

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 2022:543
Douglas County School District RE-1**

DECISION

INTRODUCTION

On September 13, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)¹ filed a state-level complaint (“Complaint”) against Douglas County School District RE-1 (“District”). The State Complaints Officer (“SCO”) determined that the Complaint identified four 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. Therefore, the SCO has jurisdiction to resolve the Complaint.

On September 21, 2022, upon the agreement of the parties, the SCO extended the 60-day investigation timeline to allow the parties to participate in mediation. However, mediation resulted in impasse, and, on October 4, 2022, the SCO resumed the investigation.

RELEVANT TIME PERIOD

The Colorado Department of Education (the “CDE”) has the authority to investigate alleged violations of the IDEA and the PPRA that occurred not more than one year from the date the original complaint was filed. 34 C.F.R. § 300.153(c); Rule 2620-R-2.07(2)(f). Accordingly, this investigation will be limited to the period of time from September 18, 2021 through September 18, 2022 for the purpose of determining if a violation of the IDEA or the PPRA occurred. Additional information beyond this time period may be considered to fully investigate all allegations. Findings of noncompliance, if any, shall be limited to one year prior to the date of the complaint.

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. For information on recent changes to the PPRA, effective May 26, 2022, please see House Bill 22-1376: [Supportive Learning Environments For K-12 Students | Colorado General Assembly](#). Those changes are not discussed in depth in this decision because the changes were effective after the incidents at issue in this investigation.

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

SUMMARY OF COMPLAINT ALLEGATIONS

1. Whether the District denied Student a Free Appropriate Public Education (“FAPE”) because the District:
 - a. Failed to develop, review, and revise an IEP that was tailored to meet Student’s individualized needs, from September of 2021 to present, by failing to include behavioral strategies and supports that adequately addressed Student’s behavioral needs, in violation of 34 C.F.R. §§ 300.320-324.
 - b. Failed to educate Student in his Least Restrictive Environment (“LRE”) from September 2021 to present, specifically by:
 - i. Failing to ensure Student was educated to the maximum extent appropriate with students who are nondisabled, including failing to consider whether supplementary aids and services would make it possible to educate Student in regular classes, in violation of 34 C.F.R. § 300.114; and
 - ii. Failing to determine Student’s placement based upon his IEP, in violation of 34 C.F.R. § 300.116 and ECEA Rule 4.03(8)(a).
 - c. Failed to provide Parent with prior written notice related to Student’s placement change in or after January 2022, in violation of 34 C.F.R. § 300.503.
2. Whether the District improperly restrained Student from January 2022 to present, specifically by:
 - a. Secluding Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
 - b. Secluding Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of Rule 2620-R-2.01(1)(b);
 - c. Secluding Student as a punitive form of discipline or as a threat to control or gain compliance of Student’s behavior, in violation of Rule 2620-R-2.01(2);
 - d. Failing to end the seclusion when it was no longer necessary to protect the Student or others, to reintegrate the Student or clearly communicate that the Student is free to leave the seclusion area, and to reasonably monitor Student during seclusion to ensure his physical safety, in violation of Rule 2620-R-2.02(1)(a)(v)-(vi);

- e. Secluding Student in a space without adequate lighting, ventilation and size, and in a space that was not, to the extent possible under the specific circumstances, free of injurious items, in violation of Rule 2620-R-2.02(2)(e)(ii);
- f. Failing to ensure seclusion was administered by staff who have received required training, in violation of Rule 2620-R-2.03; and
- g. Failing to comply with the documentation and notification requirements for seclusion, 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 OF FACT (“FF”):

A. Background

1. During the 2021-2022 school year, Student attended second grade at a District elementary school (“School”). *Interview with Parent*. Student received instruction in School’s Affective Needs classroom (“AN classroom”). *Id.* Student now attends a different District elementary school. *Id.*
2. Student is eligible for special education and related services under the disability category of Serious Emotional Disability (“SED”). *Complaint*, p. 1; *Exhibit 1*, p. 80.
3. Student enjoys being outside riding his bike, camping, and fishing. *Interview with Parent*. He loves math but dislikes writing. *Id.* Student struggles with emotional regulation. *Id.* When Student is told “no” or when his performance (either academically or, for example, on art) does not meet his standards, he can become dysregulated. *Id.*

B. Student’s IEP and BIP

4. Student’s IEP dated May 6, 2021 was in effect at the beginning of the 2021-2022 school year. *Exhibit 1*, pp. 80-93.
5. Student’s IEP reviewed his present levels of performance, noting that Student was at or near grade level in reading and math. *Id.* at p. 84. Student met his annual goals related to writing and self-determination, though he did not meet his social-emotional goals. *Id.* at pp. 83-85. Staff noted that Student’s academic stamina was low, even when receiving instruction in the AN classroom. Once Student hit “his limit”, he refused to work and became aggressive. *Id.* at p. 84.

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

6. As noted in his IEP, Student's disability "prevent[ed] him from regulating his emotions" and "impact[ed] his ability to participate in the general education classroom without adult support and use of direct interventions." *Id.* at p. 86. "The difficulties that [Student] [was] having with anger management, sensory processing, emotional regulation, [and] safe behavior [were] impacting his ability to participate safely with all classroom activities." *Id.*
7. Student's IEP indicated that he exhibited behavior requiring a behavior intervention plan. *Id.* at p. 86.
8. The IEP contained four annual goals in the areas of social-emotional wellness, self-determination, and writing. *Id.* at pp. 87-88
9. The IEP provided Student numerous accommodations, including, in part, warnings before transitions, access to a separate location to regulate, and a visual timer for transitions. *Id.* at p. 88.
10. Under the IEP, Student received the following special education and related services:
 - Specialized Instruction: 1,945 minutes (or 32 hours) per week of specialized instruction provided by a special education teacher inside or outside the general education environment. Under the IEP, Student would "have access to the general education classroom while he [was] emotionally regulated and making safe choices. The amount of minutes within the general classroom [would] vary as his needs [varied]."
 - Writing Instruction: Of the 1,945 minutes, Student was to receive 100 minutes per week of specialized writing instruction to support his writing goal.
 - Social-Emotional Instruction: 240 minutes per month of direct instruction targeting Student's social-emotional skills provided by a mental health provider outside the general education classroom.
 - Occupational Therapy: 30 minutes per semester of indirect occupational therapy provided by an occupational therapist outside the general education classroom.

Id. at p. 91.
11. Per his IEP, Student spent less than 40 percent of the time in the general education classroom. *Id.* at p. 92.
12. At the beginning of the 2021-2022 school year, Student's BIP dated April 23, 2021 ("BIP") was in effect. *Exhibit 1*, pp. 5-10.

13. The BIP identified Student’s emotional dysregulation and refusals as the target behaviors. *Id.* at p. 6. According to the BIP, Student yelled or ran away from staff when asked to engage in a non-preferred activity. *Id.* When Student became dysregulated, he yelled, threw objects, hit, and kicked. *Id.*
14. The BIP outlined setting event strategies, such as having scheduled sensory and movement breaks, allowing snacks as needed, providing access to sensory strategies (such as chewing gum or noise-cancelling headphones), and using soft landings for transitions. *Id.* at pp. 7-8.
15. Listed antecedent strategies designed to reduce the target behaviors included: warning of transitions, using a visual menu of coping strategies, and assigning Student tasks during transitions. *Id.* at pp. 7-8. When Student began to get upset, staff should use visuals to prompt him to communicate how he feels. *Id.* Once Student started escalating, staff should remove him from the classroom and have him write or draw his feelings. *Id.*
16. The BIP also included behavior teaching strategies, such as modeling how to make mistakes and how to talk about feelings. *Id.*
17. As reinforcement strategies, the BIP identified daily point sheets and immediate rewards for compliance. *Id.*
18. The BIP contained a Crisis Intervention Plan to be followed if Student became unsafe. *Id.* at p. 8. Staff should minimize language and only use short verbal prompts to remind Student to be safe or direct him to a safe space. *Id.* Once Student was safe, staff should use visuals to prompt Student to indicate his needs and process through the event. *Id.*

