

Colorado Department of Education  
Decision of the State Complaints Officer  
Under the Protection of Individuals from Restraint and Seclusion Act

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**State-Level Complaint 2020:901  
Boulder Valley RE-2 School District**

**DECISION**

**BACKGROUND**

On January 17, 2020, the parent (“Parent”) of a student (“Student”) filed a complaint (“Complaint”) against Boulder Valley RE-2 School District (“District”) alleging improper restraint of Student in violation of the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)<sup>1</sup> and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”)<sup>2</sup>. The State Complaints Officer (“SCO”) determined that the allegations in the Complaint fell within the SCO’s jurisdiction under the PPRA and the Rules. See Rule 2620-R-2.07. Therefore, the SCO has authority to resolve the Complaint.

**RELEVANT TIME PERIOD**

The Colorado Department of Education (“CDE”) has jurisdiction to investigate alleged violations of the PPRA that occurred within one year of the date the original complaint was filed. *Id.* at 2620-R-2.07(2)(f). Accordingly, in determining whether a violation of the PPRA occurred, this investigation considers only events occurring on or after January 17, 2019. Any consideration of events prior to this date shall be for context only and not for determining whether a violation occurred. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

**SUMMARY OF ACCEPTED ALLEGATIONS**

1. Whether the District improperly restrained Student on January 28, 2019<sup>3</sup>, specifically by:

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<sup>1</sup> 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.

<sup>2</sup> The Rules are codified at 1 C.C.R. 301-45.

<sup>3</sup> Parent’s Complaint alleged improper restraint of Student during an undated incident which Parent believed occurred during February 2019. Though Parent was unable to specify the date, Parent provided sufficient detail for her allegation to be accepted. During the investigation, the District clarified that the incident in question occurred on January 28, 2019.

- a. Physically restraining Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
  - b. Physically restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective, in violation of Rule 2620-R-2.01(1)(b); and
  - c. Physically restraining Student as a punitive form of discipline or as a threat to control or gain compliance of Student's behavior, in violation of 2620-R-2.01(2).
2. Whether the District improperly restrained Student on March 1, 2019, specifically by:
- a. Restraining Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
  - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective, in violation of Rule 2620-R-2.01(1)(b);
  - c. Restraining Student as a punitive form of discipline or as a threat to control or gain compliance of a Student's behavior, in violation of Rule 2620-R-2.01(2);
  - d. Restraining Student without prioritizing the prevention of harm to Student, in violation of Rule 2620-R-2.01(3)(b); and
  - e. Failing to ensure that the restraint did not inhibit or impede Student's breathing or communicating, in violation of Rule 2620-R-2.02(1)(a)(i).
3. Whether the District failed to comply with the documentation and notification requirements for the restraint on January 28, 2019, in violation of Rule 2620-R-2.04.

### **FINDINGS OF FACT**

After thorough analysis of the entire record,<sup>4</sup> the SCO makes the following FINDINGS OF FACT ("FF"):

#### **Background**

1. Student is a nine-year old male who is eligible for special education and related services under the disability category of Severe Emotional Disability. *Interview with Parent.*

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<sup>4</sup> The appendix, attached and incorporated by reference, details the entire record.

2. Student attends fourth grade at an elementary school in the District (“Current School”). *Id.* During the 2018-2019 school year, Student attended third grade at a different District elementary school (“School”). *Id.* Student did not return to School after the incident at issue on March 1, 2019 and, instead, enrolled in Current School. *Id.*
3. Student is described as a sweet, empathetic child who enjoys art, math, and being with his classmates. *Interviews with Parent, Special Education Resource Teacher (“Special Education Teacher”), and Teacher.* In the classroom, Student struggles to follow instructions or complete academic work—even when working one-on-one with a teacher. *Interviews with Special Education Teacher, Teacher, and Physical Education Teacher (“P.E. Teacher”).* Reading and writing are especially difficult for Student. *Interview with Parent.*
4. Student’s Behavior Support Plan in effect during the 2018-2019 school year noted that asking Student to complete a non-desired task caused Student to become oppositional and defiant. *Exhibit 1*, pp. 2-3. The Behavior Support Plan does not identify de-escalation strategies for Student but provides only strategies to prevent Student’s oppositional and defiant behavior. *Id.* Specifically, the Behavior Support Plan suggests using a calm voice to talk to Student, offering praise for well-performed tasks, providing Student opportunities for movement or calming breaks, and teaching Student more socially appropriate responses to difficult situations. *Id.*
5. This Complaint alleges Principal and Special Education Teacher improperly restrained Student on January 28, 2019 and March 1, 2019. *Complaint*, pp. 3-4; *Exhibit D*, pp. 1-7.

### **The School’s Behavior Management System and Staff Training**

6. The School—as well as the rest of the District—uses Crisis Prevention Institute’s Nonviolent Crisis Intervention Program (“CPI”) for crisis intervention and physical behavior management. *Interview with Executive Director of Special Education (“Executive Director”).* CPI teaches a variety of interventions to prevent escalation and, hopefully, avoid the need for physical intervention. *Id.* Under CPI, physical intervention is the last resort. *Id.*
7. The District requires CPI certification for the following categories of employees: special education paraprofessionals, social workers and psychology staff, and teachers at intensive learning centers. *Interviews with Executive Director and Behavior Specialist.* Other staff members—such as general education teachers and principals—may voluntarily participate in CPI training but are not required to do so. *Interview with Behavior Specialist.*
8. The District offers CPI training approximately once a month during the school year. *Id.* A spreadsheet tracks the dates of staff members’ attendance at CPI courses, as well as the expiration date for each individual’s current certification. *Id.* Email reminders are

used to inform staff of upcoming expiration dates and encourage staff to sign up for training classes. *Id.*

9. Principal received his CPI certification in February 2016. *Exhibit B*, p. 16. He did not complete any other CPI training between February 2016 and February 2020. *Interview with Principal*. At the time of the incidents at issue—in January and March 2019—Principal had not completed any CPI training for three years. *Id.*; *Exhibit B*, p. 16. During the course of this investigation, Principal completed a CPI certification course. *Interview with Principal*.
10. Special Education Teacher became CPI certified in September 2017. *Exhibit B*, p. 1. However, Special Education Teacher has not completed any additional training since September 2017. *Id.*

### **The School’s Policies and Procedures regarding Disciplinary Incidents**

11. When a student experiences a behavioral crisis, School staff use a variety of de-escalation strategies to help the student. *Interview with Principal*. When possible, the student’s teacher resolves the crisis. *Id.* However, if the teacher needs support, the teacher may call Principal or Social Worker for assistance. *Id.*
12. Restraint is used only as a last resort, when a student’s behavior poses a significant safety risk to that student or other students. *Id.*
13. Under the School’s standard procedure, the staff member who restrains a student notifies the parents of the incident in person or via telephone or email, preferably by the end of the school day but no later than the end of the business day. *Id.*
14. That staff member then completes the District’s Student Restraint Incident Report Form (“incident report form”). *Id.* Behavior Specialist receives an electronic copy of an incident report form once it is submitted. *Interview with Behavior Specialist*. Within one business day, Behavior Specialist reviews the incident report form and contacts those involved with questions about the incident or the form. *Id.* Once Behavior Specialist has reviewed the form, the staff member sends the form to the parents. *Id.*
15. If a hold—whether stationary or used to escort a student—lasts longer than five minutes, the District considers that hold to be a restraint. *Id.* The District only requires staff members to complete the incident report form for restraints. If a hold lasts five minutes or less, staff members may complete the incident report form but Behavior Specialist does not review those forms. *Id.*

### The Decompress Room

16. The School utilizes a room within the main office as a “Decompress Room.” *Interview with Principal*. Students may request to visit the Decompress Room when they recognize the need for time and space. *Id.* Escalated students may use the Decompress Room to calm down.
17. The Decompress Room has three sheetrock walls and one cinderblock wall. *Id.* The floors are concrete covered with industrial carpet and mastic (i.e. no carpet pad). *Id.* The door to the Decompress Room has a window that allows staff to supervise students even when the door is closed, though the door does not lock. *Id.*
18. At the time of the incidents at issue, the Decompress Room had electrical and internet boxes mounted to the surface of the wall. *Id.*; *Exhibit H*, pp. 73-77. The boxes protruded several inches from the wall. *Interview with Principal*; *Exhibit H*, pp. 73-77. Metal conduit—fastened to the walls—carried the wiring from the boxes to the ceiling. *Interview with Principal*; *Exhibit H*, pp. 73-77.
19. The District modified the Decompress Room following the March 1, 2019 incident at issue in the Complaint. *Interview with Principal*. Specifically, the electrical and internet boxes and conduit were moved up to the ceiling to prevent a student from climbing on the boxes. *Id.*; *Exhibit H*, pp. 73-78.

