

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

**State-Level Complaint 2019:902
El Paso County School District 38**

DECISION

BACKGROUND

On December 27, 2019, the parents (“Parents”) of a student (“Student”) filed a complaint (“Complaint”) against El Paso County School District 38 (“District”) alleging improper restraint of Student in violation of the Protection of Individuals from Restraint and Seclusion Act (“PPRA”)¹ and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”)². The SCO determined that the allegations in the Complaint fell within the SCO’s jurisdiction under the PPRA and the Rules. See Rule 2620-R-2.07. Therefore, the SCO has authority to resolve the Complaint.

RELEVANT TIME PERIOD

The Colorado Department of Education (“CDE”) has jurisdiction to investigate alleged violations of the PPRA that occurred within one year of the date the original complaint was filed. *Id.* at 2620-R-2.07(2)(f). Accordingly, in determining whether a violation of the PPRA occurred, this investigation considers only events occurring on or after December 27, 2018. Any consideration of events prior to this date shall be for context only and not for determining whether a violation occurred. Findings of noncompliance, if any, shall be limited to one year prior to the date of the Complaint.

SUMMARY OF ACCEPTED ALLEGATIONS

1. Whether the District improperly restrained Student on February 1, 2019, specifically by:
 - a. Secluding Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);

¹ 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.

² The Rules are codified at 1 C.C.R. 301-45.

- b. Secluding 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. 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); and
 - d. Failing to provide Student with relief periods from seclusion, in violation of Rule 2620-R-2.02(2)(e)(i).
2. Whether the District failed to comply with the documentation and notification requirements for the alleged restraint on February 1, 2019, in violation of Rule 2620-R-2.04.

FINDINGS OF FACT

After thorough analysis of the entire record,³ the SCO makes the following FINDINGS OF FACT ("FF"):

Background

1. Student currently attends eleventh grade at a District high school ("School"). *Interviews with Parent and Student*. Student is not eligible for special education and related services. *Interview with Executive Director of Exceptional Student Services ("Executive Director")*.
2. During the 2018-2019 school year, Student attended tenth grade at the School. *Interviews with Parent and Student*.
3. Due to the size of the student population, the School has a principal, two assistant principals, and a dean of students. *Interview with Principal/Formal Assistant Principal ("Former Assistant Principal")*.

The District's Behavior Management Program

4. The District uses Crisis Prevention Institute's Nonviolent Crisis Intervention Program ("NCI") for crisis intervention and physical behavior management. *Interview with Executive Director*. NCI teaches staff to use a variety of de-escalation techniques, including physical intervention; however, physical intervention is always the last resort. *Id.*

³ The appendix, attached and incorporated by reference, details the entire record.

5. Parent and the District agree that no physical restraint was used during the incident at issue in the Complaint. *Interviews with Student, Parent, and Assistant Principal*. Therefore, no discussion of NCI’s physical intervention techniques is necessary.
6. The District has three NCI-certified trainers who provide training annually to District staff. *Id.* The staff involved in this Complaint completed NCI training—either a comprehensive or a refresher course—within the year prior to the incident. *See Exhibit B; Interview with Assistant Principal*.
7. The District conducts an annual review of incidents involving restraint, including seclusion, throughout the District. *Interview with Executive Director*. Executive Director prepares a written report detailing the results of the annual review. *Id.*; *see Exhibit A*.

The School’s Investigation of Disciplinary Incidents Involving Multiple Students

8. When a disciplinary incident occurs involving multiple students, School staff typically separate the suspected students. *Interviews with Assistant Principal and Former Assistant Principal*. Depending on the number of students involved, School staff may use individual offices—such as the offices of the two assistant principals and dean of students—or the conference room located within the School’s main office. *Id.* This physical separation prevents the students from discussing the incident or collaborating on a story before School staff can properly investigate. *Id.*
9. Once separate, each student is asked to complete a written incident report, detailing the student’s perception of the incident. *Id.* Administrative staff—often the principal, one of the assistant principals, or the dean of students—talk to each student, asking questions where necessary. *Id.* If this discussion results in a clarification or a change to the student’s incident report, staff annotate that report using a different color pen and initial where the changes were made. *Id.*
10. Students are released once the investigation is complete. *Id.* At that point, any discipline assigned as a result of the investigation would be entered into the District’s student information system. *Interview with Former Assistant Principal*.
11. During the course of an investigation, staff generally allow students to use the restroom located within the office. *Id.*; *Interview with Former Principal*. However, if a student needs to be physically searched—such as for contraband—the student would be searched before being permitted to use the restroom. *Interviews with Assistant Principal, Former Assistant Principal, and Former Principal*. Staff would prioritize this search so the student could use the restroom as soon as possible. *Id.*

