

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

**State-Level Complaint 2024:901
Denver Public Schools**

DECISION

INTRODUCTION

On February 16, 2024, the parent (“Parent”) of a student (“Student”) filed a complaint (“Complaint”) against Denver Public Schools (“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 “PPRA Rules”).² The State Complaints Officer (“SCO”) determined that the allegations in the Complaint fell within the SCO’s jurisdiction under the PPRA and the Rules. See C.R.S. § 22-32-147(6); PPRA Rule 2.07. Therefore, the SCO has jurisdiction 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. PPRA Rule 2.07(2)(f). Accordingly, in determining whether a violation of the PPRA occurred, this investigation considers only events occurring on or after February 16, 2023. 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 violations occurring after February 16, 2023.

SUMMARY OF COMPLAINT ALLEGATIONS

Whether the District improperly restrained Student on or about September 11, 2023, specifically by:

1. Restraining Student in a non-emergency situation, in violation of PPRA Rule 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.

2. 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 PPRA Rule 2.01(1)(b);
3. Restraining Student as a punitive form of discipline or as a threat to control or gain compliance of Student's behavior, in violation of PPRA Rule 2.01(2);
4. Failing to properly administer physical restraint, in violation of PPRA Rule 2.02(2)(c); and
5. Failing to comply with the documentation and notification requirements for restraint, in violation of PPRA Rule 2.04.

FINDINGS OF FACT

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

A. Background

1. Student currently attends seventh grade at a District middle school. *Interview with Parent*. He likes playing video games and has a knack for editing videos. *Id.* Parent described Student as a nurturer who enjoys caring for his puppies and younger cousins. *Id.*
2. Student began the 2023-2024 school year at a District charter school ("School"). *Id.*; *Response*, p. 1. School belongs to a network of charter schools that are overseen by an administrative office ("Administrative Office"). The alleged violations of the PPRA at issue in this investigation occurred while Student attended School. *Interview with Parent; Response*, pp. 1-2.
3. School serves students in grades six through twelve. *Interview with Teacher 1*. The middle school and high school occupy separate buildings on the same campus. *Id.* Within the middle school, each grade level has its own designated hallway. *Id.* For example, students in seventh grade have lockers in the seventh-grade hallway and attend classes in the classrooms located off that hallway. *Id.*

B. The Incident on September 11, 2023

4. Parent alleges School staff improperly restrained Student during an incident at School on September 11, 2023. *Complaint*, pp. 3-4; *Interview with Parent*.

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

5. Security cameras in the hallway captured the incident on video. *Exhibit A-2*. The District provided a copy of the video during this investigation. *See id*. The District also produced copies of a short video taken by another student. *See Exhibit A-1; Exhibit A-3*.
6. During a passing period, Student entered the eighth-grade hallway followed by a large group of seventh graders. *Exhibit A-2; Interviews with Teacher 1 and Teacher 2*. Teacher 1 and Teacher 2 stood in the doorways of their respective classrooms off the eighth-grade hallway. *Interviews with Teacher 1 and Teacher 2*. School requires teachers to stand in the threshold of their classrooms during passing periods to monitor the hallways. *Id*. This ensures students get their things and head to class. *Id*.
7. Both Teacher 1 and Teacher 2 felt an escalated energy from the group of seventh-grade students who entered the hallway. *Id*. Several students had their phones out ready to record, and Teacher 1 felt students were “moving in a way that suggested there would be a fight.” *Id*.
8. Approximately thirty seconds after Student entered the eighth-grade hallway, he and an eighth grader (“Other Student”) began fighting. *Exhibit A-2* at 2:50. More than two dozen students encircled Student and Other Student. *Id*. The video does not show who initiated the fight or who threw the first punch, although District staff claim Student hit Other Student first. *Id.; Interviews with Teacher 1 and Teacher 2*.
9. As soon as the fight broke out, Teacher 1 and Teacher 2 made their way through the crowd of students to intervene. *Interviews with Teacher 1 and Teacher 2; Exhibit A-2* at 2:50. Even after verbal commands, the students in the hallway did not move out of the way. *Interviews with Teacher 1 and Teacher 2*. Teacher 2 used phrases like “Break it up!” and “Go to class, guys!” and recalled Teacher 1 doing the same thing with a loud voice. *Interview with Teacher 2*.
10. When Teacher 2 sees a fight, he usually tries to separate the student with whom he has the best relationship. *Interview with Teacher 2*. In this situation, Teacher 1 and Teacher 2 had a relationship with Other Student but did not know Student since he was only in seventh grade. *Interviews with Teacher 1 and Teacher 2*. Before this incident, neither teacher was familiar with Student whatsoever. *Id*.
11. Teacher 1 and Teacher 2 tried to separate Student and Other Student using outstretched arms and by positioning their bodies between the students. *Id.; Exhibit A-2* at 2:52-2:59. Because Student and Other Student were already fighting, this approach was not successful. *Interview with Teacher 2*. Teacher 2 “pulled” Other Student off Student and used outstretched arms to prevent the two students from engaging any further. *Id.; Exhibit A-2* at 2:59-3:00.

