

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

**State-Level Complaint 2022:531
Colorado Springs School District 11**

DECISION

INTRODUCTION

On July 5, 2022, the parents (“Parents”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Colorado Springs School District 11 (“District”).

The State Complaints Officer (“SCO”) determined that the Complaint identified allegations subject to the jurisdiction of the state-level complaint process under the IDEA and its implementing regulations at 34 C.F.R. §§ 300.151 through 300.153, as well as the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)² and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”)³. The SCO has jurisdiction to resolve the Complaint pursuant to these regulations.

On July 20, 2022, upon the agreement of both parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in impasse, and, on August 11, 2022, the SCO resumed the investigation.

On September 8, 2022, the SCO extended the 60-day investigation timeline due to exceptional circumstances arising from the SCO’s medical leave of absence, and another family medical emergency, consistent with 34 C.F.R. § 300.152(b)(1).

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has authority to investigate alleged violations of IDEA and PPRA that occurred not more than one year from the date the original complaint was

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

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

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

filed. 34 C.F.R. § 300.153(c); Rule 2620-R-2.07(2)(f). Accordingly, this investigation will consider only events that occurred not earlier than July 5, 2021 to determine whether a violation of IDEA or PPRA occurred. 34 C.F.R. § 300.153(c); Rule 2620-R-2.07(2)(f). Additional information prior to this date may be considered to fully investigate all allegations accepted in this matter. Findings of noncompliance, if any, shall be limited to one year prior to the date the Complaint was filed.

SUMMARY OF COMPLAINT ALLEGATIONS

1. Whether District denied Student a Free Appropriate Public Education (“FAPE”) because District:
 - a. Failed to properly implement Student’s IEP, specifically by failing to follow Student’s Behavioral Intervention Plan on May 6, 2022 and May 9, 2022, in violation of 34 C.F.R. § 300.323.
2. Whether District improperly restrained Student on November 4, 2021, December 14, 2021, May 5, 2022, May 6, 2022, May 9, 2022, May 10, 2022 and May 12, 2022, 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 Student’s behavior, in violation of 2620-R-2.01(2); and
 - d. Failing to comply with the documentation and notification requirements for restraint, in violation of Rule 2620-R-2.04.

FINDINGS OF FACT

After thorough and careful analysis of the entire Record,⁴ the SCO makes the following FINDINGS:

A. Background

1. Student is a creative, curious, and outgoing 10-year-old, with a love of Minecraft and a great imagination. *Interviews with Special Education Teacher, Parent, and School Psychologist; Exhibit A*, p. 2. Student qualifies for special education and related services under the Autism Spectrum Disorder disability category, with private diagnoses of oppositional defiant

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

disorder, attention deficit hyperactivity disorder, and anxiety. *Exhibit K*, pp. 1, 51; *Exhibit C*, p. 44.

2. Due to his disability, Student displays difficulties with social skills and pragmatics (especially in less structured environments), emotional regulation, attention to tasks, work initiation/completion, change, and applying skills in new settings, and weakness in developing and maintaining relationships; all of which impact his ability to progress in the general education classroom. *Exhibit K*, p. 6.
3. During the 2021-2022 academic year, Student attended 4th grade at a District elementary school ("School"). *Id.* at p. 51. At the beginning of the 2021-2022 academic year, Student's November 9, 2020 IEP ("2020 IEP") was in effect. See *Exhibit K*, pp. 33-50. The 2020 IEP included a behavior intervention plan ("2020 BIP"). *Exhibit A*, pp. 2-4.
4. From August through October 2021, Student only attended School during the mornings for approximately three hours and 25 minutes each day at Parents' request. *Response*, p. 2; *Interviews with Parents*. Student attended a private ABA treatment center ("ABA Center"), where he worked on social/emotional regulation for the remainder of the day (although Student was given time to work on assignments at ABA Center, academic instruction was not provided). *Response*, p. 2; *Interviews with Parents*.
5. In November of 2021, at the advice of ABA Center staff, Parents increased Student's time at ABA Center to 40 hours each week and decreased his time at School to a total of approximately one hour and 25 minutes each morning, five days a week. *Response*, p. 2; *Interviews with Parents*.

B. The 2021 FBA and the 2021 BIP

6. On November 1, 2021, a properly constituted IEP Team met to review and revise the 2020 IEP ("2021 IEP") and update the 2020 BIP ("2021 BIP"). *Exhibit K*, p. 20. A functional behavioral assessment ("FBA") was completed to identify positive behavioral supports for the 2021 BIP. *Exhibit A*, p. 5; *Interview with School Psychologist*.

The 2021 FBA

7. The 2021 FBA was developed through a review of records, observation, and input from IEP Team members. *Exhibit A*, p. 5.
8. The 2021 FBA identified Student's target behaviors as work refusal and aggression. *Id.* When Student is presented with a task or directive that he finds undesirable, he engages in refusal behaviors including ignoring, verbally arguing, and sometimes aggression toward objects and people and egression to delay or avoid the directive. *Id.*

9. The 2021 FBA reported that Student’s target behaviors are more likely to occur on days when he has not slept well or where there has been a change at home or in plans or his usual routine. *Id.*

The 2021 BIP

10. The 2021 BIP’s strength-based profile section documented that Student is a “bright” child who loves to share his ideas and interests with others. *Id.* He is creative, innovative, and artistic, and he enjoys drawing and playing games. *Id.*
11. The strategies/outcomes worksheet envisioned a setting where Student is given advance warning of changes to his schedule or expectations where possible, and allowed breaks when changes are made. *Id.* Antecedent strategies included chunking tasks to reduce visual presentation; using first/then strategies for reinforcement; and short, clear, and concise language for giving directives (and only one directive at a time when the directive is unexpected, or Student has been emotionally escalated recently). *Id.*
12. Behavior teaching strategies included teaching emotional regulation strategies (as well as how to identify strong feelings), not engaging in “arguing back behavior,” and use of simple statements like “let me know when you are ready.” *Id.* If Student is aggressive more than three times in 60 seconds, follow the “procedure for recovery” (10 minutes of safe behavior, followed by “recovery questions”). *Id.* The “recovery questions” were a pre-set series of questions designed to help Student develop alternative strategies for social/emotional regulation (what happened, what were the effects on him and others, what are some solutions, and what can he do differently next time). *See, e.g., Exhibit C, p. 69; Interview with School Psychologist.*
13. School Psychologist explained that the “recovery procedure” is used as a restorative process to teach new behavioral strategies. *Interviews with School Psychologist and Special Education Teacher.* Although Student expresses guilt and remorse after behavioral incidents, he does not make a “plan B” for future incidents. *Id.* Thus, when he is calm, staff use the “recovery procedure” as an opportunity to explore alternative behavioral strategies. *Id.*
14. The Crisis Prevention Institute’s Nonviolent Crisis Prevention Program (“CPI”) teaches a coping model which teaches staff to process behavioral incidents with a student, provided doing so is part of a recovery process. *Consultation with CDE Content Specialists 1 and 2.* This can help a student generate positive thought processes, develop ways to problem solve, and build support, and it can further be a preventative tool to address future behavioral incidents. *Id.*
15. Reinforcement strategies in the 2021 BIP included frequent access to preferred items and activities as a reward for completion and compliance. *Exhibit A, p. 5.*

16. A crisis intervention plan provided that if Student engages in significant or continued aggression toward objects or people, crisis response strategies as outlined in District policies will be followed. *Id.* If Student egresses from an area within the building or on school grounds, support staff will be alerted to track his location. *Id.* If Student egresses outside the building and off school grounds, District security “may” be contacted, and Parents will be alerted. *Id.*
17. The criterion for success indicated Student would decrease instances of aggression toward objects and people by 66 percent (baseline of 18 instances per month) per month for three consecutive months (to be tracked and monitored using a chart). *Id.* at p. 5.
18. School Psychologist was responsible for ensuring teachers and service providers were aware of their responsibilities under the 2021 BIP, as well as communicating about the 2021 BIP with Parents. *Id.* at pp. 5-6.

