

Colorado Department of Education
Decision of the State Complaints Officer
Under the Individuals with Disabilities Education Act (IDEA) and
the Protection of Individuals from Restraint and Seclusion Act (PPRA)

**State-Level Complaint 2024:522
Weld RE-4**

DECISION

INTRODUCTION

On February 23, 2024, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Weld RE-4 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)² and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “PPRA Rules”).³ Therefore, the SCO has jurisdiction to resolve the Complaint.

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has the authority to investigate alleged violations that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c); Rule 2.07(2)(f). Accordingly, this investigation will be limited to the period of time from February 23, 2023 through the present for the purpose of determining if a violation of the IDEA or the PPRA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to violations occurring on or after February 23, 2023.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District denied Student a Free Appropriate Public Education (“FAPE”) because the District:

¹ The IDEA is codified at 20 U.S.C. § 1400 *et seq.* The corresponding IDEA regulations are found at 34 C.F.R. § 300.1 *et seq.* The Exceptional Children’s Education Act (“ECEA”) governs IDEA implementation in Colorado.

² The Protection of Individuals from Restraint and Seclusion Act, C.R.S. § 26-20-101 *et seq.*, was previously titled the Protection of Persons from Restraint Act and referred to as the “PPRA.” This acronym lives on despite amendment of the Act’s title.

³ The Rules are codified at 1 C.C.R. 301-45.

1. Failed to review and revise Student's Individualized Education Program ("IEP") to ensure it was tailored to meet Student's individualized needs—specifically, his social-emotional and behavioral needs—since the beginning of the 2023-2024 school year, in violation of 34 C.F.R. §§ 300.324(a)(2)(i) and (b).

And whether the District violated the PPRA Rules because the District:

2. Improperly restrained Student on or about October 30, 2023 and the beginning of December 2023, specifically by:
 - a. Restraining Student in a non-emergency situation, in violation of PPRA Rule 2.01(1)(a);
 - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of PPRA Rule 2.01(1)(b);
 - c. Restraining Student as a form of discipline or to gain compliance from a student, in violation of PPRA Rule 2.01(2);
 - d. Restraining Student using more force than is necessary and without prioritizing the prevention of harm to Student, in violation of PPRA Rule 2.01(3);
 - e. Failing to ensure restraints were administered by staff who have received required training, in violation of PPRA Rule 2.3; and
 - f. Failing to comply with the documentation and notification requirements for restraint, in violation of PPRA Rule 2.04.
3. Improperly secluded Student on or about the first week of September 2023 and the beginning of December 2023, specifically by:
 - a. Secluding Student in a non-emergency situation, in violation of PPRA Rule 2.01(1)(a);
 - b. Secluding Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of PPRA Rule 2.01(1)(b);
 - c. Secluding Student without continually monitoring him, in violation of PPRA Rule 2.02(2)(e);

- d. Failing to provide Student with opportunities to have the seclusion removed, in violation of PPRA Rule 2.02(1)(a)(iv);
- e. Failing to end the seclusion when it was no longer necessary to protect the Student or others, to reintegrate the Student or clearly communicate that the Student is free to leave the seclusion area, in violation of PPRA Rule 2.02(1)(a)(v);
- f. Failing to ensure seclusion was administered by staff who have received required training, in violation of PPRA Rule 2.3; and
- g. Failing to comply with the documentation and notification requirements for seclusion, in violation of PPRA Rule 2.4.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁴ the SCO makes the following FINDINGS OF FACT (“FF”):

A. Background

1. Student, an “awesome,” “very capable young man” attended the spring semester of second grade (2022-2023 school year) and fall semester of third grade (2023-2024 school year) in a center-based program at a District school (“School”). *Interview with Special Ed Teacher*.
2. Student is eligible for special education and related services under the disability categories of Autism Spectrum Disorder and Speech and Language Impairment. *Exhibit A*, p. 1. Student’s disabilities have caused him to struggle with social situations and emotional regulation, which in turn has led him to exhibit behavioral challenges that have impeded his progress at school. *Interview with Parent*.
3. When dysregulated, Student can exhibit severe physical aggression and property destruction requiring multiple adults, including his parents, to physically hold him using Crisis Prevention Institute (“CPI”) holds, even at home and his private Applied Behavior Analyst (“ABA”) program, for his safety and the safety of those around him. *Interviews with Parent, Special Education Director (“Director”), and Student’s Private BCBA (“BCBA”)*.
4. Parent’s allegations concern the adequacy of the behavioral interventions, supports, and other strategies provided by the District to address these behavioral challenges. *Complaint*, pp. 3-8. The District, in response, states that it has appropriately responded to and provided supports for Student’s behavioral challenges by placing Student in a center-based “positive behavior intervention program” with a curriculum

⁴ The appendix, attached and incorporated by reference, details the entire Record.

“designed to develop [social] skills and teach replacement behaviors,” as well as by developing a behavior intervention plan (“BIP”) with strategies for addressing Student’s challenging behaviors and teaching alternative behaviors. *Response*, p. 3.

5. Parent has also alleged that staff at School have improperly restrained and secluded Student in violation of the PPRA, a claim that the District denies. *Complaint*, pp. 3-8; *Response*, p. 1. Parent’s PPRA allegations concern three dates in which allegedly improper restraints or seclusions occurred; however, the Record contains, and this Decision references, numerous other occasions on which School staff properly documented actions that they described as involving PPRA restraints and seclusions. See *Exhibits I and R*. Those other occasions are not in dispute here.

B. The November 2022 IEP and BIP

6. On November 10, 2022, when Student was in second grade, his IEP Team convened to review and revise his IEP, and to develop a BIP in response to the behavioral challenges that impeded his academic progress. *Exhibit A*, p. 1.
7. Student already had eleven documented behavioral incidents that semester, and the incidents involved severe physical aggression, property destruction, and other disruptive behaviors. *Id.* at pp. 4, 27; *Interview with Director*. The incidents had resulted in multiple suspensions, reducing Student’s time for education. *Exhibit A*, p. 6; *Interview with Director*.
8. The IEP Team determined that Student would, at the end of the fall semester, transition from his former elementary school to School’s center-based program, referred to herein as “the Program,” which was “designed to positively shape behavior . . . in order to help him learn the needed skills to successfully reintegrate back into a general education classroom.” *Exhibit A*, p. 17.