12. At the same time, Teacher 1 tried to remove Student from the fight. *Interview with Teacher 1*. Both Teacher 1 and Teacher 2 recalled Student punching Teacher 1 in the face several times. *Interviews with Teacher 1 and Teacher 2*.
13. Three minutes into the video, Teacher 1 grabbed Student on the left side of the hallway, near where Teacher 2 stood in front of Other Student. *Exhibit A-2* at 3:00. Student's head appears to hit the lockers at least once while Teacher 1 tries to gain control over him. *Exhibit 4*. Facing Student, Teacher 1 wrapped his left arm under Student's right armpit from behind, so that Teacher 1's palm was near Student's shoulder. *Exhibit A-2* at 3:00; *Exhibit A-1* at 00:01. This position pinned Student's right arm down by his side. *Id.* The fingers of Teacher 1's right hand were wrapped around Student's neck. *Exhibit A-2* at 3:00-3:03; *Exhibit A-1*; *Exhibit A-3*. During this time, Teacher 1 and Student moved from the left side of the hallway to the right side of the hallway. *Exhibit A-2* at 3:00-3:30.
14. Teacher 1's right hand remained around Student's neck for at least three seconds and potentially up to seven seconds. *Exhibit A-2* at 3:00-3:07. As other students moved in the video, they obscured the view of Student's neck, making it impossible to determine the exact length of time. *Id.* Teacher 1 acknowledged that his hand made contact with Student's neck. *Interview with Teacher 1*. Teacher 1 described the contact as "very brief" and said he "quickly moved" his hand once he realized where it was. *Id.*
15. At that point, Teacher 1 had Student pressed up against the wall, and Student's head appears to hit the wall. *Exhibit A-2* at 3:07-3:25. Teacher 1 shifted his right hand from Student's neck to Student's left wrist. *Id.* at 3:25. Using a stiff arm, Teacher 1 held Student's left arm outstretched. *Id.* Student's right arm remained pinned by Teacher 1's left arm. *Id.*
16. Once the students were separated, Teacher 2 felt it was clear that Other Student was done engaging. *Id.* Teacher 2 then worked to disperse the remaining kids and send them back to class. *Id.*
17. Student remained in this hold against the wall until 3:58. *Exhibit A-2* at 3:25-3:58. In the video, Student can be seen yelling at peers in the hallway. *Id.* At 3:58, Teacher 1 began to move Student down the hallway. *Id.* at 3:58. As they walked through the hall, Teacher 1's arms and hands remained in the same position. *Id.* at 3:58-4:07. That is, Teacher 1's left arm was still intertwined with Student's right arm, and Teacher 1's right hand was on Student's left wrist. *Id.* Student could not use his arms or his hands during this time. *Id.* Teacher 1 maintained this position to prevent Student from hitting Teacher 1 or other students. *Interview with Teacher 1*.
18. At 4:07, Student and Teacher 1 go off camera. *Exhibit A-2* at 4:07. Teacher 1 took Student to an empty classroom just outside the view of the camera. *Interview with Teacher 1*. Teacher 1 estimated the door to the classroom was approximately five feet past the view of the camera. *Id.*

