

**Findings of Multiple Problems with the Use of Seclusion and Restraint for Student Results
in Determination of “Neglect.”**

**Denali and Woodriver Elementary Schools
Fairbanks North Star Borough School District
April 2016**

**The Disability Law Center of Alaska
Community Integration Unit - Abuse/Neglect Investigation**

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TABLE OF CONTENTS

I.	INTRODUCTION & SUMMARY.....	3
II.	GENERAL INFORMATION & TERMS.....	4
III.	SUMMARY, METHODOLOGY & FINDINGS	7
IV.	CURRENT DISTRICT POLICIES, PROCEDURES	41
V.	CURRENT DISTRICT ADMINISTRATIVE REGULATIONS.....	42
VI.	CONCLUSIONS & RECOMMENDATIONS, PART I.....	42
VII.	CONCLUSIONS & RECOMMENDATIONS, PART II.....	47

I. Introduction and Summary

In October of 2013, the Disability Law Center (DLC) of Alaska received a complaint alleging a six year old student who experiences Autism was frequently and inappropriately being placed in seclusion while attending Denali Elementary School, which is part of the Fairbanks North Star Borough School District, during the 2013-2014 school year. That same month, DLC initiated an abuse and neglect investigation into that allegation. As a result of those concerns, the student transferred to Woodriver Elementary School, which is also part of the District. In February of 2014, DLC received a complaint involving the same student, alleging the student was once again being inappropriately placed in seclusion, this time at his new school. DLC initiated an abuse and neglect investigation into that complaint as well. During the course of the investigation, DLC received a complaint alleging the student's mother had requested that school staff at Woodriver Elementary School demonstrate the holds or restraint techniques being used with her son when he was being taken to seclusion or once he was in seclusion, but was denied. That complaint was also investigated by DLC.

This report contains an overview of DLC's investigations into those complaints, including its methodology or process, its findings, its conclusions, and its recommendations to the North Star Borough School District.

DLC would like to thank District staff who made numerous requested documents available; the staff who participated in interviews with DLC; and the general cooperation and assistance provided by the District.

II. General Information & Terms

The Disability Law Center of Alaska (DLC) is Alaska's federally mandated Protection and Advocacy (P&A) system. Under the Developmental Disabilities Assistance and Bill of Rights Act,¹ (also known as the DD Act or PADD), DLC is mandated to protect and advocate for the rights of individuals, including minors, with developmental disabilities.²

The DD Act gives DLC federal statutory authority that provides for investigating allegations of abuse and neglect of individuals with developmental disabilities (e.g., special education students). This Act also grants DLC a unique access authority, giving it access to facilities, schools, records, staff and administration in order to complete its investigation.³

Developmental Disability means "...a severe, chronic disability of an individual that - (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is manifested before the individual attains age 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care. (II) Receptive and expressive language. (III) Learning. (IV) Mobility. (V) Self-direction. (VI) Capacity for independent living. (VII) Economic self-sufficiency; and (VIII) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated..."⁴

Denali Elementary School – According to the school's website,⁵ "Denali Elementary is the oldest operating school in Fairbanks having been established in 1951. Located in downtown Fairbanks, the original building was replaced in 2005 with new construction, right next to the original. It is primarily a neighborhood school with approximately 400 students. The school community is enriched by its culturally and economically diverse population with a good mix of old-time families and relative newcomers to the area."

Woodriver Elementary School – As of this writing, there was nothing available on the school's website describing the school.⁶

"ABEL" – Stands for "Autism & Behavior Educational Liaisons." It is a support and training unit within the District, and is described in their brochure as providing "training and resources to staff, while assessing the behavioral needs of students and developing service plans to increase functional independence across educational settings."⁷

¹ 42 U.S.C. §§ 15001; 15041-15045.

² *Id.*

³ 42 U.S.C. § 15043.

⁴ 42 U.S.C. § 15002(8).

⁵ Denali Elementary, Excellence And Equity For All, available at <http://www.k12northstar.org/site/Default.aspx?PageID=1088>.

⁶ Woodriver Elementary, Excellence And Equity For All, available at <http://www.k12northstar.org/Page/1136>

⁷ The ABEL brochure is available at <http://www.k12northstar.org/Domain/1721>.

“CPI” - Stands for the “Crisis Prevention Institute,” which is a trademark name for “...an international training organization committed to best practices and safe behavior management methods that focus on prevention... The cornerstone of CPI is the *Nonviolent Crisis Intervention*® program, which is considered the worldwide standard for crisis prevention and intervention training...”⁸

Complaint includes, but is not limited to any report or communication, whether formal or informal, written or oral, received by the P&A (DLC) including media accounts, newspaper articles, telephone calls (including anonymous calls), from any source alleging abuse or neglect of an individual with a developmental disability.⁹

Abuse means any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes such acts as: Verbal, nonverbal, mental and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing such an individual in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations or any other practice which is likely to cause immediate physical or psychological harm or result in long term harm if such practices continue.¹⁰

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff.¹¹

Physical restraint “...means the use of physical strength to significantly restrict the free movement of all or a portion of the student’s body. To the extent possible without compromising safety, other interventions should be attempted prior to the use of restraint. Restraint must be limited to that necessary to address the emergency and should be discontinued when the emergency no longer exists. Restraint may not be used as a form of discipline. Physical restraint must be implemented in a manner that protects the health and safety of the student and others. Restraint may not prevent the student from breathing or speaking. **Prone or supine restraint (when the student is placed on his or her stomach or back) is prohibited.** A student’s well being must be monitored during restraint.”¹² (Emphasis in original).

⁸ Information about CPI is available at <http://www.crisisprevention.com/About-CPI>.

⁹ 45 Code of Federal Regulations § 1386.19.

¹⁰ *Id.*

¹¹ *Id.*

¹² The Fairbanks North Star Borough School District did not have policies and procedures in place for the use of restraint or seclusion at the time these investigations began. This definition was taken from the *Special Education Handbook*, State of Alaska Department of Education & Early Development, 2013, at 145-146. The Handbook is available at <https://www.kpbsd.k12.ak.us/WorkArea/DownloadAsset.aspx?id=27352>.

Seclusion "...is the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving (not to be confused with "time out"). Seclusion of a student is prohibited unless needed as an emergency response to protect the student or others from physical injury. **A student should be continuously observed during seclusion.** Seclusion should last only as long as necessary to resolve the actual risk of danger or harm, or while awaiting the arrival of law enforcement or crisis intervention personnel."¹³ (Emphasis in original).

"Calm Corner" – This is the name of the area where the student who is the subject of this report was sequestered to at both schools. The teacher at Denali Elementary School described the Calm Corner as a corner of the room where there was no furniture, where the area was quiet, and where there was a gym mat that could be used as a barrier if needed for protection.

The teacher at Woodriver Elementary School described the Calm Corner as approximately 3 feet by 4 feet. The area had two soft chairs and was also used as a quiet place for the student or other students to go and read or play with toys. Another name for the space was the "Reset Area." She reported one gym mat was against the wall to keep students from banging their head on the wall, and another gym mat could be used as a partition to protect others if the student was exhibiting behaviors such as biting, kicking or hitting.

¹³ *Id.* at 146.

III. Summary, Methodology & Findings

a. Seclusion

DLC utilized the guidelines for Seclusion located in the 2013 State of Alaska *Special Education Handbook* (Handbook) when evaluating whether or not the two schools' practices of separating the student from his classmates by use of a "Calm Corner"¹⁴ met the definition of "seclusion." According to those guidelines:

Seclusion is the involuntary confinement of a student **alone** in a room or area from which the student is prevented from leaving (not to be confused with "time out") Seclusion of a student is prohibited unless needed as an emergency response to protect the student or others from physical injury. **A student should be continuously observed during seclusion.** Seclusion should last only as long as necessary to resolve the actual risk of danger or harm, or while awaiting the arrival of law enforcement or crisis intervention personnel.¹⁵ (Emphasis in original)

DLC interprets the Handbook definition of seclusion to include the District's use of the Calm Corner. DLC was able to substantiate the complaints alleging seclusion by determining that the student: was frequently and involuntarily placed in an area (the Calm Corner) that separated him from the rest of the classroom and his peers; and was prevented from leaving the Calm Corner through staff's holding up a gym mat to prevent egress, or using their own bodies or physical restraint for that purpose.

The proposition that a student is not 'alone' when an adult is present observing him is in conflict with the bolded requirement that a student "should be continuously observed during seclusion." If by definition staff must be present when 'seclusion' is taking place, the word "alone" must refer to the separation of the student from his or her peers.

This understanding is supported by the District's own Administrative Regulation, 1064.2, that was adopted in November, 2014. This regulation defines seclusion as the involuntary confinement of a student who is "alone." Immediately following this definition are two examples of what constitutes appropriate seclusion:

¹⁴ During a telephonic interview, the teacher at Denali Elementary School described the Calm Corner as a corner of the room where there was no furniture, where the area was quiet, and where there was a gym mat that could be used as a barrier if needed for protection. Also during a telephonic interview, the teacher at Woodriver Elementary School described the Calm Corner as approximately 3 feet by 4 feet. The area had two soft chairs and was also used as a quiet place for the student or other students to go and read or play with toys. Another name for the space was the "Reset Area." She reported one gym mat was against the wall to keep students from banging their head on the wall, and another gym mat could be used as a partition to protect others if the student was exhibiting behaviors such as biting, kicking or hitting.

¹⁵ *Special Education Handbook*, State of Alaska Department of Education & Early Development, 2013, p .146. Available at <https://www.kpbsd.k12.ak.us/WorkArea/DownloadAsset.aspx?id=27352>.

- a. when student is alone and physically prevented from leaving the room after a “room clear” by locking or holding the door closed; or
- b. when student is surrounded by mats and prevented from leaving the area by staff holding the mats stationary; and**
- c. a staff member is continuously monitoring the student by face to face or direct visual contact throughout the seclusion.** (emphasis added).

This supports the interpretation that a student can be alone while being surrounded, and observed, by school staff.

In addition, effective October 14, 2014, Alaska Statute 14.33.125 was enacted to establish requirements for the use of restraint and seclusion in schools. The statute states in relevant part that “seclusion” means the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving.¹⁶ The statute also requires that staff “continuously monitor the student in face-to-face contact or, if face-to-face contact is unsafe, by continuous direct visual contact with the student.”¹⁷

This statute, in conjunction with the Fairbanks North Star Borough School District’s Administrative Regulation, demonstrate that a student in seclusion is considered to be “alone” while being continuously observed by staff. These subsequent interpretations strengthen DLC’s determination that the District’s actions in the case at hand met the Handbook definition of what constitutes “seclusion.”¹⁸

- the student was involuntarily confined in an area separated from his peers;
- he was continuously observed during this time; and
- he was prevented from leaving.

b. Extended Use of Seclusion

In addition to the finding of “seclusion,” DLC determined that the District’s practice of not allowing the student to leave the area after his unsafe behaviors had ceased, was not in keeping with the Handbook. The Handbook states that “seclusion should last only as long as necessary to resolve the actual risk of danger or harm...”¹⁹ Alaska Statute § 14.33.125 is similar when describing when seclusion must be discontinued.²⁰

¹⁶ Alaska Statute § 14.33.125(g)(5).

¹⁷ Alaska Statute § 14.33.125(b)(3).