C. AN Classroom

19. During the 2021-2022 school year, Affective Needs Teacher (“AN Teacher”) taught 8-10 students in the AN Classroom. *Interview with Principal.* Five paraprofessionals—some full-time and some part-time—rotated into the AN Classroom. *Id.* On a typical day, AN Teacher and three paraprofessionals staffed the AN Classroom. *Id.*
20. AN Teacher used a single level system for all students in the AN Classroom. *Exhibit G*, p. 1. The level system applied equally to all students and was not individualized. *See id.* Students on Level 1—the lowest level—could be restricted from attending recess, lunch, or specials with their peers “depending on whether or not they can exhibit safe behavior.” *Id.* “Students [on Level 1] who have been physically aggressive need to earn 80% on their point sheet for the day to move back to Level 2.” *Id.* Student never moved past Level 2 and struggled to even move past Level 1. *Interview with Parent.* The District does not have a written policy or procedure regarding level systems, though the District instructs staff to individually tailor

level systems to students' needs. *Interview with Interim Director of Special Education ("Interim Director")*.

21. The AN Classroom contains a reset room, a small adjoining where students can go for a quiet workspace or to self-regulate. *Interviews with Behavior Specialist and Principal*. The Reset Room measures approximately 5' by 5' and has a door with a window. *Interview with Principal*.

D. District's Behavior Management System and Staff Training

22. The District uses Crisis Prevention Institute's Nonviolent Crisis Intervention Program ("CPI") for crisis intervention and physical behavior management. *Interview with Coordinator of Health Wellness Prevention and Behavior Supports ("Behavior Supports Coordinator")*. CPI teaches a variety of interventions to prevent escalation and, ideally, avoid the need for physical intervention. *Id.* Under CPI, physical intervention is the last resort. *Id.*
23. Any District staff member can complete CPI training and become certified. *Id.* The District requires all mental health staff (including school psychologists and social workers) and all staff working in SSN and AN classrooms to be CPI certified. *Id.* The District offers initial CPI certification courses and refresher courses throughout the year. *Id.*
24. After a staff member attends CPI training, the District adds the training to the staff member's transcript. *Id.*; see *Exhibit M*, pp. 1-25. The District does not track or monitor the expiration date of individual staff member's CPI certifications. *Interview with Behavior Supports Coordinator*. Instead, each staff member bears responsibility for tracking the expiration date of his certification and completing training every two years. *Id.* The District sends general reminders about the training requirement and training offered but does not remind individual staff members of expiring or expired certifications. *Id.*
25. During the 2021-2022 school year, six District staff members—AN Teacher, Paraprofessional #1, Paraprofessional #2, Paraprofessional #3, Paraprofessional #4, and Paraprofessional #5—worked in the AN Classroom. *Interview with Principal*.
26. Based on the District's transcript, it appears that AN Teacher received her CPI certification before July 2013, when the District's transcript begins. *Exhibit M*, p. 7. AN Teacher completed CPI refresher courses in January 2014, May 2016, and May 2019. *Id.* at pp. 1-7. AN Teacher had not completed any CPI training since May 2019. *Id.*
27. Paraprofessional #1 became CPI certified in September 2016. *Id.* at p. 11. She finished CPI refresher courses in 2017, 2019, 2020, and 2021. *Id.* pp. 9-10.

28. It is unclear if or when Paraprofessional #2 became CPI certified. *Id.* at p. 14. Indeed, the District's transcript indicates only that Paraprofessional #2 took a CPI refresher course in July 2022. *Id.*
29. Paraprofessional #3 received her CPI certification in November 2021. *Id.* at p. 21.
30. Paraprofessional #4 became CPI certified in September 2015 and completed refresher courses in August 2019 and August 2020. *Id.* at pp. 23-25. She took an additional initial CPI certification course in September 2021. *Id.* p. 23.
31. Paraprofessional #5 obtained her CPI certification in March 2019. *Id.* at p. 19. She took CPI refresher courses in August 2020 and August 2021. *Id.* at p. 15.

E. Student's Escalating Behavior

32. Student started off the 2021-2022 school year "bumpy." *Interview with Behavioral Specialist.* Student had some behavioral challenges at the beginning of the school year that prompted staff to consider holding an IEP Team meeting, but his behavior leveled off and he started having some success. *Id.*
33. Around winter break, Student became dysregulated more frequently, yelling at and threatening others in the AN Classroom, throwing objects, and refusing to work. *Id.; Interview with Principal.* At the same time, Student's behavior became more unpredictable, and he resorted to physical aggression much more quickly. *Interview with Principal.* The unpredictability and quick escalation of Student's behavior made it difficult for staff to separate Student or clear the room to ensure everyone's safety. *Id.*
34. On February 8, the District suspended Student for kicking AN Teacher. *Interview with Parent.* When Student returned to School on February 10, he became escalated, which prompted the School to call the Sheriff's Office. *Id.* Staff were able to deescalate Student, but Parent decided to take him home and keep him home the following day. *Id.*

F. Student's Move to the Blue Room

35. After the incident on February 8, School staff met with Behavior Specialist to express their growing concern about Student's aggression towards staff and peers. *Interview with Behavior Specialist.* The group discussed ways they could support Student while also ensuring the safety of others in the AN Classroom. *Id.* Staff felt that Student was being overstimulated by the AN Classroom and that asking Student to complete his work was often an antecedent to his aggression. *Interviews with Behavior Specialist and Principal.* As a result, District staff decided to "shrink Student's world" by having him work in a separate space. *Id.* District staff felt this would remove some of the stimulation, while also ensuring the safety of others in the AN Classroom. *Id.* The District did not convene Student's IEP Team or conduct any

additional assessments. *Interview with Behavioral Specialist*. At the time, Student's most recent FBA was from preschool. *Exhibit 1*, p. 6.

36. An empty office was available down the hall from the AN Classroom. *Interview with Principal*. The office, referred to as the "Blue Room", was approximately 12' x 12'. *Id.*
37. When Student returned on February 14 or shortly thereafter, Student began spending his day in the Blue Room. *Interviews with Behavioral Specialist, Parent, and Principal*. Behavior Coach provided additional support to Student and the AN staff for two weeks. *Interview with Behavioral Specialist*. AN staff—including AN Teacher and the AN paraprofessionals—rotated into the Blue Room to work with Student. *Interview with Behavioral Specialist*. Student was working on 20-minute rotations between sensory work, learning, and free choice. *Id.*
38. Initially, Student was not permitted any access to peers and was not allowed to attend recess, lunch, or specials regardless of whether he was regulated or not. *Interviews with Behavioral Specialist and Parent*. A Functional Behavior Assessment ("FBA") completed in April 2022 noted that: "Due to unsafe behavior, [Student]'s work space [sic] has been moved to a private room next to the AN room. He has had very limited access to his AN peers." *Exhibit 1*, p. 19.
39. On March 23, Student started attending the morning meeting and social skills group in the AN classroom, eating lunch with his peers, and going to specials classes. *Id.* at pp. 97-98.
40. During January and late February, District staff met with Parent to connect her with community resources for Student. *Interviews with Behavioral Specialist and Parent*. District staff did not discuss Student's move to the Blue Room with Parent. *Interview with Parent*. Behavioral Specialist recalled discussing "shrinking his world" with Parent during these meetings but was not sure whether Parent was informed that Student was working in the Blue Room. *Interview with Behavioral Specialist*. Behavioral Specialist consulted her notes from the meetings but acknowledged that the notes did not mention the Blue Room or "shrinking his world." *Id.*
41. Parent did not learn that Student had been moved to the Blue Room until sometime in March 2022. *Interview with Parent*.
42. The District did not provide Parent with Prior Written Notice regarding Student's move to the Blue Room. *Interviews with Behavioral Specialist and Parent*. District staff did not believe Student's placement had changed, because he was still receiving instruction from AN Teacher and the AN paraprofessionals. *Interview with Behavioral Specialist*.