19. Teacher 1 released Student once they were inside the classroom. *Id.* At that point, Teacher 1 turned the situation over to Dean of Students. *Id.*
20. In total, the hold lasted from 3:00 to, at least, 4:08, a total of 68 seconds. *Exhibit A-2* at 3:00-4:07. Teacher 1 never released Student during the time period. *Id.* In its Response, the District argued the hold ended at 3:57, once Student and Teacher 1 began to walk down the hallway. *Response*, p. 3. Because the intervention lasted only 57 seconds, the District contends Student could not have been restrained. *Id.*
21. The situation felt like an emergency to Teacher 1 and Teacher 2. *Interviews with Teacher 1 and Teacher 2.* It was clear Student and Other Student were not play fighting. *Id.* This, coupled with the number of students in the hallway and the students' energy, felt dangerous to both teachers. *Id.*

C. School's Response to the Incident

22. Within an hour of the incident, Teacher 1 and Teacher 2 provided written accounts of the incident to School administration. *Interviews with Teacher 1 and Teacher 2; Exhibit B*, pp. 1-5. In his statement, Teacher 2 noted:

[Student] kept swinging wildly after being broken up from [Other Student,] hitting [Teacher 1] in the face multiple times. [Teacher 1] then tried to physically restrain and redirect [Student] so he was no longer a threat.

Exhibit B, p. 5. Teacher 1 indicated that:

I had [Student] around the arm pit [sic] and shoulders. . . . I secured his arm so he'd stop hitting me or anyone else and used my left forearm to hold him up against the wall.

Id. at p. 4. None of the other witness statements described the physical contact between Teacher 1 and Student. *Id.* at pp. 1-6.

23. School uses the District's forms to report restraint. *Interview with Administrative Office's Vice President of Culture and Student Experience ("VP of Culture")*. Once the forms are completed by School staff, they are sent to Administrative Office for review before being forwarded to the District. *Id.* However, neither Teacher 1 nor Teacher 2 completed any other documentation of the incident. *Interviews with Teacher 1 and Teacher 2.* When asked during this investigation, Teacher 1 and Teacher 2 were unaware of any system School has for reporting or documenting the use of restraint. *Id.*

24. Upon request from Associate School Director, Administrative Office’s Director of Human Resources (“HR Director”) completed an investigation into the incident. *Exhibit A*, p. 5. The investigation was completed on September 11—the day of the incident. *Id.* Teacher 1 and Teacher 2 did not recall participating in the investigation. *Interviews with Teacher 1 and Teacher 2*. Based on the documentation, HR Director reviewed statements from School staff and School’s security camera footage. *Exhibit A*, p. 5. In the investigation summary, HR Director indicated that “[Teacher 1] put his hand up in an effort to create space from the student and in doing so made incidental contact with the student’s neck while trying to create space.” *Id.* Elsewhere, the summary stated: “When attempting to create space, [Teacher 1] *may* have made contact with the student that *may* have led to his hand being placed on [Student’s] neck.” *Id.* (emphasis added). The outcome of the investigation was “[c]ase closed as unsubstantiated on 9/11/23.” *Id.*
25. School staff asked Parent to pick up Student following the incident. *Interview with Parent*. During a meeting with school administration, Parent was told only that Student had been involved in a fight with another student and would be suspended. *Id.* When School staff brought Student into the room, he told Parent that Teacher 1 had choked him. *Id.*
26. That night, Parent took Student to urgent care, where it was determined that Student had a concussion from hitting his head during the incident. *Id.*
27. School staff never acknowledged to Parent—either in writing or verbally—that Student had been restrained. *Id.* She was never provided with any documentation of the incident. *Id.*; see *Exhibit A*, pp. 1-23.
28. In October, Student left school and enrolled in an online program for the remainder of the first semester. *Id.* Student now attends another District middle school in person. *Id.* According to Parent, this experience traumatized Student. *Id.* His interest in school has decreased, and he has struggled with attendance. *Id.* Student worries he will not be safe at school. *Id.*