Accessibility of 2021 BIP to Student’s Teachers and Service Providers

19. School Psychologist provided Student’s teachers and service providers, as well as the administrative staff that were sometimes called to support Student during times when Student became escalated, with a physical copy of the 2021 BIP. *Interviews with School Psychologist, Special Education Teacher, School Counselor, Assistant Principal, and Principal.* Staff also had access to the 2021 BIP through School’s shared drive, and School Psychologist trained support paraprofessionals on the 2021 BIP at regular meetings. *Interviews with School Psychologist and Special Education Teacher.*
20. Throughout the year, the special education team (including paraprofessionals) met every two weeks with School Psychologist to discuss, among other things, the 2021 BIP, and the “certified staff” met weekly to discuss the 2021 BIP and Student’s behavioral needs. *Id.* School Psychologist further explained that she was with Student frequently, so she could observe and monitor his behavior and provide feedback to other staff about the 2021 BIP. *Interview with School Psychologist.*
21. From November 2021 through May 2022, Student exhibited frequent behaviors requiring an intervention under the 2021 BIP, such as aggression and elopement. *Response*, p. 2; *Interviews with School Psychologist, Principal, Assistant Principal, Special Education Teacher, and School Counselor.* This investigation concerns District’s actions during several behavioral incidents, which occurred from November of 2021 through May of 2022.

C. District's Behavior Management System and Staff Training

22. District uses CPI for crisis intervention and behavior management. *Exhibit F*, p. 8; *Exhibit N*, p. 17; *Exhibit E*, pp. 2-10; *Exhibit M*, pp. 1-32; *Interview with Director of Special Education*. CPI teaches a variety of interventions to prevent escalation and, hopefully, avoid the need for physical intervention. *Consultation with CDE Content Specialist 1*. Under CPI, physical intervention should only be used as a last resort, after attempts of lesser restrictive interventions have failed. *Id.*
23. District requires CPI certification for all special education staff and service providers, as well as any staff members who are likely to be in situations where restraint might be necessary. *Interview with Director of Special Education; Exhibit F*, p. 8; *Exhibit N*, p. 17.
24. District offers CPI trainings in an “ongoing manner” throughout the year, as well as at District’s professional development days. *Interview with Director of Special Education*. District employs eight behavior interventionists, and every District school has a behavior interventionist assigned to that school for training and support. *Id.* Under District policy and procedure, staff must retrain at a frequency of at least every two years. *Exhibit F*, p. 8; *Exhibit N*, p. 17.
25. All the staff members involved in the disciplinary incidents at issue in this investigation held active CPI certifications from November 2021 through May 2022. *Exhibit E*, pp. 2-10. Special Education Teacher received CPI certification on May 12, 2021. *Id.* at p. 3. School Psychologist received CPI certification on May 12, 2021. *Id.* at p. 4. Principal received CPI certification on June 7, 2021. *Id.* at p. 5. Assistant Principal received CPI certification on October 14, 2020. *Id.* at pp. 8-10. School Counselor is a certified CPI instructor since October 26, 2020. *Id.* at p. 2.

D. Policies and Procedures Regarding Physical Interventions and Restraints

26. Under District policy and procedure, District staff may only use restraint in cases of emergency and with extreme caution after the failure of less restrictive alternatives (such as positive behavioral supports, constructive and non-physical de-escalation, and restructuring the environment) and after the staff member determines that such alternatives would be inappropriate or ineffective under the circumstances. *Exhibit F*, p. 6; *Exhibit N*, p. 15.
27. If a staff member restrains a student, the staff member must complete a Restraint Report and deliver it to the principal no later than one school day, and the principal then reviews the use of restraint to ascertain that appropriate procedures were followed and minimize the future use of restraint. *Exhibit F*, p. 9; *Exhibit N*, p. 18. The principal must then provide the parents with a written report of the incident within five days of the use of restraint, and

if requested by the parents, convene a meeting to review the incident. *Exhibit F*, p. 9; *Exhibit N*, p. 18.

28. At least once a year, the Office of the Assistant Superintendent of Personnel Support Services looks at all reports regarding incidents involving restraints and completes a Yearly Summative Use of Restraint Form. *Exhibit M*, p. 31; *Exhibit F*, p. 10; *Exhibit N*, p. 19; see *Exhibit D*, p. 2. The purpose of this annual review is to ensure that District is properly administering restraint, identify additional trainings needed, minimize the use of restraint, and reduce incidence of injury to students and staff. *Exhibit M*, p. 31.
29. Under District policy and procedure, “seclusion” is defined as the placement of a student alone in a room from which egress is involuntarily prevented and is prohibited. *Exhibit F*, p. 13; *Exhibit N*, p. 15.
30. District’s policies and procedures addressing physical intervention and restraints were reviewed and revised on August 24, 2022 to reflect changes to PPRA effective May 26, 2022.⁵ Upon review, the SCO finds that District’s policies and procedures concerning restraints are consistent with IDEA and PPRA.

E. Incident No. 1 (November 4, 2021)

31. The first behavioral incident at issue in this investigation occurred on November 4, 2021 (“Incident No. 1”). *Exhibit C*, p. 4. Student attempted to elope from School and was sent to School’s “recovery room” (“Recovery Room”) to complete work until he was picked up by Parents. *Exhibit C*, p. 4. Parents’ concern is that by sending Student to the Recovery Room, District secluded Student when it was not an emergency, and without first considering less restrictive alternatives. *Complaint*, p. 5; *Interview with Parents*.
32. District’s position is that Student was not secluded in the Recovery Room because he was never alone in the room as staff members were always present with him. *Response*, p. 4.

Incident Details

33. On November 4, 2021, Student became upset after being told he needed to complete a unit assessment in his classroom, so he was taken to a special education classroom for a change of environment. *Exhibit C*, pp. 4, 42-43; *Response*, p. 4. While in the special education classroom, he became escalated, was aggressive toward School Psychologist (hitting and slapping), and then eloped through an exterior door which led to the front of School. *Exhibit C*, p. 4; *Interview with School Psychologist*.

⁵ For further information on the changes to PPRA, effective May 26, 2022, please see House Bill 22-1376: [Supportive Learning Environments For K-12 Students | Colorado General Assembly](#).

34. Principal was called for support, and he caught up with Student outside before Student made it off School property. *Id.*; *Interview with Principal*. Principal asked Student to come back inside, and Student voluntarily walked back to the Recovery Room. *Exhibit C*, p. 4; *Interview with Principal*.

The Recovery Room

35. The Recovery Room is a small, eight-by-seven-foot room sometimes used by School Psychologist for a social skills group as well as by speech/language staff for therapy sessions. *Interview with School Psychologist*. The space is also sometimes used by paraprofessionals as an “educational place” for students. *Id.* Formally a storage room, the Recovery Room contains a bean bag, a large board with recovery strategies that School Psychologist designed for a social skills group, and desks (although items were removed from the room for safety on occasions when Student went to the room in an escalated state). *Interviews with School Psychologist and Principal*.
36. Student was previously familiar with the Recovery Room through his participation in a social skills group with School Psychologist. *Interview with School Psychologist*. Principal explained that Student was taken to the Recovery Room on November 4 because the Recovery Room does not have an exterior door leading outside, and staff were concerned Student would make another attempt to elope off School grounds (most classrooms at School have exterior facing doors which lead directly outside of School). *Interview with Principal*. The Recovery Room does not have a window, and only contains one door, which leads to the interior of School. *Interviews with Principal and School Psychologist*.
37. On November 4, following his elopement, Student spent approximately 2 hours in the Recovery Room and completed an assignment in the room before Parent came to pick him up at the end of the day. *Exhibit C*, p. 4; *Interviews with Principal and Special Education Teacher*. During this time, Student was never alone in the room, and always had at least one adult in the room with him (the practice at School is for at least two staff members to remain with a student if the student is escalated). *Interviews with Principal, School Psychologist, and Special Education Teacher; Exhibit C*, p. 44. Parents do not allege, and the Record does not demonstrate, that Student was alone in the Recovery Room at any point on November 4. *Interview with Parents; see Complaint*, p. 4; *see Reply*, pp. 1-7.

F. Incident No 2 (December 14, 2021)

38. The second behavioral incident at issue occurred on December 14, 2021 (“Incident No. 2”). *Exhibit C*, p. 6. Parents’ concern is that District staff used the threat of physical restraint to gain compliance over Student, by telling him he needed to go the Recovery Room or Principal would “put hands” on him and transport him. *Complaint*, p. 5; *Interview with Parents*. Parents further allege that Student was thereafter secluded in the Recovery Room for approximately one hour before leaving for ABA Center. *Interview with Parents*.

39. District's position is that Student was given the choice to walk on his own to the Recovery Room or to have Principal "physically help" Student get there, but Principal did not threaten Student. *Response*, p. 4; *Interview with Principal*. District further contends that Student was not secluded in the Recovery Room because he was never alone. *Response*, p. 3.