The November 2022 IEP

9. The November 2022 IEP reflected that Student’s disabilities often caused him to become emotionally dysregulated, leading to challenges socializing and effectively expressing his needs. *Id.* at pp. 4, 9. By November 10, 2022, he had eleven documented behavioral incidents in that school year. *Id.* at p. 4.
10. The IEP set annual goals for Student. *Id.* at pp. 11-14. In addition to one goal each for reading and math, Student had three goals targeting his social-emotional skills and one goal targeting his ability to properly communicate in social situations. *Id.*
11. Student’s three social-emotional goals were based on the social skills curriculum that the District implements through the Program. *Id.* Each of Student’s three social-emotional goals targeted one of the Program’s “sixteen critical social skills”: Goal 1 targeted the ability to “accept feedback,” Goal 2 targeted “get the teacher’s attention,” and Goal 3 targeted “follow instructions.” *Exhibit A*, pp. 11-12. Student’s performance

was tracked by the points he would earn or lose through demonstrating these social skills, on points sheets. *Id.*

12. Student's communication goal targeted interpersonal communication, and his specific goal was to identify a problem, identify and assess the severity of the problem, determine the appropriate emotional response, and respond appropriately in four out of five trials as measured by a teacher. *Id.* at p. 14.
13. The IEP provided accommodations, including supports, to help Student manage his behavior. *Id.* at p. 15. For example, he would be given extra time before being expected to respond to a question; he would be given timed warnings leading to transitions; he would have sensory motor tools and a space within the classroom allowing movement; he would, when dysregulated, be invited to express his needs either verbally or with a choice board; and he would be paired with patient, academically strong peer models during group tasks. *Id.* at p. 15.
14. The IEP also provided services to address Student's academic and social-emotional needs. *Id.* at p. 17. He would receive 1,300 minutes (about 22 hours) per week of specialized instruction for both academic subjects and social skills. *Id.* at pp. 17-18. He would receive 75 minutes per month of direct occupational therapy, 120 minutes per month of direct speech and language therapy, and 90 minutes per month of direct psychological services from a licensed school psychologist. *Id.*
15. The IEP Team determined that Student's least restrictive environment ("LRE") was to be in the general education environment less than 40% of the time. *Id.* at p. 19. The IEP Team's goal was that this should not be 0%, however, and he would participate with his class so long as he could remain safe in that environment with the assistance of a paraeducator. *Interview with Special Ed Teacher.*

The November 2022 BIP

16. The November 2022 IEP incorporated a BIP. *Exhibit A*, p. 10. The BIP was based on classroom observations, teacher input, parent input, daily tracking sheets, and school records. *Id.* at 27. The BIP reflected that Student, when faced with a non-preferred task or transition, engaged in "aggression, property destruction, disruptive behaviors, and refusal" as a means of avoiding the task or transition. *Id.*
17. The BIP provided strategies to address Student's emotional dysregulation by anticipating triggers of dysregulation, providing strategies to decrease the likelihood that he would become dysregulated, and both teaching and reinforcing alternative pro-social behaviors and self-regulation strategies. *Id.* at p. 28.
18. Specifically, staff would monitor Student's hunger and stamina, attempt to present Student's classwork as consistent with his peers' classwork, provide opportunities for achievement, allow him to work independently at times, and provide warnings before transitions. *Id.*

19. To teach pro-social behaviors and self-regulation strategies, the BIP provided the use of a visual schedule, individualized social stories, scheduled movement breaks, scheduled sensory breaks, and encouragement to use coping strategies like asking for a break or taking deep breaths. *Id.* Because one of Student's triggers was a request to do classwork that he found difficult, the BIP provided that staff would break difficult tasks into more manageable parts. *Id.* Another strategy was that staff would direct Student to do things he enjoyed, such as movement and sensory breaks by saying "[Student], I need you to jump on the trampoline," and to do things that were neutral, such as "[Student], I need you to hand me a pencil." *Id.* In this way, when staff used strategies to help Student maintain his emotional regulation, they would also be teaching him to follow directions. *Id.*
20. To reinforce the pro-social behaviors and self-regulation strategies that the BIP attempted to teach in place of disruptive behaviors, staff would provide reinforcers such as time with an iPad, breaks, or other preferred activities—the BIP noted that his responses to various reinforcers changed frequently and that staff would need to maintain an evolving set of reinforcement options. *Id.* at pp. 27-28.
21. To evaluate its effectiveness, the BIP stated that its measures for success would be increasing Student's tolerance for non-preferred tasks and decreasing incidents of physical aggression. *Id.* at p. 29.

C. The Program

22. The IEP Team's decision to move Student from his regular elementary school to the Program at School was a behavioral intervention intended to teach positive social interactions and address the behavioral challenges that interfered with his ability to make progress in the general education environment. *Id.* at p. 17; *see Response*, p. 2; *Interviews with Director, Principal, and Special Ed Teacher*.
23. The Program had seven students, all of whom were enrolled in the program because their behavior was impacting their time in the general education environment. *Interview with Special Ed Teacher*. The Program was intended to address their needs for emotional regulation, relationship building, and social skills. *Interview with School Psychologist*.
24. The Program was staffed by Special Ed Teacher, Paraeducator 1, Paraeducator 2, and School Psychologist. *Interviews with Principal and Special Ed Teacher*. District-level special education staff also regularly communicated with Special Ed Teacher and stayed involved in the running of the Program. *Interview with Director*. When additional staff were needed to supervise the students, Program staff would get help from teachers and paraeducators in School's special education program, Principal, and other School staff. *Interview with Paraeducator ("Para") 1*.

25. The Program was defined by its curriculum and its behavioral strategies. *Id.* The curriculum taught “sixteen critical social skills: following instructions, accepting criticism or a consequence, accepting ‘no’ for an answer, greeting others, getting the teacher’s attention, disagreeing appropriately, making an apology, accepting compliments, having a conversation, asking for help, asking permission, staying on task, sharing something, working with others, listening, and appropriate voice tone.” *Response*, p. 3; *accord CDE Specialist.*
26. As one of its strategies, the Program used a points system wherein students gained and lost points by demonstrating compliance or noncompliance with the social skills. *Interviews with Director and Special Ed Teacher; accord CDE Specialist.* If points were lost, they could be earned back through conformant behavior. *Interview with Director.*
27. When a student lost a certain number of points, the student was warned that the student would “earn a referral,” and then, if the referral was earned, the student would be asked to go across the hallway to a multipurpose “Opportunity Room,” generally used by the Program for one-on-one instruction and small group work, to “work through the referral.” *Interviews with Principal and Para 1.*
28. “Working through a referral” meant the student would be asked to identify the situation that resulted in a referral, to discuss what happened factually, to consider how they felt at that time and why they felt that way, and to practice the social skill that could have resulted in a better outcome. *Interview with School Psychologist.* Students worked through referrals with School Psychologist; if she was not immediately available, the student would wait in the Opportunity Room until she returned, with the option to use the time there for schoolwork. *Interviews with School Psychologist and Para 1.* Working through a referral and practicing the social skill allowed points to be earned back. *Interview with Para 1.*
29. Although working through a referral in this fashion could take time from a student’s school day, it was intended to avoid the even greater loss of time that could result from suspensions. *Interviews with Director and Special Ed Teacher.* It combined cool-off time, practice in self-regulation strategies, and one-on-one instruction in social-emotional skills. *Id.* It generally resulted in successfully deescalating a student so the student could move past a behavioral incident and resume their school day. *Id.* During the time that he attended the Program, Student was not suspended. *Interview with Special Ed Teacher.*
30. As another behavioral strategy, the Program used “contracts.” *Interviews with Principal and Special Ed Teacher.* For example, one of Student’s contracts stated:

I will not earn a referral for my behavior when I am frustrated.
I will ask for a break or ask for time alone. If I earn a referral,
I will owe mediation.

Exhibit F, p. 4.

