



Respondent: Jeremy Brenner, Building Principal, Wilkinson Elementary School

Investigator: Amy De Kok

District Contact: Judith Billehus, HR Director, Williston Basin School District

Date of Report: March 22, 2024

Introduction:

As further explained herein, at the District's request, Investigator conducted a detailed investigation as a result of an incident that occurred at Wilkinson Elementary School on November 27, 2023, and related events. The investigation consisted of: (1) extensive review of documentation and records provided by the District and WILMAC Multidistrict Special Education Unit staff, including relevant video footage; (2) conducting detailed interviews of the Respondent and several other individuals alleged to have knowledge of the incident and related events; (3) review of relevant District policies and procedures; and (4) review of/research regarding relevant federal and state law.

Based on the investigation conducted by Investigator as outlined herein, the investigator has concluded that Mr. Brenner violated applicable federal and state law, violated several district policies, as well as failed to comply with district procedures and expectations as further detailed below.

Relevant Board Policies/Procedures:

Investigator reviewed several relevant school district administrative policies and procedures, including:

- Policy DEBD (Maintaining Professional Employee-Student Boundaries)
- Policy DE (Staff Code of Conduct)
- Policy AAC (Nondiscrimination and Anti-Harassment Policy)
- Policy AAC-BR1 (Discrimination and Harassment Grievance Procedure)
- Policy AACA (Section 504 of Rehabilitation Act of 1973)
- Policy ACDB (Video Surveillance and Recording in Schools)
- Policy ACE (Violent and Threatening Behavior)
- Policy FDE (Education of Special Education/Disabled Students)
- Policy FCC (Restraint or Seclusion Policy)
- Policy FC (Student Safety and Supervision)
- Policy FF (Student Conduct and Discipline)
- Policy KACB (Complaints About Personnel)

- District organizational chart (updated 11/17/23)
- District's detailed chain of command procedures

Summary of Investigation¹:

On January 18, 2024, Investigator was retained by Dr. Richard Faidley, Superintendent, to investigate an incident that occurred at Wilkinson Elementary School on November 27, 2023, and related events. The incident on November 27, 2023, involved the alleged mistreatment of special education learners by school staff in the resource/autism room at the school. The District and/or WILMAC provided the Investigator with the following records and information relevant to the incident:

- Video footage taken from a camera installed in the resource room on November 27, 2023 consisting of entire school day
- Timestamped notes for November 21, 27, and 28, 2023 video footage prepared by district staff
- Information regarding students depicted in footage
- Copy of 960 report filed with Institutional Child Protection Services unit;
- Written Reprimand provided to J. Brenner dated December 14, 2023
- Paid Administrative Leave letter to J. Brenner dated December 20, 2023
- Rebuttal letter from J. Brenner dated January 3, 2024
- Notices of Termination dated December 21, 2023, provided to K. McIvor, E. Love, J. Marquart, M. Ackerman, and C. Orduno
- Copies of documents from personnel file of J. Brenner, including written performance evaluations, employment contracts, disciplinary records and other miscellaneous items
- Email correspondence from J. Brenner to staff and parents regarding student behaviors
- Certification and training records for paraprofessionals employed in resource room at Wilkinson Elementary
- Work ticket for installation of video camera in resource room at Wilkinson Elementary
- PowerSchool behavior log entries
- Notes from interview of E. Hurley conducted by WILMAC Director, Shawn Huss
- Copies of IEP and related special education records for Wilkinson student(s)
- Documents from personnel files of C. Orduno, M. Ackerman, E. Love, K. McIvor, and J. Marquart, including written performance evaluations

¹ Some aspects of the investigation were coordinated with Shawn Huss, WILMAC Special Education Unit Director, and Kevin Miller, Institutional Child Protection Services unit, as per the District's request/approval. WILMAC and CPS were conducting their own investigations of the incident at issue and requested to coordinate their efforts with Investigator in order to avoid duplication and interference with the District's investigation.

