

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)

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**State-Level Complaint 2022:554  
Ute Pass BOCES**

**DECISION**

**INTRODUCTION**

On October 19, 2022, the parent (“Parent”) of a student (“Student”) identified as a child with a disability under the Individuals with Disabilities Education Act (“IDEA”)<sup>1</sup> filed a state-level complaint (“Complaint”) against a member district (“District”) of the Ute Pass BOCES (“BOCES”). The State Complaints Officer (“SCO”) determined that the Complaint identified three 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”)<sup>2</sup> and its implementing regulations, the Rules for the Administration of the Protection of Persons from Restraint Act (the “Rules”)<sup>3</sup>. Therefore, the SCO has jurisdiction to resolve the Complaint.

**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 October 19, 2021 through October 19, 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.

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<sup>1</sup> 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.

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

<sup>3</sup> The Rules are codified at 1 C.C.R. 301-45.

## SUMMARY OF COMPLAINT ALLEGATIONS

1. Whether the BOCES denied Student a Free Appropriate Public Education (“FAPE”) because the BOCES:
  - a. Failed to develop, review, and revise an IEP that was tailored to meet Student’s individualized needs, from October 19, 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.
  
2. Whether the BOCES improperly restrained Student at School #2 between January 1, 2022 and present, specifically by:
  - a. Restraining Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
  - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of Rule 2620-R-2.01(1)(b);
  - c. Restraining Student as a punitive form of discipline or as a threat to control or gain compliance of Student’s behavior, in violation of Rule 2620-R-2.01(2); and
  - d. Failing to comply with the documentation and notification requirements for restraint, in violation of Rule 2620-R-2.04 and C.R.S. 22-32-147(3)(b.5)-(c).
  
3. Whether the BOCES improperly restrained Student at School #1 on September 19, 2022, specifically by:
  - a. Restraining Student in a non-emergency situation, in violation of Rule 2620-R-2.01(1)(a);
  - b. Restraining Student without first using less restrictive alternatives or determining that less restrictive alternatives would be inappropriate or ineffective under the circumstances, in violation of Rule 2620-R-2.01(1)(b);
  - c. Restraining Student as a punitive form of discipline or as a threat to control or gain compliance of Student’s behavior, in violation of Rule 2620-R-2.01(2);
  - d. Secluding Student in a space without adequate lighting, ventilation, size, and a window for monitoring, in violation of Rule 2620-R-2.02(2)(e)(ii) and C.R.S. 26-20-111(5); and

- e. Failing to comply with the documentation and notification requirements for restraint, in violation of Rule 2620-R-2.04 and C.R.S. 22-32-147(3)(b5)-(c).

### **FINDINGS OF FACT**

After thorough and careful analysis of the entire Record,<sup>4</sup> the SCO makes the following FINDINGS OF FACT (“FF”):

#### **A. Background**

1. Student currently attends first grade at a District elementary school (“School #1”). *Interview with Parents*.
2. Student is eligible for special education and related services under the disability category of Developmental Delay. *Exhibit A*, p. 75.
3. Student is a happy and loving child who enjoys spending time outdoors hiking and fishing. *Interviews with AN Teacher and Parents*. Student enjoys doing puzzles with his family and at school. *Interviews with AN Teacher, Social Worker, and Parents*. Though Student can complete grade-level math, his verbal abilities lag behind those of his non-disabled peers. *Id*.

#### **B. Student’s Transfer to the District**

4. In December 2021, Student enrolled in the District. *Interview with BOCES’ Assistant Director of Special Education (“Assistant Director”); Response*, p. 1. At the time, Student had recently completed his first semester of kindergarten in his prior school district (“Prior District”). *Interview with Parents*. There, Student had been in the general education setting at least 80% of the time. *Exhibit A*, p. 28.
5. Upon his enrollment, the District reviewed Student’s IEP from the Prior District and determined that it would not be accepted for a variety of reasons. *Id.* at pp. 2-7; *Response*, p. 1. The District obtained consent to evaluate from Parents on December 20, 2021. *Exhibit A*, pp. 50-52. A District multidisciplinary team, which included, in part, a speech language pathologist, an occupational therapist, a Board Certified Behavior Analyst (“BCBA”), a general education teacher, and a special education teacher met with Student to conduct an informal “play-based” assessment. *Response*, p. 2; *Exhibit A*, pp. 54-69. The District prepared an evaluation report, dated January 7, 2022, which reviewed the evaluation report, as well as Student’s May 2021 triennial evaluation by Prior District, his prior IEP, and his progress on his prior IEP annual goals. *Exhibit A*, pp. 54-69.

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

6. On January 7, 2022, the District convened a multidisciplinary team to confirm Student's eligibility for special education and related services. *Id.* at pp. 70-72. That team determined that Student remained eligible under the developmental delay disability category. *Id.* Subsequently, Student's IEP Team met to develop his IEP for the District. *Id.* at pp. 76-91.
7. The IEP Team considered whether Student had any behaviors that warranted a behavior intervention plan ("BIP"), but the team—including Parents—agreed that Student did not need a BIP. *Interview with Parents.*

### C. Student's IEP

8. The IEP developed by the District was dated January 7, 2022. *Exhibit A*, pp. 76-91.
9. Because Student had not yet attended school in the District, the present levels of performance portion of Student's IEP contained information from the District's "play-based" observation and his prior IEP. *Id.* at pp. 78-81. During Fall 2021 in Prior District, Student made limited progress or adequate progress on all of his IEP goals. *Id.* at 79-81. His IEP indicated that he "participated in teacher directed activities easily," though he became frustrated with difficult language tasks. *Id.* at p. 78. However, Student was "easily redirected by the teacher." *Id.*
10. As noted in his IEP, Student's difficulty with language and communication impacted his ability to understand "all of the content and direction given to him in a general education classroom and communicating his wants and needs and what he knows." *Id.* His disability also affected Student's ability to stay focused. *Id.*
11. Student's IEP did not indicate that he exhibited behavior requiring a BIP. *Id.* at p. 82. He did not have a BIP from his Prior District. *Interview with Parents.*
12. The IEP contained six annual goals in the areas of communication, language, physical motor, and social/emotional wellness. *Id.* at pp. 82-85. His social/emotional wellness goal provided that "[b]y the end of the IEP year, [Student] will participate in teacher directed tasks without challenging behavior both independently and in group in 80% of opportunities." *Id.* at p. 85.
13. The IEP provided Student numerous accommodations, including, in part, visual reminders for on-task behavior, repetition of directions, prompts for on-task behavior, visual schedule, visual support for breaks or hugs, and providing choices with visual support when Student appeared dysregulated. *Id.* at p. 86.
14. The service delivery statement in the IEP indicated that Student would spend half of his school day in the affective needs ("AN") program at School #2 and the other half in the general education program at School #1. *Id.* at p. 88. Student began his day in the AN program, where he received specialized instruction, speech therapy, and occupational therapy. *Id.* Student

