

CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0249-17/18

Public Agency Paul Cordeiro, Superintendent Newhall Elementary School District 25375 Orchard Village Road, Suite 200 Valencia, CA 91355-3000	Complainant Robert Borrelle 350 South Bixel Street, Suite 290 Los Angeles, CA 90017
Special Education Director Larry Brunson, Director, Pupil Services Newhall Elementary School District	Parents Various
Special Education Local Plan Area (SELPA) Tracy Peyton-Perry, Director Santa Clarita Valley SELPA 24930 Avenue Stanford Santa Clarita, CA 91355	Students Jane Doe and other similarly situated students
Complaint Received October 10, 2017	Report Mailed December 8, 2017

INVESTIGATION PROCEDURES

The investigation and conclusions are based on the investigator's review of materials and documents provided by the Complainant and the District, as well as telephone contacts with the Complainant on October 18, 2017, and November 29 and 30, 2017; and with the parent of Jane Doe and the Complainant on November 1, 2017. The parents of other similarly situated students were interviewed on November 27 and 29, 2017. The District was contacted on October 24 and 27, 2017. The SELPA Director was contacted on November 21, 2017.

An on-site investigation was conducted at the District on November 7 and 8, 2017, to address the allegations in the complaint. Two District school sites were visited and the regional emotional disturbance (ED) special day class (SDC) program was observed. The pupil services director, a school site principal, a vice principal, a school psychologist, and a program administrator were interviewed on November 7 and 8, 2017.

The California Department of Education (CDE) requested a list of all students who were restrained in the last year at all District school sites, and all pupil records, including copies of behavior emergency reports (BERs); individualized education programs (IEPs), behavior intervention plans (BIPs), and assessments for those students. The District provided the names and pupil records for 31 students attending District schools that were

restrained District wide for the period of August 18, 2016, to June 12, 2017. The students presented in this report are identified as Jane Doe and a sample of the 31 similarly situated students identified as students 1 to 13. These students attend or attended SDCs at Oak Hills Elementary School (Oak Hills), Old Orchard Elementary School (Old Orchard), and/or Peachland Elementary School (Peachland) within the District.

SUMMARY OF ALLEGATION ONE

The Complainant alleges the District failed to adhere to the requirements pertaining to behavioral emergency interventions, in violation of California *Education Code (EC)* Section 56521.1a-h (except for g).

Specifically, the Complainant alleges the District hired the Behavior Learning Center (BLC) non-public agency (NPA), to provide one-on-one aide support to Jane Doe and other similarly situated students in the District and the aides used restraint in nonemergency situations for predictable behaviors. As a result the Complainant alleges that Jane Doe was restrained 45 times from October 12, 2016, through November 15, 2016, for nonemergency predictable behaviors. On November 1, 2016, Jane Doe was restrained 15 times and some restraint holds were allegedly unnecessarily lengthy in duration and force. The Complainant also alleges that when a restraint was used on Jane Doe, the District failed to notify the parent within one school day, complete a BER, maintain the BER in the student's file, forward the report to school administrators, and convene an IEP team meeting to review and determine if the student's BIP needs to be modified.

APPLICABLE CITATIONS

EC Section 56521.1(a) requires:

Emergency interventions may only be used to control unpredictable, spontaneous behavior that poses clear and present danger of serious physical harm to the individual with exceptional needs, or others, and that cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to contain the behavior.

EC Section 56521.1(b) requires, "Emergency interventions shall not be used as a substitute for the systematic [BIP] that is designed to change, replace, modify, or eliminate a targeted behavior."

EC Section 56521.1(c) requires, "No emergency intervention shall be employed for longer than is necessary to contain the behavior. A situation that requires prolonged use of an emergency intervention shall require the staff to seek assistance of the school site administrator or law enforcement agency, as applicable to the situation."

EC Section 56521.1(e) requires:

To prevent emergency interventions from being used in lieu of planned, systematic behavioral interventions, the parent, guardian, and residential care provider, if appropriate, shall be notified within one school day if an emergency intervention is used or serious property damage occurs. A [BER] shall immediately be completed and maintained in the file of the individual with exceptional needs. The [BER] shall include all of the following:

- (1) The name and age of the individual with exceptional needs.
- (2) The setting and location of the incident.
- (3) The name of the staff or other persons involved.
- (4) A description of the incident and the emergency intervention used, and whether the individual with exceptional needs is currently engaged in any systematic [BIP].
- (5) Details of any injuries sustained by the individual with exceptional needs, or others, including staff, as a result of the incident.