- Timestamp notes taken by T. Quilling from review of video footage from resource room camera from November 21, 2023 and November 28, 2023
- Handwritten notes taken by J. Brenner in the Spring of 2023 while investigating concerns of a parent regarding bruises on her child that was assigned to the resource room (includes pictures of the bruising on the student provided by the parent)
- Resignation in Lieu of Discharge signed by E. Hurley
- WILMAC Letter of Determination dated February 9, 2024

Investigator conducted detailed interviews of the following individuals on the dates noted below:

- Jeremy Brenner, Principal at Wilkinson Elementary (via Zoom on February 8, 2024, and March 5, 2024)
- Darla Ratzak, Interim Assistant Superintendent/Director of Student Services (via Zoom on February 20, 2024)
- Kevin Klaasen, Assistant Superintendent (via telephone on February 23, 2024);
- Shawn Huss, Director, WILMAC (via Zoom on February 23, 2024);
- Cary Draper, WILMAC special education coordinator (via Zoom on February 27, 2024); and,
- Dr. Richard Faidley, Superintendent (via Zoom on March 1, 2024).

Investigator made numerous requests to interview the following individuals, all of whom likely had direct, personal knowledge regarding the treatment of learners in the resource room at Wilkinson Elementary:

- Erin Hurley, former Special Education teacher in the resource room at Wilkinson Elementary.
- EmmyLee Love, former paraprofessional in the resource room at Wilkinson Elementary.
- Kiara McIvor, former paraprofessional in the resource room at Wilkinson Elementary.
- Crystal Orduno, former paraprofessional in the resource room at Wilkinson Elementary.
- Mindy Ackerman, former paraprofessional in the resource room at Wilkinson Elementary.
- Jayden Marquart, former paraprofessional in the resource room at Wilkinson Elementary.
- Kimberly Day, former paraprofessional at Wilkinson Elementary.
- Erica Castro, current paraprofessional at Wilkinson Elementary.

As to Ms. Hurley, Investigator worked with Shawn Huss and Crystal Rocketship at WILMAC to coordinate her interview. Ms. Hurley was still employed by WILMAC at the outset of this

investigation but had been placed on administrative leave by WILMAC.² As per WILMAC, Ms. Hurley initially indicated a willingness to be interviewed by Investigator and proposed dates were discussed for this purpose. Investigator worked with WILMAC staff over several weeks to arrange a time and place for an interview; however, Ms. Hurley stopped responding to WILMAC's attempts to schedule and eventually refused to cooperate. The WILMAC board accepted Ms. Hurley's resignation in mid-February.

As to the five former paraprofessionals employed at Wilkinson Elementary, Investigator received responses to my requests from Crystal Orduno, Mindy Ackerman, and Kiara McIvor. Ms. McIvor responded that she would only agree to meet if the District removed the termination letter from her file. Investigator forwarded this request to Judy Billehus, HR Director, and confirmed that the District was unwilling to remove the letter but would allow Ms. McIvor to submit a rebuttal to the letter. Investigator informed Ms. McIvor of this option; however, she responded that upon the advice of counsel, she will not take part in an interview.

Ms. Orduno and Ms. Ackerman both indicated a willingness to be interviewed, but informed Investigator that they were represented by legal counsel and that he would be in touch to coordinate the interviews. After not receiving any contact from their legal counsel, Investigator contact their counsel by email to coordinate the interviews. After several back and forth emails, the parties agreed that Investigator would travel to Williston to conduct the interviews of Ms. Orduno and Ms. Ackerman, with counsel present, on February 22, 2024. Legal counsel requested that a list of questions Investigator planned to ask to be provided in advance. Investigator provided a detailed outline of anticipated topics that would be covered if time permitted. Following receipt, legal counsel informed Investigator that he was cancelling the interviews scheduled for the following day. Investigator made several additional attempts to reschedule the interviews but received no response.

Ms. Marquart also responded to my request to interview by indicating that all further communications should be sent to her attorney, and she provided his name and contact information. Investigator attempted to contact her counsel to coordinate an interview but received no response.

Investigator did not receive a response from Ms. Love (or anyone acting on her behalf) to my repeated requests for an interview.

Investigator made a request by email to interview Ms. Day. Ms. Day worked in the resource room at Wilkinson Elementary along with Ms. Hurley the previous school year. Ms. Day responded by email declining my request.

² After receiving notice of the incident on November 27, 2023, Mr. Huss, WILMAC Director, met with Ms. Hurley to discuss what happened. WILMAC provided Investigator with copies of notes from the interview.