then transitioned to School #1 for lunch, specials, science, and counseling services. *Id.* Under the IEP, Student received the following special education and related services:

- Specialized Instruction: 160 minutes per day of direct specialized instruction provided by a special education teacher outside the general education classroom.
- Occupational Therapy: 80 minutes per month of direct occupational therapy provided by an occupational therapist or a certified occupational therapy assistant outside the general education classroom.
- Speech Therapy: 120 minutes per month of direct speech therapy provided by a speech language pathologist or speech language pathology assistant outside the general education classroom.
- Counseling: 120 minutes per month of direct counseling services provided by a social worker inside the general education classroom.

*Id.* at p. 88.

15. Per his IEP, Student spent 40 to 79 percent of the time in the general education classroom. *Id.* at p. 89.

#### **D. Student's Transition to School #1 and School #2**

16. As outlined in his IEP, Student started his day in the AN Classroom at School #2. *Interview with AN Teacher.* The AN Classroom specifically targeted students' language development and communication. *Interview with Assistant Director.* During the 2021-2022 school year, the AN Classroom served six students in kindergarten through fifth grade. *Id.* AN Teacher and six paraprofessionals staffed the classroom. *Id.*
17. The AN Classroom has a self-contained break room students use for breaks and, at times, seclusion. *Interview with AN Teacher.* The break room measures 6' by 12' and has overhead lights. *Id.* The door to the break room does not contain windows; however, one wall of the break room has a large window that allows staff to observe the entire break room. *Id.* Typically, the break room is empty, but students can bring in blankets or fidget toys if desired. *Id.*
18. The AN Classroom used a penny board system to incentivize Student. *Id.* Student would pick what he wanted to work for from a slate of reinforcers before he started working. *Id.* Student's preferred reinforcers were puzzles, the fish tank, and bubbles. *Id.* When he complied with tasks or completed academic work, Student could "earn his pennies," and, once he had ten pennies, Student received his chosen reinforcer. *Id.*

19. During Spring 2022, Student demonstrated some work avoidance behaviors in the AN Classroom. *Interviews with AN Teacher, Paraprofessional #1, and Paraprofessional #2.* When Student did not want to do something, he would walk away or hide under the table. *Interview with Paraprofessional #1.* However, Student was easily redirected by being asked to check his visual schedule. *Id.* Staff would also ask Student what he was working for to prompt him to get back on task. *Id.* His visual schedule used pictures to outline his whole day at School #2. *Interview with AN Teacher.*
20. AN Classroom staff felt that these strategies effectively addressed Student’s work avoidance behaviors. *Interviews with AN Teacher, Paraprofessional #1, and Paraprofessional #2.* Staff did not recall any other concerning behaviors. *Id.*
21. Just before lunch, the District transported Student to School #1, where he joined nondisabled peers for lunch, recess, specials, and science. *Interview with Parents.* Student also received his counseling services in the general education classroom at School #1. *Interview with Social Worker.* When Student arrived at School #1, Social Worker helped him transition by reading his social story. *Id.* That story explained Student’s day at School #1 and provided reminders about behaviors (such as using words to ask for hugs and listening to teachers). *Id.*
22. During the first few weeks at School #1, Student demonstrated some elopement behavior. *Id.* Student sought to avoid non-preferred activities by eloping to the location of preferred activities in School #1. *Id.; Response, p. 3.* School #2’s Board Certified Behavioral Analyst (“BCBA”) trained staff at School #1 to ensure consistency between both schools in Student’s social story and implementation of the penny board. *Interview with Social Worker.*
23. Afterwards, Student’s elopement behavior tapered off, and he demonstrated work avoidance behavior similar to that at School #2. *Id.* The behavioral strategies in Student’s IEP—such as first/then statements, visual schedule, and positive reinforcements—adequately addressed his work avoidance behavior. *Id.*

#### **E. Beginning of the 2022-2023 School Year**

24. Prior to the 2022-2023 school year, Parents expressed concern regarding Student’s limited access to the general education curriculum. *Interview with Parent.* During the 2021-2022 school year, Student was at School #2 in the morning when the students at School #1 were doing reading and math. *Id.* Student arrived at School #1 as his kindergarten classmates were going to lunch, recess, and specials. *Id.*
25. In response to Parents’ concern, the District agreed to swap Student’s schedule to give him greater access to the general education curriculum. *Interviews with AN Teacher, BOCES’ Director of Special Education (“Director”), and Parents.* Under his new schedule, Student began his day at School #1 and participated in general education core content before leaving

for School #2. *Interview with Parents*. Student then had lunch, recess, and specialized instruction at School #2. *Interviews with AN Teacher and Parents*.