Incident Details

40. On December 14, Student was supposed to participate in testing. *Response*, p. 4. Student historically struggles with testing, so Parent came to School to assist District staff with Student. *Interview with Parents*.
41. Prior to Parent's arrival, Student became escalated and ran from the special education department to his general education classroom. *Exhibit C*, pp. 6, 49; *Interview with Parents*. At the time, Student's classmates were in the library (although they were scheduled to return to the classroom). *Exhibit C*, pp. 6, 49; *Interview with Principal*.
42. Upon arriving in the classroom, Student began throwing chairs and stools, so Principal and School Psychologist were called for support. *Exhibit C*, p. 6. Upon School Psychologist's arrival, Student went to a table by the teacher's desk, where he sometimes went when he was escalated and "needed a minute." *Interview with School Psychologist*. Consistent with the 2021 BIP, Student was given space, and once he appeared calmer, the teacher checked in with him to see if he was ready to talk; however, this resulted in Student re-escalating. *Id.*; see *Exhibit A*, p. 5.
43. When Parent arrived, Student was under the table, highly upset and crying. *Interview with Parents*. Parent had two beverages and donuts with her, which she set down upon entering the room. *Exhibit C*, p. 6. Student left the table and crossed the room, then threw the beverages and donuts, creating a mess on the walls and floor, damaging books in the teacher's personal library, and stomping the donuts into the carpet before returning under the table. *Id.*; *Interviews with Principal and School Psychologist*. Soon after, Principal arrived at the classroom. *Exhibit C*, p. 42.

Principal's Statement to Student

44. At this time, Student's classmates had been sequestered in the library for approximately 15 minutes past their scheduled return to the classroom, so Principal approached Student, and told Student that he needed to go to the Recovery Room. *Interviews with Principal and School Psychologist*. Principal gave Student the choice to walk on his own or Principal would assist him. *Interviews with Principal and School Psychologist*. Student responded by walking to the Recovery Room on his own, although Parent indicates this exchange made Student start crying. *Interview with Parents*.

45. Parent indicates Principal spoke sternly, as if he were speaking “like a parent when a child is misbehaving” and told Student he needed to walk to the Recovery Room or Principal would “put hands on him.” *Interview with Parents*. Parents’ position is that this constituted a threat of restraint used to gain compliance over Student. *Id.*
46. Principal indicates his intention was not to threaten Student, but to give him the option of walking on his own. *Interview with Principal*. Restraints and CPI techniques are never used at School for discipline, and Principal wanted Student to understand that he had to leave the classroom so the rest of the class could return. *Id.*
47. Principal explains that had Student refused to go to the Recovery Room on his own, Principal would have used minimal physical contact to help escort Student, but would not have grabbed or carried Student, unless doing so was necessary in an emergency in which Student was a danger to himself or others, and even then, only as a last resort. *Id.*
48. CPI teaches a technique known as “setting limits” which involves providing a student with options (e.g., you can go on your own and maintain independence) as well as a technique known as “isolating the situation” which provides that if a student dysregulates, the presence of an audience increases the likelihood that the student will further dysregulate. *Consultation with CDE Content Specialist 1*. In situations where it is not feasible to remove the audience, it may be more feasible to remove the actor (i.e., remove the dysregulated student). *Id.* Choosing whether to remove the actor or audience is a judgment call based on the size of the audience and feasibility of removing the actor versus the audience. *Id.*
49. Principal used the “setting limits” technique to provide Student with the option to walk to the Recovery Room on his own, and by removing Student from the classroom before the rest of the class returned from the library, Principal used the “isolating the situation” technique to minimize the likelihood that Student would have an audience and further dysregulate. *Id.* The SCO finds, upon consultation with CDE Content Specialists 1 and 2, that Principal made a reasonable judgment call using options he was trained on during CPI training, and under the circumstances, his statement to Student did not constitute a threat of restraint to gain compliance. *Consultation with CDE Content Specialists 1 and 2*.

The Recovery Room

50. Following Principal’s interaction with Student in the classroom, Student voluntarily walked to the Recovery Room, along with Parent, Principal, School Psychologist, and School Counselor. *Interviews with Parent, School Psychologist, Principal, and School Counselor*. Once in the room, Student pushed School Counselor, and security was called for support (although security remained in the hallway outside of the room). *Exhibit C*, p. 6.
51. District staff went through the “procedure for recovery” outlined in the 2021 BIP with Student in the Recovery Room while Parent spoke to the security officer. *Interviews with*

Parent and School Psychologist. When Parent returned to the room a few minutes later, Student was answering “recovery questions” and, after a time, he deescalated and calmed down. *Id.*; *Exhibit C*, p. 6.

52. In total, Parents estimate Student remained in the Recovery Room for approximately one hour before leaving to be picked up by ABA Center staff for transportation to ABA Center. *Interview with Parents*. District staff and Parents agree, however, that Student was not alone in the Recovery Room during this time, and that Student always had at least one staff member in the room with him. *Interviews with Parents, School Psychologist, Principal, and School Counselor*.

The Continuum Room

53. Following Incident No. 2, District determined that a larger room was necessary for occasions when Student was escalated and made plans to instead use School’s “continuum room” (“Continuum Room”) on occasions when Student was escalated and/or needed a change of environment. *Interviews with Principal and School Psychologist*.
54. The Continuum Room is a full-size classroom at School that is used both for instruction and lessons. *Interview with Principal*. A corner of the Continuum Room containing a beanbag was reserved for Student as a “safe space” where he could retreat when he needed space (“Calming Corner”). *Interviews with Principal, School Psychologist, and Special Education Teacher*. Following Incident No. 2, Student only went to the Continuum Room and not the Recovery Room. *Interviews with Principal, School Psychologist, and School Counselor*.

G. Student Begins Attending School Full Time (March 2022)

55. On March 18, 2022, prior to spring break at School, Parents sent Principal an email indicating that they withdrew Student from ABA Center and wished to have Student begin attending School full time, starting on March 28, 2022. *Response*, p. 4; *Exhibit G*, p. 2.
56. Leading up to this point, Student had been “struggling significantly” with aggression and elopement at School. *Interview with School Psychologist; Response*, p. 2. Although staff initially saw an increase in both the frequency and intensity of aggression and elopement when Student began attending School full time, staff started to observe some improvements with aggression over the course of April 2022 as Student “started to understand the expectations” (although behaviors like work refusal were a near daily occurrence). *Interview with School Psychologist*.
57. However, in early May 2022, District staff observed a dramatic increase in Student’s aggression and elopement behaviors, both in terms of frequency and intensity. *Interviews with School Psychologist, Principal, Assistant Principal, Special Education Teacher, and School Counselor*. District staff indicate that the increase may have been the result of a

change to medication that Parents were in the process of weaning Student from. *Interviews with School Psychologist, Special Education Teacher, School Counselor, and Parents*. Parents suggest Student’s behavior may have been impacted by their recent divorce. *Interview with Parents*. This increase in aggression and elopement behaviors culminated in five behavioral incidents which occurred on May 5, 6, 9, 10, and 12. *Exhibit C*, pp. 16-39.⁶

H. Incident No. 3 (May 5, 2022)

58. The third behavioral incident at issue in this investigation occurred on May 5, 2022 (“Incident No. 3”). *Exhibit C*, pp. 16-17. On May 5, Student eloped from a classroom, hit/kicked a staff member, and was thereafter asked to work on his assignments in the office with Principal. *Response*, p. 5; *Interview with Principal*. Parents’ concern is that by having Student complete work in the office with Principal, District secluded Student, and did not reintegrate Student into the classroom when Student deescalated and the emergency subsided. *Complaint*, p. 4; *Interview with Parents*.
59. District’s position is that Student was not secluded because he was never alone in the office as at least one staff member was always with him while he completed work. *Response*, p. 5.

Incident Details

60. Student was in the Continuum Room with School Psychologist and Behavior Interventionist, working on math problems. *Exhibit C*, p. 16. During math support Student began throwing items in the room and tearing papers. *Id.* at p. 17. After a time, Student calmed down, complied with the “recovery procedure” from the 2021 BIP, worked on the math problems, and then indicated he was ready to return to the general education classroom. *Id.*
61. Instead of returning to class, Student ran to the front office and sat by the entrance, where other students were coming into the office. *Id.* School Psychologist stood in between the other students and Student (asking those other students to leave), and Student hit School Psychologist six times and kicked her once. *Id.*
62. Principal was called for support, and upon his arrival, Student stopped hitting/kicking. *Id.* Student was asked to stay in the office with Principal and remained there for the rest of the afternoon working on assignments. *Id.* Parents do not allege, and the facts do not demonstrate, that Student was ever left alone in the office (there was always at least one staff member with him throughout the afternoon). *Id.*; *Interviews with School Psychologist and Principal*.