D. The District’s Behavior Management System and Staff Training

29. The District utilizes Crisis Prevention Institute’s Nonviolent Crisis Intervention Program (“NCI”) for crisis intervention and physical behavior management. *Interview with NCI Specialist*.
30. Instead of requiring specific types of employees to complete NCI training, the District requires three to six staff members in each building to complete training. *Id.* For buildings with center-based programs, the District expects four to eight staff members to be trained in NCI practices. *Id.* These requirements and expectations apply equally to charter schools. *Id.*

31. The District offers NCI training throughout the school year on weekdays, professional development days, and weekends. *Id.* All trainings are open to District staff, as well as staff at District charter schools. *Id.*
32. School’s Administrative Office—which oversees the network of charter schools—does not require teachers to be NCI certified. *Interview with VP of Culture.* Typically, Administrative Office has each school’s deans, culture staff, and mental health staff complete NCI training. *Id.* These staff members would be available to respond to situations and, when necessary, perform restraint. *Id.* At School, all four deans have completed NCI training. *Id.* Neither Teacher 1 nor Teacher 2 have completed any training on the use of restraints or physical interventions. *Interviews with Teacher 1 and Teacher 2.*

CONCLUSIONS OF LAW

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

Conclusion to Allegation Nos. 1-5: The District restrained Student during the incident on September 11, 2023. Though the District had an appropriate basis to use restraint, the restraint was not properly administered and was performed by a staff member without training, in violations of PPRA Rules 2.02(2) and 2.03. Finally, the District failed to comply with the PPRA’s notification and documentation requirements, in violation of PPRA Rule 2.04(2).

Parent’s Complaint raises five concerns about the incident that occurred on September 11, 2023. Each concern assumes that the District “restrained” Student within the meaning of the PPRA. Accordingly, the SCO must first determine whether Student was restrained.

A. The PPRA’s Definition of “Restraint”

The PPRA defines “restraint” as “any method or device used to involuntarily limit freedom of movement, including but not limited to bodily physical force, mechanical devices, and chemicals.” PPRA Rule 2.00(8). “Physical restraint” means “the use of bodily physical force to involuntarily limit an individual’s freedom of movement for *one minute or more.*” PPRA Rule 2.00(8)(c) (emphasis added). However, “physical restraint” specifically excludes:

- A physical intervention lasting less than one minute for the protection of the student or others or to prevent the destruction of property;
- A brief holding of a student by one adult for the purpose of calming or comforting the student;
- 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.

PPRA Rule 2.00(8)(c)(i)-(iv).

The PPRA does not explain what constitutes minimal physical contact in the context of an escort. Historically, the CDE has relied on guidance from the U.S. Department of Education distinguishing between a physical restraint and an escort:

Physical restraint, although not defined in IDEA and its implementing regulations, means a personal restriction that immobilizes or reduces the ability of a student to move their torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purposes of inducing a student who is acting out to walk to a safe location.

Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, 81 IDELR 138 (OSERS 07/19/22); *see also Dear Colleague Letter: Restraint and Seclusion of Students with Disabilities*, 69 IDELR 80 (OCR 2016) (containing the same quotation).

