

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

State-Level Complaint 2019:528
Arapahoe 5 – Cherry Creek Schools

DECISION

INTRODUCTION

This state-level complaint (Complaint) was filed on April 29, 2019, by the parents of a child identified as a child with a disability under the Individuals with Disabilities Education Act (IDEA)¹.

Based on the written Complaint, the 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 Persons from Restraint Act (PPRA), found at 1 C.C.R. 301-45². The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

RELEVANT TIME PERIOD

Pursuant to 34 C.F.R. § 300.153(c), CDE has the authority to investigate alleged violations of IDEA that occurred not more than one year from the date the original complaint was filed.

Pursuant to 1 C.C.R. 301-45, CDE has the authority to investigate alleged violations PPRA that occurred not more than one year from the date the original complaint was filed.

Accordingly, this investigation will be limited to the period of time from April 29, 2018, through April 29, 2019, for the purpose of determining if a violation of IDEA and/or 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 one year prior to the date of the complaint.

¹ The IDEA is codified at 20 U.S.C. § 1400, *et seq.* and its corresponding regulations are found at 34 C.F.R. § 300.1, *et seq.* IDEA implementation in Colorado is governed by the Exceptional Children’s Educational Act (“ECEA”), found at 1 CCR 301-8, 2220-R-1.00, *et seq.*

² Regulations for the Protection of Persons from Restraint Act are codified at 1 CCR 301-45, 2620-R-1.00, *et seq.*

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District violated the PPRA by improperly restraining Student on April 15, 2019, specifically by:

1. Physically restraining Student in a non-emergency situation, consistent with 2620-R-2.01(1)(a);
2. Physically restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective, consistent with 2620-R-2.01(1)(b);
3. Physically restraining Student as a punitive form of discipline or to control or gain compliance of Student's behavior, consistent with 2620-R-2.01(2);
4. Physically restraining Student for longer than necessary and using more force than necessary, consistent with 2620-R-2.01(3)(a);
5. Physically restraining Student and failing to prioritize prevention of harm to Student, consistent with 2620-R-2.01(3)(b);
6. Failing to comply with the documentation and notice requirements, consistent with 2620-R-2.04.

Whether the District violated the IDEA and denied Student a free appropriate public education (FAPE) by:

1. Failing to accurately document the percentage of time Student spends in general education on Student's IEP, consistent with 34 C.F.R § 300.320(a)(4)-(5); ECEA Rule 4.03(6).

FINDINGS OF FACT

After thorough and careful analysis of the entire record, the SCO makes the following FINDINGS:

1. Student is a nine-year-old child who is currently eligible for special education and related services under the disability categories of Serious Emotional Disability (SED) and Other Health Impairment (OHI). Student recently finished second grade at School which is located within the District. *Exhibit B1*, p. 1.
2. Student is described as a bright, engaging, and friendly child, who is kind and wants to please others. *Exhibit B1*, p. 3; *Interviews with Parent and Paraprofessional 1*. Student

shows “relative strengths in the areas of gross motor strength, coordination, and motor planning.” *Exhibit B2*, p. 8.

3. However, Student also struggles with significant behavioral issues within the school setting. Student’s behavioral issues are described as “aggression towards peers, running from staff and teachers, and avoiding seated work.” *Exhibit B1*, p. 3.
4. The origin of this Complaint is a disciplinary incident involving Student on April 15, 2019. That day, Student became dysregulated in the lunchroom and was physically escorted by staff to a self-contained classroom. Parent filed a state complaint, alleging that school staff improperly restrained Student in violation of PPRA. Additionally, Parent claims that Student’s IEP does not accurately reflect the amount of time he spends in the general education classroom, in violation of IDEA.