31. One of the Program’s distinctive characteristics was the requirement that students “work through” any conflicts or social skill errors in the same day that they occurred, even if it meant staying late at School. *Interviews with Director, Special Ed Teacher, School Psychologist, and Para 1.*
32. Parent opposed this aspect of the Program because Student had after-school services every day and would miss them if he stayed late. *Interview with Parent.* School staff, accordingly, did not hold Student late in the fall semester for this purpose. *Interviews with Director, Special Ed Teacher, School Psychologist, and Para 1.* He was held late two or three times, but this was because the staff deemed him too elevated and unsafe to ride on the bus with the other children, even with close adult supervision. *Id.* On those occasions, he missed his after-school services. *Interview with Parent.*
33. Program staff have also modified other aspects of the Program’s curriculum for Student. *See Interviews with Principal, Special Ed Teacher, School Psychologist, Para 1, and Para 2.* They allow substantially more time for Student to respond to a question or instruction. *Id.* For de-escalation, they use simple language and pictures, such as allowing him to point to pictures of different de-escalation strategies like water, ice to chew, and fidget devices. *Id.* They have also tailored the curriculum to Student’s individualized needs by reducing and simplifying the language-heavy concepts used by the curriculum, such as using fewer words to explain a social skill and practicing the social skills through modeling and active practice rather than rote memorization. *Id.*
34. School’s modifications and accommodations—such as using a visual schedule, using visual aids to choose self-regulation strategies, and providing transition warnings—respond to Student’s individualized learning needs. *CDE Specialist.*
35. The Program is highly structured, which is suited to Student’s need for predictable interactions. *See id.* Student’s social-emotional needs are addressed by some of the sixteen social skills taught by the curriculum, including the skills set as his three social-emotional goals. *See id.*
36. Based on consultations with CDE specialists as well as the credible opinions of those individuals directly involved in Student’s education who also possess expertise in this area, the SCO finds that the Program, as modified for Student’s individualized needs—considered along with his other services, supports, and accommodations—was reasonably designed to meet Student’s emotional and behavioral needs. *See id.; Interviews with Director, Special Ed Teacher, and School Psychologist.*

D. Behavioral Incidents in Spring 2023

37. In the spring semester of the 2022-2023 school year, which was Student’s first semester in the Program, Student had twenty-nine documented behavioral incidents. *See Exhibit R.* In sixteen of these incidents, staff needed to use CPI holds that they

correctly documented as PPRA restraints or needed to place Student in the Opportunity Room while holding the door closed for brief periods to allow him to deescalate, which they correctly documented as PPRA seclusions. See *id.*

38. Virtually all of Student's behavioral challenges—and all of his severest behaviors—arose when asked to do classwork or when classwork became difficult and frustrating, although, as his BIP reflected, other factors such as his level of fatigue also played a part. See *Exhibit A*, pp. 60-62; see generally *Exhibit R*. As an example of Student's behavioral challenges when he first started attending the Program, on January 6, 2023, Student became escalated after being asked to do a non-preferred task. *Exhibit R*, p. 3. He “began to growl,” tore his papers up, and stabbed the table with his pencil. *Id.* Staff offered him a break. *Id.* He responded by throwing objects in the room, attempting to flip a large table, and pushing a chair into one of the paraeducators. *Id.*
39. He was asked to walk to the Opportunity Room, but he instead became more aggressive, requiring staff to escort him using a CPI transport, which involved briefly touching his shoulders and arms to walk him across the hall to the Opportunity Room. *Id.* He continued to pose a physical threat to staff's safety, so a staff person held the door closed to allow him to deescalate. *Id.* However, he began hitting his head against the window in the door, so staff opened the door and placed him in a CPI control hold for his own safety until he deescalated. *Id.* The school nurse came to the room, examined Student for injury, and gave him an icepack for his head. *Id.* School Psychologist then worked through the referral with Student, and he helped clean up the classroom. *Id.*
40. Staff have credibly stated that, based on their observations, Student began benefiting from the Program by the end of the semester, because he was demonstrating the social skills and self-regulation strategies provided by the Program curriculum and his BIP. *Interviews with Special Ed Teacher, Para 1, and Para 2*. For instance, although he still scratched his arms when nervous or upset—hard enough to make them red but not to draw blood—his other self-harming behavior, such as head-banging, had ceased entirely by early March 2023. *Id.* His progress on his social skills was also noticeable; for example, if staff asked him to do something like tie his shoe, he would say “okay” and tie his shoe, after which staff would give him positive feedback. *Id.*
41. In the last three weeks of the spring 2023 semester, Student had only two documented behavioral incidents. See *Exhibit R*. Staff did not, in either of these incidents, need to physically hold Student for his own or others' safety, or hold the Opportunity Room door shut for their safety. See *Exhibit R*, pp. 151-154.
42. This was the longest period that Student attended School without exhibiting behavior that required staff to physically hold him in a documented PPRA restraint or place him behind a closed door in a documented PPRA seclusion. See *Exhibit R*. The incidents were both categorized as “minor”—characterized by a refusal to work—by the staff who filled out the incident forms, in contrast to the “major” incidents—characterized by

severe physical aggression such as flipping tables and throwing chairs—he frequently had in January and February. *Compare id.* at pp. 106, 109, 113, 116 *with* pp. 151-154.

E. Behavioral Incidents from August 2023 through October 10, 2023

43. On August 16, 2023, Student returned to the Program and began third grade. *Exhibit L*, p. 1; *Exhibit A*, p. 36. For the first three weeks of the new school year, Student had no documented behavioral incidents. See *Exhibits F, I*.
44. Staff observed that, in this period—and also later in the semester, despite setbacks—he demonstrated the social skills and self-regulation strategies that they had been teaching in accordance with the Program curriculum and Student’s BIP. *Interviews with Special Ed Teacher, School Psychologist, Para 1, and Para 2*. For example, in the new school year, he generally sought the teacher’s attention by raising his hand, looking at her, and remaining calm, as he was taught, rather than yelling, throwing a marker, or throwing his chair. *Id.*
45. After September 5, however, Student again began exhibiting negative behaviors. See *Exhibit F*, pp. 1-13. From September 5 through October 10, he had twelve documented incidents. *Id.* Of those, staff were required to physically hold Student or to place him in the Opportunity Room with the door held shut for safety in three incidents, which they correctly documented as PPRA restraints or seclusions. See *Exhibit I*, pp. 1-19. Of the incidents not documented as PPRA restraints or seclusions, only two were categorized as “major” and the rest were categorized as “minor.” See *Exhibit F*, pp. 1-13.
46. Notably, even in the most severe incidents—those documented by School as a restraint or seclusion—Student did not exhibit the self-harming behavior that he had in January the prior semester, e.g., banging his head against a door or wall. See *Exhibit I*, pp. 1-19.

F. The October 2023 IEP and BIP

47. Student’s IEP Team met on October 10, 2023 at Parent’s request. *Response*, p. 4. This was a month earlier than the annual IEP review deadline, and Parent wanted to move Student from the Program back to either his old elementary school or to another district, because she had researched the Program curriculum and determined it was not appropriate for Student. *Id.*; *Interview with Parent*. Scheduling an early meeting was challenging—fifteen individuals signed the IEP participants list—and Director intervened to assist the District and school staff in finding time in early October rather than November. *Exhibit N*, p. 11.