Finally, Investigator requested to interview current Wilkinson employee, Erica Castro. Ms. Castro had been assigned to the resource room during the 2022-23 school year. Ms. Castro eventually responded to my request, declining to speak with me. As Ms. Castro is a current employee of the District, Investigator informed Judy Billehus, HR Director, who met with Ms. Castro to explain that her cooperation was important. Investigator again attempted to reach out to Ms. Castro but did not receive a response to these attempts.³

Factual Findings from Investigation⁴:

As a result of the above-referenced interviews and review of extensive documentation and information provided, the investigator makes the following findings:

Brenner's Job Responsibilities

Mr. Brenner, the subject of the investigation, has been employed by the District for eight years. For the past four years, Mr. Brenner has been the principal at Wilkinson Elementary School. When asked to explain his job duties, Mr. Brenner reported that his job is to support the teachers so that they may teach without disruption. He also agreed that he is in charge of managing and supervising all staff in his building. He reported that he has a very hands-on approach so that he is aware of everything happening in the building. Mr. Brenner confirmed that there is no other administrative staff (i.e., assistant principal) employed at Wilkinson. Mr. Brenner agreed that it is his responsibility as building principal to ensure compliance by all staff with district policies and procedures and that he is expected to be aware of any required policies and procedures.

Mr. Brenner acknowledged and agreed that, as building principal, he is responsible for ensuring compliance with federal and state special education requirements with respect to the provision of special education services at Wilkinson. According to district administration, a building principal is responsible to make sure that requirements of student individual education programs (IEPs) and behavior intervention plans (BIPs) are being followed and met, that organization of special education programs are properly managed, and that consultation with WILMAC staff is being done when appropriate.

Mr. Brenner's direct supervisor is currently Dr. Faidley. Last school year, Mr. Brenner was supervised by Kevin Klaasen, Assistant Superintendent. Mr. Brenner reported that Mr. Klaasen was generally responsive to Mr. Brenner's requests for assistance. Mr. Brenner reported that he

³ Investigator's attempts to coordinate all of these interviews delayed the progress of the investigation for several weeks. Because these were the only individuals (other than Mr. Brenner) who had direct, personal knowledge of the treatment of learners in the resource room, Investigator believed it necessary to interview at least some of them if possible.

⁴ These Findings are a summary of the pertinent factual information gathered by the investigator during the investigation. Additional detailed information can be found in the investigator's notes from interviews conducted and documentation/records reviewed in connection with the investigation.

hasn't contacted Dr. Faidley as often this school year as he appears to be busy. When he does have contact with Dr. Faidley (which he says occurs once every three or four weeks), Dr. Faidley is the one who generally initiates the contact. With respect to special education matters, Mr. Brenner reported that Darla Ratzak, interim Assistant Superintendent, has been available and is responsive to his requests for assistance this school year.

When asked about the District's chain of command when an issue arises with a student or staff member, Mr. Brenner reported that it is quite fuzzy due to the turnover in the District over the past few years. He stated that he does not always know who to go to and who will be available. Mr. Brenner reported that whether he would reach out to district administration depends on the severity of the issue. If the situation is severe enough or something out of the ordinary happens, that might trigger him to reach out. Otherwise, he will handle the issue or concern on his own. Mr. Brenner does not recall any specific discussion with district administration about proper chain of command procedures. Mr. Brenner admitted that both Mr. Klaasen and Ms. Ratzak have generally been available and responsive to him.

Special Education Program at Wilkinson

The District is a member of the WILMAC Multidistrict Special Education Unit. According to Dr. Faidley and Shawn Huss, WILMAC Director, WILMAC provides support to the District in the provision of special education services and is not a full-service provider. WILMAC works with district staff within district schools to provide special education services. WILMAC assigns a special education building coordinator for each district school. At Wilkinson, this individual is currently Cary Draper. During the 2023-2024 school year, the building coordinator for Wilkinson was Carla Magnuson (who is currently the assistant director at WILMAC). Ms. Draper reported that, on average, she would be at Wilkinson a few times per month, unless something came up or someone needed assistance. She is also available to district staff by phone and email.

WILMAC is also responsible for hiring itinerant (temporary, part-time) special education staff, to provide specialized services (e.g., PT or OT services) to member schools including the District. WILMAC also holds the contracts for special education teachers assigned to schools within the District.⁵ The District is responsible for hiring all other special education staff within district schools, including special education paraprofessionals.