February 1, 2019 Incident

12. Around 11:30 a.m. on February 1, 2019, Student and four other boys (“Other Students”) went to the locker room during their lunch hour. *Interviews with Student and Assistant Principal; Exhibit E.* Two staff members suspected the students were vaping and entered the locker room to investigate. *Interviews with Student and Assistant Principal.* One of the Other Students was holding the vape pen when the staff members came into the locker room but said the vape pen belonged to Student. *Id.*
13. Student remembers the staff members calling Former Principal to the locker room; however, Former Principal does not recall going to the locker room. *Interviews with Student and Former Principal.* Regardless, upon the direction of either the staff members or Former Principal, Student and Other Students walked to the School’s main office so the School could investigate the incident. *Interview with Student.* It is undisputed that no physical contact occurred between the students and staff members. *Id.*
14. On the way to the main office, the Other Students began to berate Student, telling him to “stop lying” and “take ownership” for the vape pen. *Id.*
15. Once inside the main office, an administrator separated the students. *Id.; Interviews with Assistant Principal, and Former Principal.* Student was assigned to the conference room located within the main office. *Interviews with Student, Assistant Principal, and Former Principal.* None of the witnesses recall who assigned Student to this room. *Id.; Interview with Former Assistant Principal.*
16. The conference room contains a table with chairs to accommodate approximately 12 people. *Response, p. 3; Interview with Former Assistant Principal; Exhibit J.* One of the conference room’s interior walls is glass with two glass sliding doors. *Response, p. 3; Interview with Former Assistant Principal; Exhibit J.*

A. Locking of Conference Room

17. Student alleges Assistant Principal closed and locked the sliding glass doors. *Interview with Student; Complaint, p. 3.* Assistant Principal said she closed the sliding doors to protect Student. *Interview with Assistant Principal.* As she recalls, at least one of the Other Students was seated in a waiting area near the conference room. *Id.* That Other Student continued to berate Student, so Assistant Principal closed the doors so Student would not have to listen to the Other Student. *Id.*
18. Assistant Principal—as well as all of the School staff interviewed—vehemently denied that Student was locked in the conference room. *Interviews with Assistant Principal, Former Assistant Principal, Former Principal, and Security Officer.* The District does not dispute that the doors to the conference room do, indeed, lock. *Id.* However, each of

the District witnesses indicated that he or she was unaware the doors locked *until* this Complaint was filed. *Id.* None of the District witnesses has ever seen the doors to the conference room locked, regardless of whether a student was inside or not. *Id.*

19. According to Student, the doors have a “lock under the door handles.” *Interview with Student.* Student believed Assistant Principal locked the doors because he saw her “look at the door lock and slide it over to the other side.” *Id.*
20. However, pictures make clear that a key is required to lock the conference room. See *Exhibit J.* One of the sliding glass doors has a two-sided lock located above the door handle; this lock requires a key on both sides of the door. *Id.* Former Principal indicated that, to the best of his knowledge, neither he nor anyone else had a key to that lock during the 2018-2019 school year.
21. Based on the evidence available, the SCO finds it unlikely that Assistant Principal locked Student in the conference room on February 1, 2019.