Special Education Referral and Development of Student’s IEP

5. Student’s family moved to Colorado in October 2018, at which time Student enrolled in the District at School as a second grader. *Exhibit B2*, p. 10.
6. Immediately upon enrollment at School, Student began to display marked behavioral challenges. In early November Student was being suspended regularly for behavioral issues. Student could not effectively self-regulate, and acted aggressively towards other students by hitting and pushing them. Student would also defy his teachers, yell during class, and abscond from the classroom. *Interview with Social Worker*. Student’s IEP, discussed below, documented similar concerns: “[Student] has a difficult time managing his frustrations, as well as, with self regulation. [Student] struggles to stay on task and pay attention. He is impulsive and can be very disruptive in the general education setting.” *Exhibit B1*, p. 4.
7. In November 2018, Parent requested that the District conduct an IDEA evaluation due to her concerns surrounding Student’s behavior difficulties at School. *Exhibit B2*, p. 10. On November 30, 2018, the District provided Parent with a combined Prior Written Notice (PWN) and Consent for Initial Evaluation, listing the areas to be evaluated as: general intelligence, communicative status, academic performance, social and emotional status, health, and motor abilities. *Exhibit D1*, p. 1. Parent signed and returned the PWN the same day. *Id.*
8. Student’s evaluation, completed January 23, 2019, notes in part that “[Student] prefers 1:1 attention and demonstrates difficulty following the rules and routines of the general education classroom. He leaves the classroom frequently, is disruptive to peers, and has demonstrated aggressive behavior when interacting with peers. He has difficulty adapting to the environmental demands throughout the day and requires additional structure and routine.” *Exhibit B2*, p. 7.

9. A functional behavioral assessment (FBA) was also completed as part of Student's IDEA evaluation. Three areas of concerning behavior are noted in the FBA: disruption, defiance, and elopement. *Exhibit B3*, p. 1. School staff collected data on Student's behavior for 10 days. In that period, Student exhibited more than 200 disruptive behaviors, more than 100 defiant behaviors, and "was exhibited to leave the classroom or any other designated area without adult permission and/or would refuse to return back to class or other designated area a total of 44 times." *Exhibit B3*, p. 1.
10. On January 23, 2019, a properly constituted IEP Team met and determined that Student is eligible for special education and related services. The team determined that Student's primary disability category is SED, with a secondary disability category of OHI. *Exhibit B1*, p. 1. One annual goal was developed in the area of social/emotional wellness, with the objective of helping Student improve his ability to self-regulate. *Id.* at 4.
11. The IEP team also determined that Student's appropriate educational placement was in School's Behavioral Development (BD) program, based on Student's social and emotional needs. School's BD program is a self-contained classroom. This program provides individual support to students in the areas of: behavior, academics, social and emotional health, motor skills, and daily living activities. This support is provided in either the BD classroom or in the general education classroom. The amount of time students spend in the general education classroom can change on a day to day basis, depending on their individualized academic and behavioral needs. BD Teacher explained that the social/emotional needs of the students in the BD program are extremely fluid, often times changing from one day to the next or quickly during the same school day. The flexible nature of the BD program allows School to best serve its students' individual needs. Currently, there are eight students and four staff members (BD teacher and three paraprofessionals) in School's BD program. *Interview with BD Teacher; Exhibit M.*
12. BD Teacher also explained that she strives to email the parents of the students in the BD program nightly to give a summary of the student's day. This includes positive and negative behavioral highlights, as well as specific information that parents can use to speak to their children about their school day. BD Teacher stated that she regularly sent these emails to Parent to update her on Student's day. *Interview with BD Teacher.*
13. Per the IEP Team's decision, the service delivery statement in Student's IEP states: "Specialized Social/Emotional Instruction will be provided 2025.00 minutes per week. This support will take place in either the general education classroom or the behavior development classroom . . . [Student] will receive specialized instruction in either the BD room or the general education classroom from either a Special Education Teacher or a Paraprofessional who is supervised by the Special Education Teacher." *Exhibit B1*, p. 8.