The October 2023 IEP

48. The October 2023 IEP reflected the IEP Team’s assessment that Student’s behavioral challenges continued to affect his education. *Exhibit A*, p. 36. The IEP reflected the observations of School Psychologist and Special Ed Teacher, who reported that he continued to show deficits in social interactions and emotional self-regulation. *Id.* at pp. 41-45.
49. Student was making some progress on his IEP’s social-emotional and communication goals. His goal was to “earn” an average of “five positive points per day for six consecutive weeks” in his social skill goals, and his average points were 1.03 for “accept feedback,” 1.56 for “get teacher’s attention,” and 2.43 for “follow instruction.” *Id.* at pp. 41, 46-49. On his social-communication goal of assessing problems and exhibiting an appropriate emotional response, he had made more progress: In four out of five trials, with minimal-to-moderate support, he could assess the size of a problem, although he was able to identify the appropriate degree of emotional response in only two out of five trials. *Id.* at p. 50-51.
50. His IEP goals were essentially unchanged from November 2022, though they were updated to recognize advancement from second to third grade, with targets adjusted for his new grade level. *Id.* at pp. 46-51. His accommodations were also unchanged. *Id.* at pp. 51-52, 59
51. His services changed by increasing his direct psychological services from 90 minutes per month to 250 minutes per month. *Id.* at pp. 54-55. This allowed School Psychologist to conduct a social skills lesson with Student every morning, provide some social-emotional instruction in a small group setting and ensure that the self-regulation strategies Student was learning remained fresh in his mind. *Interview with School Psychologist.*
52. Because Student’s behavior had improved at the end of the spring 2023 semester and beginning of the fall 2023 semester, he had been spending more time in the general education environment, and the IEP Team recognized this by changing his LRE to 40-79% of time in general education. *Exhibit A*, p. 56.
53. The IEP Team decided, over Parent’s objections, to keep Student in the Program. *Id.* at p. 36. Student was finding success in the Program, which was evident in the reduced number of behavioral incidents and the reduced severity of the incidents such that staff did not need to use physical holds or to place him in the Opportunity Room nearly as often as they had early in the spring 2023 semester. *Interviews with Special Ed Teacher, School Psychologist, Para 1, and Para 2.*

The October 2023 BIP

54. The IEP Team updated Student’s BIP and adjusted its strategies/outcomes worksheet. See *id.* at p. 61.

55. The IEP Team added several more strategies to anticipate triggers for Student's emotional dysregulation. *Id.* Specifically, staff would consider the time of the day because Student grew fatigued over the course of the day such that there was a higher risk of dysregulation in the afternoon. *Id.* Staff would also consider his relationship with the adults involved with the task, because Student preferred to work with certain adults and there was a higher risk of dysregulation when he worked with a non-preferred adult. *Id.*
56. To reduce the likelihood that a non-preferred task or transition would trigger dysregulation, the BIP provided that staff would continue to monitor Student's stamina, present his work as consistent with his peer's work, give him independent work, and provide transition warnings. *Id.* In addition, staff would state clearly when they could or could not help him with a certain task, provide a visual schedule, and give Student a choice whenever possible, e.g., "do you want to use the blue marker or the green marker" or "do you want to do math first or reading first." *Id.*
57. The revised BIP continued to provide that, to teach pro-social behaviors and self-regulation strategies, staff would break difficult tasks into more manageable parts, direct Student to do things he enjoyed as well as actions that were neutral, such as "[Student], I need you to hand me a pencil." *Id.* The BIP also directed staff to remind Student to use his coping strategies, such as reminding him he could take a few breaths or request a break. *Id.*
58. The IEP Team also added several reinforcement incentives. *Id.* He could still earn breaks and time to use an electronic device, but the BIP now expressly stated that staff would award positive "points" for desired behavior and provide "contingent adult attention," e.g., positive attention—making jokes, talking about preferred topics—when he was displaying desired behaviors, and neutral attention—reminders, task-specific conversation—when he was off task. *Id.*
59. In sum, although School staff felt that the Program was effective—as illustrated by the overall reduction in behaviors, which represented a significant increase in time Student spent being educated—they amended the IEP and BIP to provide daily opportunities to refresh and reinforce the skills and strategies being taught, specifically by creating time each day for Student to work on his social skills and self-regulation strategies with School Psychologist as well as by making explicit in his BIP that staff should remind him of his self-regulation options throughout the day. *Exhibit A*, pp. 54-55, 61.

G. Behavioral Incidents from October 11, 2023 through December 6, 2023, and Parent's Withdrawal of Student

60. From October 11, 2023, when the revised IEP took effect, through December 6, 2023, which was Student's last day of attendance in the Program, Student had six

documented behavioral incidents, only one of which required staff to physically hold Student for safety reasons, which staff correctly documented as a PPRA restraint. See *Exhibit F*, pp. 14-20; *Exhibit I*, pp. 28-32.

61. In this period, the Program staff saw that he was adopting the social skills he was taught, and responding to positive feedback and reinforcers for those skills. *Interviews with Special Ed Teacher, Para 1, and Para 2*. For example, he continued to use non-disruptive means to get the teacher's attention as a general matter; he continued to follow directions without becoming escalated; and he showed a better ability to either stay on task or else use one of his self-regulation strategies to manage his frustrations. *Id.*
62. It takes many months for a child to adopt self-regulation strategies and to replace negative behaviors with positive behaviors. *CDE Specialist*. The SCO finds the reduction in number and severity of incidents from the beginning of the spring 2023 semester until the time Student left the program demonstrated reasonable improvement within that timeframe, even though there continued to be significant behavioral incidents at the time Parent withdrew him. *Id.*
63. In summary, then Student's behavior changed from when he began the Program to when Parent withdrew him as follows:
- In spring 2023, Student had a total of twenty-nine behavioral incidents. In sixteen of those incidents, School staff needed either to use physical holds or to close the door of the Opportunity Room for a brief period for the safety of Student or staff. The staff correctly documented those incidents as PPRA restraints and seclusions. In the final three weeks of the spring 2023 semester, he had only two incidents, neither of which required staff to physically restrain him or close the door to prevent him from attacking them.
 - At the beginning of fall 2023, Student had no incidents at all for the first three weeks—a sharp contrast to his first three weeks in the prior January. From that point until Parent withdrew him on December 6, Student had a total of seventeen documented behavioral incidents, of which four necessitated actions that School staff correctly documented as PPRA restraint or seclusion.
64. The reduction over the two semesters from twenty-nine to seventeen documented behavioral incidents, and particularly the reduction from sixteen to four situations requiring the use of PPRA restraint or seclusion, reflects that the District's response to Student's behavioral challenges—considered together with the Program curriculum, the BIP, and Student's services—was effective. *CDE Specialist*. Compared to Student's experience prior to transitioning to the Program, the FAPE offered by the District from the time he enrolled in the Program resulted in increased time in the classroom and instruction in skills and strategies that, over time, allowed

him to remain better emotionally regulated than before he enrolled in the Program. *CDE Specialist.*

65. Even though Student was still exhibiting behaviors when Parent withdrew him from the Program, the degree that they were reduced is within reasonable expectations in light of the many years that he had struggled with the behaviors as well as the severity of the behaviors that he exhibited at the beginning of the spring 2023 semester. *Id.*
66. Student's final progress report, which provided information for the period between the October 10 IEP Team meeting and his final six-week data calculation date of November 3, 2023, showed progress on his social-emotional goals. *See Exhibit H*, pp. 1-5. For "accept feedback," he increased from an average of 1.03 points to 1.63 points, for "get teacher's attention," he increased from an average of 1.56 points to 2.23 points, and for "follow instruction" he increased from 2.43 points to 2.46 points. *See id.*

