to fund four weeks of a 2015 summer camp from the Quest Therapeutic Camp program or a similar behavior based summer program including transportation. Acceptable evidence shall be a copy of the written offer to the guardian of Jane Doe and parent of John Doe to fund four weeks of the 2015 summer Quest Therapeutic Camp, or a similar behavior based summer program.
13. By May 31, 2015, the District shall provide to Jane Doe 40 hours of compensatory services from a credentialed teacher to provide 1:1 tutoring. Specifically, the District shall reimburse 40 hours of academic tutoring provided to the student and the tutor shall be selected at the discretion of Jane Doe's guardian. The tutor shall present the District with the invoice for the 40 hours services provided to the student and the district shall reimburse the tutor for 40 hours of the service. The services shall be available for one year from the date of the report. Acceptable evidence shall be the written offer to pay for the 40 hours of 1:1 tutoring services, the invoice for the services and proof of payment for the 40 hours of services.

RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Pursuant to Title 5, *California Code of Regulations* Section 4665, either party may request reconsideration:

Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s) or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied. . . . Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.

A request for reconsideration must be postmarked 35 days from the receipt of the investigatory report.

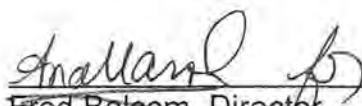
If you have questions regarding the report or reconsiderations, please contact the Complaint Resolution Unit:

**Ana Marsh, Administrator
Complaint Resolution Unit
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4623 Phone
916-327-8878 Fax**

Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

**James Johnson, Administrator
Focused Monitoring and Technical Assistance Unit Three
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-327-6966 Phone
916-327-0843 Fax**

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.


Fred Balcom, Director
Special Education Division