### January 28, 2019 Incident

20. The first incident at issue in the Complaint occurred on January 28, 2019. Student began to swing a jump rope inappropriately at his classmates during P.E. class. *Interview with P.E. Teacher*. P.E. Teacher became concerned for the safety of the other students and asked Student to stop swinging the jump rope. *Id.* Despite this request, Student continued to swing the jump rope at his classmates, so P.E. Teacher called for additional support. *Id.*
21. Special Education Teacher arrived first and found Student standing next to a portable jump rope cart in the gymnasium. *Interviews with P.E. Teacher and Special Education Teacher*. Student was trying to get another jump rope off the cart. *Interview with Special Education Teacher*. Special Education Teacher told Student that his behavior was unsafe and wheeled the jump rope cart out of reach. *Id.* At that time, Student walked into the gymnasium’s storage closet. *Id.*
22. The storage closet is located on the east side of the gymnasium, just off the gym floor. *Interview with P.E. Teacher*. Though the doors lock, P.E. Teacher typically leaves the doors unlocked during the day so she can easily access equipment. *Id.* The storage closet contains shelves filled with various P.E. equipment, ranging from balls to

- unicycles. *Id.* The first shelf is approximately one foot above the floor, with subsequent shelves two feet higher than the prior shelf. *Id.*
23. Next, Student began to climb the shelves in the storage closet. *Interview with Special Education Teacher.* Special Education Teacher tried to verbally de-escalate Student by reminding him that his behavior was unsafe, distracting him with conversation about other topics (“Look how many balls are in this room!”), and asking him to come sit with her. *Id.* From time-to-time, Student voluntarily stepped down from the shelving before climbing back up on the shelving. *Id.* At some point, staff blocked Student from climbing the shelving. *Interview with Principal.* No staff member recalls physically removing Student from the shelving. *Id.; Interviews with Special Education Teacher, Social Worker, and P.E. Teacher.*
  24. Special Education Teacher used a two-way radio to call for further support. *Interview with Special Education Teacher.* Social Worker responded to the gymnasium, where she found Student sitting on the floor of the storage closet. *Id.* Principal arrived next, and Social Worker stepped outside the storage closet to debrief Principal on the incident. *Id.; Interview with Principal.*
  25. As Principal entered the storage closet, Student struck him with a jump rope. *Interviews with Principal, Special Education Teacher, and Social Worker.* Principal took a step backwards to give Student space and attempted to verbally de-escalate Student. *Interview with Principal.* At that time, Student was still seated on the floor of the storage closet, so Principal squatted down to Student’s eye level. *Id.* Principal expressed concern for Student’s safety and discussed Student leaving the storage closet voluntarily, while gesturing to the open doorway. *Id.*
  26. Student did not respond to Principal’s de-escalation efforts. *Id.* According to Principal, Student attempted to get up from the seated position, causing concern that Student would resume climbing the shelves. *Id.* Principal let Student know that Student would be physically removed from the storage closet unless he left voluntarily. *Id.*
  27. Student did not leave voluntarily, so Principal physically removed Student from the storage closet. *Id.* Principal described the physical intervention as a “partial physical prompt.” *Id.* However, according to a CDE Specialist trained in physical intervention and personal safety techniques, including CPI, this terminology does not match any terminology used by CPI. *Interview with CDE Specialist.*
  28. In the hold (“Hold A”), Student was standing with his arms down at his sides. Principal stood behind Student and placed his hands over Student’s elbows, securing Student’s arms to Student’s sides. *Id.* Principal and Student then walked forward out of the storage closet. *Id.* Hold A lasted less than one minute. *Id.* It is unclear whether Student

stood up voluntarily or Principal picked Student up off the ground before Hold A was initiated.

29. During his interview, Principal confirmed that the hold used matched the “Lower-Level Holding in a Standing Position” identified in the CPI Instructor Guide. *Id.*; *Exhibit I*, p. 140. CPI does not endorse use of this hold for transporting an individual, and, in fact, CPI does not teach a one-person transport position. *Interview with CDE Specialist.*
30. Once outside the storage closet, Principal asked Student to walk to the office voluntarily. *Interview with Principal.* Despite being in Hold A, Student continued to escalate. *Id.* Principal requested support from Special Education Teacher, and, together, they transitioned Student into the CPI Transport Position (“Hold B”). *Id.*; *Interview with Special Education Teacher.*
31. Under CPI, the Transport Position should be used to transport students from one area to another. *Interview with CDE Specialist.* In this position, two staff members stand on either side of the student. *Id.* The student’s arms are stretched outward across each staff member’s torso. *Id.* Each staff member loops his or her internal arm over the student’s forearm and uses his or her outer arm to hold down the student’s wrists. *Id.*
32. In Hold B, Student was standing between Special Education Teacher and Principal. *Interview with Principal.* When Student lifted his legs to kick the wall or refused to carry his own weight, Principal and Special Education Teacher intermittently released Student from Hold B. *Id.* Student then lay on the floor, kicking the walls and spinning in circles. *Id.* When other students entered the hallway, the staff members resumed Hold B for the safety of Student and the other students. *Id.*
33. CPI teaches that a student lying or sitting on the ground does not pose a safety threat—either to himself or to others—and should be left there. *Interview with CDE Specialist.* No CPI restraint technique authorizes picking up a seated child or carrying a child while restrained. *Id.*
34. CDE Specialist identified blocking as one of the CPI interventions that could have been used in this situation. *Interview with CDE Specialist.* Blocking involves a staff member using his or her body to physically block or prevent a student’s unsafe behavior. *Id.* If implemented here, blocking would have involved Principal and/or Special Education Teacher creating a physical barrier between Student and the other students in the hallway, eliminating Student’s ability to access the other students. *Id.*
35. When they arrived at the office, Student was released from Hold B into the Decompress Room. *Id.* Hold B lasted for three minutes from 10:05-10:08 a.m. *Exhibit D*, p. 2.
36. On prior visits to the Decompress Room Student’s reaction varied from becoming frustrated and throwing items to contentedly lying down on a pillow. *Interview with*

*Principal.* But, on January 28, Student reacted negatively to the Decompress Room. *Id.* Student threw his shoes into the office, while throwing the books, crayons, and other manipulatives staged in the Decompress Room for him. *Id.*

37. When placing a student in the Decompress Room, Principal typically leaves the door open, letting the student know he or she is free to close the door. *Id.* On the date at issue, Principal left the door open. *Id.* Student slammed the door open and closed, but the door eventually landed partially open. *Id.*
38. Special Education Teacher and Social Worker remained just outside the Decompress Room to supervise Student. *Id.* Meanwhile, at 10:15 a.m., Principal called Parent and asked her to come to the School. *Id.*; *Exhibit D*, p. 2.
39. According to Principal—both in his interview and the incident report form—this was the end of the January 28 incident. However, during her interview, Social Worker recalled taking notes on the January 28 incident, and she provided a copy of those notes during her interview. *See Exhibit K.*
40. Social Worker’s account of the incident diverges from Principal’s account at the time Student arrived in the Decompress Room. The notes—made contemporaneously with the incident—indicate that “[t]wo holds, both under 49 seconds, had to be done, as [Student] began ripping the molding off the floor. After both holds, [Student] was released onto the large pillow in the room.” *Exhibit K*, p. 2. Principal did not recall Student being placed in any holds, either in the incident report form or during his interview. *Exhibit D*, pp. 1-3; *Interview with Principal.*
41. Social Worker’s notes continue:

At 10:18, [Student] opened the door after banging on it for approx. 2 minutes. At 10:20, he opened the door again and put the bean bag pillow against the open door and then tried to push it through. [Special Education Teacher], etc. stood in the door blocking the exit. At 10:22, [Special Education Teacher] told Student that she will need to close the door, as she was getting tired of physically blocking the door. At 10:23, the pillow was removed from the room. At 10:27, [Parent] arrived.

*Exhibit K*, p. 2.

42. Principal informed Parent of the incident when Parent arrived at the School, though Parent did not recall being informed of the use of holds in the Decompress Room. *Interviews with Principal and Parent.*

43. At some point, Principal completed the incident report form even though the District did not require him to do so (because the physical intervention lasted five minutes or less). *Interviews with Principal and Behavior Specialist*. It is unclear whether Principal sought the input from Social Worker in preparing the incident report form, though Social Worker recalls providing a copy of her notes to Principal. *Interview with Social Worker*.
44. On the incident report form, Principal checked “Other” and identified the restraint used as “CPI Transport Position.” *Exhibit D*, p. 1. No other boxes were checked, including the box for seclusion. *Id.*
45. Behavior Specialist discussed the January 28 incident with Principal but does not recall reviewing the incident report form. *Interview with Behavior Specialist*.
46. Principal did not send a copy of the incident report form to Parent because the physical intervention lasted five minutes or less. *Interview with Principal*.