14. Relevant to this complaint, the section in Student's IEP explaining Student's placement in the least restrictive environment (LRE) states that Student will spend less than 40% of the time in the general education classroom. The IEP Team explained this decision by stating: "[Student's] needs are such that at various times throughout his school day, [Student] requires one to one support in both the general education classroom and the behavior development classroom." The IEP further states: "time in general education environment: 0.0%." *Exhibit B1*, p. 9.
15. The SCO interviewed BD Teacher, two of the BD paraprofessionals, and Social Worker. All four of these individuals have worked extensively with Student and are very familiar with him. All described Student as very intelligent and social. *Interviews with Principal, Social Worker, Paraprofessional 1, Paraprofessional 2*. Principal explained that Student can be very self-aware, and has recognized and developed calming strategies on his own that work for him. *Interview with Principal*. However, all also stated that Student has extreme difficulty with focus, and can be very disruptive in class. Student can also be very aggressive. Social Worker explained that Student could misdirect his anger, i.e., be angry at one person but lash out at someone else. *Interview with Social Worker*. Paraprofessional 2 explained that when Student is angry he can escalate very quickly, going from "0-100 very quickly." *Interview with Paraprofessional 2*.

April 15, 2019 Disciplinary Incident

16. On April 15, 2019, as the whistle blew to indicate recess was over, Student approached Paraprofessional 2 saying another student had tripped him. While speaking with Student, another student approached Paraprofessional 2. As Paraprofessional 2 spoke with the other student, Student ran off. After speaking with the other student, Paraprofessional 2 looked for Student, and saw him off on his own kicking a ball towards the basketball court. Paraprofessional 2 approached Student and told him he needed to come to the BD classroom for leaving the line and running away. Student told Paraprofessional 2 to "get out of his face" and ran off to catch up with the line of students entering School for lunch. Paraprofessional 2 was concerned, as she believed Student was dysregulated and angry. *Interview with Paraprofessional 2; Exhibit J*, p. 3.
17. Student then entered School with the other students coming in from recess, with Paraprofessional 2 following. Paraprofessional 1 could hear Paraprofessional 2 telling Student to stop, so she attempted to block Student's path. Student pushed past Paraprofessional 1, stating "get out of my face." *Interview with Paraprofessional 1; Exhibit J*, p. 2. Student then continued into the lunchroom, with Paraprofessional 1 and Paraprofessional 2 following. *Exhibit J*.
18. Once in the lunchroom, Student attempted to pass through the doors to enter the cafeteria. Paraprofessional 1 and Paraprofessional 2 caught up to Student and blocked the door to the cafeteria. Paraprofessional 1 and Paraprofessional 2 explained that

typically when Student became dysregulated, they could speak to him, and he would voluntarily walk to the BD classroom. However on this day, Student would not listen, was yelling at them to get out of his face, and took a swing at Paraprofessional 2. *Interviews with Paraprofessional 1 and Paraprofessional 2; Exhibit J, pp. 2-3.*