EC Section 56521.1(f) requires, "All [BERs] shall immediately be forwarded to, and reviewed by, a designated responsible administrator."

EC Section 56521.1(h) requires:

If a [BER] is written regarding an individual with exceptional needs who has a positive [BIP], an incident involving a previously unseen serious behavior problem, or where a previously designed intervention is ineffective, shall be referred to the IEP team to review and determine if the incident constitutes a need to modify the positive [BIP].

ADDITIONAL APPLICABLE CITATION

EC Section 56521.1(d)(3) requires, "Emergency interventions shall not include . . . An amount of force that exceeds that which is reasonable and necessary under the circumstances."

FINDINGS OF FACT

1. The District uses a 2015 draft Santa Clarita Valley SELPA (SELPA) Positive Behavior Interventions (PBI) handbook for member districts that identifies procedures and processes for functional behavior assessments (FBAs), BIPs, and BERs. The handbook includes a policy that all school districts in the SELPA or non-public schools serving SELPA students may only use techniques of emergency intervention taught by a certified instructor of the nonviolent crisis intervention (NCI) program. Evidence for this finding is based on the 2015 draft SELPA PBI handbook, last revised on August 20, 2015.

2. The District contracted with the BLC NPA to provide behavioral services to eight students being served by the District and attending District schools. Evidence for this finding is based on the NPA master contract dated August 22, 2016, and the District November 8, 2017, complaint response.
3. Some SELPA member Districts place students in a "regional SDC-5 ED program" that is located at the District's Old Orchard site. This program also serves the District's student population, including Jane Doe. Evidence for this finding is based on the IEPs and BERs of students.
4. The Crisis Prevention Institute (CPI) NCI program training is promoted as a safe, non-harmful behavior management system designed to help professionals provide the best possible care and welfare of disruptive, assaultive, and out-of-control persons, even during their most violent moments. The NCI program emphasizes that physical restraint is recommended only when all less-restrictive methods of intervening have been exhausted, and when the individual presents a danger to self or others. The participant training manual states that there is a psychological danger in using restraints, and being restrained can be a frightening, even traumatic experience. The manual also states that restraints can interfere with the relationship between caregivers and the person being restrained, and in fact, if people are restrained too often, they may begin to feel that they have no control over their lives. The manual concludes, for these reasons and others, restraints should be used only when a person's behavior is more dangerous than the danger of using restraints. Evidence for this finding is based on the CPI NCI participant training workbook.
5. Of the 38 District staff identified as participating in student restraints, including classroom aides, teachers and administrators, the CPI NCI training and certification records reflect that 16 of these staff members involved in the use of restraint on students did not have NCI training or certification. Evidence for this finding is based on the District's NCI training records, and the 285 BERs provided by the District.
6. Four District special education SDC teachers and one District program administrator listed on many student BERs from Old Orchard attended a refresher training by CPI in the NCI and earned NCI certification on August 19, 2016, and the certification expired on August 19, 2017. One SDC teacher from Old Orchard completed CPI NCI training on August 9, 2016, and is certified until August 9, 2018. The District did not provide evidence that the three SDC teachers and the one administrator have renewed their certification after August 19, 2017. Evidence for this finding is based on the CPI training class details, and NCI training confirmation report for August 19, 2016.