G. Student's Move Back to the AN Classroom

43. Though Student's behavior improved in the Blue Room, he still became escalated in that space. *Interview with Principal*. AN Teacher's behavior log indicated that, during the 26 school

days Student was in the Blue Room, he had approximately 40 behavioral incidents, exhibiting behaviors ranging from verbal aggression to physical aggression to yelling. *Exhibit 1*, pp. 8-11. Nineteen of the incidents involved School staff using “physical redirection” or “closing the door” to the Blue Room. *Id.* When Student became escalated, he started ripping wallpaper off the walls and breaking the drywall. *Interview with Principal.* Eventually, due to this damage, the Blue Room was no longer a safe space for Student to work. *Id.*

44. Around March 30, Student moved back to the AN Classroom, where he began working in the Reset Room. *Interviews with Behavioral Specialist and Principal.* The Reset Room became “[Student]’s Office,” and there was a QR code on the door with Student’s name on it. *Id.* Student participated in morning meeting and a social skills group with the AN Classroom when he was regulated. *Id.*
45. Staff recalled Student having a desk in the Reset Room and self-directing into the Reset Room when he wanted to work in a quiet space. *Id.* However, when Parent saw the room on May 12 during the arts festival, only two pillows were on the floor. *Interview with Parent.* There was not a desk in the room or directly outside of the room. *Id.* During the arts festival, Student made statements to Parent indicating that the trauma he experienced in the Reset Room. *Id.*
46. During an IEP Team meeting on April 1, School staff informed Parent that Student was now using the Reset Room “for his education.” *Exhibit 2*, p. 1. Parent reminded staff that Student has panic attacks when someone holds a door shut on him. *Id.; Interview with Parent.* At this time, the District sought consent to conduct a new FBA. *Exhibit 1*, p. 27.
47. Between mid-February and mid-May, the duration of Student’s behavioral incidents totaled at least 45 hours. *Exhibit 1*, pp. 8-11.
48. The District convened Student’s IEP Team in April and May 2022 for Student’s triennial reevaluation. *Interview with Interim Director.* These meetings resulted in a revised IEP and BIP for Student. *Exhibit 1*, pp. 18-26, 94-109.

H. Restraint of Student

49. Typically, the District notifies parents of the reasonable probability that restraint might be used on a particular student in the Crisis Intervention Plan in a student’s BIP. *Interview with Interim Director.* Student’s BIP contained no mention of restraint—either in the Crisis Intervention Plan or elsewhere. *Exhibit 1*, pp. 5-10. Notably, however, Student’s revised BIP—dated April 4, 2022—indicated that Student may be restrained. *Id.* at p. 23.
50. On December 7, 2021, Paraprofessional #2 and Paraprofessional #3 restrained Student. *See Exhibit 3*, pp. 176-179. While students were wrapping up an activity, Student kicked three classmates who were seated on the floor. *Id.* at p. 177. Staff asked Student to stop, but he moved “to get at other seated students.” *Id.* At that point, the paraprofessionals blocked

Student and then used a transport hold to move Student into the Reset Room. *Id.* Staff asked Student to sit on the back wall of the Reset Room and closed the door to the Reset Room. *Id.* Staff ultimately opened the door to talk to Student and help him clean up the room, though it is unclear what they required from Student before the door was opened. *Id.*

51. Student's Behavior Detail Log referenced only a single behavioral incident for the 2021-2022 school year. *Exhibit 4*, p. 7. That incident occurred on October 6, 2021, when Student threw an object at a classmate. *Id.*

52. During the 2021-2022 school year, AN Teacher maintained a separate chart detailing Student's behavioral incidents. *See Exhibit 1*, pp. 1-15. The log contains:

- the date and time;
- the type of behavior Student exhibited (such as verbal aggression, physical aggression, yelling, work refusal, etc.);
- the location of the behavior;
- the length of time until Student reengaged in academic tasks;
- staff's response to the behavior (such as verbal redirection, offering choices, room clear, physical direction, etc.);
- whether Student attempted any calming strategies; and
- whether an escort to the Reset Room or CPI restraint was required.

Id.

53. The log indicated that an escort or CPI restraint was required on September 20, December 2, December 7, January 26, February 1, February 8, February 16, March 29, May 5, and May 10. *Id.* No incident report forms were provided to Parent for any of these incidents except the incident on December 7. *Interview with Parent.* Parent was not verbally notified of the incidents either. *Id.*

54. Between February 14—when Student was moved to the Blue Room—and May 13, there are an additional 42 entries on the log that indicate staff used “physical redirection”, “closed the door”, or both. *Exhibit 1*, pp. 1-15.

55. It is unclear whether “CPI restraint”—as used on the log—refers only to a physical restraint or also includes seclusion. *Id.* Additionally, the phrases “physical redirection” and “closed the door” are similarly ambiguous. *Id.* For example, does physical redirection mean staff blocked Student's egress or used a transport hold? AN Teacher no longer works in the District and did not respond to SCO's attempts to schedule an interview with her. As a result, the SCO was unable to obtain any clarity regarding the terminology used in the log.

56. During an observation in early April for an updated FBA, Student “became upset when asked to do an academic or non-preferred task and escalated quickly.” *Exhibit 1*, p. 65. Once Student

started throwing things, staff closed the door to the Reset Room. *Id.* Student was “repeatedly told that when he is sitting down the door will be opened.” *Id.*

57. The District’s Response acknowledged that “there were numerous instances when seclusion was necessary to avoid injury to staff or [Student].” *Response*, pp. 1-2. However, neither the District’s Response nor any of the supporting documentation provided any specifics on the instances of seclusion (or any other restraints). *See Response*, pp. 1-3.

I. Annual Restraint Review

58. The District requires staff to document any incident of restraint, regardless of length, on the student restraint incident report form. *Interview with Behavior Supports Coordinator; Exhibit L*, p. 1. The form collects information regarding the type of restraint used, the length of the restraint, the staff involved in the restraint, and the details of the incident. *See, e.g., Exhibit 3*, pp. 176-179. The Behavior Support Team regularly reviews restraint reports submitted by District staff. *Interview with Behavior Supports Coordinator*.
59. At the end of each school year, Behavior Supports Coordinator reviews all incident report forms to prepare the District’s annual restraint review (“Annual Restraint Review”). *Id.* None of the incidents at issue in this investigation were included in the Annual Restraint Review since no incident report forms were completed.
60. The Annual Restraint Review identifies the number of students restrained, the number of incident report forms submitted, and the total number of restraints. *Exhibit L*, pp. 1-4. Additionally, the Annual Restraint Review breaks down the restraints by: race, gender, setting (such as general education or AN program or SSN program), geographic region, school level, and length of restraint. *Id.*
61. The Annual Restraint Review indicates that 39.8 percent of restraints during the 2021-2022 school year resulted in injury to staff and students. *Id.* Sixty-one percent of the injuries were to staff, and 39 percent of the injuries were to students.⁵ *Id.* Thirteen percent of the injuries to students were classified as self-inflicted. *Id.*
62. The percentage of restraints resulting in injury is concerning. *Interview with CDE Consultant*. If District staff implement CPI holds per their training, there should be few, if any, injuries to students and staff. *Id.* The CPI program is designed to be safe for students and staff. *Id.* Additionally, if students are properly restrained, they should not be able to injure themselves. *Id.*

⁵ The Annual Restraint Review contains the number and corresponding percentage of injuries to students and staff. However, the percentages calculated by the District are incorrect. For purposes of this investigation, the SCO has relied on the number of injuries reported to recalculate the percentages.