B. Denial of Access to Restroom

22. During his time in the conference room, Student contends he saw Assistant Principal through the glass doors and waved her over. *Interview with Student.* Student alleges he asked Assistant Principal to use the restroom but was denied. *Id.* Instead, Assistant Principal told Student to “remain in his seat.” *Id.*
23. Student did not feel as if he could use the restroom on his own because the door was locked. *Id.* Even if the door were unlocked, Student believed he would have been suspended if he left the conference room without permission. *Id.*
24. None of the School administrators involved in the incident recall Student asking to use the restroom. *Interviews with Assistant Principal, Former Assistant Principal, and Former Principal.* As noted above, under the School’s standard operating procedures, students are generally permitted to use the restroom located within the main office during an investigation. See *FF # 11.* There was no basis to depart from those standard procedures in this investigation. *Interview with Former Principal.*

C. Interview and Completion of Incident Report

25. Student alleges he was later taken to Assistant Principal’s office, where he discussed the incident with Assistant Principal and Security Officer. *Interview with Student.* Student contends Assistant Principal tried to “coerce” Student into admitting that the vape pen belonged to Student. *Id.* Student refused, and Assistant Principal sent Student back to the conference room to complete the incident report (“Incident Report”). *Id.*; *Exhibit E.* Student says he was “held” in the conference room for “another hour or two” after refusing to accept responsibility for the vape pen. *Interview with Student.*

26. Assistant Principal does not recall interviewing Student, and, in fact, none of the School's administrators recall who interviewed Student. *Interviews with Assistant Principal, Former Assistant Principal, and Former Principal*. Assistant Principal's initials appear on the incident reports for two of the Other Students, indicating that she interviewed those Other Students. *Interview with Assistant Principal*. Neither her initials nor the initials of any other administrator appear on Student's Incident Report. *Id.*; *Exhibit E*.
27. In his Incident Report, Student recites his version of the events that occurred in the locker room. *Exhibit E*. The Incident Report closes by stating: "This concludes my statement and description of the event. I have spoken with security and [Former Principal] already. Thank you." *Id.* However, the Incident Report never mentions Assistant Principal or any concerns related to the conference room. *Id.*

D. Close of Investigation

28. Student contends Other Students "roamed" around the main office while Student was in the conference room. *Interview with Student*. According to Student, Assistant Principal called the Other Students into her office and met with them individually for 10 to 15 minutes. *Id.* After that, the Other Students were free to leave. *Id.*
29. Assistant Principal disagrees, recalling that the Other Students were separated into the two assistant principals' offices, the dean of student's office, and the lobby waiting area. *Interview with Assistant Principal*.
30. At 1:01 p.m.—approximately 90 minutes after the incident—the discipline assigned to the Other Student holding the vape pen was entered into the School's database. *Interview with Assistant Principal*. Based on the School's procedure of entering discipline at the end of an investigation, Former Assistant Principal believes this is the time the investigation was complete. *Interview with Former Assistant Principal; FF # 10*. Former Assistant Principal indicated it was unlikely the discipline for the Other Student would have been entered while Student was still in the conference room. *Id.*
31. Ultimately, Student received no discipline for the incident. *Interview with Assistant Principal*. Student recalls being released from the conference room "about 20 minutes before school ended." *Interview with Student*. Since classes end at 2:52 p.m., this would have been approximately 2:30 p.m. *Id.*
32. Student's attendance record for February 1 shows an absence for his class scheduled from 1:19 p.m. to 2:52 p.m. *Complaint*, p. 4. During her interview, Assistant Principal was unclear why Student was absent from this class. *Interview with Assistant Principal*.
33. After Student was released, he called Parent to ask her to pick him up from School. *Id.* Parent agreed and picked Student up shortly before the end of the school day. *Id.*;

Interview with Parent. Neither Parent nor Student recall the exact time Student was picked up. *Interviews with Student and Parent.*

34. On February 1 at 3:18 p.m., Assistant Principal emailed Parent, providing basic information regarding the incident (i.e. that Student was investigated for possession of a vape pen). *Exhibit F*, p. 6. The email does not indicate that Student was placed in the conference room or that he missed class due to the investigation. *See id.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation No. 1: The District’s February 1, 2019 placement of Student in the conference room did not constitute seclusion because Student’s egress was not involuntarily prevented. As a result, no restraint occurred under the PPRA.