#### **March 1, 2019 Incident**

47. The second behavioral incident at issue in the Complaint occurred on March 1, 2019. A few minutes after he arrived at School, Student began ripping up papers and adamantly refusing to do academic work. *Interview with Teacher*. Teacher sat with Student and asked Student how Teacher could help. *Id.* Alternatively, Teacher offered to let Student sit by Teacher—something Student ordinarily enjoyed. *Id.*
48. Student did not respond to Teacher and had a “glazed over look on his face.” *Id.* Teacher continued with his math lesson, while keeping an eye on Student. *Id.*
49. A few minutes later, Student continued to rip papers from his desk, throwing the remnants around the classroom. *Id.* He also broke and threw his pencil. *Id.*
50. Teacher asked Student to calm down; Student refused. *Id.* Student started looking around the room for other objects to throw. *Id.* Teacher sat next to Student, trying to calm him down, but Student’s behavior was causing the entire class to escalate. *Id.*
51. Teacher told Student he would have to call the office if Student did not calm down. *Id.* He suggested Student go sit on the couch and talk with Teacher. *Id.* Student did not respond to Teacher, so Teacher called Principal for additional support. *Id.*
52. Principal arrived at the classroom around 8:45 a.m. and saw Student breaking pencils and throwing markers in the back of the classroom near Teacher’s desk. *Interview with Principal*. Upon Principal’s arrival, Teacher turned his attention to the other students in the class, allowing Principal to focus on de-escalating Student. *Interview with Teacher*.

53. Kneeling at Student's eye level, Principal offered Student three choices: (1) stop throwing items and being disruptive to stay in the classroom; (2) leave the classroom on his own to go to the office; or (3) be helped from the classroom to the office. *Exhibit D*, p. 4. Principal waited one to two minutes for Student to respond, but Student continued to rip up paper and throw it in the air. *Id.*; *Interview with Principal*.
54. Principal felt this situation constituted an emergency, because Student's behavior threatened the safety of Student and his classmates, including a student with complex health needs. *Interview with Principal*.
55. As a result, Principal decided to physically remove Student from the classroom. *Id.* Standing directly behind Student's chair, Principal placed his arms under Student's armpits and lifted Student from the chair. *Id.* Student refused to carry his own weight and began to drag his feet, so Principal's forearms supported Student's body weight. *Id.* Principal then walked Student out of the classroom and into the hallway. *Id.* Principal described this hold ("Hold C") as a "partial physical escort." *Id.* The record does not indicate—and Principal cannot recall—the length of Hold C. *Id.*; *Exhibit D*, p. 6.
56. Once in the hallway, Principal released Student from the hold. *Interview with Principal*. Student lay down on the floor, spinning in circles and kicking the wall. *Id.* As other students came down the hallway, Principal felt Student posed a safety risk to those students. *Id.* Principal picked Student up and placed him in another "partial physical escort" hold ("Hold D"). *Id.* As they walked down the hallway, Student jumped and kicked the walls. *Id.* Again, the record does not indicate—and Principal cannot recall—the length of Hold D. *Id.*; *Exhibit D*, p. 6.
57. As Student began to escalate, Principal transitioned Student into the Child Control Position ("Hold E"). *Interview with Principal*; *Exhibit D*, p. 4. CPI instructs staff to use the Child Control Position to restrain elementary students who are a danger to themselves or others. *Exhibit I*, p. 147. In this position, a staff member stands behind the student. *Id.*; *Interview with CDE Specialist*. The staff member crosses the student's arms across the student's waist and slides the student's crossed arms up around the student's collarbone. *Exhibit I*, p. 147; *Interview with CDE Specialist*. Each of the staff member's hands holds one of student's wrists. *Exhibit I*, p. 147; *Interview with CDE Specialist*. The staff member then leans the student back on the staff member's thigh and knee. *Exhibit I*, p. 147; *Interview with CDE Specialist*.
58. A child in a properly performed Child Control Position cannot drop to the ground or kick because the posture of the hold deprives the student of leg strength and shifts the student's balance backwards. *Interview with CDE Specialist*. CPI does not authorize use of the Child Control Position to transport a student. *Id.*

59. Principal and Student entered the office, and Principal released Student from Hold E into the Decompress Room. *Interview with Principal; Exhibit D*, p. 4. Principal could not recall how long Hold E lasted and the length was not documented in the incident report form. *Interview with Principal; Exhibit D*, p. 6.
60. Upon entering the Decompress Room, Student directed vulgarities at Principal and began to throw art supplies and other manipulatives staged in the Decompress Room for Student. *Interview with Principal; Exhibit D*, p. 4. As Student threw items out of the Decompress Room, they were placed on Office Manager's desk. *Interview with Principal*. Principal removed any remaining manipulatives from the Decompress Room. *Id.*
61. Principal told Student that "this is where [Student] needed to be right now" and let Student know that the door could be open or closed. *Id.* Student began to slam the door as hard as he could, shaking the walls in the office. *Id.* Principal became concerned that Student might injure himself, so he pulled the door to the Decompress Room closed and told Student he would re-open the door if Student stepped back. *Id.*
62. Student then picked up a chair in the Decompress Room and began ramming the legs of the chair in the glass portion of the door. *Id.* Principal entered the Decompress Room and removed the chair and table, leaving only a body pillow. *Id.; Exhibit D*, p. 4. The door was left open. *Interview with Principal*. Principal did not remove the body pillow because, in the past, the pillow had been a preferred item for the Student. *Id.*
63. Principal called Parent, while Office Manager, Health Room Paraprofessional, and Registrar supervised Student. *Id.*
64. Student began to slam the door of the Decompress Room again, so Principal closed the door. *Id.* Shortly thereafter, Principal saw Student lying on the floor, stuffing the pillow label into his mouth until he gagged. *Id.* Principal pulled the pillow out of Student's mouth and removed the label from the pillow. *Id.*
65. Principal closed the door to the Decompress Room and continued to monitor Student through the window on the door. *Id.* Student next began to shove the pillow into his mouth, again gagging himself. *Id.* Principal removed the pillow from the room. *Id.*
66. Office Manager entered the Decompress Room. *Id.* Student and Office Manager had a good relationship and, in the past, Office Manager had been able to help Student de-escalate. *Id.* Office Manager began to rub Student's back. *Exhibit D*, p. 5. Student shoved his fingers down his throat until he gagged. *Id.; Interview with Principal*. Office Manager removed Student's fingers from his throat, exited the room, and closed the door. *Exhibit D*, p. 5; *Interview with Principal*.

67. While monitoring Student through the window, Principal saw Student stick his fingers into the internet outlets and try to unscrew a metal plate on an electrical socket using his fingernails. *Exhibit D*, p. 5; *Interview with Principal*. Principal informed Student that he would be restrained if he continued to “stick his fingers into unsafe openings in the wall.” *Exhibit D*, p. 5.
68. Student did not comply, so Principal placed Student in a hold using the Child Control Position (“Hold F”) for two minutes. *Id.*; *Interview with Principal*. Principal released Hold F after asking Student to show him that he was safe. *Interview with Principal*. Principal then exited the Decompress Room and closed the door. *Id.*
69. Student stepped up onto the electrical box mounted on the surface of the Decompress Room wall, using the conduit to pull himself up. *Id.*; *Exhibit D*, p. 5. Student “then threw his body off backwards landing on the floor.” *Id.* Per Principal, this electrical box was 20” from the ground. *Exhibit L*.
70. Principal used the Child Control Position to place Student in another hold (“Hold G”). *Exhibit D*, p. 5; *Interview with Principal*. Principal released Hold G after four minutes when he felt that Student was no longer a danger to himself. *Interview with Principal*.
71. Student stepped up on to the electrical box again. *Id.* After removing Student from the electrical box several times, Principal placed Student in a final hold using the Child Control Position (“Hold H”). *Exhibit D*, p. 5; *Interview with Principal*.
72. During Hold H, Student was kicking and using both feet to push off the wall. *Exhibit D*, p. 5; *Interview with Principal*. Principal was concerned Student might injure his feet, so Principal oriented Student’s face towards a wall to try to limit Student’s ability to kick. *Exhibit D*, p. 5; *Interview with Principal*.
73. Principal heard Student take a deep breath and then felt Student’s body “sag.” *Interview with Principal*. Student did not respond when Principal said his name, so Principal released Student from Hold H and placed Student on the ground. *Id.* Hold H lasted one minute. *Exhibit D*, p. 6.
74. Student’s eyes were “fluttering.” *Id.* Principal yelled for Office Manager. *Id.* Office Manager sat with Student, while Principal called 911 and the Registrar called Security Officer. *Id.* When Principal returned, Student’s eyes were open and Office Manager was rubbing Student’s back. *Id.* Office Manager told Principal that Student was “salivating heavily and foaming at the mouth.” *Interview with Principal*; *Exhibit D*, p. 5.
75. Emergency medical technicians (“EMTs”) arrived and evaluated Student. *Interview with Principal*. The EMTs indicated Student’s “levels looked good” but did not hypothesize about what caused Student to pass out. *Interviews with Principal and Parent*.