26. The 2022-2023 school year began on August 22, 2022. *Exhibit J*, p. 3. [Special Education Teacher] had been hired to work as a special education teacher near Student's first-grade classroom. *Interview with Parents*.
27. During the first few weeks of the school year, Student demonstrated some elopement behaviors at School #1 like those staff saw during the 2021-2022 school year. *Interview with Social Worker*. Again, he eloped from non-preferred activities to other areas of the building. *Id.* When he left his work area, staff closed the classroom door. *Interview with Director*. If he left the classroom, Paraprofessional #3 (or another staff member) would follow, but not chase, him. *Id.* Staff employed a variety of strategies to get him back into the classroom, such as waiting him out, reminding him to come back to class, using a timer, and repeating the social story. *Id.* School #1 staff placed pictures of stop signs on the floor near the doors of Student's classroom and the specials classroom. *Id.* The stop signs provided a visual reminder that he needed to stay in his designated space. *Id.* Over the course of the first month of school, he started eloping less frequently and going shorter distances when he eloped. *Id.*
28. Student was not eloping at School #2. *Interview with AN Teacher*. However, at School #2, Student continued to display work avoidance behaviors. *Interviews with AN Teacher, Paraprofessional #1, and Paraprofessional #2*. Staff successfully used the same strategies they used in Spring 2022, such as the visual schedule and penny board. *Id.*
29. At the same time, AN Teacher became concerned about Student's lack of progress on some of his IEP goals. *Interview with AN Teacher*. After summer, Student struggled with some concepts he had mastered the prior school year, and his overall language progress seemed stagnant. *Id.* As a result, AN Teacher scheduled an IEP Team meeting for September 19, 2022. *Id.*

#### **F. BOCES' Behavior Management System and Staff Training**

30. The BOCES uses Crisis Prevention Institute's Nonviolent Crisis Intervention Program ("CPI") for crisis intervention and physical behavior management. *Interview with Assistant Director*. 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.*
31. The BOCES requires District teachers to complete CPI training every two years and paraprofessionals to complete CPI training every year. *Id.* The BOCES tracks the completion of training and monitors the expiration dates of District staff's certifications. *Id.*

32. AN Teacher received her CPI certification on January 6, 2022 and completed a refresher course on August 4, 2022. *Exhibit I*, p. 2. Her CPI certification was valid at the time of the incident on September 19, 2022, described below. *Id.*

### **G. BOCES and District Policies**

33. The District has a policy outlining the use of restraint and seclusion by District staff. *Exhibit K*, pp. 2-6. The policy adheres to the Rules, though it has not been revised to contain the May 26, 2022 updates to the PPRA. *Id.*; *Interview with Director*. The BOCES works with each district to help update their policies but has not yet provided districts guidance on updating their restraint and seclusion policies. *Interview with Director*.

34. The District has a policy outlining the use of physical intervention by staff. *Exhibit K*, pp. 7-8. That policy provides as follows:

[D]istrict employees may use reasonable and appropriate physical intervention with a student, that does not constitute restraint as defined by this policy, to accomplish the following:

1. To quell a disturbance threatening physical injury to the student or others[;]
2. To obtain possession of weapons or other dangerous objects upon or within the control of the student[;]
3. For the purpose of self-defense[; and]
4. For the protection of persons against physical injury to prevent the destruction of property which could lead to physical injury to the student or others.

*Id.*

### **H. Physical Intervention**

35. Typically, school staff use physical intervention to ensure the safety of students or to prevent injury to students or staff. *Interview with CDE Consultant*. Physical intervention should not be used solely to gain compliance over a student's behavior; instead, staff should resort to lesser alternatives. *Id.*

36. Physical intervention can include guiding a student down a hallway, but the intervention must not limit the student's freedom of movement. *Id.* A staff member can place his or her hands on a student's shoulders and use some pressure to guide the student. *Id.* In such a position, the student should be free to escape; in fact, the student's ability to escape indicates that his movement has not been restricted. *Id.*



## I. September 19, 2022 Incident

37. On September 19, AN Teacher went to School #1 to observe Student in the general education classroom to see what kind of language Student was using and how he was participating in the general education classroom. *Id.* AN Teacher arrived at School #1 shortly after 9:00 a.m. *Id.* Student was just coming back from recess. *Id.* He earned puzzle time using the penny board system. *Id.* When Paraprofessional #3 asked him to transition back to his writing assignment, Student refused. *Id.* Paraprofessional #3 unsuccessfully prompted Student, and AN Teacher came over to prompt Student. *Id.* Student returned to his workspace but then left the classroom. *Id.*
38. Paraprofessional #3 followed Student out of the classroom, and AN Teacher followed Paraprofessional #3. *Id.* Student went to Special Education Classroom #1, where [Special Education Teacher] was working. *Interviews with AN Teacher, Assistant Director, Director, and Parents.* [Special Education Teacher] and two students were sitting at a table in the classroom. *Interviews with Assistant Director, Director, and Parents.* Paraprofessional #3 prompted Student to return to his classroom. *Id.* When he did not respond, AN Teacher prompted him again and took his hand to lead him back to the first-grade classroom. *Id.* Student pulled away and crawled under the table where [Special Education Teacher] was working. *Id.*
39. Here, the accounts of the incident diverge. AN Teacher said she offered Student her hand and “gently helped him stand up.” *Response*, p. 12; *Interview with AN Teacher.* However, [Special Education Teacher] and Paraprofessional #3 recalled AN Teacher putting both of her hands on Student’s hips and pulling him out from under the table. *Interviews with Assistant Director, Director, and Parents.*<sup>5</sup>
40. The SCO finds the consistency in the accounts of [Special Education Teacher] and Paraprofessional #3 to be an indicator of their reliability. Both witnesses recalled AN Teacher placing her hands on Student’s hips to pull him out from under the table. *Interviews with Assistant Director, Director, and Parents.* This physical contact between AN Teacher and Student lasted less than one minute and will be referred to by the SCO as “Contact A.” *Interview with Parents.*
41. Student then left Special Education Classroom #1 and went to his former kindergarten classroom. *Interviews with AN Teacher, Assistant Director, Director, and Parents.* He went to the corner of the empty classroom near an exterior door. *Interviews with Assistant Director and Director.* Paraprofessional #3 recalled Student looking nervous and scared. *Id.* AN

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<sup>5</sup> Paraprofessional #3 was not interviewed separately during this investigation. However, the SCO has relied upon the notes from her initial interview with BOCES staff after the September 19 incident. The SCO finds her earlier account to be more accurate than an account given in an interview more than two months after the incident.