19. By this time, Social Worker had entered the lunchroom and was concerned because Student was demonstrating unsafe and aggressive behavior. *Interview with Social Worker.* Paraprofessional 1 and Paraprofessional 2 both explained that, at this point, they were concerned for themselves and the other students in the lunchroom because this disturbance was happening at the entrance to the cafeteria where students were lined up to get lunch. Staff then decided to transport Student to the BD classroom for the safety of Student and others in the lunchroom. *Interviews with Paraprofessional 1 and Paraprofessional 2.*
20. Paraprofessional 1 and Paraprofessional 2 used an “escort hold” to transport Student to the BD classroom. Social Worker, who followed them out of the lunchroom, explained that during an escort hold, there is a person on each side of the person being escorted, each supporting the person under an arm. The person being escorted walks while in the hold, and if they fall, the persons performing the escort let the escorted person go, then resume the escort when the person stands back up. *Interview with Social Worker.* The escort hold described by Social Worker is consistent with video of this incident submitted by the District. The video, which is time-stamped, shows Paraprofessional 1 and Paraprofessional 2 place their arms underneath Student’s arms and guide him through the cafeteria, starting at 11:11:53. *Exhibit J, camera 3.* Student is escorted through an outside door, and then back into the building. *Exhibit J, camera 4.* Student is next shown being escorted down an interior hallway towards the BD classroom. Student is last seen on the video at 11:12:48. *Exhibit J, camera 5.*
21. Paraprofessional 1 and Paraprofessional 2 took Student to an office that is connected to the BD classroom. Once in the office, they released Student from the hold, and Paraprofessional 2 left. *Interview with Paraprofessional 2.* Social Worker and Paraprofessional 1 stayed with Student, who was still agitated but calmed in approximately one minute. Social Worker and Paraprofessional 1 then spoke with Student, who explained he was initially mad at another student at recess, then at Paraprofessional 2 for demanding he come to the BD classroom for running away outside, and pushing and yelling in line. *Interviews with Social Worker and Paraprofessional 1; Exhibit J, p. 1.* BD Teacher spoke with Student at the end of the day, who further explained that he was upset because he felt Paraprofessional 2 was ignoring him on the playground when he initially told her another student tripped him. *Interview with BD Teacher.*
22. Paraprofessional 1, Paraprofessional 2, and BD Teacher all explained that this incident is the only instance of School staff physically managing Student’s behavior. All three

witnesses explained that while Student had significant behavioral issues, they were always able to speak with him or use other de-escalation techniques when he became dysregulated. *Interviews with Paraprofessional 1, Paraprofessional 2, and BD Teacher.*

23. The day of the escort, BD Teacher called Parent to tell her that Student's behavior had become escalated in the lunchroom. The next day, Parent came to School to watch the surveillance videos referenced above. Parent became extremely upset while watching the video showing Student being escorted out of the lunchroom by Paraprofessional 1 and Paraprofessional 2. Parent demanded copies of all the videos and left the meeting. *Interview with Parent and BD Teacher.*
24. The afternoon of April 16, 2019, Parent emailed Social Worker, and stated in part: "I believe it is best to not have the paraprofessionals that are involved in this current incident to have any interaction with [Student] until this matter is resolved/settled. (for the safety and well-being of [Student] Please advise." *Exhibit K*, p. 4. Parent had expressed the same concern earlier in the day when she viewed the surveillance videos. *Exhibit K*, p. 10.
25. On April 17, 2019, Principal emailed Parent, stating: "regarding [Student] attending school . . . if he is at school he will continue to be staffed through our BD program. This means that BD staff members will be working with him as required even if he is spending time in his general education classroom." *Exhibit K*, p. 12.
26. On April 22, 2019, Parent sent a letter to Special Education Coordinator, stating her concern that Student had been restrained. Attached to the letter was an IEP amendment proposed by Parent. The amendment proposed to change Student's service minutes from 2004 per week to 1200 per week, and change his percentage of time in general education from 0.00% to 59.8%. *Exhibit K*, pp. 18-20. Parent explained that her intent in proposing the amendment was to reduce the amount of time Student spent with BD staff. *Interview with Parent.*
27. On April 29, 2019, Principal forwarded Parent an email explaining the amount of time Student spends in the general education classroom:

The plan for [Student] is for him to begin each day in [Classroom Teacher's] classroom with support (meaning there is either a para or myself in the room with him). Depending on his behavior, he is in [Classroom Teacher's] classroom from 8:00-11:35 am which is the end of lunch. At 11:35 he comes down to my room for an extended break to "chill out." He is usually back in [Classroom Teacher's] room around 12:15 pm. He is then in [Classroom Teacher's] room until the end of the day, 2:45 with support. This schedule equates to the following percentage and minutes.