76. Parent arrived shortly after the EMTs. *Id.* Parent declined to have Student taken to the hospital for a further evaluation and, instead, took Student home to relax. *Interview with Parent.*
77. Principal informed Parent of the incident when she picked Student up and also followed up with a phone call that afternoon. *Exhibit D, p. 6; Interview with Principal.*
78. The same day, Principal spoke with Behavior Specialist and other District administrators regarding the incident. *Interview with Principal.* Principal completed the incident report form on Monday, March 4, 2019. *Id.* Behavior Specialist does not recall reviewing the incident report form because, at the time, she believed the restraints cumulatively lasted five minutes or less. *Interview with Behavior Specialist.* Principal emailed a copy of the incident report form to Parent on March 6, 2019. *Exhibit G, p. 20.*

### **Annual Restraint Review**

79. Behavior Specialist uses the incident report forms submitted during the school year to prepare the District’s annual restraint review (“Annual Restraint Review”). *Interview with Behavior Specialist.*
80. The District does not consider any physical intervention lasting five minutes or less to constitute a restraint. *Id.* Therefore, those incidents are not included in the Annual Restraint Review. *Id.*
81. The Annual Restraint Review contains the following information for each restraint: name of student, school, grade, date of restraint, disability category, location of restraint, name(s) of staff administering restraint, length of restraint, and whether the student attends one of the District’s intensive learning centers. *Id.; Exhibit A, pp. 1-6.*
82. One section of the Annual Restraint Review—titled “Properly Administering Restraints”—quantifies how many restraints:
  - Identified the use of CPI techniques;
  - Were held for less than 15 minutes;
  - Did not put excess pressure on child’s chest or back;
  - Were completed by CPI certified staff.

*Exhibit A, p. 3.*

83. To determine whether a restraint was properly administered, Behavior Specialist consults the underlying incident report form, looking specifically to the checklist for “type of restraint used.” That checklist asks the staff member to identify which of the following restraints was used:

- CPI Child Control
- CPI Team Control
- Seclusion
- Other

*Exhibit D, p. 1.*

84. If a staff member checks one of the first three boxes or checks other and identifies a CPI technique, Behavior Specialist considers the restraint to have been properly administered. *Interview with Behavior Specialist.* If “other” is checked and no CPI technique is identified, Behavior Specialist follows up with the staff member to learn more about the restraint used. *Id.* This determination does not take into account the facts of the incident itself. *Id.*
85. During the Annual Restraint Review, Behavior Specialist confirms that the staff members who administered the restraints have proper CPI certification. *Id.*
86. The Annual Restraint Review does not indicate the number of restraints performed by CPI-certified staff or the total number of incident reports submitted for review. *Exhibit A, p. 3.* When asked why this information was incomplete, Behavior Specialist said it was “probably just [her] not being organized.” *Interview with Behavior Specialist.*
87. Neither of the incidents at issue in this Complaint was included in the 2018-2019 Annual Restraint Review. *Id.*, pp. 1-6; *Interview with Behavior Specialist.* The incidents were not included because—per Behavior Specialist—the physical interventions in each incident lasted five minutes or less. *Interview with Behavior Specialist.*
88. Had she known that the holds used on March 1, 2019 cumulatively totaled more than five minutes, Behavior Specialist said she would have directed Principal to submit the incident report form and would have included that incident in the Annual Restraint Review. *Id.*

### **CONCLUSIONS OF LAW**

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

#### **I. January 28, 2019 Incident**

**Conclusion to Allegation No. 1: The School violated the PPRA on January 28, 2019. Hold A qualified as a physical restraint and Student’s placement in the Decompress Room constituted seclusion. The School lacked an appropriate basis to use either restraint. Hold B**

**fell within one of the exceptions to physical restraint and, therefore, was not governed by the PPRA.**

In her Complaint, Parent alleges the School lacked a proper basis for restraining Student on January 28, 2019. As a preliminary matter, the SCO must determine whether the holds the School used on January 28 constituted restraints within the scope of the PPRA.

A. Whether the Holds are Physical Restraints

As used in the PPRA, “restraint” refers to “any method or device used to involuntarily limit freedom of movement” and includes chemical restraint, mechanical restraint, physical restraint, and seclusion. Rule 2620-R-2.00(8).

“Physical restraint” means “the use of bodily, physical force to involuntarily limit an individual’s freedom of movement.” Rule 2620-R-2.00(8)(c). However, physical restraint specifically *excludes*:

- Holding of a student in a position other than a prone position for less than five minutes by a staff person for the protection of the student or others;
- Brief holding of a student by one adult for the purpose of calming or comforting the student, not to include holding a student in a prone position;
- Minimal physical contact for the purpose of safely escorting a student from one area to another; and
- Minimal physical contact for the purpose of assisting the student in completing a task or response.

*Id.* 2620-R-2.00(8)(c)(i)-(iv).

The PPRA does not explain what constitutes minimal physical contact in the context of an escort. In past decisions, CDE has relied on guidance from the U.S. Department of Education Office of Civil Rights (“OCR”) distinguishing between a physical restraint and an escort:

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) (“*Dear Colleague Letter*”); *see also CDE Decision 2019:520; CDE Decision 2019:528; CDE Decision 2019:901.*

## 1. Hold A

Hold A, the first hold School used on January 28, 2019, constituted a physical restraint and not an escort. Principal initially made physical contact with Student to remove Student from the storage closet in the gymnasium. (FF # 27.) To implement the Lower Level Holding in a Standing Position, Principal stood behind Student. (FF #s 28, 29.) Principal placed his hands over Student's elbows, securing Student's arms to Student's sides. (FF # 28.) Principal and Student then walked forward out of the storage closet. (*Id.*) Hold A lasted less than one minute. (*Id.*) The record suggests Principal may have picked Student up to place him in Hold A, although it is not completely clear.

Hold A did not limit Student's ability to move his arms, torso, legs, or head. The SCO finds that the physical contact in Hold A did not go beyond "a temporary touching or holding of the hand, wrist, arm, shoulder, or back." *Dear Colleague Letter*, 69 IDELR 80 (OCR 2016).

Nonetheless, the SCO cannot ignore that Principal used an improper hold to transport Student. Under CPI, the Transport Position should be used to move students from one area to another. (FF # 31.) Here, Principal transported Student in a position designed to hold a standing student still. (FF # 29.) The term "physical restraint" excludes "minimal physical contact for the purpose of *safely* escorting a student from one area to another." Rule 2620-R-2.00(8)(c)(iii) (emphasis added). The language of the rule makes clear that the escort must be safe.

The PPRA requires staff to be trained using a nationally recognized physical management program. *Id.* 2620-R-2.03(4). This requirement aims, in part, to ensure staff use appropriate restraint techniques. Where a staff member deviates from the adopted physical management program, it cannot be said that the staff member *safely* escorted a student from one area to another. The absence of an injury does not mean the physical contact was safe.

No CPI restraint technique authorizes picking a child up from a seated position (FF # 33.) And, in fact, CPI does not teach a one-person transport position. (FF # 29.) Principal plainly deviated from CPI. These deviations from CPI endangered Student's safety and prevents the physical intervention used by Principal from qualifying as "minimal physical contact for the purpose of *safely* escorting" Student. *See id.* 2620-R-2.00(8)(c)(iii). As a result, the SCO finds that Hold A was a physical restraint.

## 2. Hold B

Hold B—the hold used to transport Student from the gymnasium to the office—fell within an exception at Rule 2620-R-2.00(8)(c)(iii) and, thus, did not constitute a physical restraint. Once outside the storage closet, Student continued to escalate, so Principal asked Special Education Teacher for assistance. (FF # 30.) Together, they transitioned Student into the Transport

Position. (*Id.*) In Hold B, Student stood between Principal and Special Education Teacher. (FF # 32.) Student’s arms were stretched outward, across each staff member’s torso. (FF # 31.) The staff members’ internal arms were looped over Student’s forearm and their outer arms were used to hold Student’s wrists down. (*Id.*) This hold lasted three minutes. (FF # 35.)