H. Allegedly Improper Restraints and Seclusions

67. Student's parents, staff at school, and the staff at Student's ABA program frequently needed to physically hold him to prevent him causing harm to himself or others. *Interviews with Director, Special Ed Teacher, Parent, and BCBA.* In December 2022, when Student was first enrolled in the Program, the District sent Parent a notice explaining that the District believed it was possible that Student would be restrained and secluded, describing the District's restraint and seclusion procedures, explaining who would conduct any restraint or seclusion, and identifying the District policies that addressed restraint and seclusion. *Exhibit I*, p. 1. Each of the Program staff, including School Psychologist and Principal, had received CPI training in restraint and seclusion within the past two years. *See Exhibit K.*
68. Parent has alleged that School staff improperly restrained and secluded Student in violation of the PPRA Rules on September 5, 2023, October 24, 2023, and December 6, 2023. Summaries of the incidents on those dates are as follows:

September 5, 2023 – Alleged Seclusion

69. On September 5, 2023, Student was given a writing task. *Exhibit I*, pp. 3-7; *Interviews with Special Ed Teacher, Para 1, and School Psychologist.* He was willing to provide his answers verbally but refused to write them down. *Id.*
70. Special Ed Teacher warned Student that he would lose points if he did not follow directions. *Id.* When he continued to refuse, she told him that he lost 100 points for not following instructions. *Id.*
71. Student became escalated and broke his crayon. *Id.* Special Ed Teacher and Para 1 attempted de-escalation strategies. *Id.* These included reminding him of the self-

regulation options he could ask for and showing him a chart with pictures of strategies such as chewing on ice, taking a break, asking for more time, or using a sensory or fidget device. *Id.* It also included reminding him of past times he successfully managed his emotions, asking him to “stop and think,” and reminding him of the consequences of earning a referral. *Id.* Special Ed Teacher and Para 1 also attempted simply waiting him out. *Id.*

72. Student continued to be escalated and to refuse to choose a de-escalation strategy or return to his work, and Special Ed Teacher told him that he had earned a 500-point penalty. *Id.*
73. Student responded by beginning to eat his broken crayon. *Id.* Special Ed Teacher and Para 1 asked him to take the crayon out of his mouth. *Id.* Student began attempting to kick, bite, and punch Special Ed Teacher and Para 1. *Id.*
74. Special Ed Teacher and Para 1 physically escorted Student from the Program classroom to the Opportunity Room across the hall, using a two-person CPI transport hold that involved briefly touching his shoulders and arms to walk him across the hall. *Id.* This took less than one minute. *Id.*
75. The Opportunity Room was roughly ten feet square, carpeted, and lit with an overhead light that could be dimmed if a student requested it. *Interviews with Principal and Para 2.* The door had a window and no lock. *Id.* The room contained nothing—neither furniture nor any other object except for a clock mounted on a wall behind a cage and a convex mirror mounted in one of the back corners near the ceiling. *Id.* The mirror allowed a person who looked through the window in the door to see the entire room. *Id.* The room was adequately ventilated; that is, it was ventilated like any other room at School. *Id.* A one-way mirror allowed a person in the office next door to look into the room; the “one-way” mirror was not perfectly opaque, and a person standing close to the mirror could see into the office on the other side. *Id.*
76. Because Student kept attempting to hit and grab the clothes of Special Ed Teacher and Para 1, they exited the room and closed the door. *Id.* They held it shut for a minute or two until Student stopped trying to open it. *Id.*
77. Para 1 sat in the doorway and kept it open so long as Student was not actively attempting to attack or grab him. *Id.* Para 1 told Student—as was the standard procedure for these situations—that he could “work through” his referral as soon as he was calm and indicated that he wanted to. *Id.* Students understood they could indicate their willingness to move forward by sitting on the carpet near a flat (closed) electrical plate on the wall that acted as a visual cue in the empty room. *Id.*
78. As a practice, when a student in the Opportunity Room was not willing to move forward with the referral but did need to use the bathroom, three staff members would accompany the student to the bathroom and wait outside while the student used the bathroom. *Interview with Special Ed Teacher.* If there were not enough Program staff

available, they would get help from one of the special education teachers or paraeducators, or Principal, or another staff member. *Interview with Para 1.*

79. On this occasion, Student did not indicate his willingness to move forward; rather, he became escalated, would attempt to grab Para 1, and then Para 1 would close the door briefly and watch through the window until Student moved back into the room. *Id.* Para 1 would ask him if he would continue with his writing assignment, and Student would become escalated again. *Id.* This went on for three-and-a-half hours. *Id.*
80. Over the course of these three-and-a-half hours, Para 1 held the door shut for a cumulative total of five minutes and fifty-nine seconds. *Id.* For the rest of the time, he sat in the open doorway. *Id.* He would occasionally ask if Student was ready to move forward. *Id.*
81. The incident ended when Student indicated his readiness to move forward by sitting against the wall in the specified place, and then he worked through the referral with School Psychologist. *Interview with School Psychologist.* Student returned to the Program classroom. *Interviews with Special Ed Teacher and Para 1.*
82. Special Ed Teacher spoke with Parent and told her about the incident that same afternoon. *Interview with Special Ed Teacher, Exhibit I*, pp. 3-7. She also filled out the District's standard notification form for PPRA restraints and seclusions, and provided the form to Parent the next day. *Id.* The form recorded the antecedents to Student's behavior (asking him to complete classwork), a description of the incident, staff's attempts to deescalate Student and, a description of the seclusion (holding the Opportunity Room door shut), and the duration of the seclusion. *Id.*

October 24, 2023 – Alleged Restraint

83. On October 24, Student was given a writing task. *Exhibit F*, p. 16; *Exhibit I*, pp. 20-26; *Interviews with Special Ed Teacher, Para 1, and Para 2.*
84. Student would not stay on task, and Para 2 gave him point penalties. *Id.* He responded by throwing his papers on the ground. *Id.* He did not respond to corrective prompts and continued to refuse to write. *Id.* He lost more points and became elevated. *Id.*
85. Staff tried de-escalation strategies—such as offering a chart with self-regulation options, reminding him of his past successes maintaining himself emotionally—but Student did not respond positively. *Id.* He flipped a table and became physically aggressive. *Id.* He threw a chair at the staff. *Id.*
86. Special Ed Teacher and Para 2 used a CPI transport to physically move Student to the Opportunity Room across the hall. *Id.* This involved briefly touching Student's arms and shoulders to walk him across the hall, and the transport took less than a minute. *Id.* The two exited the room as soon as they could disengage Student's hands from their clothing. *Id.* A police officer who reviewed surveillance video for the hallway

stated in his report that the video showed Special Ed Teacher and Para 2 transporting Student across the hallway from the classroom to the Opportunity Room and then exiting the Opportunity Room after about twenty seconds. *Exhibit I*, p. 22.

87. None of the staff involved recall what happened after that point. *Interviews with Special Ed Teacher, Para 1, and Para 2*. Special Ed Teacher stated that they did not restrain Student or close the door and seclude Student because, if they had, she would have completed PPRA paperwork. *Interview with Special Ed Teacher*. Given that the disciplinary paperwork in the Record is both voluminous and meticulous, the SCO finds her statement credible. See generally *Exhibits F, I, and R*. On this day, staff did determine that Student was too escalated to be safe for himself and other children on the bus, and Parent had to pick him up. *Interview with Special Ed Teacher, Response*, p. 6; see *Interview with Parent*.
88. Student told Parent that Para 1 had “thrown” him on this occasion. *Interview with Parent*. Parent observed redness on Student’s hip and scratches on his upper arms. *Id.*; *Exhibit I*, p. 21. Staff could not recall any reason for redness on Student’s hip that day but noted that Student sometimes scratched his arms. *Interviews with Special Ed Teacher, Para 1, and Para 2*. Parent provided a pediatric visit form, but the form is dated September 25, 2023. *Reply Exhibit 2*.