¹⁸ *Id.*

¹⁹ *Id.* at p. 146. Available at <https://www.kpbsd.k12.ak.us/WorkArea/DownloadAsset.aspx?id=27352>.

²⁰ Alaska Statute § 14.33.125(b)(5) “...immediately when the student no longer poses an imminent danger of physical injury to the student or another person or when a less restrictive intervention is effective to stop the danger of physical injury.”

DLC was able to determine that the student was frequently in the Calm Corner for an hour or more, long after his unsafe behaviors had resolved. For example, the staff used a system where the student was required to remain in the Calm Corner until he demonstrated compliance with commands for certain tasks (e.g., tie your shoes; reach for the sky; touch your toes) before the student was allowed to leave the Calm Corner and return to his studies and peers. The requirement for compliance with those commands came after the student has ceased displaying the behaviors that resulted in him being placed in the Calm Corner to begin with. Based on this combination of findings, DLC determined the student had been inappropriately secluded in the Calm Corner on multiple occasions, because he remained secluded when the precipitating (unsafe) behavior was no longer present. In addition, and for the same reasons, DLC was also able to determine the student was inappropriately restrained on multiple occasions prior to, or following, him being placed in the Calm Corner.

c. Lack of Adequate Assessment

DLC determined District staff failed to conduct adequate assessments of the student's behaviors and collect the data necessary to analyze and understand the student's unwanted behaviors. This resulted in the development of inadequate behavioral interventions that did not effectively mitigate or extinguish the unwanted behaviors. Other problems were also identified, such as the absence of systems to evaluate the effectiveness or ineffectiveness of the interventions being used. These inadequacies contributed to the continuing use of seclusion, as the unwanted behaviors continued or worsened.

Frequent use of restraint and seclusion increases the risk that a student can be injured. Each time the student was involuntarily escorted, restrained, and physically prevented from leaving a designated area the student was put at an increased risk of injury. DLC further determined this practice was the result of the two school's failure to establish or carry out an appropriate individual program plan for the student. Based on these determinations, DLC established a finding of "neglect."

Neglect means a negligent act or omission by an individual responsible for providing treatment or habilitation services which caused or may have caused injury or death to an individual with developmental disabilities or which placed an individual with developmental disabilities at risk of injury or death, and includes acts or omissions such as failure to: establish or carry out an appropriate individual program plan or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care to an individual with developmental disabilities; provide a safe environment which also includes failure to maintain adequate numbers of trained staff. 45 Code of Federal Regulations § 1386.19.

d. Refusal to Demonstrate Restraint

In addition to the above, DLC was able to substantiate the allegation that the student's mother was denied the opportunity to observe a staff demonstration of the restraint and holding

techniques used to escort or restrain the student. DLC did not find, however, that such practice met the threshold for “abuse” or “neglect.”²¹

Methodology

As part of its investigation, DLC conducted the following activities:

- Reviewed the student’s educational records from both schools.
- Interviewed staff from both schools.
- Interviewed staff from the District’s Autism & Behavior Educational Liaisons²² (ABEL) team.
- Interviewed a District psychologist and Crisis Prevention Institute²³ (CPI) instructor; and interviewed CPI’s Director of Client Services.
- Interviewed the student’s mother.
- Reviewed applicable District policies, procedures and administrative regulations.
- Reviewed relevant Alaska statutes.
- Reviewed selected information from the CPI instruction manual and other CPI materials.

Findings

Part I:

Summary of Findings

1. The complaint allegations were substantiated.
2. The problems DLC found did not rise to the threshold for what constitutes “abuse” under the federal definitions DLC adheres to.²⁴ The problems did, however, rise to the level of what constitutes “neglect,” as defined in federal regulations.²⁵
3. Based on the information available, the student was in seclusion at least 28 times and restrained at least 6 times between August 26, 2013 and February 6, 2014.
4. The District did not have policies and procedures for the use of restraint or seclusion at the time the investigation began. It did, however, have policies, procedures and administrative regulations for the use of restraint or seclusion prior to the issuance of this report.

²¹ 45 Code of Federal Regulations § 1386.19.

²² ABEL, which stands for Autism & Behavior Educational Liaisons, is described in their brochure as providing “training and resources to staff, while assessing the behavioral needs of students and developing service plans to increase functional independence across educational settings.”

<http://www.k12northstar.org/sites/default/files/abelbrochure.final.pdf>

²³ “CPI” stands for “Crisis Prevention Institute,” which is a trademark name for “...an international training organization committed to best practices and safe behavior management methods that focus on prevention... The cornerstone of CPI is the *Nonviolent Crisis Intervention*® program, which is considered the worldwide standard for crisis prevention and intervention training...” <http://www.crisisprevention.com/About-CPI>

²⁴ 45 Code of Federal Regulations § 1386.19.

²⁵ *Id.*

5. There was no system for anyone outside the classroom(s) to review the data being collected to ensure the use of restraint and seclusion via use of the Calm Corner was appropriate. There was also no system in place to ensure staff were using restraint techniques appropriately following their initial training. Lastly, there was no system in place to evaluate program fidelity.²⁶
6. District staff failed to consistently collect appropriate and adequate data for the purpose of developing an Individualized Education Plan (IEP) and Functional Behavior Analysis (FBA). Specifically, data collected by staff did not consistently include:
 - a. What was taking place for the student and in the student's environment (setting event)²⁷ just before the trigger or antecedent²⁸ that resulted in the student's initial display of unwanted behavior(s)? For example, was the classroom noisy? Did the student want to engage in an activity going on elsewhere in the classroom that was different than what he was being directed to engage in? Was he tired? Was he not feeling well?
 - b. How did the student respond to the intervention(s) employed?
 - c. How long was the student restrained?
 - d. What if anything was different on the days when the student did not display the target or unwanted behaviors?

As a result of not collecting necessary data, District staff were unable to develop an adequate Behavior Intervention Plan (BIP). The continued failure to collect the appropriate data resulted in District staff's inability to evaluate the effectiveness of the interventions developed or make changes that might result in a measureable reduction in the behaviors they were attempting to

²⁶ **Fidelity** may be defined as the extent to which delivery of an intervention adheres to the protocol or program model originally developed. Fidelity measurement has increasing significance for evaluation, treatment effectiveness research, and service administration. <http://aje.sagepub.com/content/24/3/315.short>.

²⁷ **Setting Event** - Setting events affect how a student will respond to situations by temporarily increasing or decreasing reinforcers in the environment. For instance, a classroom activity a student usually enjoys may not be as reinforcing right before the holidays. Math class may be difficult for a student who has a learning disability, but on most days the student copes well. However, on days when this particular student has a bad headache, the presentation of math problems may be more aversive than usual. Setting events can occur immediately before a problem behavior or days in advance. Some setting events are obvious while other setting events can be more difficult to identify. For example, the death of a close family member that occurred before school started can increase the likelihood the student will engage in problem behavior a few months later when school starts. Setting events can be social (e.g. arguments), physiological (e.g. illness), or environmental (e.g. noisy or crowded rooms). The University of Kansas, Functional Behavior Assessment is available at http://www.specialconnections.ku.edu/?q=behavior_plans/functional_behavior_assessment.

²⁸ **Antecedent** - Events that directly precede and serve as a "trigger" for a problem behavior are called antecedents. Antecedents serve as cues signaling when a behavior will be reinforced. A substitute teacher can sometimes be an antecedent for problem behavior. In this situation, the presence of someone other than the students' teacher signals that talking loudly, pretending to have homework already turned in, and off task behavior in general will be reinforced, allowing the students to escape from their school work. Antecedents can be related to the physical setting, materials, time of day or social situations. Examples of common antecedents include verbal demands, criticism, teasing, the absence of attention, and the presence or absence of specific people, materials, or events. The difference between an antecedent and a setting event is that setting events increase the likelihood that an antecedent will trigger problem behavior. The University of Kansas, Functional Behavior Assessment is available at http://www.specialconnections.ku.edu/?q=behavior_plans/functional_behavior_assessment.

mitigate. This contributed to or resulted in the frequent use of the Calm Corner where the student was secluded, separated from his peers and removed from academic opportunities. In addition, staff were trained to require the student to follow a series of commands (e.g., reach for the sky; touch your toes; tie your shoes), after the unsafe behavior that resulted in him being in the Calm Corner to begin with was no longer present, and before he was allowed to leave the Calm Corner to rejoin his peers and resume his studies.

Although the student was frequently displaying target or unwanted behaviors, little was changed in the plan for how staff were to respond to the student's behaviors, between August 2013 and February 2014. These combined inadequacies resulted in the lack of progress toward reducing or eliminating the student's unwanted behaviors. They also resulted in the over-use or misuse of seclusion via use of the Calm Corner and the use of physical restraints.

Investigative Activities

Telephonic Interviews – Student's Parent:

DLC conducted telephonic interviews with the student's mother. She reported she had learned that her son had been placed in "seclusion" on at least two occasions while he was a student at Denali Elementary School²⁹ and was concerned for her son's safety and emotional well-being. Because of those and other concerns, the student's mother ultimately transferred her son to Woodriver Elementary School.

The mother reported that during the time her son was at Woodriver Elementary School, she witnessed staff verbally pressuring her son for compliance as well as physically keeping him from exiting the Calm Corner by use of a gym mat. She was also concerned that at least on one occasion she witnessed staff physically "pushing" him out the door when she came to pick him up. The mother reported she had written school staff to alert them to the fact that she did not approve or authorize the use of physical management of her son's behavior, restraint or seclusion, but was informed that the District would never agree to a demand that restraints for a student could never be used.

The mother went on to report that she had asked school staff to demonstrate the holds her son was being placed in, but was informed they could not demonstrate the holds because they were "proprietary."

When asked how she managed her son's behavior at home, the mother reported she would allow her son to select one thing to play with and that this would often motivate him to comply with what was being asked. She reported that if she "ordered" him to do something, he would only become more resistant. She went on to say that her son enjoyed arguing, so if an adult engaged him in an argument it would only serve to prolong and reinforce his resistance.

²⁹ The use of the school's "Quiet Room" was confirmed during an interview with Teacher Assistant (TA) #1 from Denali Elementary School. See p. 31 of this report.

One of the techniques the mother reported using to assist in keeping her son's behaviors "in check" was to use a set of headphones with calming music.