The physical contact in Hold B did not immobilize Student’s arms, torso, legs, or head and did not go beyond “a temporary touching or holding of the hand, wrist, arm, shoulder, or back.” *Dear Colleague Letter*, 69 IDELR 80 (OCR 2016). Hold B permitted Student to walk on his own (at least when he chose to do so). Thus, the SCO finds that Hold B constituted minimal physical contact during an escort and not a physical restraint.

### 3. Holds in Decompress Room

The SCO must address the inconsistencies between Principal’s account of the January 28 incident—both in the incident report form and in his interview—and Social Worker’s account in her contemporaneous notes. Social Worker’s notes indicate that Principal placed Student in two additional holds—each lasting 49 seconds—in the Decompress Room because Student was ripping the molding from the floor. (FF # 40.) Nothing in the record indicates the type of holds used; therefore, the SCO cannot determine the propriety of the holds.

Nonetheless, the SCO finds it troubling that these holds, though short, were not documented in the incident report form. The absence of this information undermines the credibility of the entire incident report form and warrants consideration of the adequacy of the District’s Annual Review Process.

#### B. Whether Student was Secluded

“Seclusion”, within the scope of the PPRA, means “the placement of a student alone in a room from which egress is involuntarily prevented.” Rule 2620-R-2.00(9). Seclusion explicitly excludes: (a) placement of a student in residential services in his room for the night; and (b) time-out, where a student is removed from “potentially rewarding people or situations.” *Id.* Any space used for seclusion “must have adequate lighting, ventilation, and size. To the extent possible under the specific circumstances, the space should be free of injurious items.” *Id.* 2620-R-2.02(2)(e)(ii).

The School staff secluded Student in the Decompress Room on January 28. Per Social Worker’s notes, at 10:20 a.m., Special Education Teacher stood in the doorway blocking the exit to the Decompress Room. (FF # 41.) Two minutes later, Special Education Teacher “told Student that she [would] need to close the door, as she was getting tired of physically blocking the door.” (*Id.*) A pillow was removed from the room one minute later at 10:23 a.m.; however, Student remained in the Decompress Room—presumably with the door closed—until Parent arrived at 10:27. (*Id.*)

Special Education Teacher physically prevented Student from leaving the Decompress Room by: (a) physically blocking the doorway with her body, and (b) telling Student she would need to close the door in lieu of physically blocking the doorway. This behavior indicated to Student that Student was not free to leave the Decompress Room or even to open the door of the Decompress Room. As a result, Student’s placement in the Decompress Room from 10:22 a.m. to 10:27 a.m. constituted seclusion under the PPRA. And, as will be explained below in Part II.C, the Decompress Room was neither free of injurious items nor safe for Student.

### C. Whether the School Had a Basis for the Restraint

Having determined that Student was both physically restrained in Hold A and secluded in the Decompress Room, the SCO must next evaluate whether the School had a basis to restrain Student. In her Complaint, Parent alleges the School lacked a proper basis to restrain Student because none of his behavior warranted restraint.

Under the PPRA, a school must have an appropriate basis for the use of restraint. The PPRA requires that restraints:

- Only be used in an emergency and 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 or 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, while prioritizing the prevention of harm to the student.

Rule 2620-R-2.01. The School must satisfy *each* of these requirements to show it had an appropriate basis to restrain Student. Here, the School cannot satisfy any of the requirements.

#### 1. Hold A

Restraints may only be used in an emergency. *Id.* 2620-R-2.01(1)(a). The PPRA defines “emergency” as “serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury. Emergency includes situations in which the student creates such a threat by abusing or destroying property.” *Id.* 2620-R-2.00(4). Here, Student hit Principal with a jump rope and climbed the shelves in the storage closet. (FF #s 23, 25.) But Student was not participating in any unsafe behavior at the time Principal initiated the restraint. (FF #s 25, 26.) In fact, Student may have still been seated on the floor of the closet. (FF # 28.) Principal feared that Student *might* resume climbing the shelves (FF # 26), but that fear does not rise to the level of an emergency under the PPRA. And, in fact, Principal, Special Education Teacher, and Social Worker—all of whom were already present—could have used

CPI's blocking technique by positioning themselves between Student and the shelving to prevent any further efforts to climb the shelves. Because Principal restrained Student in a non-emergency situation, the SCO finds the School violated Rule 2620-R-2.01(1)(a).

Even if there had been an emergency, the PPRA would permit the use of restraints only after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). Rule 2620-R-2.01(1). Less restrictive alternatives include "Positive Behavior Supports, constructive and non-physical de-escalation, and restructuring the environment." *Id.* Here, both Special Education Teacher and Principal attempted—without success—to verbally de-escalate Student. (FF #s 23, 25.) However, the SCO does not find that less restrictive alternatives failed or would have been inappropriate or ineffective. Indeed, at the time of the restraint, Student was not engaged in any unsafe behavior. Principal could have given Student increased wait time before resorting to restraint or, if Student began climbing the shelves, Principal could have blocked Student. These alternatives should have been exhausted before using physical restraint. As a result, the SCO finds the School violated Rule 2620-R-2.01(1)(b).

The PPRA prohibits the use of restraint as a punitive form of discipline or as a threat to gain control over a student's behavior. Rule 2620-R-2.01(2). Principal told Student that Student would be physically removed from the storage closet unless Student voluntarily left. (FF # 26.) Student did not comply, so Principal placed Student in Hold A. (FF # 27.) Principal threatened restraint in order to get Student to leave the storage closet in violation of Rule 2620-R-2.01(2).

Finally, the PPRA requires that the restraint last no longer and use no more force than necessary. Rule 2620-R-2.01(3). The school must prioritize the prevention of harm to the student. *Id.* The Principal placed Student in Hold A during a non-emergency setting that did not warrant the use of any restraint. As a result, Hold A inevitably lasted longer and used more force than necessary, in violation of Rule 2620-R-2.01(3)(a). Additionally, because Principal deviated from CPI and improperly transported Student using a standing hold, the SCO finds that the School did not prioritize the prevention of harm to Student, in violation of Rule 2620-R-2.01(3)(b). Because the School did not satisfy any of the requirements of Rule 2620-R-2.01, the School did not have a basis to restrain Student.

## 2. Seclusion

The PPRA requires a school to have an appropriate basis for using a restraint. Rule 2620-R-2.01. Part I.C. details those requirements, and, for brevity, an explanation of those requirements is not repeated here. Just as the School lacked a basis for Hold A, the School also lacked a basis secluding Student.

Restraints may only be used in an emergency. *Id.* Just before being secluded, Student was banging on the Decompress Room door. (FF # 41.) He opened the door and tried to push a

pillow through the doorway. (*Id.*) At that time, Special Education Teacher secluded Student by physically blocking the doorway to the Decompress Room. These circumstances do not indicate a “serious, probable, imminent threat of bodily injury to self or others.” Rule 2620-R-200(4). And, in fact, nothing in the record suggests that Student was a threat to himself or others while he was in the Decompress Room. (See FF #s 40, 41.) Because Special Education Teacher secluded Student in a non-emergency situation, the SCO finds the School violated Rule 2620-R-2.01(1)(a).

Even if there had been an emergency, the PPRA would permit the use of restraints only after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). Rule 2620-R-2.01(1). The record does not indicate that Special Education Teacher attempted *any* less restrictive alternatives before secluding Student. (FF #s 40, 41.) As a result, the SCO finds the School violated Rule 2620-R-2.01(1)(b).

The PPRA prohibits the use of restraint as a punitive form of discipline or as a threat to gain control over a student’s behavior. Rule 2620-R-2.01(2). The record suggests that Special Education Teacher secluded Student to prevent Student from shoving a pillow through the doorway. (FF # 41.) As such, Special Education Teacher used seclusion to gain control of Student’s behavior. Therefore, the SCO finds the School violated Rule 2620-R-2.01(2).

Finally, the PPRA requires that the restraint last no longer and use no more force than necessary. Rule 2620-R-2.01(3). Special Education Teacher secluded Student in a non-emergency setting that did not warrant the use of restraint. As a result, the seclusion inevitably lasted longer and used more force than necessary, in violation of Rule 2620-R-2.01(3)(a). Because the School did not satisfy all of the requirements of Rule 2620-R-2.01, the School did not have a basis to seclude Student.

The SCO will evaluate School’s compliance with the PPRA’s notification requirements separately in Part III.