Teacher followed Student to the corner. *Id.* She gave Student a verbal prompt to return to class, but Student did not comply. *Id.; Interviews with Parents.*

42. AN Teacher said she was concerned that Student might elope out the exterior door. *Interview with AN Teacher.* AN Teacher used what the BOCES called a “momentary physical prompt by gently touching his shoulder from behind with guiding pressure.” *Response*, p. 12. AN Teacher recalled her palms being on the back of Student’s shoulders. *Interview with AN Teacher.* However, Paraprofessional #3 and [Special Education Teacher] both remembered AN Teacher placing her hands or arms under Student’s armpits and using her torso to push Student forward. *Interviews with Assistant Director, Director, and Parents.* No witness recalled AN Teacher limiting the mobility of any part of Student’s body. *Id.; Interview with AN Teacher.* AN Teacher guided Student into the hallway, where he fell down. *Id.; Interview with AN Teacher.* The physical contact lasted less than one minute and will be referred to by the SCO as “Contact B.” *Interviews with AN Teacher, Assistant Director, Director, and Parents.*
43. In the hallway, AN Teacher said she extended her hands, palms up, to help Student up. *Interview with Assistant Director and AN Teacher.* According to Paraprofessional #3, AN Teacher pulled Student up by his arms and said, “time for a break because you’re not listening to teachers.” *Interviews with Assistant Director and Director.*
44. AN Teacher and Student walked to Special Education Classroom #2. *Interview with AN Teacher.* AN Teacher stood behind Student, with her palms on the back of Student’s shoulders and her fingers in Student’s armpits. *Id.; Interviews with Assistant Director and Director.* AN Teacher placed gentle pressure on Student’s shoulders to guide him forward and “waddle-walked” behind him to Special Education Classroom #2. *Interviews with AN Teacher, Assistant Teacher, and Director.* The physical contact lasted less than 30 seconds and will be referred to by the SCO as “Contact C.” *Id.*
45. Special Education Classroom #2 contained a quiet room (“Quiet Room”). *Interview with Assistant Director.* The Quiet Room measures 10’ by 5’ and has a door with a window. *Id.* The space contains overhead lighting operated by a light switch outside the door. *Id.*
46. Once inside Special Education Classroom #2, AN Teacher guided Student to the Quiet Room. *Interviews with AN Teacher, Assistant Director, and Director.* Student said “no” and tried to turn away. *Interviews with Assistant Director and Director.* Both AN Teacher and Paraprofessional #3—the only witnesses to the incident—agreed that the door was closed. *Id.; Interview with AN Teacher.* AN Teacher insisted she did not hold the door closed and that Student was free to leave the Quiet Room. *Interview with AN Teacher.* She said Student was opening and closing the door and making “play sounds.” *Id.; Response*, p. 13. Paraprofessional #3, however, recalled AN Teacher closing the door and holding it closed. *Interviews with Assistant Director and Director.* The light was not on, so Paraprofessional #3 asked AN

Teacher if she should turn on the light. *Interviews with AN Teacher, Assistant Director, and Director.* AN Teacher turned on the light. *Id.*

47. Paraprofessional #3 was a new paraprofessional, and this situation made her feel uncomfortable. *Interviews with Assistant Director and Director.* She questioned AN Teacher about what was happening and said, “I didn’t know I could be so rough.” *Id.*
48. The SCO finds more credibility in Paraprofessional #3’s version of the events. Paraprofessional #3’s reaction to the events suggests that what occurred was something more than Student voluntarily staying in the Quiet Room. AN Teacher forced Student to take a break; it was not an option he chose. And, throughout the incident, Student had been running from AN Teacher. The SCO finds it inconsistent that Student would voluntarily stay in the Quiet Room and make “play sounds” given all that had occurred.
49. AN Teacher set the timer for two minutes and told Student he could come out when the timer went off. *Id.* When the timer went off, AN Teacher opened the door, and AN Teacher, Paraprofessional #3, and Student returned to the first-grade classroom. *Interviews with AN Teacher, Assistant Director, and Director.*
50. Back in the classroom, Student was quieter than normal and seemed distressed. *Interviews with Assistant Director and Director.*
51. On her way out of School #1, AN Teacher stopped by Special Education Classroom #1 to talk to [Special Education Teacher] about what happened. *Interviews with AN Teacher and Parents.* [Special Education Teacher] expressed her frustration with AN Teacher’s actions and told her that “we don’t lay hands on kids here.” *Interview with Parents.* AN Teacher did not understand why [Special Education Teacher] was upset. *Interview with AN Teacher.* Though AN Teacher disagreed, [Special Education Teacher] recalled AN Teacher saying “that is what they do at [School #2] to get him to work and that the seclusion room is used.” *Complaint, p. 4; Interview with Parents.* In hindsight, AN Teacher said she told [Special Education Teacher] they used breaks at School #2 to get Student to work, though [Special Education Teacher] understood her to be talking about seclusion. *Interview with AN Teacher.*
52. AN Teacher then returned to School #2. *Id.*
53. Parents did not receive any verbal or written notice from the BOCES or the District regarding the incident on September 19. *Interview with Parents.*

#### **J. Investigation of September 19 Incident**

54. Shortly thereafter, Parent expressed her concern regarding the incident to Principal. *Id.* Parent then took Student home, [ ]. *Id.* Similarly, AN Teacher contacted Assistant Director to

let him know that there had been an incident and that Parent was upset and she did not understand why. *Interviews with Assistant Director and AN Teacher.*