Data Collected

Denali Elementary School:

DLC reviewed data collected by staff regarding the student's behaviors. The data indicated that between August and December 2013, the student had been secluded from his peers at least seventeen times, and restrained at least twice. For the majority of times the student was sequestered from his peers, he was in the Quiet Room or Calm Corner for an hour or more. Examples of the data collected for the student's target behavior while he attended Denali Elementary School, and examples of the "Specific Behavior Incident(s)" that were documented by staff during times when the student was displaying targeted behavior, are provided below:³⁰

Specific Behavior Incident(s) – Denali Elementary School

<i>Date/Time of Incident</i>	<i>Antecedent: What triggered the behavior?</i>	<i>Behavior: What happened?</i>	<i>Consequence: Staff response? Did student calm down?</i>
8/26/13 9:30 – 10:30	Asked to put away video game and go to P.E.	Very upset. Began throwing things out of cubby. Threw a chair, then another. Scratched staff on arms.	Staff offered to use video game as reinforce. Directed to quiet area. Calmed down after 1 hr.
8/29/13 1:30 -2:00	Wanted to play with toy instead of doing art.	Became agitated, threw glue stick, ran away from table.	Performed CPI child protective hold. Calmed down and rested for 5 minutes. [Chart shows lasted ½ hour]
9/9/13 10:45 – ?	Gave student writing work.	Ripped up paper and threw a chair.	Escorted to calming area. Continued to yell, kick, scratch for 30 min. Mom came in, comforted, he fell asleep.
9/12/13 1:30 - end of day	Earned computer time. When break was over, was asked to close	Threw computer; yelled; attempted to hit staff.	CPI to calming area. Continued to kick, hit staff, yell. [unk time]

³⁰ The data noted here for "Specific Behavior Incidents" reflects only those occasions that resulted in use of the Calm Corner or the student being restrained. Missing days are those where the student's behavior did not result in seclusion or the use of restraint, according to the data provided. Please note the data in this table often includes an excerpt or paraphrase of what staff actually recorded versus exact quotes.

	computer.		
9/13/13 8:45 – 10:45	Directed to bathroom.	Became upset, hit, kicked staff, yelled, fell on floor.	Attempted to redirect. Escorted to calming area. Mom gave meds around 9:30 am. Calmed down around 10:45 am.
9/24/13 12:30 – 2:10	Instructed to go to recess.	Yelled, cried, fell on floor. Teacher tried to redirect, offered choices of other activities. Student became increasingly agitated, esp. when staff went outside w/o him. Teacher con't to try and redirect, removed toys and other reinforcing objects. At 1:05 pm hit teacher and threw chair at her.	Was then escorted to quiet room. Was released when calm. [unk time, but appears was 2:10 pm]
9/27/13 10:15 – 11:45	Asked student to check his schedule. Was in sensory area & didn't want to go to work station.	Became upset, refused to go. Staff attempted to redirect. Removed reinforcing items in the area. Student became very upset, began to hit, kick and attempted to bite staff.	Escorted to quiet area. Became extremely angry, kicking, hitting, biting. Escorted to quiet room. At 11:15 am started to play with light switch, etc. Escorted back to class & quiet area. When lunch bell rang, calmed down
10/4/13 10:30 – 12:45	Asked to do his work – put word cards on a sheet.	Started wiggling the table and got upset when cards moved. Insisted staff put cards back.	Staff asked student to put cards back. Got extremely upset, yelled, and knocked all items off the table. Began to hit and kick staff, attempted to bite. Ran to quiet corner and after 20 minutes continued to hit, kick, yell. Staff utilized crisis communication and calming techniques throughout. Student began to calm down at approx 12:45 pm, then chose activity from choice board.
10/22/13 10:40 – 11:35	Earned iPad for a break. Asked to turn off when break over and go to	Began to yell and scream. Jumped up and down, threw puzzle at staff. Knocked over 2 shelves and attempted	Escorted to quiet corner. Continued to yell and kick. Staff utilized crisis communication. Calmed down at approx. 11:30. Staff had completed a few compliance checks (put on shoes, sit in chair). When demonstrated a calm body,

	“puzzle” area.	to bite staff’s legs twice.	was able to return to puzzle area.
10/22/13 1:45 – 2:15	At speech group, asked to write first and last name.	Wrote first name, but refused to write last name. Got very upset when staff tried to redirect. Began to yell, ripped up his paper. Attempted to hit staff and knock over shelf.	Escorted to quiet area. Continued to yell and kick. Scratched teacher’s arm. Staff used crisis communication. Began to calm down at 2:10. When showed a calm body, was directed to sit in chair and put on shoes. Went back to activity.
11/1/13 10:45 – 2:15	Asked to put away puzzle and check schedule.	Began to yell and scream that he didn’t want to clean up. Became non-compliant, lay on floor, attempted to knock over 2 shelves. Staff attempted to redirect. Began to hit and kick staff.	Escorted to quiet corner. Con’t to yell, kick and scratch staff. Began to calm down at 2:15. Sat as directed and demonstrated compliance. Was able to join group.
11/21/13 11:15 – 12:00	Working on reading game on computer. When timer went off, refused to give up computer.	“Slammed” computer. Screamed, threw things, hit computer twice. Hit and kicked over chairs and teachers.	Directed to quiet corner. Gave small commands to have calm body and hands. Calm at 11:50, able to return and do work.
11/25/13 9 - 10	Asked to put away iPad, earned for 3 minute break.	Refused to give iPad back. Teacher took iPad. Student hit teacher in stomach and knocked over 2 chairs.	Moved to quiet corner at 10. Student sat down calmly and showed he was ready to listen. Followed several compliance checks. Returned to work station.
12/3/13 1 – 1:45	Asked to get undressed in bathroom so could get changed.	Became very upset and started yelling he wanted teacher with him. Teacher refused to have student gain independence with toileting. Began throwing objects at teacher (wipes, chairs), started	Escorted to quiet corner. Con’t to yell, kick and hit staff. Calm sitting at 1:45 and completed several compliance checks. Completed bathroom routine.

		pounding at fixtures.	
12/5/13 10:45 – 12:15	Writing spelling words and noticed he had accidentally skipped 1 word. Staff directed to write the skipped word and assured student was okay to write them out of order.	Began to yell, grab things around him and rip things up. Threw things, including 2 chairs at staff.	Escorted to quiet corner. Remained there until able to exhibit a calm body and complete several compliance checks. Went back and finished paper.
12/5/13 1 – 1:45	Went to bathroom. Instructed to take off boots, pants, diaper. Student wanted staff to stay in bathroom with him. Was informed staff would be right outside door.	Began hitting, throwing objects at staff. Calmed down, but got upset again. Attempted to bite staff and rub soiled bottom on staff. Calmed down to wash hands. Walked out of bathroom and knocked over 2 bookshelves.	Staff escorted to quiet corner for safety. Remained in quiet corner while teacher telephone mother. Student spoke with mom on phone for approx. 15 minutes. When mom arrived, she directed student to clean up bookshelves.

Other data collected on a daily basis, for which examples have not been provided in this report, included a selection by staff of particular scheduled activities that the student was or could be involved in on any given day (e.g., breakfast, good morning, writing, snack). Columns for “Yes” or “No” selections were created for tracking:

- Follow picture schedule
- Transition appropriately
- Accept changes in routine
- On-task for 15 minutes
- Keep hands/feet to self
- Penny earned?

While some of this data is useful in a broad sense for determining if the student’s IEP and BIP objectives are being met, there was little data available to give the reader detail of what went

well or what went poorly during the student's day. This was especially important for the days where there were no incidents, as staff might have been able to see what elements resulted in a good day for the student versus those days that resulted in unwanted behaviors.

When looking at the data for the specific behavior incidents, one can't tell from staff's handwritten narrative what was taking place immediately before the event or circumstances (setting event) that triggered the student into displaying the unwanted behavior(s). At times, such as with the data for August 29, 2013,³¹ what was noted as the antecedent ("Wanted to play with toy instead of art") was actually staff's understanding of why the student acted out as he did, not what triggered the behavior (e.g., The student's unwanted behaviors began immediately after staff directed the student to stop playing with his toy and start work on an art project). Based on the information available, someone analyzing the data was primarily provided only the highlights of what happened, not the details. It is the details of what happened that are necessary for evaluating the efficacy of the behavior plan and measuring progress or lack of progress toward objectives.

As another example of having limited information, data for August 26, 2013,³² indicated the antecedent was that the student was asked to put away a video game and go to P.E. The student was then described as being very upset, throwing things, including a chair, and scratching staff. Was that the student's initial response to being asked to put away the video or did it escalate over time? Even if the time was brief, what was happening? What was staff saying or doing? Did staffs' initial response to the student's refusal add to the student's escalation, or did the student escalate immediately?

On that same data date, the student was reported as being in the Calm Corner for an hour. What was he doing during that hour? What happened when he was allowed to leave the Calm Corner? In addition to the above information not being available, at least on a consistent basis, there were also multiple occasions where the amount of time spent in a hold or restraint was not recorded.

Woodriver Elementary School:

Problems were also found in the data collected for the student's behavior while attending Woodriver Elementary School. Without exception, the data for the "consequence" of the behavior was limited to the student being secluded in the Calm Corner. The student was placed in seclusion on at least thirteen occasions between January and April 2014, for an hour or more with the majority of instances. The student was restrained on at least four occasions. The data collected also showed that the student's behaviors, and staff's general response to them, continued past the first few weeks in which the student was adjusting to Woodriver.

Three additional data elements were added to the data being collected by Woodriver Elementary staff that had not been collected while he was a student at Denali Elementary School. One was that the amount of time the student spent in the Calm Corner was more consistently being recorded by staff. The other was documenting "intensity." The measure of "intensity" was

³¹ See data on p. 13.

³² *Id.*

“High, Medium or Low,” although staff frequently provided a range (e.g., M-H). Nothing on the data sheet or other documents provided by the District described what the “intensity” rating was related to, although DLC speculated it likely that it referred to the intensity of the student’s behavior. Without any legend or guide, the reader does not know what criteria staff used to assign an intensity measurement. Without this, the intensity assignment appears to have been purely subjective. The last added piece of data was an indication of whether or not a restraint was used with the student. For approximately half of the data documented, the name(s) of staff who were involved were written on the side of the row noting the incident.

Calm Corner Data – Woodriver Elementary School – January and February³³

Date	Time	Antecedent	Behavior	Consequence	Intensity (High, Med,Low)	Restraint Y/N
1/13/14	1:20-2:40 [1 hr 20 min]	Did not want to sit at circle time – began walking around trying to ruin things almost from the time he arrived @ 10:40 am.	Hit teacher, kicked teacher, tried to scratch teacher.	Calm Corner	H	Y- Held hands each time he hit teacher.
1/15/14 ³⁴	Stood in quiet	He did not want to join group.	Pushed rocking heavy file cabinet	Already sitting in calm corner -	M to H	Y- Held hands each

³³ Please note the data in this table often includes an excerpt or paraphrase of what staff actually recorded versus exact quotes.

³⁴ Information from the District’s database for when restraints were used provided information that was not captured on the classroom behavior data collection sheet for this particular date. Specifically, the restraint database captured an incident that occurred earlier on 1/15/14, at 10:40 am. The antecedent behavior was noted as “Did not want to join the group and kicked over his chair which hit another student, continued with aggressive behaviors and screaming loudly.” The behavior observed was noted as:

He was carried by two-man CPI hold to the calm corner. He kicked and hit both teachers when trying to set him in calm corner. He was put into a hold until he could calm down. After 12 minutes, he calmed was let go and as teacher was moving away he kicked her again. He was held again. This process continued several times. He would not comply with teacher request: “I’ll know you are ready when you have a calm body with your back against the wall.” This was repeated about every 2 to 3 minutes for the next several hours. Each time I came over and saw that his back was to the wall, I said, “Great job, you have a calm body with back to the wall,” he would immediately move his body away from the wall, sometimes turning his back to me.