## II. March 1, 2019 Incident

**Conclusion to Allegation No. 2: Three of the six holds used on Student on March 1, 2019 violated the PPRA. Holds C, D, and E qualified as physical restraints under the PPRA, and the School lacked a basis for use of the restraints. The remaining three holds—Holds F, G, and H—did not qualify as physical restraints due to their short duration. Student’s placement in the Decompress Room also constituted a seclusion that violated the PPRA.**

In her Complaint, Parent alleges School lacked a proper basis for restraining Student on March 1, 2019. As a preliminary matter, the SCO must determine whether the holds School used on March 1 constituted restraints within the scope of the PPRA.

## A. Whether the Holds are Physical Restraints

The legal framework outlined in Part I.A regarding the scope of physical restraints applies here.

### 1. Holds C and D

Holds C and D constituted physical restraints and not escorts. On March 1, 2019, Principal initially made physical contact with Student to transport Student to a safe location. (FF # 55.) Principal placed Student in Hold C—a hold Principal described as a “partial physical escort”—by placing his arms under Student’s armpits and lifting Student from his chair. (*Id.*) Student refused to carry his own weight, so Principal supported Student’s weight on his forearms. (*Id.*) Once Student exited the classroom, Principal released Student from Hold C. (FF # 56.) Student lay down on the floor, spinning in circles and kicking the wall. (*Id.*) As other students came down the hallway, Principal—concerned for the safety of the other students—placed Student in Hold D, another “partial physical escort hold.” (*Id.*)

Because Principal was, in essence, carrying Student, Holds C and D plainly limited Student’s ability to move and went beyond “a temporary touching or holding of the hand, wrist, arm, shoulder, or back.” *Dear Colleague Letter*, 69 IDELR 80 (OCR 2016). For this reason alone, the SCO finds that Holds C and D fell outside the scope of minimal physical contact during an escort and, instead, constituted a physical restraint.

Further, the exception in Rule 2620-R-2.00(8)(c)(iii) applies to “minimal physical contact for the purpose of *safely* escorting a student from one area to another.” As outlined in Part I.A.1, the escort must be safe. Where a staff member deviates from the adopted physical management program, it cannot be said that the staff member *safely* escorted a student from one area to another. The absence of an injury does not prove that the physical contact was safe.

No CPI restraint technique authorizes picking a child up from a seated position (FF # 33.) And, in fact, CPI does not teach a one-person transport position. (FF # 29.) Principal plainly deviated from CPI, endangering Student’s safety and preventing the SCO from finding that Principal used the “minimal physical contact for the purpose of *safely* escorting” Student. *See* Rule 2620-R-2.00(8)(c)(iii). Thus, the SCO finds that Holds C and Hold D constituted physical restraints and not escorts.

### 2. Hold E

Hold E similarly qualified as a physical restraint, not an escort. While in Hold D, Student began to escalate. (FF #s 56, 57.) At that point, Principal transitioned Student into Hold E using the Child Control Position. (FF # 57.) Student remained in Hold E while Principal transported

Student to the office. (*Id.*) In this position, Student’s arms were crossed high around his collarbone, and Principal held Student’s wrists down. (FF # 57.)

Hold E limited Student’s ability to move his arms and torso and went beyond “a temporary touching or holding of the hand, wrist, arm, shoulder or back.” *Dear Colleague Letter*, 69 IDELR 80 (OCR 2016). For this reason, the SCO finds Hold E used more than minimal physical contact during an escort and, instead, constituted a physical restraint.

Additionally—as with Holds C and D—Principal deviated from established CPI technique. Though the Child Control Position is a recognized CPI hold, it is not a recognized means of transport. (FF # 58.) Because he deviated from CPI, the SCO cannot find that Principal used the “minimal physical contact for the purpose of *safely* escorting” Student. See Rule 2620-R-2.00(8)(c)(iii). The SCO, therefore, concludes that Hold E constituted a physical restraint.

### 3. Holds F, G, and H

Holds F, G, and H fall within an exception and, thus, did not constitute physical restraints. Once in the Decompress Room, Student stuck his fingers into internet outlets and attempted to unscrew a metal plate on an electrical socket. (FF # 67.) This unsafe behavior prompted Principal to place Student in a hold using the Child Control Position. (FF # 68.) This hold—Hold F—lasted two minutes. (*Id.*) Once released, Student began to climb on an electrical box in the Decompress Room. (FF # 69.) Student “threw his body backwards”, causing Principal to place Student in Hold G using the same Child Control Position. (FF #s 69, 70.) Principal released Student from Hold G after four minutes. (FF # 70.) Student proceeded to climb on the electrical box again, so Principal placed Student in a final hold—Hold H—using the Child Control Position. (FF # 71.) In Hold H, Student was kicking and using both his feet to push off the wall. (FF # 72.) As noted earlier, in the Child Control Position, Principal stood behind Student. (FF # 8.) Student’s arms were crossed high across his body, while Principal held Student’s wrists down. (*Id.*) Principal heard Student take a deep breath in and then felt Student’s body go limp. (FF # 73.) At that time, Principal released Student from Hold H. (*Id.*)

Holds F, G, and H lasted two minutes, four minutes, and one minute, respectively. (FF #s 68, 70, 73.) These three holds qualified for the exception to physical restraint for “[h]olding of a student in a position other than prone position for less than five minutes by a staff person for the protection of the student or others” and, therefore, are not physical restraints. Rule 2620-R-2.00(8)(c)(i). Student was not in a prone position in either of the three holds. Principal placed Student in the holds due to Student’s unsafe behavior in the Decompress Room. Because Holds F, G, and H did not constitute restraints, they are not covered by the PPRA. As a result, the SCO cannot consider whether the School had an appropriate basis to place Student in these holds.

B. Concerns Regarding Holds F, G, and H and Principal's Lack of Adequate Training

The SCO would be remiss if the discussion ended without addressing the troubling events in the Decompress Room on March 1, 2019. Principal implemented Holds F, G, and H in response to behavior by Student that Principal deemed to be unsafe. Specifically, Student was sticking his finger in internet outlets, attempting to unscrew the cover on an electrical box, gagging himself on his fingers and items in the Decompress Room, and climbing on a protruding electrical box. (FF #s 64, 65, 67, 69, 71.) With the exception of Student's fingers, all of these items were present in the Decompress Room when Student arrived. The District's modification of the Decompress Room following this incident suggests the District realized the Decompress Room was not the ideal space for an escalated student. (See FF # 19.) Given Student's level of escalation, perhaps the Decompress Room should have been emptied before Student's arrival. Or, at the very least, Principal should have removed all of the items from the Decompress Room once Student starting throwing things.

Principal resorted to physical intervention without utilizing safer, less restrictive alternatives. For example, Principal—perhaps with the assistance of Office Manager or Registrar—could have used their bodies to physically block Student from accessing the electrical box and the internet outlets. Such an alternative would have prevented the majority of Student's unsafe behavior without physical intervention and would have been significantly safer than placing Student in repeated holds.

Given Principal's description of Hold H, the SCO has concerns that Principal did not use proper Child Control Position technique. During a proper Child Control Position hold, the student's weight is shifted backwards on to the staff member's leg. (FF #s 57, 58.) A child in a properly performed Child Control Position cannot drop to the ground or kick because the posture of the hold deprives the student of leg strength and shifts the student's balance backwards. (*Id.*) Here, Principal indicated that Student was kicking and using both feet to push off the wall, suggesting that Principal's form in Hold H was improper. (*Id.*)

Under the PPRA, staff utilizing restraint must complete "retraining at a frequency of at least every two years." Rule 2620-R-2.03(7). Though Principal received his CPI certification in February 2016, he did not complete any other CPI training between February 2016 and February 2020. (FF # 9.) Though Principal completed CPI certification again in February 2020, at the time of the incidents at issue—in January and March 2019—Principal had not completed any CPI training for three years. (*Id.*)

Therefore, the SCO finds that Principal was not in compliance with Rule 2620-R-2.03(7). However, because Special Education Teacher obtained her CPI certification in September 2017, her certification remained valid until September 2019—beyond the incidents at issue in this case. (FF # 10.) Special Education Teacher has not completed any additional training since September 2017. Therefore, Special Education Teacher no longer has adequate training to utilize restraint in the School, pursuant to Rule 2620-R-2.03(7).

Throughout this investigation, it has been clear that Principal only loosely adhered to CPI technique (perhaps due to inadequate training) during the incidents on January 28, 2019 and March 1, 2019. This lack of adherence to CPI jeopardized Student's safety.