55. That afternoon, Parent met with Co-Interim Superintendent #1 and Assistant Director. *Interviews with Assistant Director and Parents.* She shared her version of the incident with them. *Id.* They listened but did not ask her any questions. *Interview with Parents.*
56. On the evening of September 19, the District pulled video footage from the hallway. *Interview with Assistant Director.* There were no cameras in Special Education Classroom #1 or Special Education Classroom #2. *Id.* Assistant Director reviewed the video footage (along with other individuals). *Id.* He recalled the video showing Student tripping in the hallway, and AN Teacher offer her hand to help him up. *Id.* The video footage was not preserved and, as a result, was automatically recorded over prior to this Complaint. *Id.*
57. On September 20, Parents met with Assistant Director, Co-Interim Superintendent #1, and Principal regarding the incident. *Interviews with Assistant Director and Parents.* During the meeting, Assistant Director told Parents that he had determined that no restraint or seclusion occurred on September 19. *Id.* At that time, Assistant Director had heard [Special Education Teacher's] side of the story and spoken briefly with AN Teacher but had not interviewed AN Teacher or Paraprofessional #3. *Id.*
58. Meanwhile, Co-Interim Superintendents conducted their own investigation to determine whether AN Teacher violated District policy during the incident on September 19. *Interview with Assistant Director.* Co-Interim Superintendent #2 interviewed those who witnessed the incident and reviewed the video footage. *Id.*
59. On October 5, Co-Interim Superintendent #2 concluded that AN Teacher did not have "improper contact" with Student. *Exhibit 2*, p. 1. His letter summarizing his investigation indicated only that he found "no evidence of policy violation" without referencing any specific policy. *Id.* His investigation also determined that there was no evidence Student was secluded at School #2. *Id.*
60. BOCES staff did not interview other staff until Parents filed this Complaint. *Interviews with Assistant Director and Director.* Director and Assistant Director conceded that the summary in the BOCES' Response contained only AN Teacher's version of the events. *Id.*
61. During interviews for this Complaint, Director and Assistant Director recognized the inconsistency in the stories of the witnesses. *Interviews with Assistant Director and Director.* When asked how they sorted out the inconsistencies, both indicated they knew "what kind of teacher" AN Teacher was and that she could not have done what Parents alleged. *Id.* For example, even though Paraprofessional #3 and [Special Education Teacher] remembered AN Teacher pulling Student out from under the table, Assistant Director said that fact seemed unreliable because Paraprofessional #1 and Paraprofessional #2—both of whom work

regularly with AN Teacher—had never seen her do that before. *Interview with Assistant Teacher*. In that sense, the SCO finds that Assistant Director and Director were placing more emphasis on AN Teacher’s past actions and reputation than on the accounts of witnesses.

#### **K. Restraint and Seclusion at School #2**

62. Parents’ Complaint raised concerns about the use of restraint and seclusion at School #2 based on the statements AN Teacher made [ ] on September 19 following the incident. *Complaint*, p. 7.
63. In its Response, the District indicated that Student had never been restrained or secluded at School #2 by any staff member. *Response*, pp. 9-10. When interviewed, AN Teacher, Paraprofessional #1, and Paraprofessional #2 stated that they never saw any staff member at School #2 restrain or seclude Student. *Interviews with AN Teacher, Paraprofessional #1, and Paraprofessional #2*.
64. Though Student demonstrated some work avoidance behavior at School #2, he was easily redirected and responsive to the strategies used by staff in the AN Classroom, such as his visual schedule and the penny board. *Id.*
65. Staff recalled one instance in which Student asked to take a break in the AN Classroom’s break room. *Id.* During recess one day, Student asked Paraprofessional #2 to take a break. *Id.* Paraprofessional #2 was surprised, because Student had never been in the break room before. *Interview with Paraprofessional #2*. Paraprofessional #2 opened the door and he walked into the break room. *Id.* She asked Student if he wanted the door closed, and he said “yes.” *Id.* Paraprofessional #2 closed the door. *Id.* Student was free to leave at any time, and, after one minute, Student exited the break room. *Id.*
66. When asked about other students in the AN Classroom, staff indicated there was only one instance in which a student in the AN Classroom was secluded between January and September 2022. *Interviews with AN Teacher, Paraprofessional #1, and Paraprofessional #2*. Staff completed the appropriate documentation for that instance of seclusion, and the student’s parents were notified. *Id.*; *Interview with Assistant Director*.

#### **L. Annual Restraint Review**

67. The BOCES expects District staff to document any incident of restraint or seclusion, regardless of length, on incident report forms. *Interview with Director*. The District sends copies of all incident report forms to the BOCES, where Assistant Director, Behavioral Specialist, and Director review the reports to identify any concerning issues and, later, to prepare the BOCES’ Annual Restraint Review. *Id.*

68. The Annual Restraint Review identified each student restrained or secluded within the BOCES. *Exhibit H*, pp. 1-3. For each incident, the Annual Restraint Review included the school district, school, setting, type of restraint or seclusion used, gender, and ethnicity. *Id.* Additionally, the Annual Restraint Review provided the student's disability category, if any. *Id.*

69. However, the BOCES' Annual Restraint Review contains no actual analysis. *Id.* It is merely an Excel spreadsheet with a line for each incident. *Id.* It does not discuss injuries to students, use of preventative or alternative techniques, proper implementation of restraint, or staff training needs. *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(a): The BOCES adequately addressed Student's behavioral needs by including behavioral strategies and supports in Student's IEP, consistent with 34 C.F.R. §§ 300.320-324. No violation of the IDEA occurred.**

The first allegation accepted for investigation concerns whether the District had an obligation to review and revise Student's IEP to address his 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. *Endrew 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); *Endrew 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.* at Question B-3. The *Discipline Q&A* noted that no evidence supports 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, all parties agree that Student did not have any behavioral concerns at the time his IEP was developed. (FF # 7.) Though Student demonstrated some work avoidance behaviors, he was easily redirected by staff. (FF #s 9, 19, 20.) Student's behavior at School #2 remained relatively consistent throughout the investigation period. (FF #s 19, 20, 28.) He continued to struggle with non-preferred tasks, but staff were able to reengage him using the penny board and accommodations in his IEP, such as a visual schedule. (FF # 28.)

Student exhibited elopement behavior at School #1, both in Spring 2022 and Fall 2022. (FF #s 22, 23, 27.) In Spring 2022, Student eloped from a non-preferred activity to the location of a preferred activity. (FF # 22.) District members of his IEP Team collaborated on strategies to ease Student's transition to School #1 around February 2022, and Student's elopement behavior decreased thereafter. (FF #s 22, 23.) In Fall 2022—after returning from summer break—Student's elopement behavior increased. (FF # 27.) Staff responded to Student's behavior with actions designed to ensure his safety (such as closing doors and following him) and by using various behavioral strategies (such as waiting out his elopement, reiterating the social story, timers, and visuals). (FF # 27.)