Total minutes in the school day – 525 minutes/day (6 hours and 45 minutes)

Minutes spent in BD classroom – 40 minutes/day

Total minutes spent in general education – 485 minutes/day

Percentage of time spent in general education classroom/day – 92.38%

Due to the intensity and frequency of his behaviors, at the current time he is always with BD staff when he is in the general education classroom. The BD staff are not hovering over him, rather their time is spent assisting other students and/or [Classroom Teacher]. We only interact with him when his behaviors dictate it.

The above outlined schedule can vary depending on the day as I adjust the student's schedule depending on the behaviors seen throughout the day. Each day begins with the plan of [Student] being in [Classroom Teacher's] room with support for about 485 minutes/day.

Exhibit K, p. 40.

28. The description above is consistent with Paraprofessional 1, Paraprofessional 2, and BD Teacher's recollection. Paraprofessional 2 explained that she spent most days with Student in the general education classroom. She also explained that Student's assignments are not altered, and that he works on the same assignments as the students in the general education classroom. Paraprofessional 2 redirected Student when he lost focus, and kept track of him when he would elope from the classroom and walk around the building. *Interview with Paraprofessional 2.* This is consistent with Paraprofessional 1's account. She stated that she spent most of the day following Student around, trying to keep him focused. *Interview with Paraprofessional 1.* BD Teacher explained that the amount of time all of her students spend in the BD classroom and the general education classroom varies day to day, and that her BD students are in and out of the BD classroom consistently during the school day. Student's schedule was no different. BD Teacher stated Student spent considerable time in the general education classroom, but during certain periods, he spent more time in the BD classroom. As an example, she stated Student spent the majority of the week following the April 15 disciplinary incident in the BD classroom. *Interview with BD Teacher.*

CONCLUSIONS OF LAW

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

Conclusion to Alleged Violations of the Protection of Persons from Restraint Act (PPRA):

School staff escorting Student to the BD classroom on April 15, 2019, did not constitute physical restraint as defined by the PPRA.

The PPRA defines restraint as “any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, chemicals, and seclusion.” PPRA Rule 2.00(8). Restraints are only to be used in emergency situations and with extreme caution, and after the failure of less restrictive alternatives or “a determination that less restrictive alternatives would be inappropriate or ineffective under the circumstances.” PPRA Rule 2.01(1). Additionally, school staff may never use restraints as “a punitive form of discipline or as a threat to control or gain compliance of a student’s behavior.” PPRA Rule 2.01(2).

Relevant here, the PPRA specifies that physical restraint does not include “minimal physical contact for the purpose of safely escorting a student from one area to another.” PPRA Rule 2.00(8)(c)(iii). Because the PPRA does not further define “minimal physical contact” in the context of an escort, the SCO looked to other sources for guidance. The U. S. Department of Education Office for Civil Rights (OCR) distinguishes between physical restraint and escorts, as follows:

Physical restraint refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.

Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities, 69 IDELR 80 (OCR 2016).

In evaluating whether the April 15, 2019 incident constituted an escort, the SCO first considers the purpose for which staff made physical contact with Student. On that date, Paraprofessional 1 and Paraprofessional 2 made physical contact with Student to safely escort him from the lunchroom to the BD classroom when Student demonstrated behavior that threatened the safety of Student and others. As more fully described in FF 17-21, Paraprofessional 1 and Paraprofessional 2 confronted Student in the lunchroom after they recognized that he had become highly dysregulated. They knew from their previous experience with Student that he could escalate and become aggressive in a short period of time. Prior to this incident, staff had always been able to speak with Student and convince him to walk to the BD classroom.

However, on this date Student repeatedly yelled at staff, and began taking swings at Paraprofessional 2. Due to Student's behavior towards staff and the close proximity of many other students on April 15, staff made physical contact for the purpose of moving Student to a safer location. Accordingly, the SCO concludes this instance constituted an escort.