⁶ These behavioral incidents that occurred in May 2022 implicate concerns related to discipline, least restrictive environment, IEP implementation, and IEP/BIP development. On May 20, 2022, prior to the filing of this Complaint, Parents filed a due process complaint which raises issues to include discipline, least restrictive environment, IEP/BIP development and implementation, and placement which cover the times at issue in this investigation. Since these issues are being resolved in the due process matter, this SCO does not have authority to resolve them pursuant to 34 C.F.R. 300.152(c).

I. Incident No. 4 (May 6, 2022)

63. The fourth behavioral incident at issue occurred the following day, on May 6, 2022 (“Incident No. 4”). *Exhibit C*, pp. 10, 17-29. Over the course of the day, Student exhibited significant elopement and aggression behaviors, and District staff administered multiple CPI holds. *Id.* Parents’ concern is that Student was secluded and physically restrained in a non-emergency situation without the consideration of less restrictive alternatives. *Complaint*, pp. 1-6; *Interview with Parents*.
64. District’s position is that Student was never secluded because he was never alone without a staff member present, and although CPI holds were administered, they were administered by CPI certified staff members using CPI approved techniques in emergency situations, and none of the holds used lasted long enough to qualify as a physical restraint under PPR. *Response*, p. 8.

Incident Details

65. When Student arrived at School, School Counselor met him in the hallway with Parent to walk him to the classroom. *Exhibit C*, p. 19. In the hallway after Parent left, Student told School Counselor to shut up and cussed at her, so School Counselor and Special Education Teacher took Student to the Continuum Room. *Id.*
66. Upon entering the Continuum Room, Student opened his lunchbox and threw his food into the trash, went to the Calming Corner, covered himself on a beanbag, and told staff he did not need to do anything at School. *Id.* In accordance with the 2021 BIP, staff gave Student space, and asked him to let them know when he was ready to talk. *Id.*; see *Exhibit A*, p. 5.

Elopement and Walk to Continuum Room

67. Approximately an hour later, Student stood up, paced the room, threw papers, tipped a table, and then attempted to leave through a door that led to the exterior of School. *Exhibit C*, pp. 19-20. Although two staff members were in the room with Student, they were unable to block his exit, and support staff was called. *Id.* at p. 20.
68. Student made it outside to the blacktop area but was blocked by two staff members before he could leave School grounds. *Id.* Student was asked to come back inside, but he refused and tried to leave. *Id.* Five staff were outside by this time, and Special Education Teacher and Assistant Principal walked with Student to the Continuum Room. *Id.*
69. On the way to the Continuum Room, both Special Education Teacher and Assistant Principal put their arms underneath Student’s arms and guided him as he walked into the building. *Interviews with Assistant Principal and Special Education Teacher*. Neither staff member

grabbed or carried Student, and although Student made a few attempts to kick staff, he allowed himself to be escorted back to the Continuum Room. *Id.*

CPI Holds No. 1 and 2

70. Upon returning to the Continuum Room Student began crying and went to the Calming Corner. *Exhibit C*, p. 20. Student cursed and called staff names from the Calming Corner, then abruptly came out of the corner, and physically hit and kicked staff (approximately five hits and two kicks). *Id.*; *Interviews with Special Education Teacher and Assistant Principal*. Special Education Teacher attempted unsuccessfully to place Student in a one-person CPI hold for 30 seconds (“CPI Hold No. 1”), then Special Education Teacher and Assistant Principal placed Student in a two-person CPI hold for 12 seconds (“CPI Hold No. 2”). *Exhibit C*, p. 20; *Interviews with Special Education Teacher and Assistant Principal*.
71. Special Education Teacher explained that for CPI Hold No. 1, she unsuccessfully attempted to administer a standing one-person hold for approximately 30 seconds by positioning herself behind Student and holding Student’s wrists, but Student was too strong for her to successfully administer the hold, so she asked another staff member to assist with the standing CPI Hold No. 2. *Interview with Special Education Teacher*.
72. During CPI Hold No. 2, Assistant Principal and Special Education Teacher stood positioned on either side of Student, with their hips securing him, and their legs in front of his legs. *Interviews with Assistant Principal and Special Education Teacher*. Staff had their arms underneath Student’s arms, and Student was leaned forward slightly. *Id.* Special Education Teacher indicates the hold is known as the “team control position” and that the hold was chosen because Student was attempting to kick staff. *Interview with Special Education Teacher*. Once Student stopped struggling and attempting to kick staff, staff released him, and he went back to the Calming Corner. *Interviews with Assistant Principal and Special Education Teacher; Exhibit C*, p. 20.
73. In accordance with the 2021 BIP, Student was given space, and he was asked again to let staff know when he was ready to talk by telling them or signaling with a “thumbs up.” *Exhibit C*, pp. 20-21; *Interviews with Assistant Principal and Special Education Teacher*.
74. Approximately ten minutes later, Student again came out of the Calming Corner and threw shoes and lunchbox at staff. *Exhibit C*, p. 21. Student threw chairs at staff and attempted to hit Assistant Principal and Special Education Teacher with a closed fist a total of four times. *Id.* School Counselor came into the Continuum Room to assist, and after a few minutes, Student went back to the Calming Corner and covered himself with the beanbag. *Id.*

CPI Hold No. 3

75. Student remained in the Calming Corner for about another ten minutes, then indicated he was ready to speak with School Counselor and do the “recovery procedure” from the 2021 BIP. *Id.* After some discussion with School Counselor, Student began to re-escalate, first by ripping paper and throwing things, then by charging toward staff and hitting and kicking (approximately five hits and four kicks). *Id.*
76. Student was directed to stop hurting staff, and told if he did not stop hitting, he would be placed in a hold. *Id.* Student continued to hit staff, and Special Education Teacher and Assistant Principal put him into a two-person CPI hold (“CPI Hold No. 3”) for approximately 15 seconds until he stopped kicking, at which point he was released. *Id.*; *Interviews with Assistant Principal and Special Education Teacher.*
77. CPI Hold No. 3 was the same “team control position” hold described above for CPI Hold No. 2, with two staff members standing positioned on either side of Student, with their hips securing Student, and their legs in front of his legs. *Interviews with Assistant Principal and Special Education Teacher.* Upon being released, Student went to the beanbag in the Calming Corner, then came to the table and again said he was ready to talk to School Counselor. *Exhibit C, p. 22.*
78. While going through questions from the “recovery procedure” with School Counselor, Student stopped answering and again returned to the beanbag. *Id.* During this time, he occasionally talked about how he was going to get picked up from School and how he did not have to do anything, swore, and called staff names. *Id.* Staff again told Student to let them know when he was ready to talk by telling them or signaling with a “thumbs up.” *Id.*

CPI Hold No. 4

79. About an hour later, Assistant Principal and Special Education Teacher were in the Continuum Room with Student when he left the Calming Corner, crossed the room, and began “swiping his hands towards staff.” *Id.* at p. 22. Student kicked twice and headbutted a staff member, so a standing two-person hold was used (“CPI Hold No. 4”). *Id.* CPI Hold No. 4 was the same two-person hold used previously, and it lasted approximately 18 seconds before Student was released and given space. *Id.*; *Interviews with Assistant Principal and Special Education Teacher.*
80. Upon his release, Student began walking around the room, turning desks around to look inside them, and “looking in all corners of the room.” *Exhibit C, p. 22.* Student paced for a few minutes, then returned to the Calming Corner and got underneath the beanbag. *Id.* Student was again told to let staff know when he was ready to talk. *Id.*

CPI Holds No. 5 and 6

81. After some time, Student left the Calming Corner and began throwing punches and kicks toward staff, making contact three times. *Id.* at p. 23. Student was told to stop, or he would be put in a hold. *Id.* Student continued to swing and made contact two more times, so Assistant Principal and Special Education Teacher administered the same standing two-person CPI hold used previously (“CPI Hold No. 5”), for 15 seconds, and released Student. *Id.*; *Interviews with Assistant Principal and Special Education Teacher.* Staff stepped quickly away to give Student space, and Student stood up, pushed tables and shelf over, and threw a chair at staff. *Exhibit C*, p. 23.
82. Student then lunged at staff swinging his arms and making contact several times, so staff placed him in the same standing two-person CPI hold (“CPI Hold No. 6”) for ten seconds, then released him again. *Id.*; *Interviews with Assistant Principal, Special Education Teacher, and School Counselor.* Upon being released the second time, Student returned to the Calming Corner, and staff removed all chairs from the room for safety. *Id.* Student was given space, and again told to let staff know when he was ready to talk and help clean up. *Id.*