December 6, 2023 – Alleged Restraint and Seclusion

89. On December 6, 2023, Student was asked to complete a mathematics task. *Exhibit I*, pp. 27-32; *Interviews with Principal, Special Ed Teacher, Para 1, Para 2, and School Psychologist*. He became visibly frustrated, and staff intentionally left him alone for a prolonged period to avoid overstimulating him. *Id.* When Student still did not work on his assignment, staff gave him the option to work on a different assignment. *Id.* Student then threw a crayon at a staff member and was told he lost 100 points for the action. *Id.*
90. Because Student was becoming escalated, staff offered cool-down time and other things he could do—a chart showing ice he could chew, time for a break, play-dough, fidget devices, etc.—to remain emotionally regulated. *Id.* Para 1 reminded him that he had previously been successful remaining regulated. *Id.*
91. Student did not respond and instead began throwing his work materials around the room. *Id.* Staff reminded him of point penalties and the consequence of earning a referral, and then again attempted “planned ignoring” so as to avoid rewarding his negative behavior with attention. *Id.* Student threw a math manipulative—a roughly one-foot square wooden board—at Para 2’s head. *Id.*
92. Staff used a CPI transport to physically move Student across the hallway to the Opportunity Room. *Id.* This involved briefly touching his arms and shoulders to walk him across the hall, and took less than one minute. *Id.* They exited, and Student immediately began beating the wall with a mechanical timer he held in his hand. *Id.*

Staff believed this posed a safety risk—both because the timer might break into sharp pieces and because he could hurt his hands banging it against the wall—and reentered the room. *Id.* Student hit the wall again, the timer broke, and pieces of it fell to the floor. *Id.*

93. Staff gathered the remains of the timer and noticed that one of its two batteries was missing. *Id.* Because Student had a history of putting non-food objects in his mouth, staff feared that he had the battery and could swallow it. *Id.* Staff asked Student multiple times whether he had the battery, but he did not answer. *Id.*
94. Special Ed Teacher, School Psychologist, and both paraeducators held Student while they checked his pants pockets and pulled off his shoes; he had hidden objects in his shoes on previous occasions. *Id.* This search took less than a minute. *Id.* They did not find the battery. *Id.* Staff exited the room again. *Id.* One of the staff did find the battery, which had rolled out of the Opportunity Room. *Id.*
95. As staff exited the room, Student removed a foot brace he had on his ankle and swung it into the window in the door. *Id.* The window broke. *Id.* Staff determined that they could not close the door because Student could completely shatter the glass, creating a hazard that could hurt him or other students who passed through the hallway. *Id.*
96. Student continued to attack staff, and he did not respond to requests to stop or to accept an alternate activity like a time-out break. *Id.* There was no other immediately available room that was clear of objects that could be used for seclusion, so Principal used a standing CPI hold on Student by standing behind Student and holding Student's arms so that he could not hit or kick staff or move toward the window. *Id.*
97. Principal held Student, tried letting him go after he seemed to calm down, and then needed to hold Student again when he began to attack staff again. *Id.* They repeated this and, over the course of thirteen minutes, Principal held Student for eight minutes and nine seconds. *Id.*
98. Student eventually stopped attempting to attack staff and stayed in the back of the room. *Id.* Staff called Student's parents, and the School Resource Officer stayed at the door to ensure nobody broke the window further or cut themselves on the glass. *Id.*
99. Parent arrived and picked up Student. *Id.* Student reported to her that Para 1 had pulled his hair, and he was very upset from having his shoes taken off and his pockets searched. *Id.*; *Interview with Parent.*
100. Staff avowed during interviews that they did not see Student get hurt during the search or incident, and that there was no sign that Principal used more force than was necessary. *Interviews with Principal, Special Ed Teacher, School Psychologist, Para 1, and Para 2.* They stated that they did not see Para 1—or anyone else—hurt,

scratch, push, throw, or cause Student to bleed, on December 6, specifically, or on any other occasion. *Id.*

101. Principal and Special Ed Teacher together told Student's parents about the incident and use of restraint. *Exhibit I*, p. 30; *Interviews with Principal and Special Ed Teacher*. They filled in a form that explained what led to the restraint, a description of the full incident, staff's efforts to deescalate the situation and consider alternatives (such as secluding Student, which was not immediately possible because there was no other clear room), the restraint, its duration, and the staff who were present.

CONCLUSIONS OF LAW

Based on the Findings of Fact above, the SCO enters the following CONCLUSIONS OF LAW:

Conclusion to Allegation No. 1: The District properly reviewed and revised Student's IEP to ensure it was tailored to meet Student's individualized social-emotional and behavioral needs. No violation is found.

Parent's concern is that the District did not properly address Student's social-emotional and behavioral needs when it placed Student in the Program.

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. *Endrew F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student's IEP at least annually. 34 C.F.R. § 300.324(b). The IDEA's procedures contemplate that a student's IEP may need to be reviewed and, as appropriate, revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Endrew F.*, 580 U.S. at 391.

For students whose behavior impedes their learning or the learning of others, the IDEA requires IEP Teams to consider the use of positive behavioral strategies and supports. 34 C.F.R. § 300.324(a)(2). As contemplated by 34 C.F.R. § 300.324(a)(2), this includes where the consequences of a child's behavior, including "violations of a school's code of student conduct, classroom disruptions, disciplinary removals, and other exclusionary disciplinary measures," impede the child's learning. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 122 LRP 24161 (OSERS 07/19/22).

Here, Student's IEP Team convened in November 2022 to address his behavioral challenges at the elementary school he attended before transferring to the Program. (FF # 6.) At that school, he had exhibited severe physical aggression against other students

and school staff, posing a safety risk to both them and himself. (*Id.*) He was suspended multiple times, which reduced his opportunities to participate in the general education environment and to make progress. (*Id.*)

The IEP Team's decision to move him from his former elementary school to the Program was based on Student's individualized behavioral challenges, which could be directly addressed by the resources and curriculum available through the Program. At his prior elementary school, his greatest hurdles to progress were his severe physical aggression and the suspensions he incurred because of his aggression. (*Id.*) The Program offered an environment with staff who were trained in managing behavior, a low student-to-staff ratio, and a system for handling severe dysregulation without suspending Student, sending him home, or shortening his school day. (FF #s 24-25, 29.) In lieu of sending him home, Program staff would take him away from the full classroom to deescalate and engage in one-on-one instruction in social skills before putting him back into the classroom. (FF # 29.) Further, the Program's focus on teaching social skills addressed his individual deficits in understanding and responding appropriately in social situations, such as getting his teacher's attention and asking for help in an appropriate way. (FF #s 4, 8, 35.)