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1(a): The District failed to review and revise Student’s IEP between February and May 2022 to address Student’s behavior, in violation of 34 C.F.R. § 300.324(a)(2)(i) and (b)(1). This violation resulted in a denial of FAPE.

The first allegation accepted for investigation concerns whether the District had an obligation to review and revise Student’s IEP to address his escalating behavior.

The IDEA requires school districts to offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances. *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 69 IDELR 174, 580 U.S. ___, 137 S. Ct. 988, 999 (2017). The IDEA does not promise a particular educational or functional outcome for a student with a disability, but it does provide a process for reviewing an IEP to assess achievement and revising the program and services, as necessary, to address a lack of expected progress or changed needs. *Id.* To that end, school districts have an affirmative duty to review and revise a student’s IEP at least annually. 34 C.F.R. § 300.324(b). However, the IDEA’s procedures contemplate that a student’s IEP may need to be reviewed and revised more frequently to address changed needs or a lack of expected progress. *See id.* §§ 300.324(a)(4)-(6), (b); *Andrew F.*, 137 S. Ct. at 994. The U.S. Department of Education recently emphasized the importance of reviewing and revising a student’s behavioral supports, noting that:

If the child's IEP already includes behavioral supports, upon repeated incidents of child misbehavior or classroom disruption, the IEP Team may need to meet to consider whether the child's behavioral supports are being consistently implemented as required by the IEP or whether they should be changed. It is critical that IDEA provisions designed to support the needs of children with disabilities and ensure FAPE are appropriately implemented so as to avoid an overreliance on, or misuse of, exclusionary discipline in response to a child's behavior.

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions, 122 LRP 24161, Question A-6 (OSEP 2022) (hereinafter, *Discipline Q&A*). At the same time, the U.S. Department of Education strongly cautioned school districts against using restraint in lieu of other strategies to address a student’s behavior:

[E]very effort should be made to prevent the need for the use of restraint or seclusion and that behavioral interventions must be consistent with the child’s rights to be treated with dignity and to be free from abuse. . . . [T]he Department’s position is that restraint or seclusion should not be used except in situations where a child’s behavior is that restraint or seclusion should not be used except in

situations where a child's behavior poses imminent danger of serious physical harm to themselves or others.

Id., Question B-3. The *Discipline Q&A* noted that there is no evidence-based support for the use of restraint or seclusion as “an effective strategy in modifying a child's behaviors that are related to their disability.” *Id.* Instead, IEP Teams should “consider and incorporate into a child's IEP other interventions and supports that are evidence-based.” *Id.*

Here, Student's behaviors escalated significantly during second semester. Student became more aggressive and unpredictable, causing Staff to be concerned for their safety and the safety of Student's peers. (FF #s 32-34.) After Student's suspension in early February, District staff had an internal meeting to discuss how they could support Student. (FF # 35.) Following the meeting, the District moved Student away from his peers in the AN Classroom to the Blue Room. (FF # 37.) The District provided Behavior Coach for two weeks during Student's transition to the Blue Room. (*Id.*) AN Teacher and the AN paraprofessionals started working one-on-one with Student, completing 20-minute rotations between sensory work, academic work, and free choice. (*Id.*) But the District could not provide specifics regarding any other support or instruction that it provided to Student in response to his escalating behaviors. (FF #s 37-38.) Instead, it appears the District did little more than move Student from the AN Classroom. (*Id.*)

The District did not convene Student's IEP Team or conduct any additional assessments to help determine whether Student's behavior supports were being implemented properly and, if so, why they were not working. (*Id.*) At the time, Student's most recent FBA was from preschool, even though Student was now in second grade. (FF # 35.) Yet the District did not seek Parent's consent for a new FBA until April 1, 45 days after Student had been removed from the AN Classroom. (FF #s 37, 46.) Even in the Blue Room, Student struggled with dysregulated, and AN Teacher documented nearly 40 behavioral incidents during the 26 school days Student spent in the Blue Room. (FF # 43.) Nineteen of those incidents involved staff using “physical redirection” or “closing the door” to the Blue Room. (*Id.*) The frequency of the behavioral incidents indicated that—even with his move to the Blue Room—Student needed additional behavioral supports and should have triggered the District to convene Student's IEP Team. Yet the District took no subsequent action until the Blue Room became so damaged that it was no longer safe for Student. (FF #s 43-44.) The District's failure to timely and appropriately respond to Student's changing behavioral needs led to Student being repeatedly secluded in the Blue Room (and, later, the Reset Room).

For these reasons, the SCO finds and concludes that the District failed to review and revise Student's IEP between February and May 2022 to address Student's escalating behavior. This failure resulted in a procedural violation of 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(1).

A. Procedural Violations

The United States Supreme Court has stressed the importance of complying with the IDEA's procedural requirements. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). However, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (concluding a procedural violation can cause substantive harm where it seriously infringes upon a parent's opportunity to participate in the IEP process).

The District's failure to review and revise Student's IEP to address his behavior impeded Student's right to a FAPE and deprived him of educational benefit. As his behaviors increased, Student spent less time on academics, less time with his peers, and more time secluded in the Blue Room. (FF #s 38, 39, 43, 47.) When Student's behaviors began to escalate, the District moved Student to the Blue Room instead of convening Student's IEP Team to consider alternative supports or strategies. (FF #s 35, 37.) The District's failure to review and revise Student's IEP also deprived Parent of her opportunity to participate in deciding how to respond to Student's behaviors. (FF # 35, 41.) As a result, the SCO finds and concludes that the District's procedural violation resulted in a denial of FAPE.

B. Compensatory Education

Compensatory education is an equitable remedy intended to place a student in the same position he would have been if not for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Compensatory education need not be an "hour-for-hour calculation." *Colo. Dep't of Ed.*, 118 LRP 43765 (SEA CO 6/22/18). The guide for any compensatory award should be the stated purposes of the IDEA, which include providing children with disabilities a FAPE that meets the particular needs of the child and ensuring children receive the services to which they are entitled. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 717-18 (3d Cir. 2010). The SCO now explains a compensatory education package designed to help place Student in the same position he would have been had the District reviewed and revised Student's IEP sooner.

Here, the District's violation impacted Student's ability to access specialized instruction and related services. Between mid-February when the District moved Student to the Blue Room through mid-May, the behavioral incidents in AN Teacher's log totaled approximately 45 hours. (FF # 47.) As a result of these behavioral incidents, Student missed 45 hours of specialized instruction or related services. Under Student's IEP, he received 32 hours per week of specialized instruction and four hours per month of mental health services targeting social/emotional skills. (FF # 10.) The SCO finds an award of 30 hours of specialized instruction and two hours of mental health services to be appropriate. Because the District revised Student's IEP (including his BIP) in May 2022 (FF # 48), the SCO has not ordered the District to convene Student's IEP to address this violation.

C. Systemic IDEA Violation

Pursuant to its general supervisory authority, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Indeed, the U.S. Department of Education has emphasized that the State Complaint Procedures are “critical” to the SEA’s “exercise of its general supervision responsibilities” and serve as a “powerful tool to identify and correct noncompliance with Part B.” *Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities*, 71 Fed. Reg. 46601 (Aug. 14, 2006). The existence of systemic allegations in a state complaint does not give rise to the CDE’s authority to investigate systemic issues. Instead, this investigatory authority stems from the CDE’s responsibility for general supervision and obligation to ensure the future provision of services for all IDEA-eligible students. *See id.*; 34 C.F.R. § 300.151(b)(2).

In this case, the District does not have any written policies and procedures regarding reviewing and revising students’ IEPs. The lack of written special education policies and procedures raises concerns that the District is not ensuring staff comply with the IDEA. Though the District indicated it follows the IDEA and other CDE guidance, the lack of written policies and procedures makes it difficult to determine whether any other erroneous practices exist and what training is being provided to staff. For these reasons, the SCO finds and concludes that this violation is systemic and likely to impact the future provision of services for IDEA-eligible students in the District. The SCO has outlined a remedy to address this violation below.