Mr. Brenner reported that he is often frustrated with a lack of responsiveness from WILMAC when assistance is needed, especially regarding difficult student behaviors. He also expressed frustration with the lack of input and advance notice he has regarding WILMAC special education staff being placed in his building. Mr. Brenner reports that he has "begged" for assistance from WILMAC regarding student behaviors and development of behavior intervention plans, but

⁵ For other member schools within the District, WILMAC does not typically hold the contracts for district staff. This is unique to Williston.

reports there was no follow through from WILMAC. He also reports that, in his opinion, students are placed without sufficient information regarding their needs, including IEP requirements. Mr. Brenner has not reported his frustrations with WILMAC to Dr. Faidley but states he has shared his concerns with Mr. Klaasen and Ms. Ratzak. When asked if his concerns have been addressed, he reports he is unsure and that there are probably steps that are being taken. He knows that district administration is listening but is not sure what corrections, if any, have been made at this time.

When interviewed, Mr. Klaasen reported that he has not experienced any issues working with or receiving assistance from WILMAC staff in connection with the provision of special education services in the District. He reports that in his experience, WILMAC staff were responsive and willing to assist.⁶ Mr. Klaasen said there may have been some issues between Mr. Brenner and WILMAC and that those concerns seemed to be coming from Mr. Brenner, but he wasn't exactly sure. Dr. Faidley reported being aware of issues between Mr. Brenner and WILMAC and described it as a difference of approach. Mr. Brenner often thought adding more staff, particularly paraprofessionals, was an appropriate solution when issues arose at Wilkinson. WILMAC didn't always agree that this was the right response. In addition, Dr. Faidley also reported that Mr. Brenner disagreed with WILMAC's efforts to provide CPI (conscious discipline) training to staff at Wilkinson.

When interviewed, Shawn Huss, WILMAC Director, stated that WILMAC could be seen as a "convenient punching bag" when issues arise in the provision of special education services by the District, although he stated that WILMAC is admittedly not perfect. Mr. Huss confirmed that while his relationship with Mr. Brenner isn't as strong as it is with other building administrators in the District, he is able to assist Wilkinson staff usually without issue when requested or needed (e.g., sitting in on an IEP meeting or when issues with special education staff arise). Mr. Huss also reported that Mr. Brenner tended to want to add more paraprofessional staff when addressing student behaviors; however, similar to Dr. Faidley, Mr. Huss did not believe this to be the appropriate solution in most circumstances.

Special Education Staff in Resource Room at Wilkinson

WILMAC hired Erin Hurley in or about the Spring of 2022 and assigned Ms. Hurley to the resource room at Wilkinson Elementary. Ms. Hurley was a certified special education teacher and had previous experience working with students on the autism spectrum. She was immediately identified by WILMAC as a good fit to meet the needs of students in the resource room at Wilkinson. Ms. Hurley started observing in the resource room at Wilkinson during the Spring of the 2021-2022 school year and started full-time as the special education teacher in the resource

⁶ Mr. Klaasen reported that when he was a principal in the District, he knew that he could and should go to WILMAC for assistance. He stated that Shawn Huss was a lifesaver for him and that he always had a very good experience with the building coordinators assigned by WILMAC.

room in the Fall of 2022. Mr. Huss reported that Ms. Hurley received CPI training (conscious discipline techniques), as well as training regarding de-escalation techniques and appropriate use of restraint and seclusion techniques upon hire.

The District employed five special education paraprofessionals that were assigned to the resource room at Wilkinson Elementary. Mr. Brenner hired all five of these paraprofessionals. In order to work as a special education paraprofessional in North Dakota, an individual is required to complete at least twenty hours of training during their first calendar year of employment. Ten of these hours are in specific areas designated by the North Dakota Department of Public Instruction (DPI), the state agency that issues special education paraprofessional certification. All five paraprofessionals employed in the resource room at Wilkinson (Crystal Orduno, Mindy Ackerman, EmmyLee Love, Kiara McIvor, and Jayden Marquart) were in compliance with the training requirements and all but Ms. Marquart had received their special education paraprofessional certification from DPI. WILMAC assists the District in coordinating the training of special education paraprofessionals hired by the District.

The District is responsible for supervising and evaluating all staff that work in their buildings, including special education teachers whose contracts are held by WILMAC.

Mr. Brenner reported that he tries to spend time in or stop by every classroom in his building each day, including the resource room. He stated that on average, he would spend at least an hour in the resource room each day. Therefore, he had frequent opportunities to observe how Ms. Hurley and other staff interacted with the students who spent time in that room.