It was reported the student was restrained 15-19 minutes. Staff involved included the teacher, an ABEL staff member and a teacher’s aide. Interventions reported to have been used prior to the use of restraint included: “Use of proximity; Choices; Planned ignoring; Redirection-set limits; Empathetic listening/response; Staff change, Verbal cues/prompts; Directive statements, Allow time/space; Use of supportive stance.”

	corner 11:10- 1:50 [2 hr 40 min]		kicking, punching, scratching.	moved to safer area there.		time he hit teacher.
1/15/14	2:05- 3:10 [1 hr 5 min]	Direction to turn page. Non compliant. Waited for student to show calm hands.	Threw book, shoved table, head butted and kicked staff, stomping feet, screaming.	Walked to calm corner with two person escort.	M to H	N
1/16/14	10:50- 1:10 [2 hr 20 min]	Student escalated when teacher did not comply w/his demand.	Hitting, kicking objects/ furniture, head butting, attempted head butt to staff's face.	Calm area	M-H	N ³⁵
1/23/14	10:10- 11:15 [1 hr 5 min]	Student didn't want to choose his journal paper- screaming at teacher, walked over to kick teacher's desk.	Screaming in the corner but calm.	Calm corner	M	N
1/27/14	3:15- 4:25 [1 hr 10 min]	Loudspeaker stated that mom would not be here to pick him up	Screaming, scratching, kicking, hitting	Calm corner	M-H	N
1/28/14	10:35- 11:48 [1 hr 13 min]	Difficulty sitting in circle. Name got picked but he wasn't ready so it was put back in bucket.	Hit the wall.	Calm corner	M	N
1/28/14	1:20- 3:05 [1 hr	Refusing to sit at math – began throwing things	Head-butting, kicking, hitting,	Calm corner	L-M	N

³⁵ Although the "Calm Corner" data sheet indicated no restraint was used, documentation for the same event on a different form indicated the student was placed in a "Child protective hold" for 10-15 minutes.

	45 min]	across the room.	screaming, threatening to “send you to prison.”			
1/30/14	10:30-11:50 [1 hr 20 min]	Direction to put stick outside.	Verbal arguing to demand stick back, walking out door (outside), hitting/punching staff.	Directive to return to class/calm area.	M-H Hallway. H-Class	N
1/30/14	1:40-2 [20 min]	Losing game.	Tried to throw chair. Screaming, kicking.	Calm Corner – walked himself.	M	N
1/30/14	3:10-3:30 [20 min]	Wanted to play with toys, but it was time to go outside.	Tantrum. Yelling, kicking. Took to calm corner-hit [TA] twice. Punch to face/shoulders	Calm Corner Restraint <hr/> Mom	H	Y
2/5/14	1:20-1:30 [20 min]	Did not want to do math. Threw his money board at teacher, threw book at floor, kicked teacher twice – then instructed to go to calm corner.	Laid on floor, refused to go to Calm Corner, slowly he was corralled.	Calm Corner	L-M	N
2/6/14	3:15-3:35 [20 min]	Did not want to fill out daily note. Reminded several times to raise hand for help. Kicked teacher.	Told to go to calm corner – refused – sat on floor – slowly motivated toward calm corner, given directive several times. Threw it on floor.	Calm Corner	L-M	Hitting wall, kicking, banging hard on wall. N

			Knocked box full of desk things on floor.			
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*Toward the end of the school year, and used on three days only, the data sheet for documenting the student's behavior was modified so that staff could select discrete options for the various categories of data being collected.

Calm Corner Data – Woodriver Elementary School – March and April³⁶

Date/Staff	Time (in/out)	Context/ Activity	Antecedent What happened before behavior?	Behavior Be specific	Consequence What happened after behavior?	Possible Function	CPI Used Y/N
2/28/14	1:20 – 2:45	<ul style="list-style-type: none"> •Academics oSpecial classes oIndividual time oLunch/Recess oTransition o_____ – 	<ul style="list-style-type: none"> oTask/Command given oNo/Diverted attention oDenied access to item oError correction given oWaiting/Downtime •<u>Wanted help refused to raise hand</u> 	Threw box off desk; threw his chair [3 times] across room; dumped his [water] bottle; threw 2 other boxes off desk	<ul style="list-style-type: none"> •Ignored •Redirected to activity oCorrective Feedback oChanged activity •Moved away •Gave break/<i>Offered</i> o_____ – 	<ul style="list-style-type: none"> oAvoid something oAccess something •Attention oSensory oControl oSelf-Stimulation o_____ 	N
3/24/14	12:33 – 1:05 Mom picked him up for O.T.	<ul style="list-style-type: none"> oAcademics oSpecial classes oIndividual time •Lunch/Recess •Transition 	<ul style="list-style-type: none"> •Task/Command given oNo/Diverted attention oDenied access to item oError 	Spit at teacher pounding fists on table & screaming at teacher.	<ul style="list-style-type: none"> oIgnored •Redirected to activity •Corrective Feedback oChanged activity •Moved 	<ul style="list-style-type: none"> •Avoid <i>directive</i> oAccess something •Attention oSensory •Control oSelf- 	N

³⁶ The data in this table often includes an excerpt or paraphrase of what staff actually recorded. In addition, the data provided did not go beyond the date of DLC's last request for information, which was dated April 9, 2014.

		o _____ –	correction given oWaiting/D own time o _____ –	Told he would have to go to calm corner. Given option to walk or be helped →he slid to floor and crawled to calm corner.	away oGave break o _____ –	Stimulation o _____	
4/7/14	3:10 – Mom arrived	oAcademics •Special classes oIndividual time oLunch/Recess oTransition o _____ –	•Task/Command given oNo/Diverted attention •Denied access to item oError correction given oWaiting/D own time o _____ –	Set timer, given choice to go to bathroom when task completed or when timer off – Timer went off he refused either choice, began flailing arms w/scissors in hand – almost hit another student. So scissors taken	•Ignored •Redirected to activity •Corrective Feedback •Changed activity •Moved away oGave break o _____ –	•Avoid <i>directive</i> oAccess something •Attention oSensory •Control oSelf-Stimulation o _____	N

				away and he began tantrumming [sic] after that.			
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The exception to the selection of discrete choices for any given data group was that staff were to document the student's specific behavior in the "behavior" column. A new data group was also added, that being the "Possible Function" of the behavior. On a number of the data groups, staff selected multiples of the options provided. While perhaps easier to use for staff, the lack of specific information in the data collected made the data less useful or reliable.

Based on these concerns, the following documents were also reviewed.

Individualized Education Plan (IEPs), Functional Behavior Analysis (FBA) and Behavior Intervention Plans (BIPs)

The student's IEP from Denali Elementary School was dated April 8, 2013. Under the heading "Social/Emotional," the student was described by the following:

[Student's name] behavior and social/emotional skills are a concern at this time. [Student's name] follows a picture schedule throughout the day for his routine. He gets very upset if there are changes in his schedule. He also gets upset during non-preferred tasks. He enjoys the computer, which is a huge motivator for [Student's name]. He works well with a first-then card (first work, then computer).

The IEP included the following statement:

[Student's name] behavior impedes his learning or that of others. Strategies considered within this IEP include positive behavioral interventions, strategies and supports to address that behavior.

The goal and objectives related to the student's behaviors were as follows (bold in original):

Annual Goal 1:

[Student's name] will demonstrate improvement in behavior by the mastery of the following objectives, independently, in 4 out of 5 consecutive opportunities [SFHL.C] as implemented by the Special Education teacher, starting 4/8/13, with 80% target achievement completed by 4/7/14.

Obj 1.1:

[Student's name] will follow a picture schedule of his daily routine, independently, in 4 out of 5 consecutive opportunities starting 4/8/2013, with 80% target achievement completed by 4/7/14.

Obj 1.2:

[Student's name] will transition from a preferred activity to a non-preferred activity, with no more than 1 verbal/visual prompt, in 4 out of 5 consecutive opportunities starting 4/7/13, with 80% target achievement completed by 4/7/14.

Obj 1.3:

[Student's name] will adjust to and accept changes in his routine/schedule, independently, without yelling or tantrum, in 4 out of 5 consecutive opportunities starting 4/7/13, with 80% target achievement completed by 4/7/14.

The student's Functional Behavior Analysis (FBA) and Behavior Intervention Plan (BIP) were also developed on April 8, 2013. The target behavior identified was:

[Student's name] gets upset when transitioning from a preferred activity to a non-preferred activity. He will yell, pull down his schedule, fall on the floor, kick, and hit.

The identified "replacement behavior" for the target behavior was that the student would "check his schedule with no more than one prompt, without tantrum." The antecedent (the event or activity that immediately precedes the target behavior), was identified as when the teacher or an aide asked the student to check his schedule, and the next item on the schedule was a non-preferred activity. The function of the behavior was identified as avoiding non-preferred activities.

Positive reinforcement strategies were "to motivate the use of replacement behaviors and positive behavior in general." Staff was to give the student some object that he was fond of or interested in to take with him to the task he was transitioning to. They were also to identify a reward that he enjoyed such as time on the computer or iPad. Another strategy employed the use of "First-Then" cards (first work, then the computer).

Staff were directed to respond to the student's target behavior with the following:

Staff response will range from mild (crisis communication, reminders of reinforcers) to severe (removing other students from area, escorting [student's name] to a safe calming area).

The "Emergency/Crisis Plan" was effectively the same as above.

A new IEP was developed for the student following his transfer to Woodriver Elementary School. It was dated February 19, 2014. The section for “behavior” was virtually identical to the IEP that was in place while he attended Denali Elementary School. The only changes to the behavior section were that the student would “follow a written schedule” instead of a “picture schedule,” and the completion date for the related goal and objectives was changed from April 7, 2014 to February 18, 2015.

A new FBA and BIP were also developed and were dated February 25, 2014. The targeted behaviors, identified antecedents and the function of the behavior were essentially the same as those found in the FBA and BIP for Denali Elementary School. The new “replacement behavior” was “Learning to ask for and use his break choice board before transitioning to a non-preferred activity.”

New positive reinforcement strategies were also developed. Instead of giving the student an object he was interested in during the transition, motivating him with the promise of computer time or time on an iPad, or use of “First-Then” cards, staff were to use the following:

Staff will acknowledge and encourage all positive, school appropriate behaviors by using specific verbal praise, moving up on his money board and access to preferred activities such as free time, game time with others, reading a book and playing/exploring with the many toy choices in the classroom.

[Student’s name] responds well to moving up on the money board. When he reaches the \$20.00 choice he gets to choose classroom activities or toys he brings from home. He is diligently moved up on the money board as he displays positive behaviors. During the ½ hour of academic time he may have to \$20.00 choice 3 or 4 times [sic]. This is a high motivator for him to transition to a non-preferred activity and to continue with the non-preferred activity, as well as maintain positive behaviors in all areas of the classroom setting.

As with the FBA and BIP for Denali Elementary School, staff were directed to respond to the student’s target behavior with the following:

Staff response will range from mild (crisis communication, reminders of reinforcers) to severe (removing other students from area, escorting [student’s name] to a safe calming area).

Added was:

Staff will teach calming techniques, positive self talk and coping skills activities.

The “Emergency/Crisis Plan” developed in the FBA and BIP for Denali Elementary School was incorporated into the new FBA, BIP for Woodriver Elementary School.