CPI Hold No. 7

83. Approximately 20 minutes later, Student once again came out of the Calming Corner and began swinging, kicking, and throwing items such as trash cans and plastic crates. *Id.* at p. 24. When Student left the Calming Corner and approached staff, he was told again that he needed to be safe and stop hitting, or staff would have to use a hold again. *Id.*
84. Student continued toward staff and hit staff three more times with a closed fist. *Id.* Assistant Principal and Special Education Teacher placed Student in the same standing two-person CPI hold (“CPI Hold No. 7”) for 15 seconds until Student stopped struggling, then released him and gave him space. *Id.*; *Interviews with Assistant Principal, Special Education Teacher, and School Psychologist.* School Psychologist reported witnessing the “tail end” of CPI Hold No. 7 and confirmed it involved a staff member of either side of Student, with their hips securing him in place, their hands on his wrists and shoulders, and Student’s arms wrapped around their sides. *Interview with School Psychologist.* School Psychologist indicated CPI Hold No. 7 was performed briefly in her presence before Student was released. *Id.*
85. Upon release, Student went back across the room, ripped a paper towel dispenser off the wall, and threw it toward staff. *Exhibit C*, p. 24. Staff removed the dispenser from the room, and Student returned to the Calming Corner. *Id.*
86. At approximately 12:15 p.m., Student was reminded it was lunchtime, and asked if he was ready to clean up, use the restroom, and go through the “recovery procedure” before eating lunch. *Id.* pp. 24-25. Assistant Principal spoke with Parent on the phone and informed

Parent that, because of his behavior, the decision had been made to give Student an in-school suspension (“ISS”). *See Id.* at p. 25.

87. Assistant Principal then informed Student of the ISS, and approximately 20 minutes later, Student began to clean up and go through the “recovery procedure” from the 2021 BIP. *Id.* Student completed the “recovery procedure” and ate lunch. *Id.* After lunch, he apologized to Special Education Teacher before going to Assistant Principal’s office for the ISS. *Id.*
88. School Psychologist and School Counselor sat in the office with Student, and Student was given assignments to complete. *Id.* pp. 26-27. Special Education Teacher joined them approximately ten minutes later, and Student was given a choice of what he wanted to work on first. *Id.* at p. 27.
89. After initially refusing, Student indicated he was ready to work, but broke the pencil he was provided. *Id.* He asked for it to be sharpened before writing. *Id.* Special Education Teacher instead provided Student with a new pencil, and Student responded by saying, “I will punch you in the neck so hard you will not be able to breathe.” *Id.* Student began pacing the room, and staff stayed back to give him space. *Id.*
90. While pacing around the room, Student began hitting staff as he passed them. *Id.* at p. 28. He was told to stop, or he would be placed in a hold, and he stopped after hitting staff a few more times. *Id.* He attempted to tip the large table in the room, so staff removed all chairs from the room for safety and held the table down and against a wall. *Id.*
91. Student began to pull on the electrical cord behind the table/desk area, so staff removed the cord when Student moved away from it and called security in case Student continued to escalate (although security did not ultimately interact with Student, and only remained outside of the door to Assistant Principal’s office in the main office area). *Id.* Around 2:00 p.m., Student agreed to, and did, complete three timed assignments for an assessment before Parent arrived to pick him up. *Id.*

Assistant Principal’s Office

92. Parents allege that Student was secluded in Assistant Principal’s office, because when Parent came to pick Student up from School, Student was alone in the office with a security guard outside the room, preventing Student’s egress. *Interview with Parents.*
93. Assistant Principal, Special Education Teacher, and School Counselor all indicate they remained with Student throughout the afternoon, and Student was never in Assistant Principal’s office alone. *Interviews with Assistant Principal, Special Education Teacher, and School Counselor.* School Psychologist indicates she was “in and out” of the office, but recalls being there when Assistant Principal called Parent about the ISS. *Interview with School Psychologist.* Assistant Principal left the room to meet Parent and discuss Student’s

behavior once Parent arrived, but Special Education Teacher and School Counselor remained in the office until the end of the day. *Interviews with Assistant Principal, Special Education Teacher, and School Counselor.*

94. When the bell rang for the end of the day, School Counselor indicates Special Education Teacher had to leave, and Parent and Assistant Principal came back and stood at the threshold of the office while Assistant Principal finished briefing Parent. *Interview with School Counselor.* Once Assistant Principal and Parent came back to the main office area, School Counselor left the room, however she “hung around” in the main office area to see if she might be needed for anything further. *Id.*
95. A security report was generated by the security officer dispatched to the office. *Exhibit L*, p. 1. The security report indicates that when the security officer arrived at the main office, Student was in the office along with a female staff member. *Id.* After a few minutes, Parent showed up and was escorted to the office. *Id.* The report indicates Student remained in the office with the female staff member, while the security officer waited in the office in case the situation became disruptive, but no additional action was necessary. *Id.*
96. The SCO finds, based on the level of detail and similarity of Assistant Principal, Special Education Teacher, and School Counselor’s accounts, and support for their accounts in the written security report, that Student was not left alone in Assistant Principal’s office as staff were always present.

J. Incident No. 5 (May 9, 2022)

97. The fifth behavioral incident at issue occurred on May 9, 2022 (“Incident No. 5”), the Monday following Incident No. 4. *Exhibit C*, p. 29. On this date, Student was told upon arrival at School that he would begin his day in the Continuum Room working on the “recovery questions” from the 2021 BIP because the “recovery process” had not been completed in the afternoon of Friday, May 6, 2022. *Exhibit C*, p. 30. Following this “recovery procedure” Student was involved in a behavioral incident which ultimately resulted in the use of a CPI hold by staff. *Id.* at p. 31.
98. Parents’ first concern is that District failed to properly implement the 2021 BIP by having Student start the day with the “recovery procedure” when Student was not demonstrating aggressive behavior. *Complaint*, p. 4. Parent’s second concern is that Student was restrained and secluded without consideration of less restrictive alternatives, and that Parents were not provided written notice that CPI holds had been used. *Id.*

Incident Details

99. When Student arrived at School, he was told he would need to work on “recovery questions” before returning to class. *Exhibit C*, p. 30. Student attempted to leave School,

but Parent, who was walking back to her car, stopped him, and walked him back into School. *Id.*

100. Parent accompanied Student to the Continuum Room with Special Education Teacher and stayed for the first “recovery question” which centered on what had happened the previous Friday. *Id.* Parent indicated she did not know what had happened, and Student said he could not remember. *Id.*
101. Parent indicates she stayed with Student for approximately 25 to 30 minutes, and that she observed him begin to escalate as soon as “he understood he did not know answers to questions.” *Interview with Parents.* A report generated at the time of the incident indicates staff tried to remind Student of the events the previous Friday and Parent asked him what had happened, but he responded by cussing and telling Parent to leave. *Exhibit C, p. 30.*

The “Recovery Procedure”

102. Although the aggressive behavior occurred the previous Friday, Student was unwilling to complete the “recovery process” before he left School. *Interviews with School Psychologist and Special Education Teacher.* Student completed the “recovery questions” around lunchtime but did not do so again after the continued aggression in Assistant Principal’s office later that afternoon. *Id.* Since the “recovery procedures” had not been completed, staff sought to briefly review the events of the previous Friday with Student to explore different plans, although Student was admittedly not demonstrating aggression when he arrived at School on May 9. *Id.*
103. Once Parent left, Student continued to escalate. *Id.* He tipped a desk, and “went toward two staff hitting them.” *Exhibit C, p. 30.* One staff member was hit in the face, resulting in a visible scratch, so the other staff member called for support, which arrived less than a minute later. *Id.* Student tipped another chair and punched a “VisionBoard” with his fist, then went to the Calming Corner and covered himself with the beanbag. *Id.* Student was given the request to let staff know when he was ready to talk. *Id.*

CPI Hold No. 8

104. At around 9:06 a.m., Student left the Calming Corner, punched the “VisionBoard” again, punched staff, and slammed a large table against the wall. *Id.* at p. 31. After slamming the table against the wall, Student attempted unsuccessfully to pick up the table, then attempted to leave out the door. *Id.* In his attempt to leave the room, Student hit staff four times with a closed fist and was put in a two-person hold (“CPI Hold No. 8”) by Assistant Principal and Special Education Teacher for approximately ten seconds. *Id.; Interview with Special Education Teacher.*