B. Student Was Restrained on September 11

Here, Teacher 1 placed Student in a hold while he separated Student from Other Student and while he moved Student to a classroom following the fight. (FF #s 12-13.) Initially, Teacher 1 wrapped his left arm under Student's right armpit from behind, pinning Student's right arm. (FF # 13.) Albeit brief, Teacher 1's right hand was pressed against Student's neck. (FF #s 13-14.) Once he realized this, Teacher 1 moved his right hand to Student's left wrist. (FF # 14.) Using a stiff arm, Teacher 1 held Student's left arm out straight away from their bodies. (FF # 15.) Teacher 1 continued this hold as he walked Student down the hallway to a classroom and released Student only once they were in the classroom. (FF #s 17-19.)

In total, the hold lasted at least 68 seconds (and, perhaps, a few seconds longer depending on how long it took Teacher 1 and Student to arrive at the classroom). (FF #s 17-20.) The District argues the physical contact ended once Teacher 1 started moving Student down the hallway and, thus, lasted only 57 seconds. (FF # 20.) The SCO disagrees with this view. At no interim point was Student released from the hold. (FF #s 17-19.) The purpose of the hold—to prevent fighting—remained unchanged. (FF #s 9, 12, 17.) For these reasons, the SCO finds the entire 68 seconds constitute one hold and, thus, meet the one-minute threshold of the PPRA. The video makes clear that Teacher 1 used bodily physical force to involuntarily limit Student's freedom of movement while Student was placed in the hold.

Ten seconds of the hold occurred while Teacher 1 walked Student to the classroom. (FF #s 17-18.) Although the PPRA excludes minimal physical contact that occurs when staff are safely escorting a student, that exclusion does not apply here. Teacher 1's contact with Student went beyond a temporary touching and limited Student's ability to move his arms freely.

Accordingly, the SCO finds and concludes that Teacher 1 physically restrained Student during the incident on September 11.

C. The District Had An Appropriate Basis to Use Restraint

Under the PPRA, the District must have an appropriate basis for the use of restraint. The PPRA requires that restraint may:

- 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.

PPRA Rule 2.01(1)-(3). Here, Parent's Complaint alleged that the District used restraint in a non-emergency situation and to gain control over Student's behavior.

Restraint may be used in cases of emergency. *Id.* "Emergency" means "serious, probable, imminent threat of bodily injury to self or others with the present ability to effect such bodily injury." PPRA Rule 2.00(4). "Bodily injury" includes "physical pain, illness, and any impairment of physical or mental condition." PPRA Rule 2.00(1). Here, an imminent threat of bodily injury existed for Student and Other Student, as well as nearby classmates and teachers. Teacher 1 and Teacher 2 both felt the situation constituted an emergency given the seriousness of the fight, the crowd of students, and the energy of the students. (FF # 21.) For these reasons, the SCO finds and concludes that the situation constituted an emergency under the PPRA.

Even in an emergency, the PPRA permits the use of restraint only after the failure of less restrictive alternatives (or a determination that those alternatives would be inappropriate or ineffective). PPRA Rule 2.01(1). Less restrictive alternatives include positive behavior supports, de-escalation, and restructuring the environment. *Id.* Here, Teacher 1 and Teacher 2 used verbal commands to try to redirect Student and Other Student and encourage their classmates to return to class. (FF #s 9, 11.) These commands were ignored. (*Id.*) Then, the teachers tried to physically position themselves between Student and Other Student. (FF # 11.) This attempt was unsuccessful given that Student and Other Student were already engaged in the fight. (*Id.*) Given that the situation was escalating quickly, it is not clear what other less restrictive alternatives Teacher 1 and Teacher 2 could have tried at that point. Any delay likely would have resulted in injury to Student or Other Student. Thus, the SCO finds and concludes that the District attempted less restrictive alternatives consistent with the PPRA.

The PPRA precludes the use of restraint as a punitive form of discipline or as a threat to gain control over a student's behavior. PPRA Rule 2.01(2). Here, Teacher 1 used restraint to control an escalating situation and prevent injury to students. (FF #s 9, 11, 21.) The restraint was, in no

way, intended to punish Student for his behavior or used as a threat to gain control over Student's behavior. (*Id.*) As a result, the SCO finds and concludes that the restraint was not used as a punitive form of discipline or as a threat to gain control over Student's behavior.