Summary

Important elements from the student's IEPs, FBAs and BIPs for both schools included:

1. A determination that the student's behaviors impeded his learning or that of others.
2. Identified objectives were:
 - That the student would follow a picture schedule of his daily routine.
 - That he would transition from a preferred activity to a non-preferred activity with no more than one verbal prompt.
 - That he would adjust to and accept changes to his routine or schedule without yelling or having a "tantrum."
3. Targeted behavior was the student yelling, falling on the floor, kicking and hitting when transitioning from a preferred activity to a non-preferred activity.
4. The replacement behavior was identified as the student would check his schedule with no more than one prompt without a tantrum.
5. What preceded the targeted behavior (the antecedent) was identified as classroom staff asking the student to check his schedule, where the next item on the schedule was a non-preferred activity.
6. The function of the behavior was determined to be avoiding non-preferred activities.
7. Positive reinforcement strategies included:
 - Giving the student some object that he enjoyed to take with him as he was transitioning to a different task.
 - Identifying a reward such as time on the computer or iPad, that he would earn if he behaved as directed. This could include the use of "First-Then" cards – first you do this, then you get that.
8. Staff's response to the target behavior ranged from verbal de-escalation techniques, the use of positive reinforcers to removing other student's from harm's way and escorting the student to the Calm Corner.

Analysis

The data collected at Woodriver Elementary School did not provide sufficient detail to allow someone to evaluate the efficacy of the student's behavior plan and progress toward objectives, or to make changes to the plan as necessary. In addition, there was insufficient information to indicate to the reader whether or not staff were carrying out the plan as written in the student's IEP and BIP (i.e., program fidelity).

While data for February, March and through April 9th, 2014,³⁷ indicated a reduction in the use of the Calm Corner with the student, there was insufficient data available to understand or analyze the reason(s) for the reduction. As was the case with the majority of data collected during the 2013-2014 school year, there was virtually no data collection for what was taking place when the student did not display the target or unwanted behaviors. Information for these periods could

³⁷ As was mentioned earlier in this report, data was only available through the date of DLC's last request for information, which was dated April 9, 2014.

have aided staff in seeing what elements were present when the student was not displaying unwanted behaviors, and what staff were doing or were not doing that aided in that result. A review of the student's IEP, FBA and BIP indicated no substantive changes had been made to the student's behavioral plan during the timeframe when the reduced use of the Calm Corner occurred. Interviews with staff³⁸ did not provide information as to what, if anything, had changed that resulted in the decreased use of the Calm Corner, only that, in staff's view, the student's behaviors had improved.

In order for staff to validate their hypothesis as to the function of the target behavior, evaluate the progression or regression toward identified objectives, and evaluate the effectiveness of strategies employed, data needed to be collected regarding the following:

- What was happening with the student and in the student's environment just before the trigger that resulted in the target behavior?
- What was the actual trigger that resulted in the target behavior?
- What was the behavior that resulted from the trigger?
- And what happened immediately after the behavior was displayed?
- What happened after that?³⁹

Staff needed to know what was taking place just before the antecedent (setting event), to determine if any other elements beside the antecedent itself may have contributed to the resulting behavior (e.g., what activity was involved, how many students were there, was it loud, did the student come in tired). Staff evaluating the data also needed to know how the student responded to the interventions employed, including how long he was in the Calm Corner and what he was doing while there. There also needed to be some method to insure the integrity or fidelity of the plan that was established. The importance of collecting data has been codified in Alaska Statute § 14.33.125(e):

A school district shall ensure that a review process is established and conducted for each incident that involves restraint or seclusion of a student. The review must be conducted as soon as practicable after the event and include

- (1) staff review of the incident;
- (2) follow-up communication with the student and the student's parent or legal guardian;
- (3) review of and recommendations for adjusting or amending procedures, strategies, accommodations, individualized education plans, or other student behavior plans, or for additional staff training.

³⁸ See pp. 31-34 of this report.

³⁹ An example of the process, documentation and importance of observation may be found at <http://www.iidc.indiana.edu/pages/Observing-Behavior-Using-A-B-C-Data>.

ABEL (Autism & Behavior Educational Liaisons)⁴⁰

The records provided showed that staff at Woodriver Elementary School requested and received in-classroom assistance from ABEL staff in January and February of 2014. Beginning on January 14, 2014, ABEL staff produced a “daily log” regarding the student for 10 of the remaining 14 school days in January, and 4 of 20 school days in February 2014. The logs had 4 sections: Objectives; Anecdotal; ABEL Consultation; and Recommendations.

The “Objectives” for the first 5 days of observation were identical:

Provide support for student with transition into new school/classroom. Provide modeling and coaching for staff in maintaining prior objectives for student.

Continue prior objectives – Observe student behaviors within classroom in regards to the availability, rate and duration of reinforcement that has been set in place. Observe student behavior in response to new and non-preferred tasks, compliance, practicing tolerance (calm body) and transitions between activities.

“Objectives” for the remaining 9 days of observation were reduced to the last 2 sentences of the original objectives:

Observe student behaviors within classroom in regards to the availability, rate and duration of reinforcement that has been set in place. Observe student behavior in response to new and non-preferred tasks, compliance, practicing tolerance (calm body) and transitions between activities.

Based on its review of the student’s records, the accuracy, comprehensiveness or usefulness of the “Anecdotal” section of the ABEL daily log was questionable. For example, the first ABEL daily log was dated January 14, 2014. From its review of the Calm Corner data, it appears the event being written about actually occurred on the student’s first day in the classroom, January 13, 2014.

An excerpt from the ABEL Daily Log described the following:

Student showed frustration during Circle Time, (e.g., arguing, walking away when teacher refused to comply with his demand), at which point student was given feedback on behavior (calm break, then return to Circle). As student was not given access to reinforcement during this time (attempts to grab toys/objects), student escalated to actively seeking out staff to strike, and in upending classroom furniture. Child was assisted to the Calm Area in which he was given feedback and praise in regaining appropriate behaviors before returning to classroom activities and reinforcement.

⁴⁰ ABEL, *supra* n. 16, at 8.

What the reader was not informed of was what the student's "demand" was that triggered his behavior. The reader was also not informed that the student was restrained (held hands each time he hit teacher) and that he was sequestered from his group of peers for 1 hour and 20 minutes. That information was noted on the Calm Corner recording instrument.

The next observation, according to the ABEL Daily Log, occurred on January 15, 2014. Under the "Anecdotal" section, the following was written:

Student arrived at 10:40am (appointment) and was exhibiting distress related to mom leaving without him (refusal to join classroom, hiding at back of room, stating "I don't want to be here", and "I want to go home".) Student was provided feedback, praise, (That's ok if you need a break, when you're ready you can come join your friends in having fun"), and opportunity to gain reinforcement (calling mom or other high level reinforcement) upon the child joining activity area. Student began to actively seek out disturbing furniture by pushing and shoving table/chair as well as crawling under/behind furniture and objects. As staff moved items to ensure student safety, student actively sought out staff by walking toward them, raising arm and striking staff with fist and stepping forward to kick staff in legs. Student was provided feedback in Calm Area to display a calm body before gaining access to classroom activities.

Student was assisted to Calm Area shortly after entering activities as student escalated into inappropriate behavior when SH did not comply with student's repeated demand (to continue high fives-SH waited for child to regain a calm body before issuing instruction).

Student threatened teacher by stating, "I'm gonna get you fired".

What wasn't reported in the ABEL staff's description was that the student was initially restrained by staff whenever he attempted to strike a staff member, and was in the Calm Corner for 2 hours and 40 minutes. Within 15 minutes of having been released from the Calm Corner, his behavior again escalated, and he was again taken to the Calm Corner.⁴¹ It was actually the incidents that occurred on January 15, 2014, that resulted in a third document⁴² that described the student as having been "carried by two-man CPI⁴³ hold" and kept in the Calm Corner for "several hours."⁴⁴

As noted above, during some of the days where ABEL staff observed the student, they omitted information about difficulties experienced by the student or classroom staff that resulted in extended time in the Calm Corner or restraint. In addition, ABEL staff did not include other important information such as details about the classroom environment that either added to or detracted from the student's ability to maintain appropriate behavior, or observations about what

⁴¹ See p. 18 of this report.

⁴² DLC learned that the third document referred to in the above paragraph was a copy of the District's database form that is to be completed when a CPI hold or other form of restraint has been used.

⁴³ CPI, *supra* n. 17, at 8.

⁴⁴ See p. 18 of this report.

seemed to work and what seemed not to work relative to staff's interaction with and response to the student. ABEL staff had no recommendations for classroom staff on 11 of 14 observation days, even though the student spent a total of 11 hours and 23 minutes of his school day in the calm room, sequestered from his peers, during those 11 days.

Analysis

Based on the limited information reflected in the ABEL daily logs, DLC determined much more information and feedback could have been provided by ABEL staff that would have been helpful to classroom staff.

In addition to the fact that there was no record of any insight ABEL staff may have had regarding their daily observations, there was also no evidence that ABEL staff evaluated the classroom staff's fidelity to the behavior plan that had been developed.

Telephonic Interviews – Denali Elementary School Staff

Special Education Teacher:

A telephonic interview was conducted with the student's special education teacher on May 1, 2014. The teacher reported she had worked with the student for a total of about 1 ½ years. For the 2013-2014 school year, she had worked with him up until the time he transferred to Woodriver Elementary School, around mid-January 2014.

When asked about the behaviors that the student sometimes displayed that were disruptive to his or other students' opportunity to learn or were unsafe for him or others, the teacher reported she could usually "see it coming" or see his emotional state "building up." During those times, de-escalation techniques from the CPI training would be employed, as well as reminding the student what he was working toward (e.g., tokens). When it appeared the student was escalating, he would be offered a "break." If he was simply not following directions (non-compliant), but was not behaving in a manner that was deemed to be unsafe for him or others, staff were to leave him alone.

The teacher reported that the only time the student was directed or escorted to the "Calm Corner" was when he was demonstrating behaviors that were deemed unsafe. This did not preclude the student going to that area voluntarily at other times. During those times when the student was displaying unsafe behaviors and would not go to the Calm Corner under direction, staff would use a CPI technique to "escort" the student to the Calm Corner.

When asked about use of a floor or gym mat during the times when the student was involuntarily in the Calm Corner, the teacher reported a gym mat was only used during those times it was necessary to protect staff from the student's behaviors, such as when he was kicking, hitting or scratching. During those times, staff would hold up the mat to maintain the student in the Calm Corner and create a barrier between the student and themselves. Although some form of on-line (electronic) documentation was required when restraints were applied, the teacher stated that the

use of physical escorts to take the student to the Calm Corner did not have to be documented using the same system. Other documentation regarding the student's behavior, including use of the Calm Corner, was maintained on the "Daily Behavior Chart."

The teacher described the Calm Corner as a corner of the room where there was no furniture, where the area was quiet, and where there was a gym mat that could be used as a barrier if needed for protection.

Teacher's Assistant (TA) #1:

A telephonic interview was conducted with the TA on May 1, 2014. This TA had worked with the student from kindergarten up to the point he transferred to Woodriver Elementary School. The TA reported her response to the student when his behaviors were deemed to represent a safety issue for him, other students or staff, was to use CPI techniques to try and de-escalate his behavior verbally. The TA would stand between the student and other students if she was concerned that he may strike out at other students.

When the student was demonstrating unsafe behaviors, he was directed to go or taken to the Calm Corner. The TA would either block his ability to leave the Calm Corner or use the gym mat as a barrier until the student's behavior was under control. In order to leave the Calm Corner and rejoin his peers, the student would have to show that he was calm and quiet. Additionally, the student would then have to demonstrate compliance with three different directions such as "criss-cross applesauce," "touch your toes," or "touch your nose."

The TA was asked if she remembered if the student had ever been placed in the school's "quiet room." She responded that she did remember that occurring, but reported that was before there was a Calm Corner in the classroom.