Having determined the April 15 incident was an escort, the SCO next considers whether staff used minimal physical contact during the escort, based on the individual facts and circumstances present. Because this term is not further defined by PPRA, the definition of a physical escort articulated by the U.S. Department of Education is persuasive. As stated above, a physical escort "means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location." *Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, 69 IDELR 80 (OCR 2016).

Applying this definition to the April 15 incident, the SCO concludes that by using the escort hold described in FF 20, Paraprofessional 1 and Paraprofessional 2 used the minimum amount of physical contact necessary under the circumstances to safely escort Student from the lunchroom to the BD classroom. The escort hold allowed Student to remain upright and walk to a safe location under staff direction. This transport allowed staff to safely direct Student to the BD classroom through a temporary touching of his arms. Given Student's size and age, this was minimum physical contact to safely escort Student to a safer location. For these reasons, the SCO concludes that staff did not restrain Student on April 15, and therefore finds no violation of the PPRA.

Because the April 15 escort did not constitute a restraint, the District was not obligated to comply with the documentation and review requirements set forth in the PPRA. Accordingly, the SCO does not find a violation of PPRA Rule 2.04.

Conclusion to Alleged Violation of IDEA: Student's IEP does not accurately describe the amount of time he spends in general education, resulting in a procedural violation.

An IEP must include, among other things "an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section." 34 C.F.R. § 300.320(a)(5). This statement describes a student's recommended placement in the least restrictive environment (LRE). "Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA's most important substantive requirements." *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). The IDEA requires that students with disabilities receive their education in the general education environment with typical peers to the maximum extent appropriate, and attend the school they would attend if not disabled. 34 C.F.R. §§ 300.114 and 300.116. Each student's educational placement must be determined on an individual case-by-case basis depending on each child's unique needs and circumstances,

rather than on the child's category of disability, and must be based on the child's IEP." 71 Fed. Reg. 46586 (2006); *El Paso Cty. Sch. Dist. 3*, 115 LRP 9424 (SEA CO 11/10/14).

In this case, the LRE statement on Student's IEP stated that he spent less than 40% of time in the general education environment. Additionally, the IEP stated that Student spent 0% of time in the general education environment. Contrary to the description on the IEP, Student consistently spent the majority of his day in the general education classroom. Although Student receives consistent support from BD program staff, the support is overwhelmingly provided in the general education classroom. Principal's email to Parent on April 29 provided a breakdown of Student's day, explaining that Student typically spends over 92% of the school day in the general education classroom. Accordingly, the LRE statement in the IEP did not accurately reflect the amount of time that Student spends in the general education setting.

Because the needs of the students in the BD program are fluid, a certain amount of flexibility in describing the LRE is appropriate. For example, BD Teacher explained that Student's time in the BD classroom can vary day to day depending on his behavior. It is reasonable to expect that students' time in the general education classroom may fluctuate some as they learn to demonstrate appropriate classroom behavior. Minor discrepancies or day-to-day variations in the amount of time a student spends in the general education environment would not in most cases result in a finding that the LRE statement was inaccurate. Moreover, the IEP team could provide for this flexibility in the LRE statement, itself. Recognizing that each situation is individualized and fact-specific, there is no precise formula for determining at what exact point a student's IEP should be revised. Nonetheless, when a student begins to evidence stability in a less restrictive setting, the IEP should be revised to reflect the student's actual program and educational setting.

In this case, once it became clear that Student was spending the overwhelming majority of his day in the general education classroom on a consistent basis, the LRE statement on Student's IEP should have been revised, either through an IEP team meeting or through the amendment process. 34 C.F.R. § 300.324(a)(4),(6). Because this did not happen, Student's IEP did not accurately reflect the amount of time he was *consistently* spending in the general education classroom, resulting in a procedural violation of 34 C.F.R. § 300.320(a)(5).

Having concluded that the inaccurate LRE statement in Student's IEP resulted in a procedural violation, the SCO must determine if the violation resulted in a denial of FAPE. A procedural violation results in a denial of FAPE if it: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2).