According to Mr. Brenner, about twelve students were assigned to the resource room this school year. Of those twelve, about seven or eight students are identified as autistic and nonverbal. These students spend the majority of the school day in the resource room, and only leave for specials (e.g., gym class), recess, and to get their lunch (although they eat in the room). The remaining students may spend one to two hours in the room each day for academic assistance or as a break from their regular classroom.

Physical Layout of Resource Room

The resource room at Wilkinson consists of a main room with stations set up around the perimeter for students to participate in individual and group instruction. There is a bathroom and some limited kitchen facilities in the main room. Finally, there are two sensory rooms off to the side. The larger of the two rooms contains several sensory-related items, including a spiral tunnel, bungee chair, large memory foam bean bag, mirrors on the walls, foam boxes, and a small trampoline. Mr. Brenner reported that use of the large room by students is often seen as a privilege and was used as a reward at times for students who completed their academic work. He states that it was also used when students needed a break from the chaos or noise of the main room.

The second room is much smaller, and its purpose has changed over time. Previously, a small table was in the room for students to do work. At some point, the table was removed, and black mats were adhered to the walls. When questioned about why mats were installed on walls, Mr. Brenner stated that he was not exactly sure. He agreed that a reasonable assumption would be that students were being placed in the small room and the mats were installed to prevent injury when students were engaging in behaviors that could lead to them throwing themselves against the wall. Mr. Brenner denied having any personal knowledge of the smaller room being used as a holding room, but agreed the assumption makes sense. When asked what his expectations would be for documentation if the room was being used as a form of seclusion or a holding room, he was unsure. He stated that student behaviors in the resource room could be quite severe and that these behaviors can occur daily and even hourly. Students may need breaks as a result and he expects that staff would use their best judgment. He reported that he wouldn't expect students to be kept in the sensory rooms but doesn't really know if that was happening.

Initially, neither sensory room had a door at the entry; however, at some point, Mr. Brenner had the doors installed. When asked to explain why he made this decision, Mr. Brenner explained that students engaged in escalated behaviors when in there and believes the doors are necessary to provide more privacy. Both doors have large windows.

In addition, at some point since Ms. Hurley was assigned to the resource room, slide locks were installed at the top of each sensory room door (facing the outside). Mr. Brenner reported that when he became aware of the locks, he questioned staff as to how and why they were there. He reported that staff told him that the rooms were being used as a closet and the locks were necessary to keep students out. He doesn't recall ever having a conversation with staff about installing those locks and doesn't know who would have initiated the installation. He reported it is possible that a staff member made a request to have maintenance install the locks and that he was not aware of it.⁷ Mr. Brenner stated that in his opinion, it would not have been appropriate to use the locks to keep a student locked in one of the sensory rooms.

Concerns and Complaints regarding Hurley

In or about the Spring of 2023, Crystal Orduno, a paraprofessional in the resource room, informed Mr. Brenner of concerns she had regarding the manner in which Ms. Hurley was physically interacting with students. According to Mr. Brenner, Ms. Orduno believed Ms. Hurley was too rough with students and was physically handling students in an inappropriate manner, including grabbing, and putting her hands on them. Ms. Orduno showed Mr. Brenner a video on her cell

⁷ Mr. Brenner's explanation of the locks was a bit confusing. He reported that he believes that he first noticed the slide locks when he was viewing the video footage after the incident on November 27, 2023 (discussed further in the report) that led to this investigation. He reports that he had the conversation with staff after the incident on November 27, 2023, but later stated that he did not recall having any discussions with the resource room staff regarding the incident after that date.

phone that she had taken of Ms. Hurley in the resource room that showed Ms. Hurley grabbing a student. At or around that same time, Mr. Brenner was contacted by the parent of this same student regarding bruises and marks the parent had noticed on the student. The parent was concerned that Ms. Hurley was causing the bruising on the student. The parent provided pictures to Mr. Brenner depicting the bruises and marks she had reported.