TA #2:

During a telephonic interview conducted on May 1, 2014, the TA reported she had worked with the student between October 2013 and January 2014. When asked how she responded to the student's unwanted behaviors, she reported when his behaviors were unsafe, she sometimes assisted in removing other students from the immediate area. At other times, the student was directed to the Calm Corner. When this occurred, the student generally required the use of CPI escorting techniques to get him to the Calm Corner. The CPI escort technique was described by the TA as "hooking" her arm under the student's arm and holding his wrist with her other hand.

In order for the student to be able to leave the Calm Corner and rejoin his peers, the student would have to demonstrate that he was calm and follow a few instructions to demonstrate compliance.

TA #3:

A telephonic interview was conducted with the TA on May 1, 2014. This TA stated she had worked with the student between October 2012 and December 2013. The TA reported that when the student displayed unsafe behaviors she would first try to de-escalate his behavior by using CPI techniques. When that was not successful, the student was directed to go to the Calm Corner. The TA reported that in order to get the student there she had to use the CPI technique for escorting “almost always.”

The TA reported that the steps she used had been developed by ABEL staff. Once the student had been escorted to the calm area, a gym mat was used as a barrier to protect staff and separate the student from the rest of the classroom. Once the student calmed down, he was then required to follow a series of instructions. Examples included: “hands on knees; hands on shoulders; hands on head; tap head.” The TA stated that the student was unable to leave the Calm Corner until he followed the instructions.

Telephonic Interviews – Woodriver Elementary School Staff**Special Education Teacher:**

A telephonic interview was conducted with the student’s special education teacher from Woodriver Elementary School on May 1, 2014. The teacher reported she had been working with the student since January 13, 2014.

When asked how she responded to instances where the student’s behaviors placed him or others at risk for harm, she reported one of the first things she did was to try to get other students out of harm’s way. The teacher said she would try and de-escalate the student verbally by saying such things as “We’ll know you’re ready when you’re back in your seat.”

If the student’s behaviors escalated to a potential for harm (e.g., raising a chair over his head to throw it), the student would be directed to go to the Calm Corner. She reported it might take as long as two hours for the student to get to the Calm Corner on his own, but he would eventually get there. She could remember only two instances where a physical escort was required, and said that was no longer happening as of the date of the interview.

The teacher described the Calm Corner as approximately 3 feet by 4 feet. The area had two soft chairs and was also used as a quiet place for the student or other students to go and read or play with toys. Another name for the space was the “reset area.” She said one gym mat was against the wall to keep students from banging their head on the wall, and another gym mat could be used as a partition to protect others if the student was exhibiting behaviors such as biting, kicking or hitting. She reported the mat would be removed as soon as the student was calm. The teacher could only remember the mat being used with the student one time.

According to the teacher, documentation for when a student was sent to the Calm Corner was recorded on the “Daily Data” sheets. A different form was used in the more recent past. The

teacher indicated no one other than her looked at the data sheets, although she said the student's mother was provided a copy.

When asked about the criteria for when the student could rejoin his classmates after being sent to the Calm Corner, the first thing the student needed to show the staff person was a "calm body and quiet voice." The student was to be able to show this while standing against the back wall for at least a minute. She elaborated by saying she would tell the student, "I'll know you're ready when you (some action on the part of the student)." The teacher reported getting the student to do that could sometimes take up to an hour. After that, the student was required to follow 2-3 directives such as: "bend down and touch the floor; reach high for the sky; put your finger on your nose." If he was successful with showing compliance, he was then required to follow one directive after he left the Calm Corner. An example was provided of "go put this piece of paper on that desk." At some point during this process, a staff member would discuss with the student what had occurred that resulted in him being placed in the Calm Corner to begin with.

The teacher explained that the compliance directives were to ensure the student had truly calmed down, both on the inside as well as on the outside. She said otherwise there was a possibility that the "slightest trigger could set them off." When asked where the compliance demonstration requirement had come from, the teacher indicated it was part of the training provided by ABEL staff.

She reported that during the first 4 weeks the student had been there he had been in the Calm Corner for extended periods of time. She went on to say that a couple of weeks beyond that time the student was complying with directions, so the techniques utilized while he was at Denali Elementary School were no longer necessary.

TA #4:

An interview was conducted with the TA on May 1, 2014. The TA reported she had been working with the student since February 2014. When asked how she responded when the student demonstrated behaviors that were deemed unsafe, the TA stated that she and other staff used the CPI protocols as required by the District. When asked to elaborate, the TA reported a student demonstrating unsafe behaviors would be asked to show a calm body, quiet voice and cool hands. When asked what would come next if the student's behaviors would not abate, she replied "we'd wait."

The TA eventually indicated that if the above techniques were not successful, the classroom had a Calm Corner or reset area that a student could use to get their behavior back under control. Although acknowledging that she may have worked with the student in the context of the Calm Corner, she could not remember any specifics about having done so.

TA #5:

During an interview on May 1, 2014, this TA reported she had been working with the student since January 2014. When asked to describe her response when the student demonstrated behaviors that were deemed to be unsafe, the TA reported she did not want to “do conjecture about that.” The TA was then asked if her response ever included having the student go to the Calm Corner. The TA indicated it had, but that she could only remember one specific occurrence. During that one occurrence, she reported the student went on his own without having to be physically escorted. She said it took him awhile to get there, but he eventually got there. She went on to say that staff prevented him from moving back into the classroom, so that he kept moving closer to the Calm Corner.

When asked if she ever remembered the use of a gym mat when the student was in the Calm Corner, the TA indicated she had. She was then asked about one incident that had been documented where the student had reportedly hit her in the face while being behind the mat, in the Calm Corner. The TA explained that occurred because the mat was not that tall, and so the student was still able to reach over the mat and hit her. Following that incident, the TA reported she had placed the student in a “CPI hold” for approximately 5 minutes.

The TA reported that it was her opinion that the student’s behaviors had gotten “much better” since she originally began working with him in January 2014. When asked if there was any documentation regarding the student’s behaviors throughout the day, the TA responded that she believed the teacher documented the student’s behaviors.

When asked to describe what the student had to do in order to be able to leave the Calm Corner and rejoin his classmates, the TA stated he needed to show a calm body and show that he was able to follow directions. The TA went on to say that one way staff could determine if the student was ready to follow directions was to direct the student to stand against the wall. When asked if compliance with that single demand was sufficient for the student to rejoin the class, the TA stated that it depended and that she “didn’t want to speculate about that.”

She was then asked if there was a rule about what the student had to do before coming out of the Calm Corner. She said it depended on the situation, but staff might give the student an additional directive such as “put on your shoes.” The TA did not believe there was a set number of times the student had to demonstrate compliance with a directive before he could come out.

TA #6:

The TA was interviewed on May 1, 2014. She reported she had worked with the student since January of 2014. When asked to describe some of the behaviors the student sometimes demonstrated that were believed to be unsafe, the TA reported: “not following directions; refusing to do what he is supposed to do; not following what is in the schedule.” Her response to when these behaviors occurred was to repeat the directions and wait until the student was ready. The TA was asked if she could remember ever witnessing the student hitting, or kicking or throwing things. She indicated she couldn’t remember.

When asked what she would do if she ever saw those behaviors, the TA reported she would follow CPI. During a follow-up question, the TA reported that prior to the use of CPI, which would be a last resort, she would try waiting out the student and re-directing. The TA was asked if she remembered ever being involved in a situation where the student had to go to the Calm Corner. She indicated it had been a long time, and she couldn't remember.

The TA was asked if she knew whether or not ABEL had developed some sort of plan on how to respond to the student's behaviors. She indicated "they are always giving us good advice." She was then asked how many students were in her classroom. She stated there were 7. When asked if she was responsible for a certain number of them or all of them, she responded that all of the aides were responsible for all of the students: students were not assigned to particular aides.

Analysis

Based on the responses of staff during interviews, it was not clear that the TAs working with the student were familiar with or consistently implementing the approaches or behavior plan found in the student's IEP, BIP⁴⁵ or other instructions for staff.⁴⁶ For example:

- When asked how she would respond to the student were he to display unsafe behaviors, TA #4 initially stated she'd follow CPI procedures. When asked to expand on her answer, the TA reported a student demonstrating unsafe behaviors would be asked to show a calm body, quiet voice and cool hands. When asked what she would do if the student didn't respond to such a request and the behaviors continued, she replied "we'd wait." None of the specific, detailed instructions for how staff were to respond to the student's unwanted behaviors were provided.
- When TA #5 was asked how she responded when the student displayed unsafe behaviors, she replied she didn't want to "do conjecture about that."
- TA #5 reported "unsafe" behaviors for her meant that if she observed the student "not following directions; refusing to do what he is supposed to do; not following what is in the schedule." When these occurred, she would repeat the directions and wait until the student was ready. The TA did not convey what constituted unsafe behaviors according to any of the plans that had been developed, or what the plan instructed staff to do when they occurred.

It was clear that before the student was allowed to leave the Calm Corner, all staff were consistently requiring the student to demonstrate compliance with commands unrelated to the behavior which had gotten him in to the Calm Corner (e.g., calm body, quiet voice, cool hands).

Telephonic Interview - Co-Lead Teacher for ABEL:

A telephonic interview was conducted with the Co-Lead on May 5, 2014. The Co-Lead described ABEL as being comprised of three staff who were paraprofessionals with the title of

⁴⁵ See pp. 23-26 of this report.

⁴⁶ See Exhibits A and B of this report.

higher level behavior technicians; three paraprofessional staff who provided direct service to students, as well as giving rationale and demonstrating Applied Behavioral Analysis (ABA) techniques; and 1 itinerant staff member who filled in at Autism focused or structured classroom or helped a student who needed short-term individual assistance

The Co-Lead stated she had assisted in the development and approved the plan created to assist the student with his unwanted behaviors.⁴⁷

When asked about use of the gym mat in the quiet corner or reset area, the Co-Lead stated that her group teaches that the mat is to be used for: protecting the student from self-injurious behaviors; student privacy, were the student to disrobe; allowing time for the other students to be taken from the room if the function of the behavior is attention. The mat was never to be used to “wrap around” a student. She indicated she and her staff always try to keep 4-5 feet between the mat and the student.

On at least two occasions during the interview with the Co-Lead, she emphasized the fact that while she and her staff provided information and modeling to school staff, they were unable to enforce what was taught and that sometimes school staff modified or chose other methods to deal with students’ behaviors. The Co-Lead went on to explain that her group could provide various items to staff, such as “bite jackets, bite sleeves” and “shin guards” to assist them in ways of protecting themselves instead of using the gym mat. The Co-Lead stated that, for larger students who were assaultive, a mat could be used as a barrier, but at some point the school staff team would have to assess if the use of the mat in that fashion constituted a “restraint.”

The Co-Lead was asked to describe what needed to occur for the student to be able to leave the Calm Corner and rejoin the group. She stated that first the student needed to demonstrate that he was “calm.” After that, staff needed to do a few checks to ensure he was ready to rejoin the group and that the cycle of his behavior had ended. She described these checks as including such directives as “time to put on your shoes;” “sit in a chair;” “pick up something and bring it back.” Whatever the directive and task was, it should be age appropriate and staff should select something that the student would normally do anyway under the circumstances. The directives were to ensure the student was truly calm and to take advantage of behavior momentum (i.e., if s/he follows directives, it is more likely that behavior of compliance will continue).