The SCO concludes that this procedural violation did not result in substantive harm. This error did not impede Student's right to FAPE or cause any deprivation of educational benefit. To the

contrary, Student's significant exposure to the general education classroom precisely aligns with the goals of IDEA. "Each public agency must ensure that to the maximum extent appropriate, children with disabilities . . . are educated with children who are nondisabled." 34 C.F.R. § 300.114(a)(2)(i). Additionally, the SCO concludes the violation did not impede Parent's participation. Parent explained her concern that she is unclear how much time Student spends in the BD classroom versus the general education classroom. Based on witness interviews and the record in this case, this concern appears to be unfounded. It is clear that staff at School communicated frequently with Parent. Soon after Parent expressed her concern regarding the amount of time Student spends in general education, Principal emailed with a detailed breakdown and percentage of the time Student spends in the general education classroom. Additionally, BD Teacher sends home frequent emails to Parent summarizing Student's day at school. For these reasons, the SCO concludes that the procedural violation did not result in substantive harm.

In its Response, the District offered to convene an IEP team meeting to update the service and LRE statement in Student's IEP in anticipation of next school year. The SCO finds this to be an appropriate remedy.

REMEDIES

Concluding that the District has not violated PPRA, no remedy is ordered.

The SCO concludes that the District has violated the following IDEA requirements:

Failing to accurately document the percentage of time Student spends in general education on Student's IEP, consistent with 34 C.F.R § 300.320(a)(4)-(5).

To remedy this violation, the District is ordered to take the following actions:

- 1) By July 12, 2019, the District must submit to the Department a proposed corrective action plan (CAP) that addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:
 - a. BD Teacher is to review this decision as well as the requirements for IEP content found at 34 C.F.R. § 300.320. This review must occur no later than July 24, 2019. A signed assurance that the above materials have been reviewed must be completed and provided to CDE no later than August 12, 2019.
- 2) By Monday, August 5, 2019, the District must convene an IEP meeting with Parents at a mutually convenient time and setting, to review and revise the services statement and

LRE statement on Student's IEP, in accord with this decision. Evidence that this IEP meeting occurred must be documented by providing a copy of the Notice of Meeting, IEP, and prior written notice to CDE no later than ten (10) days following the IEP meeting. If Parents do not respond to the District's efforts to convene an IEP meeting by August 5, 2019, CDE will determine compliance with this remedy in accordance with 34 C.F.R. § 300.322.

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. If either party disagrees with this Decision, their remedy is to file a Due Process Complaint, provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See 34 C.F.R. § 300.507(a) and Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).

This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 26th day of June, 2019.

Thomas Treinen
State Complaints Officer

Appendix

Complaint, pages 1-4

- Ex. 1 1/23/19 IEP; evaluation report; various emails
- Ex. 2 Email correspondence from 4/19/19 and 4/22/19
- Ex. 3 Letter and email dated 4/22/19

Response, pages 1-11

- Ex. A CDE IEP Procedural Guidance Manual
- Ex. B 1/23/19 IEP; evaluation reports; FBA; BIP
- Ex. C Student's services and weekly schedule
- Ex. D PWN and Consent for Services
- Ex. E Notice of Meeting
- Ex. F Grade Reports
- Ex. G District restraint report
- Ex. H Staff training records
- Ex. I District Restraint and Seclusion policy and training materials
- Ex. J Staff narratives of 4/15/19 disciplinary incident; surveillance video of incident
- Ex. K Email correspondence
- Ex. L List of District and School staff with knowledge of complaint allegations
- Ex. M BD program description
- Ex. N Response delivery notice
- Ex. O Student's BIP

Reply, pages 1-4

Interviews with:

Parent
BD Teacher
Paraprofessional 1
Paraprofessional 2
Social Worker
Special Education Coordinator