Conclusion to Allegation No. 1(b): The District failed to educate Student consistent with his placement in the LRE and improperly changed Student’s placement, in violation of 34 C.F.R. §§ 300.116 and 300.117. Also, the District’s use of a universal level system resulted in additional violations of 34 C.F.R. §§ 300.116, 300.117, 300.321(a)(1), and 300.324(a)(1). These violations resulted in a denial of FAPE.

The second allegation accepted for investigation relates to Student’s LRE. Specifically, Parent raised concerns over the use of the level system in the AN Classroom and the District’s unilateral decision to move Student to the Blue Room.

A. Placement in the LRE

Under the IDEA, an IEP must include “an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class.” 34 C.F.R. § 300.320(a)(5). This statement describes a student’s recommended placement in the LRE. *Id.* Students with disabilities must be educated consistent with the LRE described in their IEP. *Id.*

“Educating children in the least restrictive environment in which they can receive an appropriate education is one of the IDEA’s most important substantive requirements.” *L.B. ex rel. K.B. v. Nebo Sch. Dist.*, 379 F.3d 966, 976 (10th Cir. 2004). This means that children with disabilities receive

their education in the general education setting with typical peers to the maximum extent appropriate, and that they attend the school they would if not disabled. 34 C.F.R. §§ 300.114, 300.116. Children with disabilities should only be placed in separate schooling, or otherwise removed from the regular educational environment, “if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” *Id.* § 300.114(a)(2)(ii).

A child’s placement must be determined by the IEP Team (including parents), must be individualized, and must be based on the IEP. *Id.* § 300.116; ECEA Rule 4.03(8)(a); *Questions and Answers on Andrew F. v. Douglas Ctny. School Dist. Re-1*, 71 IDELR 68 (EDU 12/7/17). Any significant change in placement, such as a move to a one-on-one setting or a shortened day, must be made by the IEP Team and in consideration of a reevaluation. ECEA Rule 4.03(8)(b)(ii)(B); see *Weld RE-5J School District*, 77 IDELR 148 (SEA CO 07/14/2020) (holding that a move to a placement where Student was completely removed from the general education environment and taught one-on-one by a special education teacher constituted a significant change in placement).

After a student’s annual IEP Team meeting, a district and parent may agree to amend the student’s IEP via written document, without convening another IEP Team meeting. 34 C.F.R. § 300.324(a)(4)(i); ECEA Rule 4.03(8)(b)(ii)(B). The district must then ensure the child’s IEP Team is made aware of those changes. 34 C.F.R. § 300.324(a)(4)(ii).

Here, Student’s IEP indicated that his LRE was less than 40 percent of his time in the general education classroom. (FF # 11.) Student’s IEP did not require any amount in the general education classroom but indicated that he would “have access to the general education classroom while he [was] emotionally regulated and making safe choices.” (FF # 10.) As a result, Student’s minutes in the general education classroom varied “as his needs var[ied].” (*Id.*)

Parent has not challenged the suitability of Student’s LRE as written in his IEP. Instead, Parent has expressed concern about Student being required to earn time in general education through the level system and the impact of Student’s move to the Blue Room on his LRE.

B. Level System

In her Complaint, Parent argued that the level system used by the AN Teacher improperly required Student to earn time outside of the AN Classroom.

AN Teacher used a single level system for all students in the AN Classroom. (FF # 20.) That level system required students on Level 1 to earn recess, lunch in the cafeteria, and specials by obtaining an 80 percent on their point sheet for the day. (*Id.*) If students on higher levels were physically aggressive towards peers or staff, the students were moved back to Level 1. (*Id.*) The level system applied to all students in the AN Classroom and was not tailored to students’ individual needs. (*Id.*) During his time in the AN Classroom, Student never moved past Level 2 and struggled to even move past Level 1. (*Id.*) Therefore, Student was routinely denied access to

recess, lunch, and specials. (*See id.*) For this reason, the SCO finds and concludes that the use of the level system violated 34 C.F.R. §§ 300.116 and 300.117.

A level system may be permissible where it is developed by an IEP Team and individualized to a student's unique needs; however, one-size-fits-all level systems are not compatible with the IDEA. *See Denver Pub. Schs.*, 122 LRP 34367 (SEA CO 09/07/22). The level system in the AN Classroom was not individualized to Student's needs (or the needs of any other students in the program). (FF # 20.) And the level system was developed by AN Teacher without input from Parent or other members of Student's IEP Team. (*Id.*) As a result, the SCO finds and concludes that the level system also resulted in violations of 34 C.F.R. §§ 300.321(a)(1), 300.324(a)(1).

C. Placement Change

Parent also expressed concern that Student's placement was changed outside of an IEP Team meeting when Student was removed from the AN Classroom to either the Blue Room or the Reset Room due to behavior.

Blue Room

In the Blue Room, Student received one-on-one instruction from AN Teacher or one of the AN paraprofessionals. (FF # 37.) For at least the first five weeks Student was in the Blue Room, he was not permitted to attend morning meeting or the social skills group in the AN Classroom. (FF # 38.) Additionally, Student was not allowed to attend lunch, recess, or specials with peers (whether disabled or nondisabled). (*Id.*) This blanket prohibition applied regardless of whether Student was regulated that day or not. (*Id.*)

The District's decision to move Student to the Blue Room constituted a significant change in placement from the placement described in Student's IEP. *See Weld RE-5J School District*, 77 IDELR 148 (SEA CO 07/14/2020). This change of placement was made unilaterally by District staff and not by Student's IEP Team upon consideration of a reevaluation, as required by ECEA Rule 4.03(8)(b)(ii). Parent was not aware of the change to Student's placement until March. (FF # 41.) Parent and District did not agree in writing to make the change outside of an IEP team meeting, as required by 34 C.F.R. § 300.324(a)(4)(i). For these reasons, the SCO finds and concludes that the decision to place Student in the Blue Room was not made by a group of persons, including Parent, and was not consistent with Student's IEP, in violation of 34 C.F.R. § 300.116(a)-(b).

Reset Room

Once the Blue Room was no longer safe for Student, School staff moved Student back to the AN Classroom where he worked—either voluntarily or not—in the Reset Room. (FF # 43.) The Reset Room was a self-contained space in the AN Classroom where all AN students could have a quiet space to work or regulate their behavior. (FF # 21.) Though Student was allowed to participate in morning meeting and social skills group with his classmates, the Findings of Fact show that

Student completed his academic work in the Reset Room away from his peers. (FF #s 44-46.) The SCO also cannot ignore the inherent contradiction in the same space being used for Student's education as for his seclusion. Even assuming Student were free to leave the Reset Room for his academics, Student may not have felt he was free to leave given that he was frequently secluded in that space. Once again, the District did not involve Parent when it decided to educate Student in the Reset Room, and Parent did not agree in writing to make the change outside of an IEP Team meeting. For these reasons, the SCO finds and concludes that the decision to place Student in the Reset Room was not made by a group of persons, including Parent, and was not consistent with the placement in Student's IEP, resulting in an additional violation of 34 C.F.R. § 300.116(a)-(b).

D. Procedural Violations

As noted above, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, both the use of the level system and the District's decision to unilaterally change Student's placement significantly impeded Parent's opportunity to participate in the decision-making process. The actions by the District also impeded Student's right to a FAPE by limiting his access to his peers. The SCO finds and concludes that these violations resulted in a denial of FAPE. However, the denial of FAPE is remedied, in part, by the compensatory education described above and other remedies outlined below. Any additional award of compensatory education would be duplicative.

E. Systemic IDEA Violation

As noted above, CDE must also consider and ensure the appropriate future provision of services for all IDEA-eligible students in the district. 34 C.F.R. § 300.151(b)(2). Nothing in the record indicates that the District routinely changes the placement of Students—such as by moving them out of their classroom—without including parents. For this reason, the SCO finds and concludes that the violation is not systemic.