The Co-Lead stated that it was very important to ensure the behavior demonstrated did not ultimately result in the student being able to avoid or escape the task that preceded the behavior itself. She said that for those staff who required the student stand against the back wall, that was not something she or her group taught. She described the use of the Calm Corner as being a “non-exclusionary time-out.”

⁴⁷ See Exhibits A and B of this report.

Analysis

Although the ABEL unit is comprised of individuals who have received specific training regarding working with students who experience Autism and those with challenging behaviors, it appears ABEL staff has little authority to ensure classroom staff are carrying out their work with students in accordance with the plans they help develop or best practices. It is clear that ABEL staff support the inclusion of a student's demonstration of compliance with tasks before the student is allowed to leave the Calm Corner.

Use of Compliance Directives in Time-Out (use of Calm Corner)

Based on interviews with staff and behavioral data that shows the student was frequently kept in the Calm Corner for extended periods of time, DLC is concerned that the student may have been frequently kept in the Calm Corner after the behavior that got him there was no longer present, because he failed to carry out the compliance directives issued to him by staff (e.g., touch your nose, raise your arms to the sky, put your back against the wall).

For example, data from an incident that occurred on January 15, 2014, stated the following:

He was carried by two-man CPI hold to the Calm Corner. He kicked and hit both teachers when trying to set him in Calm Corner. He was put into a hold until he could calm down. After 12 minutes, he calmed was let go and as teacher was moving away he kicked her again. He was held again. This process continued several times. He would not comply with teacher request: "I'll know you are ready when you have a calm body with your back against the wall." **This was repeated about every 2 to 3 minutes for the next several hours.** Each time I came over and saw that his back was to the wall, I said, "Great job, you have a calm body with back to the wall," he would immediately move his body away from the wall, sometimes turning his back to me. (Emphasis added).

Another example involves an incident on February 5, 2014, where the student refused to follow an initial directive to open his math book. When he refused, he was not "moved up on his money board" because he wasn't compliant. The student became upset and threw the money board at the teacher. He then was non-compliant with another directive to sit in his chair. The student then threw his math book on the floor. He was ultimately directed to the Calm Corner where the following occurred:

[The student] walked over and stood with his back to the wall, calm body, cool hands and quiet voice. (This is always the directive to earn his way out of the Calm Corner). He was immediately ready for the wait time. He has to stand there for 2 minutes with calm, quiet body, which he did. He was able to follow five simple directions: reach hands high to the sky, touch the floor, cover ears, put these two objects in the basket, put the chair back up to the table. "Now, you will go back to your desk, open your math book and continue working on your math..."

Analysis

Based on its review of the student's records and interviews with school staff, the student was only required to go to the Calm Corner when his behaviors were deemed to be unsafe for himself or others. During those times, he went or was taken there involuntarily; kept there for indefinite rather than fixed periods of time; during that time he was sequestered from his peers, removed from educational opportunities, and ostensibly removed from reinforcement for the unwanted behavior(s). Through physically blocking the student with their bodies or use of a gym mat, the student was unable to leave the Calm Corner until staff allowed him to leave.

Since this involuntary seclusion from which the student was prevented from leaving was based on the presence of behavior deemed to be unsafe, one would think the student should be allowed to leave, rejoin his classmates and resume his educational opportunities once the unsafe behavior was no longer present. Based again on its interviews with staff, this was not the case. In addition to the student no longer demonstrating unsafe behaviors, he was required to follow commands that had nothing to do with the behavior that resulted in him being placed in the Calm Corner to begin with.

According to some staff, these commands (e.g., touch your toes; reach for the sky) were to see if the student was ready to follow directions without lapsing back into unsafe behaviors. DLC could not find any empirical evidence that supported this theory or a study that demonstrated use of this system had an impact on future unsafe behavior. In addition, DLC could not find any evidence of staff collecting data to determine if use of this demonstration of compliance before release from the Calm Corner impacted future unsafe behavior. Because staff didn't collect this data, DLC doesn't know how much longer the student was forced to remain in the Calm Corner after he no longer demonstrated unsafe behaviors. DLC does know, however, that on at least one occasion, he was kept there for hours after the unsafe behaviors had stopped.⁴⁸

Calm Area Instructions

During their investigation, DLC reviewed a document entitled "Calm Area." Important excerpts from that document are as follows (Emphasis in original):

Purpose

The Calm Area is a designated location within the classroom in which the student can regain composure over his/her own self in a respectful way, while also minimizing stigmatization.

The Calm Area is **never** about gaining control over the student. It is **not** punitive, unattended or isolated, and is utilized only so long as the student presents the need for de-escalation.

⁴⁸ See p. 29, note for January 15, 2014.

Student-Disruptive behavior

Any inappropriate behavior as indicated by the student's individual Behavior Response Plan, that disrupts the student's ability to attend, and continues following verbal redirection by staff.

Staff-Response

When the student meets the above criteria, staff will verbally direct the student to calm area. Staff should **not** physically move the student to the calm area. When possible, staff should discretely move objects or materials away from the student's reach and wait for him/her to comply. Be prepared to wait.

DE-ESCALATION ASSESSMENT**Informational Feedback:**

This is **not** a time for the student to earn reinforcement. This **is** a time for feedback on what the student is doing correct.

Short Tasks:

Have the student sit/stand inside the calm area or sit in a chair near the entrance of the calm area. Give the student a series of short tasks (2-3). If he/she is compliant and calm, the tasks may slowly lead him/her back to the previous task where the behavior originally occurred. The student must not escape original task. However, modification of task can be made as necessary to create behavior momentum with the student.

-Non-Compliance and Calm:

Give corrective feedback acknowledging that the student is calm, but did not follow directions. Wait 30-60 seconds then try a new task.

Analysis

At least two elements of this document appear in conflict with one another, while other elements were not occurring in practice. For example, under "Purpose," is a statement that use of the Calm Area is never to be about gaining "control" over a student, nor is it to be "punitive." This appears contradictory to the requirement for a demonstration of compliance for short tasks in order to be able to leave the Calm Area, as stated in the "De-Escalation Assessment" portion of the document.

In addition, under "Staff-Response," staff are not to "physically move" the student to the calm area. In contrast, virtually every staff member interviewed stated they "escorted" the student to the Calm Corner. The CPI escort technique was described by staff "hooking" her arm under the student's arm and holding his wrist with her other hand.⁴⁹ From this description and use of the

⁴⁹ See p. 31 of this report.

term “escort,” DLC determined it was likely that this technique resulted in physically moving a student.

Lastly, the directive to staff for “Short Tasks” and “Non-Compliance and Calm” appear to relate to staff’s practice of requiring the student demonstrate compliance with 2-3 arbitrary tasks that are assigned before the student is able to leave the Calm Corner, even though the unsafe behavior(s) that reportedly resulted in the student being there in the first place had abated. DLC determined this practice resulted in the student being sequestered longer than is appropriate, is contrary to other District directives and could potentially have led to re-escalation and unsafe behaviors.

Additional Interview – CPI Training

Psychologist and CPI Trainer:

An interview was conducted with the trainer on May 1, 2014. The trainer stated that special education staff within the District received CPI training. The initial training was a 2-day course, taking 8 hours each day. Refresher courses were required and given between 6 and 18 months after the initial course, and lasted ½ day. The trainer stated that almost all of the school psychologists were CPI trainers, and that the total number of trainers was somewhere around 15.

The trainer indicated that she and other trainers did not visit schools to observe staff after they received their initial CPI training. The trainer was then asked if there was a way that she would know if one school or class was using CPI holds more than other schools or classes, she stated there was not. When asked about documentation when CPI holds were used, the trainer stated there was an online District form that was to be completed when a CPI hold was used.

The trainer was asked what CPI training was recommended when school staff observed that their efforts to bring the student into compliance resulted in behavioral escalation. The trainer stated that CPI taught that there is a reciprocal relationship between both parties, that the behavior of the student has the potential to affect the staff member’s behavior, as much as the staff member’s behavior has the potential of affecting the student’s behavior. She indicated that CPI training teaches there are times when the best response on the part of staff is to leave the student alone.

Analysis

The CPI trainer stated that one of the elements of CPI training is to emphasize the relationship between the behavior of the student having an impact on school staff, and the behavior of school staff having an impact on the student. This is another example of why it is important that there be a system to ensure staff are carrying out a student’s behavioral plan as written, and that data describes in detail what is occurring. One of the important elements to evaluate is the degree to which, if at all, the behavior of staff is serving either to escalate a student’s unwanted behavior, or reduce it.

IV. Current District Policies and Procedures

Although the District did not have policies and procedures in place for the use of restraints or seclusion at the time its investigation began, School Board Policy No. 1064.2 addressing their use was adopted on October 21, 2014. Excerpts from the District's policy include:

3. Staff may physically restrain or seclude a student only if:
 - a) the student poses an imminent danger of physical injury to the student or another person;
 - b) less restrictive interventions would be ineffective to stop the imminent danger to the student or another person;

5. Seclusion means the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. Seclusion does not include time-outs, a student's voluntary choice to enter an isolated environment, supervised detention or in-school suspension rooms that are utilized for instructional purposes, or suspension from school. "Time-outs" are behavior interventions to provide a student with an opportunity to regain self-control or engage in problem solving where the student is separated from other students for a limited period in a setting from which the student is not physically prevented from leaving. Time-out includes placing a student in an area of the classroom where the student observes classroom instruction but does not participate.

Analysis

Though this policy was not enacted at the time, the policy demonstrates why collecting data is so important. It is extremely difficult to determine if less restrictive interventions would be ineffective to stop the imminent danger to the student or another person without this information.

In addition, the policy also emphasizes the importance of using less restrictive means, such as a time-out, to gain self-control before resulting to seclusion. Based on the information available, there were multiple occasions where the student was kept in the Calm Corner for an hour or more, not because he was demonstrating the unsafe behaviors that put him there to begin with, but because he failed to carry out the subsequent directives required through use of the contingent delay component to the time-outs.

V. Current District Administrative Regulations

In addition to reviewing the District's current policies and procedures, DLC reviewed the District's current corresponding "Administrative Regulations." In relation to this investigation, DLC determined the following excerpt from Administrative Regulation 1064.2, "Restraint and Seclusion," to have the most relevance:

II. Procedure:

A. General Guidelines

3. Restraint or seclusion should not be implemented except in situations where a student's behavior poses imminent danger of physical injury to self or others and otherwise complies with Board Policy 1064.2. The restraint or seclusion must be discontinued immediately when the student no longer poses an imminent danger of physical injury to the student or another person. Restraint or seclusion should not be used as a routine strategy implemented to address instructional problems, inappropriate behavior, as a means of coercion or retaliation, or as a convenience.

Analysis

At the time, the Handbook policy suggested that seclusion should last only as long as necessary to resolve the actual risk of danger or harm. The District's adoption of this directive in their own regulations underscores the importance of this mandate. As such, the student should have been allowed to leave the Calm Corner after the student no longer posed an imminent danger of physical injury to himself or someone else.

VI. CONCLUSIONS AND RECOMMENDATIONS – PART I:

Through its investigation, DLC was able to establish that the student had, on several occasions, been placed in seclusion where he was involuntarily separated from his peers and was physically kept from leaving. During some of those occasions, physical restraints were used.