District staff responded to Student's elopement with behavioral strategies that aligned with the accommodations in his IEP. (FF #s 13, 27.) Those strategies successfully reduced the frequency of Student's elopement and the distance he eloped over the first month of school. (FF # 27.) Meanwhile, Student's behavior remained consistent at School #2, and he continued to be easily redirected by staff. (FF # 28.) The Record does not indicate that Student needed additional

behavioral supports or the creation of a BIP. For these reasons, the SCO finds that the BOCES appropriately responded to Student’s behavioral needs, consistent with 34 C.F.R. §§ 300.324(a)(2)(i) and (b)(1).

**Conclusion to Allegation Nos. 2(a)-(d): The BOCES did not improperly restrain or seclude Student at School #2 between January 2022 and September 2022. No violation of the PPRA occurred.**

The next four allegations address the use of restraint and seclusion by staff at School #2 between January 2022 and September 2022. Parents have not alleged specific instances of restraint or seclusion. Instead, these allegations arise from statements AN Teacher made [ ] after the incident on September 19. (FF # 51.) Before the SCO can determine whether the BOCES improperly restrained or secluded Student, the SCO must evaluate whether any restraint or seclusion occurred at School #2.

#### **A. Whether Student was Restrained or Secluded**

As used in the PPRA, “restraint” refers to “any method or device used to involuntarily limit freedom of movement, including bodily physical force, mechanical devices, or chemicals.” C.R.S. § 26-20-102(6). “Physical restraint” means “the use of bodily, physical force to involuntarily limit an individual’s freedom of movement for more than one minute.” *Id.* § 26-20-102(5). The term “physical restraint” specifically excludes:

- Holding of a student in a position other than a prone position for less than one minute by a staff person for the protection of the student or others;
- Brief holding of a child by one adult for the purposes of calming or comforting the child;
- Minimal physical contact for the purpose of safely escorting a student from one area to another; and
- Minimal physical contact for the purpose of assisting the student in completing a task or response.

*Id.* § 26-20-102(6); Rule 2620-R.2.008(c)(i)-(iv).<sup>6</sup> “Seclusion” refers to “the placement of an individual alone in a room or area from which egress is involuntarily prevented, except during normal sleeping hours.” C.R.S. § 26-20-102(7); Rule 2620-R-2.00(9). A student in a seclusion room must be “continually monitored.” C.R.S. § 26-20-111(5). If a school district uses a seclusion room, the room must have at least one window for monitoring or be monitored through video camera. *Id.* The seclusion room must be “a safe space free of injurious items” and cannot be a space “used by school staff for storage, custodial, or office space.” *Id.*

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<sup>6</sup> As amended May 26, 2022, C.R.S. § 26-20-102(6) excludes the holding of a student for less than one minute for the protection of a student or others. The Rules have not yet been revised to reflect the statutory changes. As a result, the Rules still exclude the holding of a student for less than five minutes.



The SCO must determine whether Student was restrained or secluded before the SCO can determine the propriety of any use of restraint or seclusion. Here, the Record lacks any evidence indicating that staff at School #2 restrained or secluded Student between January 2022 and September 2022. (FF #s 62-66.) By all accounts, Student responded well to the positive behavioral interventions used in the AN Classroom, such that restraint or seclusion would not have been necessary. (FF # 19, 20, 28.) The lack of documentation or recollection by staff members does not definitely indicate that Student was not restrained or secluded but without some indicia otherwise, including from Parents, the SCO finds and concludes that the BOCES did not restrain or seclude Student between January 2022 and September 2022.

**Conclusion to Allegation No. 3(a)-(d): Student’s placement in the Quiet Room at School #1 constituted a seclusion. The BOCES did not have a basis to use seclusion, resulting in a violation of Rule 2620-R-2.01(1).**

Allegations No. 3(a)-(d) concern the use of restraint and seclusion at School #1 during the incident on September 19, 2022. Again, before the SCO can determine whether the BOCES improperly restrained or secluded Student, the SCO must evaluate whether Student was restrained or secluded.

#### **A. Whether the Physical Contact was a Restraint**

AN Teacher had physical contact with Student on at least three occasions on September 19:

- Contact A: When AN Teacher pulled Student from under the table in Special Education Classroom #1,
- Contact B: When AN Teacher guided Student out of Special Education Classroom #1, and
- Contact C: When AN Teacher guided Student into Special Education Classroom #2.

(FF #s 40, 42, 44.) As noted above, “physical restraint” means “the use of bodily, physical force to involuntarily limit an individual’s freedom of movement for more than one minute.” C.R.S. § 26-20-102(5).

#### **Contact A**

Contact A—AN Teacher’s first physical contact with Student on September 19—occurred in Special Education Classroom #1. (FF #s 38-40.) At the time, Student was hiding under a table. (FF # 38.) He was not in danger and was not posing a threat to himself or others. (*Id.*) Because Student did not comply with her instructions, AN Teacher placed her hands on Student’s hips and pulled him out from under the table. (FF # 40.) In doing so, AN Teacher used bodily, physical force to involuntarily limit Student’s freedom of movement. During the physical contact, Student was not free to move however he wanted. However, AN Teacher’s contact with Student lasted less than one minute (*Id.*) The duration of the contact, therefore, prevents it from being classified as a

physical restraint. As a result, the SCO finds and concludes that Contact A did not result in a physical restraint.

### Contact B

With Contact B, AN Teacher used physical contact to guide Student out of Special Education Classroom #1 into the hallway. (FF # 42.) Here, AN Teacher either placed her hands on Student's shoulders or under his armpits. (*Id.*) She used pressure to guide Student forward and into the hallway. (*Id.*) Nothing in the Record indicates that Student's freedom of movement was involuntarily limited. Even if Student's movement had been restricted, the physical contact lasted less than one minute. (*Id.*) As a result, the SCO finds and concludes that Contact B did not result in a physical restraint but, instead, was a physical intervention.