In her Complaint, Parent alleges School staff improperly restrained Student on February 1 when Assistant Principal secluded Student in a locked conference room during the investigation of a disciplinary incident. During the seclusion, Assistant Principal allegedly denied Student access to the restroom. As a preliminary matter, the SCO must determine whether the placement of Student in the conference room constituted a restraint within the scope of the PPRA.

A. Whether Student was Secluded

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. PPRA 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.* A student must be provided “reasonable access to toilet facilities” during seclusion. *Id.* 2620-R-2.02(2)(e).

Here, the alleged seclusion occurred on February 1, 2019. This investigation was complicated by the passage of time between the incident and the filing of the Complaint—on December 27, 2019. Witnesses understandably had trouble recalling every detail of the incident. And the School’s lack of records created a further hindrance. Though the School has Student’s Incident Report, the School has no records detailing the investigation itself (such as where the students were located, who conducted the interviews, and when the students were released). As a result, the evidence in this case is less robust (and, perhaps, less reliable) than it would have been if less time passed before the filing of the Complaint. Nonetheless, the SCO must still determine whether the District secluded Student on February 1, 2019.

The SCO concludes that the Student's placement in the conference room did not constitute seclusion and, thus, did not qualify as a restraint under the PPRA. Though Student may have undoubtedly felt as if he should not leave the conference room, the SCO finds that his egress was not involuntarily prevented. Indeed, at one point, Student left the conference room to meet with Assistant Principal in her office. (FF # 25.) The evidence available—albeit limited—does not support Student's contention that he was locked in the conference room. (See FF #s 18-21.) Former Principal indicated that, to the best of his knowledge, no one had a key to the conference room during the 2018-2019 school year. (FF # 20.) None of the School's staff have ever seen the conference room locked. (FF # 18.)

Student alleges Assistant Principal denied him access to the restroom while he was in the conference room. (FF # 22.) This allegation is troubling. However, Rule 2620-R-2.02(2)(e), which requires "reasonable access to toilet facilities", applies only during seclusion. Since the SCO has determined that the February 1 incident did not constitute seclusion, Rule 2620-R-2.02(2)(e) does not apply.

Conclusion to Allegation No. 2: The School did not violate the PPRA's notification requirements. Because Student was not restrained, the PPRA's notification requirements were not triggered and, thus, the School had no obligation under the PPRA to inform Parent of the incident.

The PPRA's documentation and notification requirements are triggered only by use of restraint. Rule 2620-R-2.04. The SCO has determined that Student's placement in the conference room on February 1 did not constitute a restraint. Therefore, the PPRA's notification requirements were not triggered and the School had no obligation to inform Parent of the incident.

REMEDIES

The SCO concludes that no violations of the PPRA occurred during the February 1, 2019 incident. Accordingly, no remedies are ordered.

CONCLUSION

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

Dated this 25th day of February, 2020.

Ashley E. Schubert
State Complaints Officer

Appendix

Complaint, pages 1-6

- Exhibit 1: Email correspondence regarding incident
- Exhibit 2: Incident Report
- Exhibit 3: Excerpt from District's website regarding Board policies

Response, pages 1-5

- Exhibit A: Annual Restraint Review 2018-2019
- Exhibit B: Training History Report for District staff
- Exhibit C: District and School policies regarding restraint
- Exhibit D: Blank
- Exhibit E: Incident Report
- Exhibit F: Investigation Report
- Exhibit G: Blank
- Exhibit H: Identification of persons with knowledge of allegations
- Exhibit I: Documents regarding Assistant Principal's licensure
- Exhibit J: Pictures of conference room doors

Reply, pages 1-5

- Exhibit 4: Screenshot of Student's attendance record from February 2019
- Exhibit 5: Screenshot of Parent's current access to Student's attendance record from February 2019

Telephonic Interviews

- Executive Director of Exceptional Student Services: February 5, 2020
- Assistant Principal: February 5, 2020
- Security Officer: February 5, 2020
- Former Principal: February 6, 2020
- Parent: February 6, 2020
- Student: February 6, 2020
- Principal/Formal Assistant Principal: February 7, 2020