However, though the Record does not show that one-size-fits-all level systems to be pervasive in the District, the level system used in the AN Classroom could have impacted all of the students in that classroom. The SCO has ordered the District to develop a plan to determine whether the other students in the AN Classroom were denied a FAPE by the level system and, if so, individually determine each AN student's need for compensatory services.

Additionally, even though Interim Director indicated the District advises staff to individualize level systems, the District has no written policy or procedure regarding level systems. (FF # 20.) The

lack of a written policy or procedure makes it difficult to determine what guidance is being given to staff. For these reasons, the SCO finds and concludes that this violation is systemic and likely to impact future IDEA-eligible students in the District. The SCO has outlined a remedy to address the District's lack of policies and procedures below.

Conclusion to Allegation No. 1(c): The District failed to provide Parent with prior written notice when it moved Student to the Blue Room in February 2022, in violation of 34 C.F.R. § 300.503. This violation resulted in a denial of FAPE.

The third allegation concerns the District's obligation provide Parent with prior written notice ("PWN") of its decision to move Student to the Blue Room.

The IDEA requires PWN to be issued a reasonable time before a district proposes or refuses to change "the educational placement of the child or the provision of FAPE to the child." 34 C.F.R. § 300.503(a). PWN must include: (1) a description of the action proposed or refused by the district; (2) an explanation of why the district proposes or refuses to take the action; (3) a description of each evaluation procedure, assessment, record, or report used by the district as a basis for the action; (4) statement that the parents of a child with a disability have protection under the procedural safeguards, and the means by which a copy of a description of the procedural safeguards can be obtained; (5) sources for parents to contact to obtain assistance in understanding the information; (6) a description of other options the IEP team considered and the reasons why those options were rejected; and (7) a description of any other factors relevant to the district's proposal or refusal. 34 C.F.R. § 300.503(b)(1)-(7). The notice must be "written in language understandable to the general public." *Id.* at § 300.503(c).

Here, the District failed to provide Parent with PWN after it changed Student's placement by moving him to the Blue Room. (FF # 42.) As a result, the SCO finds and concludes that the District violated 34 C.F.R. § 300.503.

As noted above, failure to comply with a procedural requirement amounts to a violation of FAPE only if the procedural violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001).

Here, the District changed Student's placement unilaterally without seeking input from Parent. This violation was further compounded by the District's failure to provide Parent with PWN of the decision. The lack of a PWN further delayed Parent learning about Student's move to the Blue Room and deprived Parent of an opportunity to participate in the decision-making process. District's failure to provide PWN resulted in a denial of FAPE. However, the denial of FAPE is remedied, in part, by the compensatory education described above and other remedies outlined below.

Conclusion to Allegation Nos. 2(a)-(d): The District improperly restrained Student from February 2022 to May 2022, in violation of Rule 2620-R-2.01 and 2620-R-2.02(1). This violation resulted in a denial of FAPE.

The next four allegations address the propriety of the District's use of restraint between February and May 2022. Specifically, Parent has alleged that the District used restraint in non-emergency situations and for longer than necessary.

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).⁶ "Seclusion" means "the placement of a student alone in a room from which egress is involuntarily prevented." *Id.* 2620-R-2.00(9).

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.

Id. 2620-R-2.01. The PPRA imposes additional obligations on school districts to ensure restraints do not inhibit a student's breathing, are administered by staff who have received training, and are removed when no longer necessary. *Id.* 2620-R-2.02(1).

Ordinarily, the SCO must determine whether a student was restrained before the SCO can determine whether the District's use of restraint was proper. Here, the alleged incidents of restraint occurred between February and May 2022. While the Record indicates that Student may have been physically restrained and secluded (either in the Blue Room or the Reset Room), the Record lacks any detailed information regarding the individual incidents of restraint. (FF #s 51-57.) AN Teacher's behavior log indicated that Student was restrained on at least six occasions during this time period; however, no incident report forms were completed. (FF # 53.) The log identified an additional 42 occasions in which staff used "physical redirection" or "closed the door" to Student's workspace. (FF # 54.) Depending on the meaning of these phrases, Student could have been restrained on all or some of the 42 occasions. Other documents confirm that Student was restrained, such as Student's FBA and even the District's Response. (FF #s 55, 56.)

⁶ Effective May 26, 2022, the Colorado Legislature amended the definition of "restraint" to "any method or device used to involuntarily limit freedom of movement, including bodily force, mechanical devices, or chemicals." C.R.S. § 26-20-102(6). Because the restraints at issue in this investigation occurred prior to the amendment, the SCO has relied on the prior definition of "restraint."

The District's lack of documentation and former AN Teacher's unwillingness to participate in an interview hampered this investigation. Without facts regarding each incident, the SCO cannot determine whether Student was restrained and whether the use of restraint was proper under the circumstances. As a result, the SCO has no option but to find and conclude that the District improperly restrained Student on numerous occasions between February and May 2022, in violation of Rule 2620-R-2.01. A school district cannot avoid culpability by not documenting incidents of restraint.

Pursuant to C.R.S. § 22-32-147(5), the CDE has the same enforcement authority for restraint investigations as state-level complaints under the IDEA. The Findings of Fact show that Student was restrained as many as 46 times between February 14 and May 11. (FF #s 53-54.) Similar to compensatory education, the Student is entitled to compensatory services as an equitable remedy that is intended to place Student in the same position but for the District's PPRA violations. Given the harm caused by these violations, the SCO finds an award of 30 hours of private mental health services to be appropriate.

Conclusion to Allegation No. 2(e): The District secluded Student in a space with adequate lighting, ventilation, and size and free of injurious items, consistent with Rule 2620-R-2.02(2)(e)(ii). No violation of the PPRA occurred.

The eighth allegation accepted for investigation concerns whether Student was secluded in spaces with adequate lighting, ventilation, and size and that were safe for him.

Under the PPRA, "[a]ny space in which a student is secluded must have adequate lighting, ventilation, and size." Rule 2620-R-2.02(2)(e). Such space should also be free of injurious items "[t]o the extent possible under the specific circumstances."⁷

Here, the Findings of Fact indicate that Student was secluded in both the Blue Room and the Reset Room at various points during the school year. (FF # 53-55.) However, nothing in the Record suggests that these spaces violated the PPRA's requirements. The Blue Room—an 11' by 11' former office—had adequate lighting, ventilation, and size. (FF # 36.) Student ripped wallpaper and broke sheetrock in the Blue Room. (FF # 43.) But this damage does not indicate that the space contained injurious items or was otherwise unsafe for Student at the outset.

As for the Reset Room, the SCO understands Parent's concern about the size of the room. However, the Reset Room is 5' x 5'. (FF # 21.) Given Student's age, the SCO finds the Reset Room to be of adequate size for seclusion. Neither Parent nor the Record indicated that the Reset Room contained inadequate lighting, ventilation, or injurious items.

⁷ Effective May 26, 2022, the Colorado Legislature added requirements that a seclusion room must have at least one window for monitoring (or, alternatively, monitoring through video camera), and a seclusion room cannot be a space used by school staff for storage, custodial, or office space. C.R.S. § 26-20-111(5). Because the incidents in this investigation occurred prior to May 26, 2022, the new requirements do not apply.

For these reasons, the SCO finds and concludes that the District secluded Student in spaces with adequate lighting, ventilation, and size that were free of injurious items, as required by Rule 2620-R-2.02(e)(ii).

Conclusion to Allegation No. 2(f): The District failed to ensure restraints were administered by trained staff, in violation of Rule 2620-R-2.03.

The ninth allegation in this investigation examines whether staff who administered restraints had completed the training required by the PPRA.

Under the PPRA, school districts must “ensure that staff utilizing restraint in schools or facilities are trained.” Rule 2620-R-2.03. Staff utilizing restraint must complete “retraining at a frequency of at least every two years.” *Id.* As evidenced by the Findings of Fact, both AN Teacher and Paraprofessional #2 had not completed training within two years of the incidents at issue in this investigation. (FF #s 26, 28.)