### Contact C

Contact C was similar to Contact B. During Contact C, AN Teacher stood behind Student, with her palms on Student's shoulders and her fingers in Student's armpits. (FF # 44.) AN Teacher again used pressure to guide Student to Special Education Classroom #2. (*Id.*) The contact lasted less than 30 seconds. (*Id.*) Once again, nothing in the Record indicates that AN Teacher limited Student's freedom of movement. Even assuming she did, the physical contact lasted less than one minute. (*Id.*) As a result, the SCO finds and concludes that Contact C did not result in a physical restraint but, instead, was a physical intervention.

Based on these conclusions, the SCO finds and concludes that neither the BOCES nor the District restrained Student during the incident on September 19. No violation of the PPRA occurred.

## **B. Whether Student was Secluded in the Quiet Room**

Next, the SCO must determine whether Student's placement in the Quiet Room constituted seclusion.

As noted above, "seclusion" refers to "the placement of an individual alone in a room or area from which egress is involuntarily prevented, except during normal sleeping hours." C.R.S. § 26-20-102(7); Rule 2620-R-2.00(9). A student in a seclusion room must be "continually monitored." C.R.S. § 26-20-111(5). If a school district uses a seclusion room, the room must have at least one window for monitoring or be monitored through video camera. *Id.* The seclusion room must be "a safe space free of injurious items" and cannot be a space "used by school staff for storage, custodial, or office space." *Id.* "Any space in which a student is secluded must have adequate lighting, ventilation, and size." Rule 2620-R-2.02(2)(e)(ii).

Here, the Findings of Fact evidence that AN Teacher placed Student in the Quiet Room on September 19 for two minutes. (FF #s 46-49.) Though AN Teacher said she did not hold the door closed, Paraprofessional #3 remembered the opposite. (FF # 46.) For several reasons, the SCO

found Paraprofessional #3's account of the events to be more credible. (FF # 48.) As a result, the SCO finds that Student was placed in the Quiet Room alone with his egress involuntarily prevented, resulting in a seclusion.

### **C. Whether the Use of Seclusion was Proper**

Having determined that Student was secluded in the Quiet Room, the SCO must evaluate whether the BOCES had a basis to seclude Student.

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

- Only be used in an emergency 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 of 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.

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

Seclusion may only be used in an emergency. *Id.* The PPRA defines "emergency" as "serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury." Rule 2620-R-2.00(4). Here, nothing in the Record suggests that an emergency existed at the time AN Teacher secluded Student. Indeed, immediately prior to the seclusion, AN Teacher was using physical contact to guide Student down the hallway. (FF # 44.) He posed no threat to himself or others. Instead of secluding Student until the danger had passed or until he was calm, AN Teacher secluded Student for arbitrary amount of time, which is indicative that the seclusion occurred in a non-emergency scenario. (FF # 49.) Because AN Teacher secluded Student in a non-emergency situation, the SCO finds and concludes that the BOCES violated Rule 2620-R-2.01(1)(a).

Even in an emergency, the PPRA permits the use of seclusion after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). Rule 2620-R-2.01(1). Less restrictive alternatives include positive behavior supports, de-escalation, and restructuring the environment. *Id.* Here, AN Teacher attempted some less restrictive alternatives, such as verbally prompting Student, but AN Teacher had, in no way, exhausted available less restrictive alternatives or determined that those alternatives would be inappropriate or ineffective. (FF #s 38, 41.) There is no indication that AN Teacher attempted to utilize the penny board to see if Student want to work for a reinforcer or even gave Student the opportunity to sit and have a break (without being secluded). (FF #s 37-49.) For these reasons, the SCO finds and concludes that the BOCES violated Rule 2620-R-2.01(1)(b).

The PPRA precludes the use of seclusion as a punitive form of discipline or as a threat to gain control over a student's behavior. Rule 2620-R-2.01(2). The Findings of Fact demonstrate that AN Teacher used seclusion to punish Student for not listening to her instructions and to gain control over his behavior. (FF # 43.) Indeed, Paraprofessional #3 recalled AN Teacher saying, "time for a break because you're not listening to teachers" before secluding Student. (*Id.*) Therefore, the SCO finds and concludes that the BOCES used seclusion as a punitive form of discipline and as a threat to gain control over Student's behavior, in violation of Rule 2620-R-2.01(2).

Finally, the PPRA requires that the use of seclusion last no longer and use no more force than necessary. Rule 2620-R-2.01(3). Here AN Teacher secluded Student in a non-emergency situation that did not justify the use of seclusion. (FF # 44.) As a result, the seclusion inevitably lasted longer and used more force than necessary, in violation of Rule 2620-R-2.01(3)(a). Because the BOCES has not satisfied all of the requirements of Rule 2620-R-2.01, the BOCES did not have a basis to seclude Student.

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. Here, the SCO has determined that the BOCES improperly secluded Student on September 19, 2022. However, the isolated nature of the incident and its duration do not warrant any Student-specific remedies. The SCO has outlined remedies below to address the violation.

#### **D. Suitability of the Quiet Room**

The SCO must now determine whether Student was secluded in a space with adequate lighting, ventilation, and size and that was safe for him.

A student in seclusion must be "continually monitored." C.R.S. § 26-20-111(5). If a school district uses a seclusion room, the room must have at least one window for monitoring or be monitored through video camera. *Id.* The seclusion room must be "a safe space free of injurious items" and cannot be a space "used by school staff for storage, custodial, or office space." *Id.*; Rule 2620-R-2.02(e)(ii).

Here, Student was secluded in the Quiet Room on September 19. (FF # 46.) Nothing in the Record suggests that this space violated the PPRA's requirements. The Quiet Room—a 10' by 5' space—had adequate lighting, ventilation, and size. (FF # 45.) Initially, the light in the Quiet Room was not turned on; however, AN Teacher quickly turned on the light after prompting from Paraprofessional #3. (FF # 46.) The Quiet Room had a door with a window, which allowed staff to monitor Student. (*Id.*) Staff at School #1 do not use the Quiet Room for storage, custodial, or office space. (*Id.*)

For these reasons, the SCO finds and concludes that the Quiet Room complied with the requirements of C.R.S. § 26-20-111(5) and Rule 2620-2-202(e)(ii). No violation of the PPRA occurred.