105. CPI Hold No. 8 was the same two person “team control position” hold administered on May 6, with both staff on either side of Student, with their hips securing him, and their legs in front of Student’s legs. *Interviews with Assistant Principal and Special Education Teacher*. Once Student stopped struggling, he was released to the ground from the hold and staff moved away. *Id.*; *Exhibit C*, p. 31.
106. Following his release, Student stood up and ran at Assistant Principal and hit her in the face while again attempting to leave through the door. *Exhibit C*, p. 31. Student hit Assistant Principal and Special Education Teacher, threw his shoes and a timer, and then went to the beanbag in the Calming Corner. *Id.* Student was again asked to let staff know when he was ready to talk. *Id.*
107. For the rest of the morning, Student exhibited a cycle of sporadic aggression toward staff, followed by retreats to the Calming Corner; however no additional CPI holds were used. *Id.* Staff explain that CPI holds were only used when Student was exhibiting continued aggression and was not retreating, and CPI holds were not necessary at any other point that day, despite the continued aggression. *Interviews with Assistant Principal, Special Education Teacher, and School Psychologist*.
108. Incident No. 5 involved Student spending approximately two hours in the Continuum Room before deescalating and going to the classroom, but Parents do not allege, and the Record does not demonstrate, that Student was ever left alone in the Continuum Room, as he always had at least one staff member present with him. *See Exhibit C*, p. 31; *Interviews with Assistant Principal, Special Education Teacher, and Parents*.

K. Incident No. 6 (May 10, 2022)

109. The sixth behavioral incident at issue occurred on May 10, 2022 (“Incident No. 6”). *Exhibit C*, p. 34. Parents’ concern is that Student was secluded in the Continuum Room without the consideration of less restrictive alternatives, and that Parents were not informed that a CPI hold was used on Student that day. *Reply*, p. 6; *Interview with Parents*.

CPI Hold No. 9

110. Student became upset after being told he needed to eat lunch in the Continuum Room rather than the cafeteria until he could “show safe behaviors over time.” *Exhibit C*, p. 34. A teacher called for support around 12:15 p.m., and five staff members arrived to help. *Id.* Upon their arrival, Student was pacing the classroom and trying to leave out the doors. *Id.*
111. Student walked voluntarily with two staff members to the Continuum Room; however, once he arrived, he hit and kicked both staff members once. *Id.* Special Education Teacher and School Counselor placed Student a two-person “team control position” hold for ten seconds (“CPI Hold No. 9”), then released Student. *Id.*; *Interviews with Special Education Teacher*

and School Counselor. Upon his release, Student went to the Calming Corner and was quiet. *Exhibit C*, p. 34. Student was asked to let staff know when he was ready to talk. *Id.* Staff brought lunch in for Student to eat, however he indicated he did not want to do so. *Id.*

112. For the following two hours, Student remained escalated in the Continuum Room, engaging in further behaviors of aggression toward staff and objects, but no additional CPI holds were used. *See id.* at pp. 35-36. At around 1:47 p.m. he indicated he was ready to talk with staff by using a “thumbs up” signal, and after working on math problems for around 20 minutes, he reentered the general education classroom at 2:06 p.m. *Id.* at p. 36.
113. Student was in the Continuum Room for approximately two hours before returning to his classroom. *See id.* at pp. 34-36. Parents do not allege, and the Record does not demonstrate, that Student was ever alone in the Continuum Room during Incident No. 6, as at least one staff member was always with him. *See id.; Interviews with School Psychologist, Principal, Special Education Teacher, and School Counselor.*

L. Incident No. 7 (May 12, 2022)

114. The final behavioral incident at issue in this investigation occurred on May 12, 2022 (“Incident No. 7”). *Exhibit C*, p. 39. Student hit several staff members after trying to elope from the general education classroom, and a CPI hold was used. *Id.* Parents concern is that Student was secluded in the Continuum Room, and that District administered a CPI hold in a non-emergency situation, without providing written notice to Parents that a hold was used. *Complaint*, p. 5; *Interview with Parents.*

CPI Hold No. 10

115. At around 10:30 a.m., Student attempted to elope out of the general education classroom and down the hallway, among multiple other students. *Exhibit C*, p. 39. School Counselor blocked Student from going down the hallway, and School Counselor and School Psychologist walked with Student to the Continuum Room. *Id.*
116. Once in the Continuum Room, Student began hitting staff repeatedly, and he was placed in a two-person hold by School Counselor and Special Education Teacher (“CPI Hold No. 10”). *Id.* CPI Hold No. 10 was the two-person “team control position” hold used previously, with Student in a standing position in a “V” shape, with a staff person on either side of Student. *Interviews with School Counselor and Special Education Teacher.* The staff members’ hips secured Student on either side, with their legs in front of Student’s legs. *Id.* Once he was “in position” they put hands on his shoulders and a hand on Student’s wrists, with Student’s arms wrapped around the staff member’s sides. *Id.*
117. The exact duration of the hold was not documented on the incident report generated at the time of the incident, but the involved staff agree the hold lasted for a very short

duration before Student was released, and none of the CPI holds used from May 6 through May 12 lasted more than 30 seconds. *Interviews with Special Education Teacher, School Counselor, Assistant Principal, and School Psychologist; Response*, p. 4.

118. Following CPI Hold No. 10, Student retreated to the Calming Corner, and he was asked to let staff know when he was ready to talk. *Exhibit C*, p. 39. Student calmed down, completed his “recovery procedure,” cleaned up the area, did some schoolwork, and returned to class. *Id.* Parents do not allege, and the facts do not demonstrate, that Student was ever alone in the Continuum Room, as at least one staff member was always with him. *Id.*; *Interviews with Parents, Special Education Teacher, School Counselor, and School Psychologist*.

M. May 13, 2022 to Present

119. After May 12, no CPI holds were administered for the remainder of the 2021-2022 academic year. *Interviews with Principal, Special Education Teacher, School Counselor, School Psychologist, and Assistant Principal*. District staff report that although Student had previously demonstrated elopement and aggression behaviors at School, CPI holds had never been necessary with Student before May 6, and the intensity and frequency of the aggression observed in Student from May 6 through May 12 was unlike anything that had been seen before from him. *Id.* Although staff still observed aggression from Student following May 12, it decreased significantly from what was observed from May 6-12. *Id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: District properly implemented the 2021 IEP, specifically the 2021 BIP, on May 6 and 9, 2022, consistent with 34 C.F.R. § 300.323.

The IDEA seeks to ensure that all children with disabilities receive a FAPE through individually designed special education and related services pursuant to an IEP. 34 C.F.R. § 300.17; ECEA Rule 2.19. The IEP is “the centerpiece of the statute’s education delivery system for disabled children . . . [and] the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988); *Bd. of Ed. v. Rowley*, 458 U.S. 176, 181 (1982)). A student’s IEP must be implemented in its entirety. 34 C.F.R. § 300.323(c)(2).

A school district must ensure that “as soon as possible following the development of the IEP, special education and related services are made available to a child in accordance with the child’s IEP.” *Id.* § 300.323(c)(2). To satisfy this obligation, a school district must ensure that each teacher and related services provider is informed of “his or her specific responsibilities related to implementing the child’s IEP,” as well as the specific “accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.” *Id.* § 300.323(d). Where

the definition of a FAPE specifically references delivery of special education and related services consistent with an IEP, the failure to implement an IEP can result in a denial of a FAPE. 34 C.F.R. § 300.17; ECEA Rule 2.19.

However, not every deviation from an IEP's requirements results in a denial of a FAPE. *See, e.g., L.C. and K.C. v. Utah State Bd. of Educ.*, 125 Fed. Appx. 252, 260 (10th Cir. 2005) (holding that minor deviations from the IEP's requirements which did not impact the student's ability to benefit from the special education program did not amount to a "clear failure" of the IEP); *T.M. v. District of Columbia*, 64 IDELR 197 (D.D.C. 2014) (finding "short gaps" in a child's services did not amount to a material failure to provide related services). Thus, a "finding that a school district has failed to implement a requirement of a child's IEP does not end the inquiry." *In re: Student with a Disability*, 118 LRP 28092 (SEA CO 5/4/18). Instead, "the SCO must also determine whether the failure was material." *Id.* Courts will consider a case's individual circumstances to determine if it will "constitute a material failure of implementing the IEP." *A.P. v. Woodstock Bd. of Educ.*, 370 Fed. Appx. 202, 205 (2d Cir. 2010).