Mr. Brenner believes he spoke with Ms. Hurley about the concerns but does not recall what she said. He doesn't recall her becoming defensive or denying that she physically handled students. He believes she accepted feedback. Mr. Brenner did not report his concerns or efforts to district administration or formally document the situation.⁸ Mr. Brenner reported that at that time, he didn't feel he had enough credible information to warrant immediate action and he made the decision that he would monitor Ms. Hurley more closely moving forward. When asked if he would have handled it differently looking back, Mr. Brenner reported that he didn't think so. He stated he did not have enough proof to pursue anything at that time.

Camera Installed in Resource Room

In June 2023, Mr. Brenner put in a work ticket with district maintenance to have a camera installed in the resource room. Investigator was provided a copy of the work ticket, which includes Mr. Brenner's written request stating "[r]questing a camera (room 113). This is my #1 priority before the start of school." Mr. Brenner reported that he made the request because of his concerns regarding Ms. Hurley. He stated that there were clearly accusations of inappropriate handling of students but nothing that could be substantiated in his opinion. He believed that installing a camera would act as a deterrent and, in the event that additional concerns arose, he would have the ability to check the camera footage. The camera was installed sometime during the summer before the start of school. Mr. Brenner had access to the live feed from his office. He reported that the camera was not concealed from view, but that it was small and looked like a small smoke detector. There was no sign or notice in the room indicating that video surveillance was in use.

Mr. Brenner reported that he did inform Ms. Hurley and the paraprofessionals assigned to the room about the camera, and that no one reported concerns about the camera. He admitted that he did not inform anyone in district administration and believed he had the autonomy to make that decision.

Mr. Brenner stated that he did not often access the camera's live feed because it was too time consuming. He reported that there were times he would have it on and did notice that the staff would often be on their cellphones, which he then spoke to them about. When asked if there

⁸ Mr. Brenner did take limited handwritten notes during his handling of these concerns and those handwritten notes were located in his office, along with the pictures provided by the parent and copies of communications with the parent.

were occasions or situations that prompted him to review camera footage, he reported that there may have been but that he doesn't recall specifically.

November 27, 2023, Incident

In the afternoon on November 27, 2023, Mr. Brenner was asked to come to the resource room to provide assistance with a student (Student A) who was having difficulties. Investigator was provided video footage from the resource room by the District from that date. The video footage starts early in the day before any students or staff arrive and continues until the end of the day when all staff and students are gone. The video footage does not contain any audio.

Student A was not normally assigned to the resource room. On that day, the student was escorted to the room by the student's regular classroom teacher after the student had engaged in disruptive, aggressive behavior in the classroom. Student A is a special education student and is on an IEP. After arriving in the resource room at around 1:30 pm, Student A was initially placed in the large sensory room. From the video footage, it appears Student A started to throw some items around the room. Ms. Hurley pulled Student A by the arm and placed the student in the small sensory room and closed the door. Ms. Hurley stood or sat outside of the door with her back against the door preventing the student from leaving the room. Student A is seen pounding on the window of the door, pushing on the door in an attempt to open it, and appears to be yelling. At one point, it appeared Ms. Hurley reached up and locked the door using the slide lock. While the student is in the room, Ms. Hurley is seen making hand gestures behind her back to the student through the window, tapping on/slapping the door with her hands, and flipping the lights on and off.

Mr. Brenner came into the room at around 2:15 pm. At that point, Student A had been locked in the small sensory for approximately 40 minutes. Mr. Brenner reported that he doesn't recall if he spoke with anyone when he first arrived in the resource room. Mr. Brenner entered the small sensory room with Student A. After entering the small sensory room, he spoke briefly with Student A who was deescalating at this point. Mr. Brenner took out his cell phone and took pictures of the inside of the room as he reported that Student A had torn some of the black mats from the wall. He asked if the student would like the lights off and to set a timer. Student A agreed. Mr. Brenner reported that he informed Ms. Hurley to set a timer for 10 or 15 minutes and then he left the room. Mr. Brenner stated that he left at that time because he was confident that Student A was deescalating, and the situation was resolved. Mr. Brenner was in the resource room for approximately fifteen minutes. He confirmed that before he left the small sensory room, Student A was calm. When asked why the student was not allowed to leave the room at that point, Mr. Brenner reported that the noise and activity of the resource room could create some anxiety and being alone was helping Student A deescalate.