**Conclusion to Allegation No. 2(e): The BOCES failed to comply with the documentation and notification requirements for seclusion, resulting in a violation of Rule 2620-R-2.04 and C.R.S. § 22-32-147(3)(b.5)-(c).**

The final allegation accepted for investigation concerns the BOCES' compliance with the PPRA's documentation and notification requirements.

The PPRA imposes documentation and notification requirements on school districts both before and after a student is restrained or secluded. Before a student is restrained or secluded, a school district must notify parents, in writing, if "there is a reasonable probability" that restraint or seclusion might be used that student. Rule 2620-R-2.04(1). For students with disabilities, this notification may occur at an IEP Team meeting. *Id.* While parents must be notified of the possibility that a student may be restrained or secluded, the inclusion of restraint or seclusion as an intervention in an IEP or BIP would not be appropriate. *See Discipline Q&A, Question B-3.*

Use of seclusion triggers additional documentation and notification requirements. *Id.* 2620-R-2.04(2)-(4); C.R.S. § 22-32-147(b.5). 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 BOCES failed to comply with all of the PPRA's documentation and notification requirements. That is, the BOCES did not provide Parent the notification required by the PPRA either before or after Student was secluded. (FF # 53.) After AN Teacher secluded Student, the BOCES failed to notify Parents of the use of seclusion, either verbally or through a written report. (*Id.*) For these reasons, the SCO finds and concludes that the BOCES failed to comply with the PPRA's documentation and notification requirements, in violation of Rule 2620-R-2.04.

**Conclusion regarding Annual Restraint Review: The BOCES' Annual Restraint Review lacks sufficient analysis to satisfy the requirements of the PPRA, resulting in a violation of Rule 2620-R-2.05(2).**

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

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

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

The BOCES prepares the Annual Restraint Review by gathering information from incident reports submitted during the school year. (FF #s 67-69.) Each incident report is entered onto one line of a table in the document. (FF # 69.) The Annual Restraint Review contains the following information for each restraint: name of student, district, school, general education or special education, restraint or seclusion, type of restraint used, disability category, gender, and ethnicity. (FF # 68.)

But the Annual Restraint Review contains no analysis; it is merely a collection of data from incident reports. (FF #s 67-69.) No portion of the Annual Restraint Review addresses proper administration of restraint, training needs, use of positive behavioral interventions, or injuries to students and staff. (FF # 69.) For this reason, the SCO finds and concludes that the BOCES' Annual Restraint Review, as currently prepared, fails satisfy the requirements of the PPRA, resulting in a violation of Rule 2620-R-2.05(2).

### **REMEDIES**

The SCO found no violation of the IDEA. However, the SCO concludes that the BOCES has violated the following PPRA requirements:

- a. Failing to properly use seclusion, in violation of Rule 2620-R-2.01;
- b. Failing to comply with the documentation and notification requirements, in violation of Rule 2620-R-2.04(4); and
- c. Failing to establish and complete an adequate annual review process, in violation of Rule 2620-R-2.05(2).

The CDE has the authority to order the BOCES to take remedial actions to bring the BOCES 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 BOCES’s violations of the PPRA.

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

## **1. Corrective Action Plan**

- a. By **Monday, January 30, 2023**, the BOCES 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 BOCES is responsible. The CAP must, at a minimum, provide for the following:
  - i. Attendance and completion of training provided by CDE on the PPRA, specifically the basis for the use of restraint and the documentation and notification requirements. This training will address, at a minimum, the requirements of Rules 2620-R-2.01 and 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, Assistant Director of Special Education, staff in School #2’s AN Classroom, and Paraprofessional #3. Such training shall be completed no later than **Monday, February 27, 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 **Monday, March 6, 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 BOCES’s timely correction of the areas of noncompliance.

## **2. BOCES Procedure Development**

- a. The BOCES must develop written procedures to strengthen the annual restraint review process and ensure it complies with the PPRA's requirements, as set forth in Rule 2620-R-2.05(2), as well as the requirements of C.R.S. § 22-32-147. Such procedures must outline the required content of the annual restraint review and how the BOCES will conduct the analysis required by the PPRA. The BOCES must develop these procedures and submit them to the CDE for approval by **Monday, February 27, 2023.**
- b. To demonstrate compliance with the procedures, the BOCES must submit its annual restraint review for the 2022-2023 school year to the CDE for review by **Friday, June 30, 2023.**

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 BOCES to meet any of the timelines set forth above may adversely affect the BOCES' annual determination under the IDEA and subject the BOCES to enforcement action by the CDE.

### **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 18th day of December, 2022.

  
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Ashley E. Schubert  
State Complaints Officer



## APPENDIX

### Complaint, pages 1-9

#### Response, pages 1-14

- Exhibit A: IEPs
- Exhibit B: BIPs
- Exhibit C: Assessments
- Exhibit D: PWNs
- Exhibit E: Behavior logs
- Exhibit F: Report cards and progress monitoring
- Exhibit G: Restraint incident reports
- Exhibit H: Annual Restraint Review
- Exhibit I: CPI training documents
- Exhibit J: District calendar
- Exhibit K: BOCES/District policies
- Exhibit L: Correspondence
- Exhibit M: List of witnesses
- Exhibit N: Verification of delivery of Response to Parent

#### Reply, pages 1-17

- Exhibit 1: Email correspondence
- Exhibit 2: Letter from Co-Interim Superintendent #2
- Exhibit 3: Progress reports
- Exhibit 4: Email correspondence

#### Telephone Interviews

- Affective Needs Teacher: December 1, 2022
- Assistant Director of Special Education: December 1, 2022
- CDE Consultant: December 6, 2022
- Director of Special Education: December 2, 2022
- Paraprofessional #1: December 1, 2022
- Paraprofessional #2: December 2, 2022
- Parents: December 2, 2022
- Social Worker: December 1, 2022