Jane Doe

7. The student's operative IEP for the 2016–17 school year (SY) is dated May 25, 2016, to which the parent signed agreement on May 31, 2016, and requires the student to receive 1,860 minutes weekly of behavior intervention services provided by BLC. Evidence for this finding is based on the student's IEP dated May 25, 2016.
8. The student's BIP dated May 25, 2016, identifies behaviors that impede learning such as throwing, kicking, and hitting. The BIP includes recommendations for strategies and supports such as a visual or written schedule, behavior momentum, reinforcements, increasing attention, and taking breaks. The BIP includes the use of NCI, specifically the use of the children's control position and the team control position. Evidence for this finding is based on the student's BIP dated May 25, 2016.
9. The District convened an amendment IEP meeting dated October 28, 2016, to review the student's behavior interventions. The team agreed that another BIP was needed and additional behavioral data was required. The District provided an assessment plan (AP) to the parent dated October 28, 2016, for an FBA, to which the parent signed consent on October 31, 2016. There was no discussion of the use of restraint on the student documented in the IEP meeting notes. Evidence for this finding is based on the IEP and AP dated October 28, 2016.
10. During the time period from October 12, 2016, to November 15, 2016, the BLC documented 10 special incident reports. On November 15, 2016, the parent requested data from the District on how many times the student had been physically restrained since the beginning of the 2016–17 SY. The BLC responded to the parent's request by providing 11 dates of when an NCI hold was used. A special incident report was not filled out for one of the dates an NCI hold was used. The parent sent another request asking again, how many times the student had been restrained. The BLC responded to the parent's second request by providing the number of NCI holds used for each date provided. Evidence for this finding is based on the Special Incident Reports dated October 12, 2016, to November 15, 2016, the e-mail from the parent to the District dated November 15, 2016, the e-mails from the BLC to the parent and the parent to the BLC dated November 16, 2016, and the e-mail from the BLC to the parent dated November 18, 2016.
11. The parent provided a letter dated November 21, 2016, to the District from the student's psychiatrist requesting the student take a leave of absence from school. The District convened an amendment IEP meeting dated December 5, 2016, to discuss the parent's request to place the student on home and hospital instruction (HHI). The IEP team agreed to change the student's placement to HHI and reconvene in January 2017, to review the HHI placement. Evidence for this finding is based on the letter from the student's psychiatrist dated November 21, 2016, and the IEP dated December 5, 2016.

12. The student attended an Oak Hills SDC program at the beginning of the 2016–17 SY. During the time period from October 12, 2016, to November 15, 2016, the BLC documented 10 special incident reports. The special incident reports include a total of 43 NCI student holds, 25 of which resulted from the student lunging, running, or acting out towards peers. On November 1, 2016, the student was restrained 15 times, 5 of which lasted four minutes in duration. Evidence for this finding is based on the amendment IEP dated September 7, 2016, the Report to Parents dated August 18, 2016, to November 17, 2016, and the BLC special incident reports dated October 12, 2016, to November 15, 2016.
13. The parent placed the student in the Phoenix Program at Bridges Academy, a private school, beginning on January 3, 2017. Evidence for this finding is based on the prior written notice sent from the District to the parent dated January 4, 2017.
14. The student's FBA report was completed on January 12, 2017. The FBA recommended implementing most of the recommendations from the 2014 FBA and additional observations of the student in a school setting to develop an appropriate BIP. Evidence for this finding is based on the FBA dated January 12, 2017.
15. The assessor who completed the FBA dated January 12, 2017, reviewed the student's educational records from March 2014 to November 2016, provided by the District. The records provided by the District did not include BERs or special incident reports from October 12, 2016, to November 15, 2016. Evidence for this finding is based on the FBA report dated January 12, 2017.
16. The parent exited the student from the private school in February 2017. The student was hospitalized on March 5, 2017, for two weeks in a neuropsychiatric unit at the University of California at Los Angeles. Evidence for this finding is based on the complaint letter dated October 10, 2017, and the parent telephone contact dated November 1, 2017.
17. The District convened an amendment IEP meeting dated March 22, 2017, to review the FBA and behavior support plan (BSP). The District's offer of free appropriate public education (FAPE) was the student's previous placement at Oak Hills in an SDC program. The parent signed in agreement to the FBA and BSP goals, but did not agree with the offer of FAPE. Evidence for this finding is based on the amendment IEP dated March 22, 2017.
18. The District convened an amendment IEP meeting dated April 12, 2017, to discuss the student's placement. The parent requested the student to be placed in general education with District behavioral support. The student's private psychologist reported that the restraint used previously at Oak Hills by the BLC exacerbated the student's anxiety. The IEP team agreed to place the student in general education at the student's school of residence, Old Orchard, on a temporary basis. The team also

agreed that if any NCI holds were used at school, an immediate IEP meeting would be held. Evidence for this finding is based on the amendment IEP dated April 12, 2017.

19. The District convened Jane Doe's triennial IEP meeting on May 23, 2017, to review assessments, placement, and student progress. The parent requested the NCI language be taken out of the BSP and for NCI holds to not be used as the primary intervention strategy. The District's offer of FAPE was general education participation with supports. The parent signed in agreement, with the exception of the diagnostic placement, on June 20, 2017. Evidence for this finding is based on the IEP dated May 23, 2017.