After about fifteen minutes, Ms. Hurley allowed Student A to leave the small sensory room. Shortly thereafter, Student A entered the large sensory room and began to pick up the items that

had been thrown previously. Less than 10 minutes later, Ms. Hurley entered the large sensory room and appeared to be physically interacting with Student A. She then dragged Student A by the clothes and arm out of the large sensory room, opened the door to the small sensory room and threw Student A into the room. Student A falls to the ground and the door is shut. Student A began pounding on the door and window while Ms. Hurley stood outside with her back to the door preventing Student A from exiting. Approximately 10 minutes later, Mr. Brenner entered the resource room again. He opened the door to the sensory room, briefly spoke with Student A, and then closed the door. Mr. Brenner reported that at this point, Student A was not showing signs of de-escalation and he decided that the student would remain in the small sensory room until the student's parent could pick the student up at the end of the school day. Student A's mom arrived in the resource room to retrieve the student at approximately 3:11 pm.

In addition to the foregoing incident, based on Investigator's review of the footage, there are numerous instances where Ms. Hurley and the resource room staff are seen physically handling students on November 27, 2023. This included:

- Picking up and carrying students across the room and in/out of sensory rooms;
- Yanking and pulling students by the arms;
- Dragging students on the floor;
- Pushing students;
- Pulling a student off of chairs and setting them in another chair;
- Grabbing student and forcing them to sit in a chair;
- Allowing students to sit in their laps;
- Physically holding students in place;
- Pulling a chair out from under student and student falls to floor;
- Wrapping their arms around students and bear hugging them; and,
- Putting students in basket holds.

These physical interactions happened frequently and continuously throughout the day and were engaged in by most of the staff in the room. Also, students were frequently placed and held in the sensory rooms when they appeared noncompliant. Staff would place the student in the room, shut the door and stand outside of the room facing outward leaving the student in the room without direct supervision. At times, staff would walk away from the door leaving the students inside unattended and unsupervised. Investigator was also provided detailed, time-stamped notes taken after district staff reviewed two additional days (November 21st and 28th) of camera footage from the resource room. These notes indicate that similar physical interactions/handling of students by resource room staff occurred on these dates as well. Investigator was unable to independently confirm this as the video footage from these days was overwritten and not maintained by the District.

Physical Interactions with Students/Mandatory Reporting Requirements

When interviewed, Mr. Brenner was asked when it is appropriate for school staff, particularly staff in the resource room, to physically interact with students. He responded that it is quite common for staff to physically interact with students in the resource room. Staff will grab students by the shoulders or hands to physically direct them. When asked if redirecting students by grabbing, pulling, carrying, or using holds is appropriate, he said that he generally condones that type of interaction as long as it is not done out of anger. Mr. Brenner explained that if it is something a loving, caring parent would do with their child, it is appropriate. He agreed that this is generally his benchmark in regard to physical interactions with students.

When interviewed, Dr. Faidley, Mr. Klaasen, Ms. Ratzak and Mr. Huss all strongly disagreed with this philosophy. All agreed that this is not an appropriate benchmark, and it is generally inappropriate to physically touch, grab, or interact with students unless necessary to protect the health or safety of the student or others. Each had viewed the video footage from November 27, 2023, and confirmed that the manner in which staff physically interacted with the students was highly inappropriate.

When interviewed, Mr. Brenner explained his understanding of the mandatory reporting requirements under North Dakota law. He stated that any time school staff suspect that a student has been abused or neglected, they are required to file a 960 report. He confirmed that he receives training on this topic at the start of every school year. Mr. Brenner confirmed that if staff observe any marks or bruises on a child, they will report. He stated that he always encourages staff to report, and he wouldn't hesitate to file a report against a staff member. With respect to the concerns reported about Ms. Hurley, however, he stated he did not feel he had enough proof to warrant immediate attention.

Termination of Paraprofessionals/Brenner Placed on Administrative Leave

After Student A's mother picked her up from school on November 27, 2023, she went to the district office and reported the incident.

Following some initial information gathering by district administration (including review of the video footage), Mr. Brenner received a written reprimand from Mr. Klaasen on December 14, 2023. Mr. Brenner was officially placed on paid administrative leave on December 20, 2023, pending the completion of an investigation. The District informed WILMAC that Ms. Hurley was no longer allowed to work in a district school and WILMAC placed Ms. Hurley on paid administrative leave pending an investigation. The District also filed a 960 report with the Institutional Child Protection Services unit relative to the treatment of students in the resource room as depicted on the video footage from November 21, 27, and 28, 2023.