DLC determined the behavioral assessments, data collected, and overall system used by staff were inadequate for the purpose of developing and carrying out a behavioral plan and interventions that would significantly reduce or eliminate the student's unwanted behaviors. Although data collected for February, March and through April 9, 2014, indicated a reduction in use of the Calm Corner for this student, there was insufficient information or data available to understand or determine what was different that resulted in the reduction. No changes had been made to the student's behavior plans during that timeframe.

DLC determined that requiring the student demonstrate compliance with arbitrary commands was a standard element of behavioral interventions used in the classrooms reviewed. DLC found nothing to indicate that this was an evidence-based practice. DLC also found no evidence to indicate that this practice impacted the predictability of future unsafe behaviors, or that staff were collecting data to determine its impact. For that reason, DLC determined the student was kept in the Calm Corner beyond the amount of time necessary for him to regain his composure, which according to the District, was the purpose for the use of Calm Corner (time-out).

In addition to data collection problems, there was no system in place to evaluate if staff were consistently and uniformly implementing the plan that had been established (program fidelity). In addition, there was no consistent evidence that the student was receiving self-regulating or

other replacement behaviors that would increase his ability to recognize when he was getting upset.

Based on DLC's record review and the data collected by ABEL staff, the information ABEL staff shared with classroom staff was minimal. One of the ways ABEL staff could have assisted was to evaluate program fidelity. However, ABEL staff were of the opinion that, even if classroom staff were not following the behavioral plan or were otherwise not displaying best practice, all they could do was make recommendations rather than corrections.

DLC was able to determine through an interview with a CPI trainer that there was no system in place to identify when CPI restraints or holds were being used more frequently than might be expected. While there may have been an electronic database for recording the use of restraints, the data was not being utilized to identify if there were higher uses in some classrooms than in others. Moreover, there was no system where a CPI trainer would periodically observe staff utilizing CPI to ensure they were following the protocols prescribed. One of the results of this was the inability of CPI trainers to know if classroom staff were utilizing the CPI system correctly or if staff were actually exacerbating the student's unwanted behaviors.

Based on its determination that school staff failed to establish or carry out an appropriate individual program plan, and that as a result the student was placed at risk for injury due to the inappropriate seclusion and restraints, DLC made a finding of "neglect."⁵⁰

Recommendations:

1. That the District develop a process for data collection that provides the information necessary to understand the precipitating or underlying causes that result in a student's behavior that impedes his learning. Such process should include revised data collection instruments and staff training.
2. That the District develop a process for ensuring behavioral plans are being consistently carried out as prescribed.
3. That the District develop a process for periodically observing staff who implement CPI to ensure compliance with the techniques they have been trained in.
4. That the District provide greater authority to ABEL staff for being able to direct classroom staff in how they respond to students before, during and after a behavioral event. In the alternative, develop a system whereby ABEL staff are able to alert someone who does have the authority to direct classroom staffs' behavior, when they observe deviation from established or expected standards.
5. That the District thoroughly review use of the Calm Corner as a "time-out," in light of the District's policy that states students are not to be physically prevented from leaving a time-out.⁵¹
6. That the District, in the absence of evidence-based support for this process, eliminate or significantly revise the non-evidence based process currently being utilized that requires

⁵⁰ 45 Code of Federal Regulations § 1386.19.

⁵¹ See p. 40 of this report.

a student's demonstration of compliance with arbitrary commands before s/he is allowed out of the Calm Corner.

Mother's Request for Demonstration of Holds

At some point after the student had transferred to Woodriver Elementary School, the student's mother requested she be given a demonstration by staff as to the holds that were sometimes used by staff in response to her son's behaviors. The mother reported she was denied that request because the holds were "proprietary" and the District was not allowed to demonstrate the holds by the company that had developed them. Instead, the mother was shown pictures of some of the holds that CPI taught.

Summary of Findings

Based on interviews and information obtained through review of CPI materials, DLC determined the student's mother's request that staff demonstrate the holds that were being used with her son should have been honored. However, this finding does not rise to the level of abuse or neglect.

Overview of Investigation

As part of its investigation into the complaint alleging the student's mother was denied being shown a demonstration of the holds staff used when restraining her son, DLC interviewed District staff, the CPI Director of Client Services, and the student's mother. DLC also reviewed certain CPI materials.

Telephonic Interviews

Special Education Coordinator/Supervisor for ABEL:

A telephonic interview was conducted with the Coordinator on May 23, 2014. The Coordinator's duties included her being assigned to five schools within the District. This involved her attending IEP meetings and providing resources and support for Special Education classrooms.

The Coordinator was asked if she remembered being at a meeting where the student's mother requested being shown the holds her son was sometimes being placed in. The Coordinator indicated she remembered the meeting and the mother's request generally, but was unclear as to whether or not the mother had requested a demonstration or to see pictures. She reported the school's principal and a school psychologist were also at the meeting. The Coordinator stated that pictures were the only thing staff could show the mother. When asked if the pictures shown to the student's mother were of the specific holds being used on the student, or just pictures of the holds taught within CPI, the Coordinator stated they were of the holds taught by CPI.

When asked if she remembered whether or not the mother was ever informed that she could not be shown the actual holds because the information was proprietary, the Coordinator indicated she

did not. When asked if staff would have been able to demonstrate the holds to the student's mother if arrangements to do so had been made, the Coordinator stated that staff could have demonstrated the holds.

Psychologist and CPI Trainer:

A telephonic interview was conducted with the school psychologist and CPI trainer who were also at the meeting with the student's parent, referenced above. The trainer was asked if she saw any problem with school staff who were applying CPI holds to a specific student, being able to demonstrate the hold to a parent who asked to see them. The trainer indicated the first problem was that only a certified trainer was allowed to demonstrate CPI holds.

The trainer went on to state that CPI had informed the District that CPI holds were not to be demonstrated by anyone other than a certified trainer, and only in the context of an actual training course. The trainer stated that parents could obtain additional information about CPI through parent workshops and that certified trainers were allowed to show pictures to parents. When asked if there were parent workshops available through the District, the trainer reported that trainings were not presently being offered.

When asked if the pictures that could be shown would be of the actual holds being used with a specific student, or just a collection of the holds that were taught in a CPI training, the trainer stated what would be shown would be "classroom models" of the holds that were taught during a training. She reported the pictures would be a "jumping off point" as the holds may have to be modified depending on circumstances.

The trainer was asked if she had received anything in writing from CPI that confirmed her understanding of what was allowed and not allowed to be shown regarding the holds. She affirmed that there was something in writing and agreed to provide us with a copy. The trainer was informed that it was DLC's understanding that at some point in the discussions about information being shared with the parent about CPI holds, someone from the District had initially informed the parent that nothing could be shown as all of the information was proprietary.

Also present during the telephonic interview with the trainer, was the District's Federal and State Compliance Facilitator with the Special Education Department. The facilitator reported that what had actually been conveyed to the parent upon her initial request was that the District was not certain what could and could not be provided, and so contact would have to be made with CPI in order to find out.

He went on to say that during a telephone call with someone at CPI, the District learned that parents could only be given information about the CPI holds that were part of the CPI training through the parent workshop and pictures; and while the District had not as yet provided a parent workshop, discussions were taking place for consideration of providing them in the future.

Interview with Woodriver Elementary School Principal:

A telephonic interview was conducted with the school principal on June 2, 2014. The principal was in attendance at the meeting where the student's parent was shown pictures of the holds taught in the CPI training. The principal did not remember the student's mother actually requesting a demonstration of the holds that were being used on her son. He did remember that after the parent's initial request, the Coordinator was to get in touch with CPI to find out what could actually be shown to the parent.

CPI Materials

In response to DLC's request to see what CPI had provided in writing regarding what could and could not be shown to a parent, excerpts were provided of CPI materials that were provided to trainers. Under "Program Quality Standards, Policies, and Procedures," a section entitled "Use of Training Materials," was the following statement highlight by District staff to demonstrate CPI directives:

B. All materials and program content are protected under international copyright laws. No portion of the materials may be reproduced in any manner. Presentation of the program content without the appropriate teaching materials is in violation of your certification and is considered unauthorized training and an unauthorized use of copyrighted information.

Another highlighted section was from materials for a parent workshop:

As you introduce the program, it is important to make it clear that **the purpose of this workshop is not to train participants** in the *Nonviolent Crisis Intervention®* program. *Nonviolent Crisis Intervention®* training is a program designed for professionals who are faced with managing disruptive behavior. It is a program that (1) requires eight to 12 hours of training; and (2) is designed to operate within the context of an organizational structure that includes policies and procedures, ongoing practice, skill-building, and periodic refresher training. (Emphasis in original).

Also under the section related to a parent workshop that was highlighted by the District was the following:

You might also wish to have your Instructor Manual available to show illustrations from *Nonviolent Crisis Intervention®* training depicting forms of physical controls used in this program. Some Certified Instructors physically demonstrate *Nonviolent Crisis Intervention®* positions to illustrate important safety precautions inherent to their use. **Warning:** if you choose to do this, do your demonstrations with another trained staff member and ensure your organization's policies approve this approach.

Interview with CPI Director of Client Services

A telephonic interview was conducted with the Director on May 23, 2014, and a follow-up e-mail was sent to us by the Director on May 27, 2014. Below is an excerpt from that e-mail:

CPI recommends that districts feel free to share copies of the training materials (or review them with) with parents. In some cases, districts seek approval from CPI to include pictures in a parent handbook. It is also appropriate for the school to demonstrate the intervention if necessary.

Analysis

It was the principal's recollection that the Coordinator was to contact CPI to determine what could and could not be provided or shown to the student's parent. According to the Coordinator, there was nothing to prevent staff from demonstrating CPI holds to the parent. The excerpt from the CPI parent workshop document indicates that some districts provide demonstrations to parents on request, but that the demonstrations should be provided by a Certified Instructor. From DLC's telephone conversation with CPI's Director of Client Services and the follow-up e-mail she provided, CPI does not prohibit demonstration of the interventions that are taught in CPI trainings.

Based on the above, it appears to us that there was a misunderstanding by the CPI trainer DLC spoke with and perhaps other District staff as to what was and was not allowed by CPI in response to a parent's request for information and demonstration of CPI holds that were taught to and being used by District staff. It appears that such demonstration must be provided by Certified Instructors, and that non-training participants, such as parents, should be informed that the demonstration is for example only, and is not to be construed as instruction for use. However, there is nothing in CPI or District policy ruling out a demonstration for a particular parent of the CPI holds being used on that parent's child.

VII. CONCLUSIONS AND RECOMMENDATIONS – PART II:

Based on interviews and review of CPI materials during the course of its investigation, DLC was able to substantiate the allegation that the student's mother was denied the opportunity to observe a demonstration by District staff regarding the holds or restraints applied to her son during times of perceived crisis or safety concerns. DLC also determined that there was a misunderstanding by certain staff as to what was allowed by CPI regarding requests for demonstration of their proprietary techniques. Staff had CPI's permission to demonstrate the restraint techniques being used, and DLC strongly endorses a parent's right to know what the actual restraints being used look like during their application.

Recommendation:

Parents or guardians who request to be informed or shown how their student is secluded, sequestered or restrained, should have that request honored. To that end, the District should

develop and implement a policy for providing information and demonstration to inquiring parents regarding seclusion and CPI techniques that are being used with their student.