STUDENTS 1-13

20. Student one has a special education eligibility of autism and ED. The student was ten years old and in the fifth grade and attends Peachland. Evidence for this finding is based on the IEP dated January 26, 2017.
21. Student one's January 26, 2017, BIP documents the student exhibits behaviors that impedes learning such as screaming, cursing, yelling, and aggressive and assaultive behavior toward peers and staff; including throwing items, pushing, shoving, and kicking. The recommended interventions and strategies documented in the student's BIP include verbal praise, earning preferred rewards, mini breaks, and a visual behavior chart. Evidence for this finding is based on the BIP dated January 26, 2017.
22. Student one was restrained 20 times recorded in 13 BERs for the 2016–17 SY. The student's restraints ranged from 30 seconds to eight minutes in duration. On November 29, 2016, the student hit another student with a sweatshirt, and a staff member relocated the sweatshirt. The student stabbed the staff member with a pencil, and then the student was led to the transition room and placed in a restraint hold for five minutes. The student was released and proceeded to hit the staff member. The student was placed in an eight minute restraint hold. The school site administrator's assistance was sought for one of the student's 13 BERs. Although the BERs indicate the parent was contacted within 24 hours of the behavior emergency incidents, the evidence does not demonstrate the parent was notified. The BERs do not demonstrate the use of all the BIP's recommended interventions and strategies. Evidence for this finding is based on the student's 13 BERs.
23. Student two has a special education eligibility of a specific learning disability and a speech and language impairment (SLI). The student was eight years old and in the third grade, and attends the regional SDC ED program at Old Orchard. Evidence for this finding is based on the IEP dated November 14, 2016.

24. Student two exhibits physical aggression such as hitting, head-butting, biting, scratching, and destruction of property. The student's October 20, 2015, BIP recommends positive reinforcements and the use of replacement behaviors such as walks and small structured work environments away from peers. There is no use of restraint mentioned in the student's BIP. The District convened an amendment IEP meeting on January 27, 2017. During the IEP meeting, based on recent triennial assessments and behavior data, the District recommended the student no longer required a BIP. Evidence for this finding is based on the BIP dated October 20, 2015, the IEP dated November 14, 2016, and the amendment IEP dated January 27, 2017.
25. Student two was restrained 29 times recorded in 11 BERs for the 2016–17 SY. These restraints ranged from one minute to seven minutes in duration. On September 19, 2016, at 9 a.m., the student was placed in an NCI team control position for seven minutes. The student dropped to the knees and was released by the staff. The school site administrator was notified of the incident at 6:18 p.m. The school site administrator's assistance was not sought on any of the student's 11 BERs. The evidence demonstrates the foster parents were notified by e-mail within 24 hours for some, but not all, of the 11 BERs. The BERs do not demonstrate the use of all the BIP's recommended interventions and strategies. Evidence for this finding is based on the student's 11 BERs, District e-mails to the foster parent, the BIP dated October 20, 2015, and the IEP dated November 14, 2016.
26. Student three has a special education eligibility of ED, and was nine years old and in the fourth grade. The student attends the regional SDC ED program at Old Orchard. Evidence for this finding is based on the IEP dated November 28, 2016.
27. Student three's BIP documents behaviors such as hitting, elopement, and taking items from other students. The student's BIP recommends strategies and supports such as a token system, using a calm supportive voice, and the taking of breaks. Evidence for this finding is based on the BIP dated November 28, 2016, and the BIP dated April 25, 2017.
28. Student three was restrained 16 times recorded in nine BERs for the 2016–17 SY. The student's restraints ranged from 30 seconds to seven minutes. On June 12, 2017, the student was placed in an NCI child control position for seven minutes in the transition room. The BER indicates that the student was not following staff directions and wandered into the transition room. While in the transition room, the student began to pick at walls, outlets, and baseboards. Out of nine BERs the school site administrator's assistance was sought one time. Although the BERs indicate the parents were notified of the restraints within 24 hours, the evidence does not demonstrate the parent was notified. The BERs do not demonstrate the use of all the BIP's recommended

interventions and strategies. Evidence for this finding is based on the student's nine BERs, the IEP and BIP dated November 28, 2016, and the BIP dated April 25, 2017.