At the same time that the IEP Team revised Student's IEP and decided to move Student to the Program, it also developed a BIP as a blueprint for the Program staff to use to anticipate negative behavior and teach pro-social behavior. (FF #s 16-21.) It described specific factors, such as fatigue or a sense of failure, that increased the likelihood he would become emotionally dysregulated when challenged by a non-preferred task or transition. (*Id.*) It provided strategies for addressing Student's particular emotional challenges from his frustration with schoolwork, such as allowing him to take more time, encouraging him to take deep breaths, and offering a break. (*Id.*) It also advised staff to provide his classwork in a way that was less embarrassing or frustrating to him, by presenting it as consistent with his peer's classwork and by breaking difficult tasks into more manageable parts. (*Id.*) It sought to replace disruptive behaviors and teach appropriate interactions by having staff instruct Student to do things that Student would want to do such as jumping on a trampoline, as well as to do neutral tasks such as passing over a pencil. (*Id.*)

The District's response to Student's behavioral challenges, through the FAPE developed in November 2022, was reasonable and, time showed, reasonably effective. Although Student did have many behavioral incidents in his first semester in the Program, his behavior improved significantly over the course the semester, to the degree that he had only two "minor" behavioral incidents in the last three weeks of the semester. (FF #s 41-42.)

In the first three weeks of the fall 2023 semester, Student's improved ability to regulate his emotions and interact appropriately with staff and peers at School was also shown after he returned. (FF # 44.) After the first three weeks, when Student began exhibiting behaviors again and Parent raised her concerns that Student's supports were inadequate. (FF #s 45-59.) The IEP Team convened quickly, on October 10, 2023. (*Id.*) Consistent

with their observations that the Program was fundamentally working, one significant change made to Student's IEP and BIP was an increase Student's psychological services from 90 minutes per month to 250 minutes per month. (FF # 51.) This change allowed School Psychologist to spend time with Student each morning going through his self-regulation strategies so they would be fresh in his mind each day. (*Id.*) They modified Student's BIP to similarly instruct staff to expressly remind Student to use his coping strategies, such as reminding him that he could request a break or simply stop and take a few breaths. (FF # 57.)

The District and School members of the IEP Team chose to keep Student in the Program despite Parent's opposition. (FF # 53.) They observed that the Program, combined with the BIP, accommodations, and services, was working; although Student did continue to exhibit challenging behaviors, they saw him demonstrating the social skills and self-regulation strategies that they had been teaching in accordance with the Program curriculum and the BIP. (FF #s 40, 42, 44, 46.)

In consultation with CDE specialists, the SCO finds and concludes that the IEP Team's decision to keep Student in the Program—considered along with Student's services, accommodations, and BIP—was a reasonable response to his behavioral challenges. (See FF #s 60-66.) Although Student continued to have behavioral challenges up to the day that Parent chose not to return him to School, his behavior was improving: Before he began the Program in spring 2023, his suspensions kept him entirely out of school for periods. After he began the Program in spring 2023, he still had numerous behavioral difficulties but showed improvement by the end of the semester. (FF #s 7, 29, 40-46.) And through fall 2023, he had far fewer documented behavioral incidents and only four incidents that required staff to use and document PPRA restraints and seclusions, a significant improvement from the sixteen such incidents he had the prior semester. (See *id.*) In addition, he had made progress on his social-emotional and communication goals. (*Id.*)

For these reasons, the SCO finds and concludes that the District properly reviewed and revised Student's IEP since the beginning of 2023-2024 school year to meet Student's individualized social-emotional and behavioral needs. No violation is found.

Conclusion to Allegation No. 2: School staff did not restrain Student on October 24, 2023. Staff restrained Student on December 6, 2023, but the restraint was conducted and documented properly under the PPRA. No violation is found.

Parent has alleged that School staff improperly restrained Student on October 24, 2023 and December 6, 2023. The SCO must first consider whether actions by staff constituted "restraint" under the PPRA and then, if it did, whether staff followed the PPRA's requirements for the use of restraint.

A. Whether Student Was “Restrained” Under the PPRA

As used in the PPRA, “restraint” means “any method or device used to involuntarily limit freedom of movement, including bodily physical force, mechanic devices, or chemicals.” PPRA Rule 2.00(8). “Physical restraint” means “the use of bodily, physical force to involuntarily limit an individual’s freedom of movement for more than one minute” but does not apply to “minimal physical contact for the purpose of safely escorting a student from one area to another.” PPRA Rule 2.00(8)(c).

On October 24, 2023, the Record shows that School staff—specifically Special Ed Teacher and Para 2—used a CPI transport to move Student from the Program classroom to the Opportunity Room directly across the hall. (FF #s 83-88.) The transport involved briefly touching Student’s arms and shoulder, and the staff exited the Opportunity Room within twenty seconds. (*Id.*) Because this transport falls within the exception for safely escorting a student from one area to another, no restraint under the PPRA occurred. PPRA Rule 2.00(8)(c); see generally *Colleague Letter: Restraint and Seclusion of Students with Disabilities*, 69 IDELR 80 (OCR 2016).

On December 6, 2023, three interactions between staff and Student implicate the PPRA. (FF #s 89-101.) First, staff used a CPI transport while briefly touching his shoulders and arms to escort him from the classroom to the Opportunity Room, which took less than one minute. (*Id.*) Second, they held him as they searched his pockets and shoes for the battery, which also took less than one minute. (*Id.*) Finally, Principal held Student for eight minutes and nine seconds in what the District concedes was a restraint. (*Id.*) Because staff touched Student minimally to escort him across the hall, the first interaction falls within the exception for escorting a Student, and no physical restraint under the PPRA occurred. PPRA Rule 2.00(8)(c). Because staff held Student for less than one minute during the search, no restraint under the PPRA occurred. *Id.* Finally, because Principal held Student for more than one minute in the third interaction, a physical restraint under the PPRA did occur and the SCO must consider whether the PPRA’s requirements and protections were followed. *Id.*

B. The December 6, 2023 Restraint Was Proper

Under the PPRA, the District must have an appropriate basis for the use of restraint. The PPRA requires that restraint may:

- Only be used in an emergency with extreme caution after the failure of less restrictive alternatives (or a determination that such alternatives would be inappropriate or ineffective);
- Never be used as a punitive form of discipline or as a threat to gain control of a student’s behavior; and
- Be used only for the period of time necessary and using no more force than necessary.

PPRA Rule 2.01. The District must satisfy each of these requirements to show that it had an appropriate basis to restrain Student. Here, Principal's physical restraint of Student on December 6, 2023 does satisfy each requirement.

Restraint may be used in cases of emergency. *Id.* "Emergency" means "serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury." Rule 2.00(4). "Bodily injury" includes "physical pain" and "any impairment of physical or mental condition." PPRA Rule 2.00(1); C.R.S. § 18-1-901(3)(c). Here, Student posed an immediate risk of injuring himself or School staff because he had just broken the window in the door with his foot brace, was still attempting to attack staff, and could have hurt them or himself either attacking the staff or by further breaking the window. (FF #s 89-101.) Thus, the SCO finds that Student's behavior constituted an emergency under the PPRA.

Even in an emergency, the PPRA permits the use of restraint only after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). Rule 2.01(1). Less restrictive alternatives include positive behavior supports, de-escalation, and restructuring the environment. *Id.* Here, staff had attempted and continued to attempt to deescalate Student verbally and by offering him other alternatives such as a time-out break. (FF #s 89-101.) Staff considered moving him to a different room rather than restrain him, but there was no other available room free of hazardous objects. (*Id.*) Thus, the SCO finds that staff attempted less restrictive alternatives prior to the physical hold.