For these reasons, the SCO finds and concludes that Teacher 1 had an appropriate basis to use restraint under the PPRA.

D. The District Did Not Properly Administer the Restraint

The PPRA requires restraint to be properly administered. PPRA Rule 2.02(2). As to physical restraints, a "person administering the physical restraint must use only the amount of force necessary to stop the dangerous or violent actions of the student." PPRA Rule 2.02(2)(c)(i). The staff member must also "continuously monitor" the restraint student to ensure the student's breathing is not compromised. PPRA Rule 2.02(2)(c)(ii). Finally, the physical restraint must be released within fifteen minutes, unless precluded for safety reasons. PPRA Rule 2.02(2)(c)(iii).

Here, Teacher 1 used more force than necessary to stop the fight between Student and Other Student. During the incident, Teacher 1 placed his hand around Student's neck for a few seconds. Though brief in duration, this force went beyond what was needed to separate Student and Other Student and endangered Student. Therefore, the SCO finds and concludes that the District failed to properly administer the restraint, in violation of PPRA Rule 2.02(2).

Teacher 1's improper administration of restraint may have resulted from his lack of training. Neither Teacher 1 nor Teacher 2 had completed any training on use of physical interventions. (FF # 32.) Under the PPRA, staff utilizing restraint must be trained and must complete retraining at least every two years. PPRA Rule 2.03. Teacher 1 used restraint without any training on physical management or restraint practices, resulting in a violation of PPRA Rule 2.03.

Pursuant to C.R.S. § 22-32-147(6) and PPRA Rule 2.07(9)(b), the CDE has the same enforcement authority for restraint investigations as state-level complaints under the IDEA. Here, the Findings of Fact show that Teacher 1 improperly administered restraint during the incident on September 11. (FF #s 13-15.) In state-level complaints, compensatory education is an equitable remedy intended to place a student in the same position he would have been in but for the violation. *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005). Like compensatory education, Student is entitled to compensatory services as an equitable remedy to place Student in the same position he would have been in but for the District's PPRA violations. Parent indicated that, since the incident, Student's enthusiasm for school has waned, and his attendance has suffered. (FF # 28.) Student worries he will be hurt at school. (*Id.*) The SCO finds an award of three hours of counseling services to be appropriate.

E. The District Did Not Properly Document the Restraint

Use of restraint triggers the PPRA's documentation and notification requirements. PPRA Rule 2.04(2). These requirements specify, in part, that:

- Any staff member using restraint or seclusion must notify school administration of the incident as soon as possible to ensure the parent can be notified the same day.
- The staff member must submit a written report of the incident to school administration within one school day of the incident.
- The school principal or designee must notify the parent of the use of restraint or seclusion verbally or in writing as soon as possible but no later than the end of the school day that any restraint or seclusion is used.
- If a physical restraint is between one and five minutes, the school must give the parent written notice on the day of the restraint and include the date, name of student, and number of restraints that lasted between one and five minutes.
- If a restraint is longer than five minutes, school administration must complete a written report regarding the incident. The report must be provided to the parent within five calendar days after the use of the restraint.

PPRA Rule 2.04(2).

Here, the District failed to comply with the PPRA's requirements. Following the incident on September 11, Teacher 1 notified School administration of the incident but did not indicate that he restrained Student. (FF # 22.) This error may have resulted from Teacher 1's lack of restraint training. (FF # 32.) Regardless, even after completing an internal investigation, neither School staff nor Administrative Office staff recognized that Student was restrained. (FF # 24.) As a result of this disconnect, Parent was not notified verbally or in writing by School or the District of the use of restraint. (FF #s 25, 27.) For this reason, the SCO finds and concludes that the District violated PPRA Rule 2.04(2).