On December 21, 2023, the District terminated the employment of all five paraprofessionals assigned to work in the resource room.

On February 14, 2024, the WILMAC board accepted the resignation of Ms. Hurley in lieu of discharge.

Conclusions

Based on the above findings, Investigator makes the following conclusions:

Mr. Brenner violated applicable federal and state law, and several school district policies, procedures, and expectations in connection with his handling of the incident on November 27, 2023, and related events involving treatment of learners in the resource room at Wilkinson Elementary. These violations are as follows:

- Mr. Brenner likely violated his obligations as a mandatory reporter under NDCC chapter 50-25.1 when he failed to promptly report suspected child abuse relating to the concerns and complaints received from parents and building staff regarding Ms. Hurley's physical interactions with students in the resource room. Mr. Brenner received specific information from staff and a parent that Ms. Hurley was interacting with a student in a manner that may be causing bruising and other physical marks on the student. Rather than reporting this suspected conduct as required, Mr. Brenner conducted his own investigation and independently determined that he did not have sufficient evidence to confirm child abuse had occurred. Mr. Brenner admitted that he was unable to conclude that Ms. Hurley had not caused physical harm to the student.
- Mr. Brenner violated the district chain of command procedures and expectations by failing to inform his supervisor(s) and district administration of the concerns and complaints regarding Ms. Hurley's physical interactions with students in the resource room. Rather than reporting these concerns and complaints to district administration as required or expected, Mr. Brenner conducted his own investigation and independently determined that no immediate corrective action was necessary and that he would install a camera in the resource room as a deterrent. Mr. Brenner also failed to properly document his concerns regarding Ms. Hurley.
- Mr. Brenner violated district policies FF (Student Conduct and Discipline) and FCC (Restraint or Seclusion) by secluding, and allowing staff to seclude, Student A in the small sensory room inside the resource room on November 27, 2023. Student A was kept locked in the sensory room for an excessive period of time than was necessary and as a means of discipline. Mr. Brenner also allowed the use of mechanical restraints through the use of slide-locks, as well as holding doors closed to prevent students from leaving. Mr. Brenner also failed to properly ensure that staff monitored Student A continuously while placed in seclusion on

that date. Mr. Brenner and his staff also failed to determine appropriate interventions as the need for restraint or seclusion of Student A was foreseeable. Mr. Brenner and his staff failed to document and inform district administration and parents regarding the use of seclusion and restraints as required by policy FCC.

- Mr. Brenner violated district policy AAC (Nondiscrimination and Anti-Harassment) which prohibits discrimination against students based on disabilities and policy AACA (Section 504 of the Rehabilitation Act of 1973) which requires that a qualified student with a disability is provided with a free appropriate public education (FAPE) and that behavior plans be developed and followed. Mr. Brenner and his staff failed to initiate an IEP meeting for further evaluation of Student A when challenging behaviors developed. Mr. Brenner and his staff also failed to take steps to ensure that a functional behavior assessment was conducted, and a behavior intervention plan was developed regarding Student A.
- Mr. Brenner also violated policy ACDB (Video Surveillance and Recording in Schools). Mr. Brenner failed to notify and obtain the permission of district administration regarding the installation of a camera in the resource room at Wilkinson. Mr. Brenner also did not request permission from Superintendent Faidley to have access to the camera's live feed.
- Mr. Brenner violated district expectations and procedures regarding the documentation of student behaviors. Building principals are expected to require that staff document student behaviors that disrupt the education environment, as well as steps taken to address the behaviors. In addition, parents are to be alerted when their student's behavior disrupts the learning environment. Behaviors are to be logged in PowerSchool and Panorama. All building principals are aware of these expectations and tools. Mr. Brenner admitted that student behaviors were only documented when they resulted in physical injury to staff or others.

In addition to the above violations, Mr. Brenner's philosophy as to the manner in which school staff are expected to interact physically with students in the school environment is entirely out of line with the expectations of his supervisors and district administration, as well as best practices in public education in North Dakota.

Mr. Brenner also has difficulty properly communicating with district administration and WILMAC regarding student and staff concerns and to ensure compliance with special education requirements regarding students in his building.

Investigator makes no specific recommendations regarding any corrective action or responsive measures that may be necessary or appropriate based on the above findings and conclusions. Investigator recommends that the District consult with and seek the assistance from its legal counsel in this regard.