### C. Whether Student was Secluded

As indicated in Part I.B, "seclusion" means "the placement of a student alone in a room from which egress is involuntarily prevented." Rule 2620-R-2.00(9). A space used for seclusion "must have adequate lighting, ventilation, and size. To the extent possible under the specific circumstances, the space should be free of injurious items." *Id.* 2620-R-2.02(2)(e)(ii).

Student was secluded in the Decompress Room on March 1. Principal initially told Student that Student could keep the door to the Decompress Room open or closed. (FF # 61.) But once Student began to slam the door, Principal became concerned for Student's safety and closed the door, telling Student he would re-open the door if Student stepped back. (FF # 61.) At that moment, Student's egress from the Decompress Room was involuntarily prevented and Student was secluded. Student remained in the Decompress Room with the door closed until he passed out during Hold H. (See FF #s 61-73.) During Student's seclusion, Principal and Special Education Teacher intermittently entered the room to either remove objects or place Student in a hold, but they then left the Decompress Room and closed the door. (*Id.*) These acts by Principal and Special Education Teacher might have interrupted Student's seclusion (or caused his time in the Decompress Room to amount to several discrete seclusions) but did not prevent this placement from constituting a seclusion under the PPRA.

The Decompress Room was not free from injurious items and, as a result, was not a safe space for seclusion. On March 1 (as well as January 28), the Decompress Room had electrical and internet boxes mounted to the surface of the wall. (FF # 18.) The boxes protruded several inches from the wall. (*Id.*) Metal conduit—fastened to the walls—carried the wiring from the boxes to the ceiling. (*Id.*)

Student climbed onto the electrical boxes, using the conduit to pull himself up. (FF #s 69, 71.) He also attempted to stick his fingers into the electrical socket and internet outlets. (FF # 67.) Student's interaction with the hazards in the Decompress Room directly resulted in Holds F, G, and H. If the Decompress Room had been a safe space, perhaps Holds F, G, and H could have been avoided altogether. Perhaps in recognition of this, the District modified the Decompress Room following the March 1 incident to move the conduit and electrical and internet boxes to the ceiling, out of reach of any students. (FF # 19.) The School violated Rule 2620-R-2.00(9) by secluded Student in a space that was not free of injurious items.

#### D. Whether the School had a Basis for the Restraint

Having determined that Holds C, D, and E constituted physical restraints, the SCO must next evaluate whether the School had a basis for using the restraints. The SCO must also determine whether the School had a basis for secluding Student.

The PPRA requires a school to have an appropriate basis for using a restraint. Rule 2620-R-2.01. As summarized in Part I.C, the PPRA requires that restraints:

- Only be used in an emergency and 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 or 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, while prioritizing the prevention of harm to the student.

Rule 2620-R-2.01(1).

For the reasons identified below, the School has not established an appropriate basis for Holds C, D, or E.

##### 1. Hold C

Restraints may only be used in an emergency. *Id.* As noted in Part I.C.1, the PPRA defines “emergency” as a “serious, probable, imminent, threat of bodily injury to self or others with the present ability to effect such bodily injury. Emergency includes situations in which the student creates such a threat by abusing or destroying property.” *Id.* 2620-R-2.00(4). Prior to being placed in Hold C, Student was destroying items from his desk and throwing them around the classroom. (FF #s 47, 49, 50, 52.) Student refused to calm down and, instead, looked for more items to throw. (FF # 50.) These circumstances—especially given the presence of a student with complex medical needs in the classroom—evidence a “serious, probable imminent threat of bodily injury to self or others.” Rule 2620-R-2.00(4). Even if Student was not targeting other students specifically, some of the items he was throwing could have injured another student. Student’s behavior rose to the level of an emergency under the PPRA.

Even in an emergency, restraints may only be used after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). *Id.* 2620-R-2.01(1). Here, Teacher responded to Student’s unsafe behavior with verbal de-escalation and offered Student environmental changes—such as sitting next to Teacher or visiting the couch to calm down. (FF #s 47, 51.) When Principal arrived, he offered Student three choices: (1) stop throwing items to stay in the classroom, (2) leave the classroom on his own to go to the office, or (3) be helped from the classroom to the office. (FF # 53.) Though

neither Principal nor Teacher had any success, the SCO finds that the School complied with the PPRA by attempting less restrictive alternatives before placing Student in Hold C.

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. Rule 2620-R-2.01(2). No evidence in the record suggests that Principal used Hold C as a punitive form of discipline or as a threat to gain control of Student's behavior. Therefore, the SCO finds that the School did not use Hold C as a punitive form of discipline or as a threat to gain control of Student's behavior.

Finally, the PPRA requires that a school prioritize the prevention of harm to a student, while using a restraint for no longer and with no more force than necessary. Rule 2620-R-2.01(3). As noted in Part II.A.1 above, the Principal did not use a CPI technique for Hold C but, instead, essentially carried Student out of the classroom. Because the Principal used a technique that was not authorized by CPI, the SCO finds that Principal did not prioritize the prevention of harm to Student and, therefore, violated Rule 2620-R-2.01(3).

## 2. Hold D

Unlike Hold C, Student's behavior immediately preceding Hold D did not rise to the level of an emergency. Principal released Student from Hold C in the hallway after they exited the classroom. (FF # 56.) Student lay on the ground, kicking the wall and spinning in circles. (*Id.*) When Principal saw other students entering the hallway, Principal felt Student posed a safety risk to those students. (*Id.*) While lying on the ground—even spinning in circles and kicking the wall—Student did not pose a “serious, probable, imminent threat of bodily injury” to himself or others. See Rule 2620-R-2.00(4). Per CPI, a student lying or sitting on the ground does not pose a safety threat to himself or to others. (FF # 33.) The circumstances did not rise to the level of an emergency and, thus, the School did not have an appropriate basis to restrain Student. The SCO, therefore, finds a violation of Rule 2620-R-2.01(1).

## 3. Hold E

The record contains little information about the circumstances surrounding Hold E. While the record indicates that Student continued to escalate while in Hold D, the record contains little information about the nature of Student's escalation or any attempts by Principal at less restrictive alternatives.

Regardless, the SCO finds that the School violated the PPRA by failing to prioritize the prevention of harm to Student. As noted in Part II.A.2 above, the Principal used a CPI hold technique to transport Student. CPI does not authorize use of a Child Control Position for transport. (FF # 58.) As a result, the SCO finds that School violated Rule 2620-R-2.01(3).

#### 4. Seclusion

Restraints may only be used in an emergency. Rule 2620-R-2.01(1)(a). Prior to being secluded, Student was in the Decompress Room with the door open. (FF # 61.) Once Student began to slam the door, Principal became concerned that Student might injure himself in the door, so Principal closed the door, initiating the seclusion. (*Id.*) These circumstances do not evidence a “serious, probable, imminent threat of bodily injury to self or others.” Rule 2620-R-2.00(4). Even though Student could have undoubtedly injured his fingers in the door, the SCO does not find that the risk was serious, probable, or imminent enough to rise to the level of an emergency under the PPRA. While in seclusion, Student’s behavior undoubtedly constituted an emergency; however, the seclusion was not initiated as a result of an emergency and, in fact, the seclusion had to be interrupted due to the emergency. The SCO, therefore, finds the School violated Rule 2620-R-2.00(4).

Even if there were an emergency, restraints may be used only after the failure of less restrictive alternatives. *Id.* Here, nothing in the record indicates that Principal attempted any less restrictive alternatives before secluding Student. For example, Principal did not indicate that he tried to verbally de-escalate Student or use blocking to prevent Student’s access to the door. (See FF # 61.) Accordingly, the SCO finds that the School violated Rule 2620-R-2.01(1)(b) by restraining Student before exhausting less restrictive alternatives.

The PPRA prohibits the use of restraint as a punitive form of discipline or as a threat to gain control over a student’s behavior. Rule 2620-R-2.01(2). The record suggests that Principal secluded Student to prevent Student from slamming the Decompress Room door. (FF # 61.) As such, Principal used seclusion to gain control of Student’s behavior. Therefore, the SCO finds the School violated Rule 2620-R-2.01(2).

Finally, the PPRA requires that a school prioritize the prevention of harm to a student, while using a restraint for no longer and with no more force than necessary. Rule 2620-R-2.01(3). Principal secluded Student in a non-emergency setting that did not warrant the use of restraint. As a result, the seclusion inevitably lasted longer and used more force than necessary, in violation of Rule 2620-R-2.01(3)(a). Because the School did not satisfy any of the requirements of Rule 2620-R-2.01, the School did not have a basis to seclude Student on March 1.

### III. Notification Requirements

**Conclusion to Allegation No. 3: School violated the PPRA’s notification requirements by failing to provide Parent with a written report of the January 28, 2019 incident within five calendar days.**

Parent alleges the School failed to provide her with a written report regarding the restraint used on January 28, 2019.