A. 2021 BIP Implementation (May 6 and 9, 2022)⁷

The 2021 IEP, which includes the 2021 BIP, was in effect in May 2022. (FF # 6). The first allegation accepted for investigation suggests that the 2021 BIP was not properly implemented on May 6 and May 9.

Accessibility to Student's Teachers

The SCO must first determine whether District satisfied its obligation under 34 C.F.R. § 300.323(d). Here, School Psychologist was responsible for ensuring staff were aware of their responsibilities under the 2021 BIP, and thus, provided Student's teachers and service providers with a copy of the 2021 BIP. (FF #s 18-19). School Psychologist trained staff, including paraprofessionals, on the 2021 BIP at regular professional meetings, and School Psychologist worked closely with Student to observe and monitor the 2021 BIP throughout the 2021-2022 academic year, and to provide feedback to other staff. (FF #s 19-20). For these reasons, the SCO finds and concludes that District ensured teachers and service providers working with Student were informed of their responsibilities under the 2021 BIP, consistent with 34 C.F.R. § 300.323(d).

Implementation - May 6, 2022

Parents' concern is that the 2021 BIP was not properly implemented on May 6 because District security was not called when Student eloped from School out onto the blacktop area.

⁷ The SCO notes that the frequency and severity of Student's misbehavior in May of 2022 should have prompted the IEP Team to convene and, as appropriate, review and revise the 2021 IEP and 2021 BIP. However, as discussed *supra*, these concerns are being addressed in Parents' due process complaint, so the SCO will not explore IEP/BIP development in this Decision.

The crisis intervention plan contained in the 2021 BIP provides that if Student egresses outside the building and off School grounds, District security “may” be contacted, and Parents will be alerted. (FF # 14). On May 6, although Student eloped outside of School and made it as far as the blacktop area, he never egressed off School grounds. *See* (FF # 68). Even if Student made it off School grounds, District staff were not obligated to contact security, as the 2021 BIP merely states that security “may” be contacted. (FF # 14). Finally, even though the 2021 BIP only requires District to contact Parents if Student egresses off School grounds, District nevertheless contacted Parents that day when the decision was made to give Student an ISS. (FF #s 86, 93). The SCO accordingly finds and concludes that District properly implemented the 2021 BIP on May 6, 2022, consistent with 34 C.F.R. § 300.323(c).

Implementation - May 9, 2022

Parents’ concern is that the 2021 BIP was not properly implemented on May 9 because Student was asked to begin the day going through the “recovery procedures” contained in the 2021 BIP, despite an absence of aggressive behavior that morning. (FF # 98).

The 2021 BIP contained several behavioral teaching strategies, to include a “procedure for recovery” to be used when Student is aggressive more than three times in 60 seconds. (FF # 12). The “procedure for recovery” calls for ten minutes of safe behavior, followed by a series of four pre-set questions designed to help Student develop alternative behavioral strategies. *Id.*

On Monday, May 9, when Student arrived at School, he was asked to start the day with the “recovery procedure” even though he was not demonstrating aggressive behavior at the time. *See* (FF # 99). This occurred because Student was unwilling to complete the “recovery procedure” on Friday, May 6 prior to being picked up from the ISS. (FF # 102).

In consultation with CDE Content Specialists 1 and 2, the SCO finds that District’s use of the “recovery procedure” here was in line with CPI’s coping model which teaches staff to process a behavioral incident with the student, provided doing so is part of a recovery process. (FF # 14). The SCO also finds that, although Student was not being aggressive at the time, requiring Student to complete “recovery questions” the morning of May 9, 2022 was not inconsistent with the 2021 BIP. *Id.* As School Psychologist confirmed, the “recovery procedure” contained in the 2021 BIP was designed as a recovery process, and thus, processing what happened with Student after a behavioral incident is one of the teaching strategies contained in the 2021 BIP. (FF #s 13-14). The SCO accordingly finds and concludes that District properly implemented the 2021 BIP on May 9, 2022, consistent with 34 C.F.R. § 300.323(c).

Conclusion to Allegation No. 2: District did not violate PPRA. Incidents No. 1-7 did not constitute seclusion, CPI Holds No. 1-10 did not qualify as physical restraints, and District did not use restraint as a threat to control or gain compliance of Student’s behavior.

Parents' first concern is that District staff lacked a proper basis for secluding Student during Incidents No. 1-7. As a preliminary matter, the SCO must determine whether Incidents No. 1-7 constituted seclusion within the scope of PPRA.⁸

A. Seclusion

As used in 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).

"Seclusion" means "the placement of a student alone in a room from which egress is involuntarily prevented." *Id.* 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.*

B. Whether Incidents No. 1-7 are Seclusion⁹

During Incidents No. 1-7, Student was inside either the Recovery Room, the office, or the Continuum Room while he was exhibiting escalated behaviors, such as elopement and aggression. (FF #s 35, 53-54, 62, 87). Student was never alone in any of the rooms, and always had at least one staff member with him. (FF #s 37, 52, 62, 96, 108, 113, 118). For these reasons, the SCO finds and concludes that Student's placement in the Recovery Room, the office, and the Continuum Room during Incidents No. 1-7 did not constitute seclusion under PPRA. Rule 2620-R-2.00(9) (defining seclusion as "the placement of a student alone in a room from which egress is involuntarily prevented").

On November 4, Incident No. 1 involved Student being sent to the Recovery Room for approximately two hours to work on assignments before being picked up by Parents at the end of the day. (FF # 37). On December 14, Incident No. 2 involved Student being sent to the Recovery Room for approximately one hour before being picked up by ABA Center staff. (FF # 52). Student was never left in the Recovery Room alone during either incident as at least one staff member was present in the room with him. (FF #s 37, 52).

On May 5, Incident No. 3 involved Student being sent to the office for the remainder of the afternoon to complete work with Principal following aggression toward School Psychologist. (FF # 62). On May 6, Incident No. 4 involved Student spending almost the entire day in either School's Continuum Room or Assistant Principal's office following the ISS. (FF # 96). On May 9, Incident

⁸ After the events at issue in this investigation, changes were made to the PPRA pursuant to House Bill 22-1376 (C.R.S. §26-20-102 was amended effective May 26, 2022). Since the events at issue in this investigation occurred prior to the changes to PPRA, the SCO analyzed the facts of this investigation under the version of PPRA that was in effect at the time of the incidents. For further information about the changes to PPRA, please visit: [Supportive Learning Environments For K-12 Students | Colorado General Assembly](#).

⁹ While the SCO finds and concludes that Student was not secluded within the scope of PPRA during Incidents No. 1-7, District's removal of Student to various locations nevertheless raises concerns about the implementation of the 2021 IEP and Student's least restrictive environment. As discussed *supra*, these concerns are being addressed in Parents' due process matter, so the SCO will not explore these concerns in this Decision.

No. 5 involved Student spending approximately two hours in School's Continuum Room following his escalated behavior after the "recovery procedure" in the morning. (FF # 108). On May 10, Incident No. 6 involved Student spending approximately two hours in the Continuum Room. (FF # 113). Finally, on May 12, Incident No. 7 involved Student spending time in the Continuum Room. (FF # 118). Student was never left alone during these incidents as at least one staff member was present in the room with him. (FF #s 37, 52, 62, 96, 108, 113, 118).

Because Student was never left alone in a room where egress was involuntarily prevented at any point during Incidents No. 1-7, the SCO finds and concludes, in consultation with CDE Content Specialists 1 and 2, that District did not seclude Student. No PPRA violation occurred.

C. Physical Restraints

Parents allege that District lacked a proper basis for restraining Student during CPI Holds No. 1-10. As a preliminary matter, the SCO must determine whether CPI Holds No. 1-10 constituted physical restraints within the scope of PPRA.

As used in 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." *Id.* 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).

D. Whether CPI Holds No. 1-10 are Physical Restraints

CPI Holds No. 1-7

On May 6, Student was physically violent toward District staff, and Special Education Teacher attempted to put Student into CPI Hold No. 1 for approximately 30 seconds. (FF # 70). Special Education Teacher was unable to successfully put Student into this CPI-sanctioned hold on her

own, so she requested assistance from another staff member, and Assistant Principal assisted her in putting Student into CPI Hold No. 2 for approximately 12 seconds. (FF #s 70-72).