REMEDIES

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

- a. Failing to properly administer physical restraints, in violation of PPRA Rule 2.02(2)(c);
- b. Failing to ensure staff using restraint complete training, in violation of PPRA Rule 2.03; and
- c. Failing to comply with the documentation and notification requirements, in violation of PPRA Rule 2.04(2).

The CDE has the authority to order the District to take remedial actions to bring the District into compliance with the PPRA. C.R.S. § 22-32-147(6).

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

1. Corrective Action Plan

- a. By **Tuesday, May 14, 2024**, the District shall submit to the CDE a corrective action plan (“CAP”) that adequately addresses the violation noted in this Decision. The CAP must effectively address how the cited noncompliance will be corrected so as not to recur. 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. Final Decision Review

- a. District Manager of Mental Health and Behavioral Supports, VP of Culture, School Director, Associate School Director, Teacher 1, Teacher 2, and all of School’s Deans of Students must review this Decision as well as the requirements of PPRA Rules 2.02(2), 2.03, and 2.04(2). This review must occur no later than **Tuesday, May 28, 2024**. A signed assurance that these materials have been reviewed must be completed and provided to CDE no later than **Friday, May 31, 2024**.

3. Procedure Development

- a. The District, in conjunction with Administrative Office or School, must develop written procedures regarding documentation of incidents involving restraint or seclusion at School and Administrative Office’s other schools within the District (“Other Schools”). These procedures should set forth how School and Other Schools will comply with the PPRA’s documentation and notification requirements in PPRA Rule 2.04(2). Such procedures must also outline how School and Other Schools will submit reports of incidents of restraint to the District. These procedures must be submitted to the CDE for approval by **Tuesday, June 18, 2024**.
- b. The District must ensure that School Director, Associate School Director, all School’s teachers, all School’s social workers, and all School’s Deans of Students receive a copy of the new procedures (including any accompanying forms) no later than **Friday, August 16, 2024**. Evidence that the procedures were shared with staff, such as a copy of the email sent, must be provided to the CDE no later than **Friday, August 23, 2024**.

4. Compensatory Services

- a. Student shall receive **3 hours of counseling services** provided by a school counselor at Student's current school. All three hours must be completed by **Tuesday, September 17, 2024.**
- a. By **Friday, June 14, 2024,** 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 include the dates, times, and durations of planned sessions, to the CDE no later than **Monday, June 17, 2024.** If the District and Parent cannot agree to a schedule by June 14, 2024, the CDE will determine the schedule for compensatory services by **Friday, June 28, 2024.**
 - i. The parties shall cooperate in determining how 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(s) 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.
 - ii. Parent may opt out of some or all of the compensatory services.
- b. To verify that Student has received the counseling 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. District must communicate with the selected provider to obtain this information.
- c. 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 session, the District will not be excused from providing the scheduled service and must immediately schedule a make-up session in consult with Parent, as well as notify the CDE of the change in the monthly service log.

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 subject the District 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; PPRA Rule 2.07(9)(c). This Decision shall become final as dated by the signature of the undersigned SCO.

Dated this 16th day of April, 2024.



Ashley E. Schubert
State Complaints Officer

APPENDIX

Complaint, pages 1-10

Response, pages 1-7

- Exhibit A: Incident documentation and video recordings
- Exhibit B: Disciplinary documentation
- Exhibit C: Behavior logs
- Exhibit D: Blank
- Exhibit E: Restraint training materials
- Exhibit F: District's annual restraint review
- Exhibit G: District policies and procedures
- Exhibit H: Correspondence

Reply, pages 1-8

- Exhibit 1: Additional documentation
- Exhibit 2: Video recording
- Exhibit 3: Video recording
- Exhibit 4: Video recording
- Exhibit 5: Video recording
- Exhibit 6: Video recording

Telephone Interviews

- NCI Specialist: March 22, 2024
- Parent: March 29, 2024
- Teacher 1: March 22, 2024
- Teacher 2: March 22, 2024
- Vice President of Culture and Student Experience: March 22, 2024