AN Teacher completed a CPI refresher course in May 2019 but did not complete any subsequent CPI training. (FF # 26.) AN Teacher’s CPI certification expired in May 2021, before the 2021-2022 school year began. (*Id.*) The District’s documentation did not indicate when Paraprofessional #2 became CPI certified; her transcript indicates only that she took a CPI refresher course in July 2022. (FF # 28.) Without any evidence in the Record to suggest otherwise, the SCO finds that Paraprofessional #2’s CPI certification was also expired during the 2021-2022 school year. Therefore, the SCO finds and concludes that the District failed to comply with Rule 2620-R-2.03.

The SCO finds and concludes that this investigation reveals a District-wide lack of oversight regarding compliance with the PPRA’s training requirements. (FF # 24.) Under the PPRA, school districts bear responsibility for ensuring staff who use restraint complete training at least every two years. Rule 2620-R-2.03. The PPRA places no individual obligation on staff members. *See id.* Here, the District has attempted to delegate its obligation to staff members. Though the District might require relevant staff to complete training every two years, the District lacks any system to ensure staff comply with that requirement. (*Id.*) Indeed, two of the six staff members working in the AN Classroom during the 2021-2022 school year had not completed training as required. (FF #s 26, 28.)

Additionally, the District’s Annual Restraint Review indicates that nearly 40 percent of the restraints in the District resulted in injury to students or staff. (FF # 60.) The high percentage of injuries is concerning and suggests that staff are not adhering to CPI procedure—perhaps indicating that staff need additional training or are not up to date on their training. (FF # 61.)

The District’s lack of a monitoring system resulted in students being restrained by staff who were not up to date on CPI training and could have resulted in injuries to students. The SCO has addressed this systemic failure in the remedies below.

Conclusion to Allegation No. 2(g): The District failed to comply with the PPRA’s notification requirements, in violation of Rule 2620-R-2.04.

The final allegation accepted for investigation concerns the District’s compliance with the PPRA’s documentation and notification requirements. Specifically, Parent contends she did not receive advance notice that restraint might be used or subsequent notice that Student was restrained.

The PPRA imposes documentation and notification requirements on school districts both before and after a student is restrained. Before a student is restrained, a school district must notify parents, in writing, if “there is a reasonable probability that restraint might be used with a particular student.” Rule 2620-R-2.04(1). Such notice must include the types of restraint that might be used, the circumstances in which it might be used, and the staff involved. *Id.* For students with disabilities, this notification may occur at an IEP Team meeting. *Id.*

Use of restraint triggers additional documentation and notification requirements. *Id.* 2620-R-2.04(2)-(4). These requirements specify, in part, that:

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

Id.

Here, the District failed to comply with all of the PPRA’s documentation and notification requirements. That is, the District did not provide Parent the notification required by the PPRA either before or after Student was restrained. Though the District typically notifies parents of the reasonable probability that restraint might be used in a student’s BIP, Student’s BIP made no mention of restraint whatsoever (though such notification is included in his new BIP). (FF # 49.) Indeed, nothing in the Record evidences that Parent received advance notification that the use of restraint was reasonably probable.

Additionally, the District restrained Student and failed to notify Parent of the use of restraint, either verbally or through a written report. (FF #s 53) The Record indicates that Student was restrained numerous times during the 2021-2022 school year, yet only one incident report form was completed. (FF #s 50, 53.) Parent received no other notification that Student was being restrained. (FF # 53.) For these reasons, the SCO finds and concludes that the District failed to

comply with the PPRA's documentation and notification requirements, in violation of Rule 2620-R-2.04.

REMEDIES

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

- a. Failing to review and revise Student's IEP to address Student's behavior, in violation of 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(1);
- b. Failing to educate Student consistent with his placement in the LRE and improperly changing Student's placement, in violation of 34 C.F.R. §§ 300.116 and 300.117;
- c. Failing to include Parent in determining Student's placement and failing to consider Student's unique needs, in violation of 34 C.F.R. §§ 300.321(a)(1) and 300.324(a)(1); and
- d. Failing to provide Parent prior written notice, in violation of 34 C.F.R. § 300.503.

Additionally, the SCO concludes that the District has violated the following PPRA requirements:

- a. Failing to properly use restraint, in violation of Rule 2620-R-2.01 and Rule 2620-R-2.02(1);
- b. Failing to ensure staff using restraint complete retraining at least every two years, in violation of Rule 2620-R-2.03(7); and
- c. Failing to comply with the documentation and notification requirements, in violation of Rule 2620-R-2.04(4).

The CDE has the authority to order the District to take remedial actions to bring the District into compliance with the IDEA. *CDE State-Level Complaint Procedures*, ¶ 12. Under C.R.S. § 22-32-147(5), the CDE has the same enforcement authority for restraint investigations as state-level complaints under the IDEA. The remedies below address the District's violations of the both the IDEA and the PPRA.

To remedy these violations, the District is ORDERED to take the following actions:

1. Corrective Action Plan

- a. By **Friday, January 13, 2023**, the District shall submit to the CDE a corrective action plan ("CAP") that adequately addresses the violations noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur as to Student and all other students with disabilities for whom the District is responsible. The CAP must, at a minimum, provide for the following:

- i. Attendance and completion of training provided by CDE on reviewing and revising IEPs and placement in the LRE. This training will address, at a minimum, the requirements of 34 C.F.R. §§ 300.116, 300.117, 300.321, and 300.324 and the related concerns addressed in this Decision. Director of Special Education (or Interim Director of Special Education) and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director of Special Education (or Interim Director of Special Education), Behavioral Specialist, Principal, and all School special education staff. Such training shall be completed no later than **Friday, February 24, 2023.**
 - a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to the CDE no later than **Friday, March 3, 2023.**
- ii. Attendance and completion of training provided by CDE on PPRA's documentation and notification requirements. This training will address, at a minimum, the requirements of Rule 2620-R-2.04 and the related concerns addressed in this Decision. Director of Special Education (or Interim Director of Special Education) and CDE Special Education Monitoring and Technical Assistance Consultant will determine the time, date, and format of the training. This training may be conducted in-person or through an alternative technology-based format, such as a video conference, web conference, webinar, or webcast. This training is mandatory for Director of Special Education (or Interim Director of Special Education), Behavioral Consultant, Behavioral Specialist, Principal, and all School special education staff. Such training shall be completed no later than **Friday, February 24, 2023.**
 - a. Evidence that this training occurred must be documented (i.e., training schedule(s), legible attendee sign-in sheets, or other form of documentation, with names, titles, and signed assurances that they attended the training) and provided to the CDE no later than **Friday, March 3, 2023.**

- b. The CDE will approve or request revisions that support compliance with the CAP. Subsequent to approval of the CAP, the CDE will arrange to conduct verification activities to confirm the District's timely correction of the areas of noncompliance.

2. District Procedure Development

- a. The District must develop written procedures regarding monitoring staff's compliance with the PPRA's training requirements, as set forth in Rule 2620-R-2.03. Such procedures should outline how the District will track staff's certification expiration dates and ensure staff (and the District) are aware when their certification is expiring or has expired. The District must develop these procedures and submit them to the CDE for approval by **Friday, February 24, 2023**.
- b. By **Friday, May 12, 2023**, the District shall submit to CDE Special Education Monitoring and Technical Assistance Consultant, finalized written procedures to address all systemic concerns noted in this Decision, to specifically include procedures regarding review and revising IEPs; placement in the LRE and change of placement; and use of level systems. These procedures must be consistent with the requirements of 34 C.F.R. §§ 300.116, 300.117, 300.321(a)(1), 300.324(a)(1), 300.324(a)(2)(i), and 300.324(b)(1). CDE will then conduct follow up activities as appropriate.