Use of a restraint triggers the PPRA's documentation and notification requirements. Rule 2620-R-2.04. These requirements specify, in part:

- That the school provide parent a written report based on the findings of staff within five calendar days of the use of restraint. The report may be sent via email, fax, or mail. *Id.* 2620-R-2.04(4).

Though the PPRA imposes other requirements, this is the only requirement at issue in this Complaint.

The School's restraint of Student on January 28, 2019 triggered the PPRA notification requirements. Though the School verbally notified Parent of the incident that day, the School failed to provide Parent with a written report. (FF #s 44, 48.) Under Rule 2620-R-2.04(4), the School must provide parent a written report based on the findings of staff within five calendar days of the use of restraint. During his interview, Principal conceded that he did not send a written report to Parent because he believed the holds used did not rise to the level of a restraint. (FF # 48.) However, because the SCO determined that Hold A constituted a physical restraint, Principal was required to provide Parent with the report. Accordingly, the SCO finds that the School violated Rule 2620-R-2.04(4) by failing to provide Parent with a written report for the January 28, 2019 incident.

#### **IV. Annual Restraint Review**

##### **Analysis of Annual Restraint Review: The District's Annual Restraint Review lacks sufficient analysis to satisfy the requirements of the PPRA.**

In her Complaint, Parent did not specifically challenge the sufficiency of the District's Annual Restraint Review. However, evidence in the record—such as the incomplete incident report form from January and the violation of the training requirements—supports expanding the scope of the investigation in the Annual Restraint Review.

Under the PPRA, a school district must conduct an annual review of the use of restraint within the district. Rule 2620-R-2.05(2). The purpose of the review is to determine whether the district is:

- Properly administering restraint;
- Identifying additional training needs;
- Minimizing and preventing use of restraint by increasing positive behavior interventions; and
- Reducing incidents of injury to staff and students.

*Id.* Such review must include, but is not limited to: analysis of incident reports; training needs of staff; staff to student ratio; and environmental considerations. *Id.*

Behavior Specialist conducts the District's Annual Restraint Review by gathering information from incident reports submitted during the school year. (FF # 79.) The Annual Restraint Review contains the following information for each restraint: name of student, school, grade, date of restraint, disability category, location of restraint, name(s) of staff administering restraint, length of restraint, and whether the student attends one of the District's intensive learning centers. (FF # 81.)

But District's Annual Restraint Review contains little analysis and, instead, appears to be primarily a collection of data. To determine whether staff properly administered a restraint, Behavior Specialist consults the incident report form's checklist for "type of restraint used." (FF #s 83, 84.) If the staff member checks one of the first three boxes—for CPI Child Control, CPI Team Control, or seclusion—Behavior Specialist finds the restraint properly administered. (*Id.*) If the staff member checks "other" and identifies a specific hold, Behavior Specialist again finds the restraint properly administered. (*Id.*) Only where a staff member checks "other" without an explanation does Behavior Specialist inquire further. (*Id.*) By relying on the checklist, Behavior Specialist does not consider the underlying facts of the restraint. For example, if a staff member checked CPI Child Control but described a completely different (and improper) hold elsewhere within the report, Behavior Specialist would still find the restraint proper during the Annual Restraint Review.

The section of the Annual Restraint Review regarding additional training needs primarily discusses employee notification and compensation for training. The focus of the Annual Restraint Review is the District's use of restraint during the prior school year. *See* 2620-R-2.05(2). Behavior Specialist should be analyzing the type and format of the restraints used, as well as the preventative techniques used leading up to restraint, to determine whether District staff need extra training, for example, on a certain restraint technique.

For these reasons, the SCO finds that, as currently performed, the District's Annual Restraint Review fails to satisfy the PPRA's requirements. The cursory review performed by Behavior Specialist does not contain sufficient analysis to ensure proper use of restraint within the District and, thus, does not fulfill the PPRA's purpose.

### **RECOMMENDATIONS**

As outlined in this Decision, the District has violated the following PPRA requirements:

1. Failing to ensure staff utilizing restraint complete retraining at least every two years, in violation of Rule 2620-R-2.03(7);
2. Using restraints in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);

3. Using restraints without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective, in violation of Rule 2620-R-2.01(1)(b);
4. Using restraints as a punitive form of discipline or as a threat to control or gain compliance of a student's behavior, in violation of Rule 2620-R-2.01(2);
5. Using restraints for more time than necessary or using more force than necessary, in violation of Rule 2620-R-2.01(3)(a);
6. Using restraints without prioritizing the prevention of harm to the student, in violation of Rule 2620-R-2.01(3)(b);
7. Using a space for seclusion that is not free from injurious items, in violation of Rule 2620-R-2.02(2)(e)(iii);
8. Failing to comply with the documentation and notification requirements, in violation of Rule 2620-R-2.04(4); and
9. Failing to establish and complete an adequate annual review process, in violation of Rule 2620-R-2.05(2).

Pursuant to Rule 2620-R-2.07(9), the SCO has authority to make recommendations to the District of remedial actions that should be taken to bring the District into compliance with the PPRA and the Rules. Consistent with this authority, CDE makes the following recommendations:

- a) The District should implement additional procedures to ensure staff utilizing restraint—and, perhaps, any staff using physical intervention—complete retraining at least every two years;
- b) The District should provide Principal with additional training regarding identification of emergency situations under the PPRA;
- c) The District should provide Principal with additional training regarding not using restraint as a form of discipline or as a threat to gain control of a student's behavior; and
- d) The District should evaluate and strengthen the current annual review process to ensure Behavior Specialist is analyzing the underlying incident report forms to

determine whether the District is properly administering restraint and identify additional training needs or areas of growth for staff members.

CDE has not recommended further CPI training for Principal because Principal completed CPI certification training during the course of this investigation.

Using the information below, the District may contact Michael Ramirez at CDE for support in implementing these recommendations or for guidance regarding the requirements of the PPRA and the Rules.

Colorado Department of Education  
Exceptional Student Services Unit  
Attn.: Michael Ramirez  
1560 Broadway, Suite 1100  
Denver, CO 80202-5149

### **CONCLUSION**

The Decision of the SCO is final and is not subject to appeal. Rule 2620-R-2.07(9)(c). This Decision shall become final as dated by the signature of the undersigned State Complaints Officer.

Dated this 16th day of March, 2020.

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Ashley E. Schubert  
State Complaints Officer

## **Appendix**

### **Complaint, pages 1-10**

- Exhibit 1: Notice of Meeting, Behavior Support Plan, and IEP
- Exhibit 2: Email correspondence between Parent and the District
- Exhibit 3: Student Restraint Incident Report Form for March 1, 2019
- Exhibit 4: Comments on Student Restraint Incident Report Form for March 1, 2019
- Exhibit 5: District policies regarding restraint
- Exhibit 6: IEP and Behavior Support Plan
- Exhibit 7: Email correspondence between Parent and the District
- Exhibit 8: Email correspondence between Parent and the District
- Exhibit 9: Email correspondence between Parent and the District
- Exhibit 10: IEP and Behavior Support Plan
- Exhibit 11: Email correspondence between Parent and the District
- Exhibit 12: Email correspondence between Parent and the District
- Exhibit 13: Email correspondence between Parent and the District

### **Response, pages 1-4**

- Exhibit A: Annual Restraint Review for 2018-2019 school year
- Exhibit B: Restraint certifications for staff
- Exhibit C: District and School policies regarding restraint
- Exhibit D: Incident reports for Student for January 28, 2019 and March 1, 2019
- Exhibit E: Documentation regarding disciplinary incidents for Student
- Exhibit F: Student's behavior logs
- Exhibit G: Email correspondence between Parents and the District
- Exhibit H: Email correspondence between District staff regarding Student
- Exhibit I: CPI training materials
- Exhibit J: Identification of staff with knowledge of allegations
- Exhibit K: Social Worker's notes regarding January 28, 2019 incident
- Exhibit L: Behavior Specialist's notes regarding March 1, 2019 incident
- Exhibit M: Principal's sketch of Decompress Room

### **Telephonic Interviews**

- Executive Director of Special Education: February 21, 2020
- Principal: February 24, 2020
- Special Education Resource Teacher: February 24, 2020
- P.E. Teacher: February 24, 2020
- Teacher: February 24, 2020
- Social Worker: February 24, 2020
- Health Room Paraprofessional: February 24, 2020
- Director of Special Education for Southwest Network: February 28, 2020

- Parent: February 28, 2020
- Former Principal: March 2, 2020
- Behavior Specialist: March 2, 2020