Later, on the same day, Student re-escalated, and charged toward and hit and kicked staff. (FF # 76). Assistant Principal and Special Education Teacher placed Student in CPI Hold No. 3 for approximately 15 seconds. *Id.* Around an hour later, Student again exhibited aggression, swiping his hands, kicking, and headbutting staff. (FF # 79). Assistant Principal and Special Education Teacher placed Student in CPI Hold No. 4 for 18 seconds, then released Student. *Id.*

Later, Student again left the Calming Corner and began throwing punches and kicks toward staff, making contact. (FF # 81). Assistant Principal and Special Education Teacher placed Student in CPI Hold No. 5 for 15 seconds and released. *Id.* Upon release, however, Student remained escalated, and pushed tables and a shelf over, threw a chair, and lunged at staff, making contact several times. (FF # 82). Student was placed in CPI Hold No. 6, this time by Special Education Teacher and School Counselor, for a total of 10 seconds. *Id.*

Finally, 20 minutes later, Student once again came out of the Calming Corner and began swinging, kicking, and throwing items such as trash cans and plastic crates. (FF # 83). Assistant Principal and Special Education Teacher placed Student in CPI Hold No. 7 for 15 seconds until Student stopped struggling, then released him and gave him space. (FF # 84).

The SCO finds, in consultation with CDE Content Specialist 1, that the “team control position” CPI technique that was used by District staff for CPI Holds No. 2-6 was a CPI approved technique, and that CPI Holds No. 1-7 were administered by staff with active CPI certifications at the time of the incident. *Consultation with CDE Content Specialist 1.* The SCO also finds, in consultation with CDE Content Specialist 1, that the holds used in CPI Holds No. 1-7 were administered for the protection of Student or others. *Id.*

For these reasons, the SCO finds and concludes, in consultation with CDE Content Specialist 1, that CPI Holds No. 1-7 fall within an exception and thus do not qualify as a physical restraint. *Consultation with CDE Content Specialist 1; Rule 2620-R-2.00(8)(c)(i)* (excluding from the definition of physical restraint the 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). Indeed, CPI Holds No. 1-7 lasted a combined total of 1 minute and 55 seconds and were performed for the protection of Student and others. Thus, in consultation with CDE Content Specialist 1, the SCO finds and concludes that staff made contact “for the protection of the student and others” and that CPI Holds No. 1-7 did not constitute a physical restraint. No PPRA violation occurred.

CPI Hold No. 8

On May 9, Student hit staff four times with a closed fist and was put into CPI Hold No. 8 by Assistant Principal and Special Education Teacher. (FF # 104). The technique used in the two-person CPI Hold No. 8 was the CPI-approved “team control position.” (FF # 105). CPI Hold No. 8

lasted for approximately ten seconds. (FF # 104). Upon release, Student remained escalated and continued to be aggressive before retreating to the Calming Corner. (FF # 107). No other CPI holds were used. *Id.*

The SCO finds and concludes, in consultation with CDE Content Specialist 1, that CPI Hold No. 8 falls within an exception and thus does not qualify as a physical restraint. *Consultation with CDE Content Specialist 1; Rule 2620-R-2.00(8)(c)(i)* (excluding from the definition of physical restraint the 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). Indeed, CPI Hold No. 8 lasted only ten seconds and was performed for the protection of Student and others. Thus, in consultation with CDE Content Specialist 1, the SCO finds and concludes that staff made contact “for the protection of the student and others” and that CPI Hold No. 8 did not constitute a physical restraint. No PPRA violation occurred.

CPI Hold No. 9

On May 10, upon voluntarily walking to the Continuum Room, Student hit two staff members and kicked one of them. (FF # 111). Special Education Teacher and Assistant Principal placed Student in CPI Hold No. 9 for approximately ten seconds before releasing him. *Id.* Upon his release, Student went to the Calming Corner, and although there were further instances of aggression later that day, no other CPI holds were used. (FF #s 111-112).

The SCO finds and concludes, in consultation with CDE Content Specialist 1, that CPI Hold No. 9 falls within an exception and thus does not qualify as a physical restraint. *Consultation with CDE Content Specialist 1; Rule 2620-R-2.00(8)(c)(i)*. Indeed, CPI Hold No. 9 lasted approximately ten seconds and was performed for the protection of Student and others. Thus, in consultation with CDE Content Specialist 1, the SCO finds and concludes that staff made contact “for the protection of the student and others” and that CPI Hold No. 9 did not constitute a physical restraint. No PPRA violation occurred.

CPI Hold No. 10

On May 12, upon being escorted to the Continuum Room, Student began hitting staff members repeatedly, so he was put into the two-person, “team control position” CPI Hold No. 10 by School Counselor and Special Education Teacher for less than 30 seconds. (FF #s 116-117).

The SCO finds and concludes, in consultation with CDE Content Specialist 1, that CPI Hold No. 10 falls within an exception and thus does not qualify as a physical restraint. *Consultation with CDE Content Specialist 1; Rule 2620-R-2.00(8)(c)(i)*. Indeed, CPI Hold No. 10 lasted approximately 30 seconds and was performed for the protection of Student and others. Thus, in consultation with CDE Content Specialist 1, the SCO finds and concludes that staff made contact “for the protection of the student and others” and that CPI Hold No. 10 did not constitute a physical restraint. No PPRA violation occurred.

E. Whether District used Restraint as a threat to control or gain compliance of Student's behavior during Incident No. 2

Parents' concern is that on December 14, during Incident No. 2, Principal used the threat of restraint to control or gain compliance of Student's behavior by telling Student he could go to the Recovery Room on his own, or Principal would "put hands on him." (FF # 38).

As an initial matter, the SCO found and concluded that Incident No. 2 did not constitute restraint (seclusion). Nevertheless, 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).

CPI teaches a technique called "setting limits" which involves providing a student with options, so the student has the opportunity to make a choice and maintain independence. (FF # 48). CPI also teaches that an audience can cause a dysregulated student to further dysregulate. *Id.* When it is not feasible to remove the audience to an escalated student, it is sometimes more feasible to remove the actor (i.e., the student). *Id.*

Here, Student was highly escalated, and his classmates were sequestered in the library, awaiting their return to the classroom where Student was located. (FF # 41). Principal knew the class was scheduled to return to the classroom from the library. *Id.* To avoid creating a situation where Student had an audience and might be likely to become further dysregulated, Principal attempted to remove Student from the classroom ("isolating the situation"), using the "setting limits" technique he learned in CPI training to give Student the option to go to the Recovery Room on his own and maintain independence. (FF # 49). The SCO accordingly finds and concludes, in consultation with CDE Content Specialists 1 and 2, that Principal did not use restraint as a threat to control or gain compliance of Student's behavior. No PPRA violation occurred.

F. Documentation and Notification Requirements for Restraint

Parents' concern is that District failed to notify them consistent with PPRA about Incidents No. 1-7 and CPI Holds No. 1-10. (FF #s 98, 114). Use of a restraint triggers PPRA's documentation and notification requirements. Rule 2620-R-2.04. In this case, Student was not secluded during Incidents No. 1-7 and Student was not physically restrained during CPI Holds No. 1-10. The SCO accordingly finds and concludes that PPRA's documentation and notification requirements were not triggered. No PPRA violation occurred.

REMEDIES

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

CONCLUSION

The Decision of the SCO is final and is not subject to appeal. *CDE State-Level Complaint Procedures*, ¶13; Rule 2620-R-2.07(9)(c). If either party disagrees with this Decision, the filing of a Due Process Complaint is available as a remedy provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. *CDE State-Level Complaint Procedures*, ¶13; *See also* 34 C.F.R. § 300.507(a); *71 Fed. Reg. 156, 46607* (August 14, 2006). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 9th day of October, 2022



Ross Meyers
State Complaints Officer

APPENDIX

Complaint, pages 1-6

Response, pages 1-10

- Exhibit A: BIPs
- Exhibit B: none
- Exhibit C: Incident Reports
- Exhibit D: Annual Report
- Exhibit E: Verification of Training
- Exhibit F: Policies and Procedures
- Exhibit G: Correspondence
- Exhibit H: List of Involved Staff
- Exhibit I: Verification of Delivery to Parents
- Exhibit J: ABA Center BIP
- Exhibit K: IEPs
- Exhibit L: Security Report
- Exhibit M: Training Materials
- Exhibit N: Updated Policies and Procedures

Reply, pages 1-18

Telephone Interviews

- Assistant Principal: August 31, 2022
- Director of Special Education: August 31, 2022
- Parents: September 2, 2022
- Principal: August 29, 2022
- School Counselor: September 6, 2022
- School Psychologist: August 30, 2022
- Special Education Teacher: September 1, 2022