3. Compensatory Education Services for Students in AN Classroom

- a. By **Friday, February 24, 2023**, the District must submit to CDE Special Education Monitoring and Technical Assistance Consultant a plan detailing how the District intends to individually determine the extent to which students in the AN Classroom during the 2021-2022 school year require compensatory education as a result of the level system.
 - i. This plan must be consistent with OSEP's guidance for determining compensatory services. *See Return to School Roadmap: Development and Implementation of Individualized Educ. Programs in the Least Restrictive Environment under the Individuals with Disabilities Educ. Act*, 79 IDELR 232 (OSERS 2021), Questions D4-D6.
 - ii. This plan must also be consistent with CDE's guidance for determining compensatory services. *See Special Education & COVID-19 FAQs* (CDE 2021), Compensatory Services, available at https://www.cde.state.co.us/cdesped/special_education_faqs#compensatory.

- iii. While the above guidance was written to address the impact of the COVID-19 Global Pandemic, it provides instructive direction to any IEP teams considering a need for compensatory education and/or how to structure such an award.
- b. If CDE Special Education Monitoring and Technical Assistance Consultant and District agree to a plan by **Friday, March 10, 2023**, the District must use the plan to individually determine about each AN student's need for compensatory services.
- c. If District and CDE Special Education Monitoring and Technical Assistance Consultant cannot reach agreement on a plan by **Friday, March 10, 2023** or the CDE has concerns with the schedule submitted pursuant to 3(d) below, the District will have two weeks to respond to any record requests from the CDE to allow the CDE to determine the compensatory education awards.
- d. The District shall submit a schedule of all AN students' compensatory services to CDE Special Education Monitoring and Technical Assistance Consultant no later than **Monday, April 10, 2023**. District shall schedule compensatory services in collaboration with the students' parent(s). A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. These compensatory services shall begin as soon as possible and will be in addition to any services students currently receive, or will receive, that are designed to advance students toward IEP goals and objectives. The parties shall cooperate in determining how the compensatory services will be provided. If the parent(s) refuse to meet with District within this time, District will be excused from delivering compensatory services, provided that District diligently attempts to meet with parent(s) and documents such efforts. A determination that District diligently attempted to meet with a student's parent(s), and should thus be excused from providing compensatory services, rests solely with the CDE.
- e. Monthly consultation between the provider(s) delivering compensatory services and Director of Special Education must occur to evaluate students' progress in general education and towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress in general education and on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name of the student, the name and title of the provider(s), and the date, the duration, and a brief description of the consultation.

- f. To verify that students have received the services required by this Decision, the District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory services have been completed. The name of the student, the name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. All compensatory services must be completed by **Friday, August 18, 2023**.
- g. If for any reason, including illness, students are not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with student's parent(s) and notify the CDE of the change in the appropriate service log.

4. Compensatory Education Services for Student for Denial of a FAPE

- a. Student shall receive **30 hours of specialized instruction** provided by a District special education teacher or an appropriately licensed special education teacher through a contract with the District. These services must target Student's current annual IEP goals. All 30 hours must be completed by **Friday, August 18, 2023**.
- b. Student shall receive **2 hours of direct mental health services** provided by a District school psychologist or social worker. These services must target Student's current annual IEP goals. All 4 hours must be completed by **Friday, August 18, 2023**.
- c. **By Friday, February 10, 2023**, the District shall schedule compensatory services in collaboration with Parent. A meeting is not required to arrange this schedule, and the parties may collaborate, for instance, via e-mail, telephone, video conference, or an alternative technology-based format to arrange for compensatory services. The District shall submit the schedule of compensatory services to the CDE no later than **Friday, February 17, 2023**. If the District and Parents cannot agree to a schedule by Friday, February 17, 2023, the CDE will determine the schedule for compensatory services by **Friday, March 3, 2023**.
 - i. The parties shall cooperate in determining how the compensatory services will be provided. If Parent refuses to meet with the District within this time, the District will be excused from delivering compensatory services, provided that the District diligently attempts to meet with Parent and documents such efforts. A determination that the District diligently attempted to meet with Parent, and should thus

be excused from providing compensatory services, rests solely with the CDE.

- d. Monthly consultation between the provider(s) delivering compensatory services and Director of Special Education (or Interim Director of Special Education) shall occur to evaluate Student's progress towards IEP goals and adjust instruction accordingly. The purpose of this consultation is to help ensure that compensatory services are designed and delivered to promote progress on IEP goals. The District must submit documentation that these consultations have occurred **by the second Monday of each month**, once services begin, until compensatory services have been completed. Consultation logs must contain the name and title of the provider and the date, the duration, and a brief description of the consultation.
- e. To verify that Student has received the services required by this Decision, the District must submit records of service logs to the CDE by the **second Monday of each month** until all compensatory education services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log.
- f. These compensatory services shall begin as soon as possible and will be in addition to any services Student currently receives, or will receive, that are designed to advance Student toward IEP goals and objectives. These compensatory services must be provided to Student outside of the regular school day (such as before and/or after school, on weekends, or during school breaks) to ensure Student is not deprived of the instruction Student is entitled to (including time in general education). If for any reason, including illness, Student is not available for any scheduled compensatory services, the District will be excused from providing the service scheduled for that session. If for any reason the District fails to provide a scheduled compensatory session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent and notify the CDE of the change in the appropriate service log.

5. **Compensatory Services for Violation of PPRA**

- a. Student shall receive **30 hours of mental health services** provided by Student's existing mental health provider, if any, or through a contract between the District and a suitable provider at the District's expense. All 30 hours must be completed by **Friday, November 3, 2023**, though Parent and the private provider are free to allocate the services however they see fit (i.e., weekly sessions, monthly, etc.). If Parent and the District cannot agree to a Provider by Friday, February 24, 2023, the CDE will select the Provider by **Friday, March 10, 2023**.

- b. To verify that Student has received the mental health services required by this Decision, the District must submit records of the services provided to the CDE by the **second Monday of each month** until all compensatory services have been furnished. The name and title of the provider, as well as the date, the duration, and a brief description of the service, must be included in the service log. The District must communicate with the selected provider to obtain this information.

Please submit the documentation detailed above to the CDE as follows:

Colorado Department of Education
Exceptional Student Services Unit
Attn.: CDE Special Education Monitoring and Technical Assistance Consultant
1560 Broadway, Suite 1100
Denver, CO 80202-5149

NOTE: Failure by the District to meet any of the timelines set forth above may adversely affect the District's annual determination under the IDEA and subject the District to enforcement action by the CDE. **Given the current circumstances surrounding the COVID-19 pandemic, the CDE will work with the District to address challenges in meeting any of the timelines set forth above due to school closures, staff availability, or other related issues.**

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). 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 25th day of November, 2022.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-14

- Exhibit 1: IEPs, BIPs, FBA, PWNs, and evaluation results
- Exhibit 2: Parent's notes
- Exhibit 3: Email correspondence
- Exhibit 4: Attendance records, enrollment history, and behavior detail reports
- Exhibit 5: Private evaluation

Response, pages 1-3

- Exhibit A: Blank
- Exhibit B: Blank
- Exhibit C: Blank
- Exhibit D: Blank
- Exhibit E: Blank
- Exhibit F: Service provider logs
- Exhibit G: Description of level system
- Exhibit H: Blank
- Exhibit I: Behavior log
- Exhibit J: Progress reports
- Exhibit K: Blank
- Exhibit L: Annual Restraint Review
- Exhibit M: Staff transcripts
- Exhibit N: 2021-2022 academic calendar
- Exhibit O: District policies and procedures
- Exhibit P: Blank

Reply, pages 1-5

Telephone Interviews

- Behavioral Specialist: October 28, 2022
- Coordinator of Behavior Supports: October 27, 2022
- Interim Director of Special Education: October 27, 2022
- Parent: October 31, 2022
- Principal: October 28, 2022