The PPRA precludes the use of restraint as a punitive form of discipline or as a threat to gain control over a student's behavior. PPRA Rule 2.01(2). Here, Principal did not hold Student to punish him or make him do something; Principal held him to prevent him from attacking staff and further breaking the window. (FF #s 89-101.) Thus, the SCO finds that staff did not use restraint as punishment or coercion.

Even when restraint is permissible, staff cannot use more force than necessary, and staff must prioritize the prevention of harm to the student. Rule 2.01(3). Here, the staff who were present have avowed that there was no sign that Principal used more force than was necessary; accordingly, the Record does not show that Principal used more force than was necessary or failed to prioritize the prevention of harm to Student. (See FF #s 89-101.)

C. Training and Documentation Requirements

Staff who administer restraints must have received appropriate training within the two years prior to the restraint. PPRA Rule 2.3. Principal did receive appropriate CPI training within the two years prior to December 6, 2023. (FF # 67.)

The PPRA requires districts to notify parents if "there is a reasonable probability that restraint or seclusion might be used," and the notification must provide written notice of restraint procedures, circumstances in which the restraint or seclusion might be used, and

the staff who may be involved. PPRA Rule 2.04(1). Here, the District provided this notice. (FF # 67.)

Use of a restraint triggers additional documentation and notification requirements. See PPRA Rule 2.4. These requirements specify, in relevant part, that:

- The school principal or designee must notify parents as soon as possible, but no later than the end of the school day, on the day that restraint was used.
- A written report must be submitted to school administration within one day of the use of restraint.
- When the restraint lasts longer than five minutes, a written report must be provided to parent within five calendar days of the use of restraint. This report must include: the antecedent to the student's behavior, a description of the incident, efforts made to de-escalate the student, alternatives attempted, the type and duration of the restraint, any injuries that occurred, and the staff involved in the restraint.

Id. Here, School staff complied with these requirements. (FF # 101.)

D. Conclusion

For these reasons, the SCO finds and concludes that School staff did not improperly restrain Student on October 24, 2023 or December 6, 2023. Staff also complied with training and notification requirements. No violation is found.

Conclusion to Allegation No. 3: School staff secluded Student on September 5, 2023, but the seclusion was conducted and documented properly under the PPRA. Student was not secluded on December 6, 2023. No violation is found.

Parent has alleged that School staff improperly secluded Student on September 5, 2023 and December 6, 2023. The SCO must first consider whether actions by staff constituted "seclusion" under the PPRA and then, if they did, whether staff followed the PPRA's requirements for the use of seclusion.

A. Whether Student Was "Secluded" Under the PPRA

As used in the PPRA, "seclusion" means "the placement of an individual alone in a room or area from which egress is involuntarily prevented, except during normal sleeping hours." PPRA Rule 2.00(9).

Here, on September 5, 2023, Student was placed alone in the Opportunity Room, and his egress was prevented by staff holding the door shut. (FF #s 69-82.) This was, as the District concedes, a "seclusion" within the meaning of the PPRA. (*Id.*)

On December 6, 2023, however, staff did not seclude Student in the Opportunity Room. (See FF #s 89-101.) They would have done so, but secluding Student was not possible because Student broke the window in the door and threatened to break it further,

endangering himself and others. (See *id.*) Accordingly, the SCO finds and concludes that the District did not seclude Student on December 6, 2023.

B. The September 5, 2023 Seclusion Was Proper

As with restraints, seclusion may be used only in cases of emergency. PPRA Rule 2.01(1). “Emergency” means “serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury.” PPRA Rule 2.00(4). “Bodily injury” includes “physical pain” and “any impairment of physical or mental condition.” PPRA Rule 2.00(1); C.R.S. § 18-1-901(3)(c). Here, staff placed Student into the Opportunity Room and then closed the door on September 5, 2023 because he persisted in attacking them, which was likely to cause bodily injury to Student, staff, or both. (FF #s 69-82.) Thus, the SCO finds that an “emergency” existed.

Seclusion may be used only after the failure or less restrictive alternatives or a determination that those alternatives would be inappropriate or ineffective. PPRA Rule 2.01(1). Because staff attempted to verbally persuade Student not to attack them, and staff also tried de-escalation strategies consistent with his BIP without success, the SCO finds that the seclusion was used only after the failure of less restrictive alternatives. (FF #s 69-82.)

Staff must continually monitor a student who is secluded, allow reasonable access to toilet facilities, allow opportunities for the seclusion to end, and end the seclusion when it is no longer necessary. PPRA Rule 2.02(1)(a)(iv)-(v), (2)(e). Para 1 kept the door closed only when Student attempted to attack him, allowed Student access to the bathroom as necessary, monitored Student continually, and periodically asked Student if he was ready to move forward with the referral and to return to class. (FF #s 69-82.) Accordingly, the SCO finds that School staff appropriately limited the period of seclusion.

C. Training and Documentation Requirements

Staff who seclude a student must have received appropriate training within the two years prior to the seclusion. PPRA Rule 2.03(7). Para 1, as well as all the other Program staff, had received appropriate CPI training within the two years prior to the seclusion. (FF # 67.)

The same documentation requirements apply to seclusion as to restraint:

- The school principal or designee must notify parents as soon as possible, but no later than the end of the school day, on the day that restraint was used.
- A written report must be submitted to school administration within one day of the use of restraint.
- When the restraint lasts longer than five minutes, a written report must be provided to parent within five calendar days of the use of restraint. This report must include: the antecedent to the student’s behavior, a description of the incident, efforts made

to de-escalate the student, alternatives attempted, the type and duration of the restraint, any injuries that occurred, and the staff involved in the restraint.

PPRA Rule 2.4. Here, School staff complied with these requirements. (FF # 82.)

E. Conclusion

For these reasons, the SCO finds and concludes that School staff did not improperly seclude Student on September 5, 2023 or December 6, 2023. Staff also complied with training and notification requirements. No violation is found.

REMEDIES

The SCO concludes that the District did not violate the requirements of the IDEA as alleged in the Complaint. Accordingly, no remedies are ordered.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶ 13; PPRA Rule 2.07(9)(c). If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶ 13; See also 34 C.F.R. § 300.507(a); 71 Fed. Reg. 46607 (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 23rd day of April, 2024.



Nicholaus Podsiadlik
State Complaints Officer

APPENDIX

Complaint, pages 1-8

Response, pages 1-17

- Exhibit A: IEPs
- Exhibit D: PWNs
- Exhibit E: Meeting Documentation
- Exhibit F: Behavior Documentation
- Exhibit G: Attendance
- Exhibit H: Report Cards & Progress Monitoring
- Exhibit I: Restraint/Seclusion Documentation
- Exhibit J: Annual Restraint Report
- Exhibit K: Restraint-CPI Training Certifications
- Exhibit L: School Calendar
- Exhibit M: Policies & Procedures
- Exhibit N: Correspondence
- Exhibit O: Logs
- Exhibit Q: Verification of Delivery
- Exhibit R: Additional Documentation

Reply, pages 1-5

- Exhibit 1: Email
- Exhibit 2: Medical Document

Telephone Interviews

- Principal: March 27, 2024
- Director: March 27, 2024
- Parent: March 27, 2024
- Para 1: March 28, 2024
- School Psychologist: March 28, 2024
- Special Ed Teacher: March 28, 2024
- Para 2: March 28, 2024