29. Student four has a special education eligibility of ED and was eight years old and in the third grade. The student attends the regional SDC ED program at Old Orchard. Evidence for this finding is based on the IEP dated October 10, 2016.
30. Student four's BIP dated October 10, 2016, lists the behaviors that impede the student's learning as yelling, kicking, whining, and hitting the head. The BIP identifies the use of strategies and supports such as taking breaks, using headphones, using a token economy, offering choices, and redirection. Evidence for this finding is based on the BIP dated October 10, 2016.
31. Student four experienced 103 restraints recorded in a total of 46 BERs for the 2016–17 SY. The 103 restraints ranged from one minute to five minutes, with up to five restraints on one day. On October 24 and 26, November 2, and December 6 and 12, 2016, and March 6, 2017, the student vomited during the restraint. On November 15, 2016, and May 12, 2017, the student urinated during the restraint. On March 14, 2017, the student spit up blood during the restraint. Out of 46 BERs, the school site administrator's assistance was sought only four times. The parent was notified within 24 hours for some, but not all of the BERs. The BERs do not demonstrate the use of all the BIP's recommended behavior interventions and strategies. Evidence for this finding is based on the IEP and BIP dated October 10, 2016, the student's 46 BERs, and District e-mails to the parents.
32. Student five has a special education eligibility of an intellectual disability and other health impairment (OHI). The student was nine years old and in the fourth grade. The student attends the regional SDC ED program at Old Orchard. Evidence for this finding is based on the IEP dated December 7, 2016.
33. Student five's BIP dated December 7, 2016, documents behaviors such as verbal and physical aggression, and disruptive off-task classroom behaviors. The BIP identifies strategies and supports such as giving the student more time on tasks, providing breaks, giving supportive words, and verbal praise, and redirection to appropriate behaviors. Evidence for this finding is based on the BIP dated December 7, 2016.
34. Student five was restrained eight times recorded in four BERs. The student's restraints ranged from 1 minute to 14 minutes. On January 26, 2017, the student was placed in a restraint hold for 14 minutes. The student was warned the student would be placed in a hold if the student did not stop rolling on the floor and rolling into classmates. The school site administrator's assistance was sought for one of the student's four BERs. Although the BERs indicate the parent was contacted within 24 hours of the behavior emergency incidents, the evidence does not demonstrate the

parent was notified. The BERs do not demonstrate the use of all the BIP's recommended interventions and strategies. Evidence for this finding is based on the student's four BERs, and the student's December 7, 2016, IEP and BIP.

35. Student six has a special education disability of ED and SLI, and is an English language learner. The student was nine years old, in the fourth grade, and attends the regional SDC ED program at Old Orchard. Evidence of this finding is the student's November 1, 2016, IEP.
36. Student six's BIP states that the student exhibits unwanted and unsafe behaviors that impede the student's learning through physical aggression by throwing objects and hitting others, vulgar language, and elopement. The student's BIP indicates the unwanted behaviors tend to occur after recess, after a bad social interaction with a peer, or during instructional time. The student's BIP provides behavior interventions to use to mitigate these behaviors such as frequent breaks, time to de-escalate and calm down, and NCI holds to be used if student is a danger to self and others. Evidence for this finding is based on the student's November 1, 2016, BIP.
37. Student six was restrained 20 times recorded in 16 BERs. The student's restraints ranged from 1 minute to 10 minutes. The student was restrained for hitting and kicking staff. Staff often threatened the use of restraint on the student if the student did not obey their directions. On October 12, 2016, the student was restrained in a team control position for 10 minutes for pushing and hitting staff. Out of 16 BERs the school site administrator's assistance was sought two times; however, the administrator was not notified of the 10 minute restraint hold on October 12, 2016. The parents were notified of 4 BERs by e-mail out of the 16 BERs completed. Evidence for this finding is based on the student's 16 BERs, November 1, 2016, IEP and BIP, and e-mails from the District.
38. Student seven has a special education eligibility of ED and OHI. The student was nine years old and in the fourth grade attending the Old Orchard SDC ED regional program. Evidence for this finding is based on the August 26, 2016, IEP.
39. Student seven has a BIP that indicates problem behaviors of non-compliance and defiance to directions, off-task classroom behaviors, physical aggression towards peers and staff (punching, charging, pushing, slapping, or kicking), elopement, throwing items, and destruction of property when the student transitions from a preferred task to another or boundaries are placed on the student. The BIP indicates de-escalation techniques for the student of praise and reward the student for appropriate behaviors, use of breaks when off-task behaviors surface, use choices, constant monitoring, provide preferred tasks, and the use of the token system helps in alleviating unwanted behaviors. When the student engages in aggressive

behavior resulting in injury of staff or peers, district disciplinary procedures will be enacted, NCI holds can be utilized, and a call is made to mom. Evidence for this finding is the student's August 26, 2016, BIP.

40. Student seven was restrained 13 times recorded in 10 BERs. The student's restraints ranged from 1 minute to 12 minutes. On February 8, 2017, the student was instructed to complete class work, but instead started kicking the cabinet, and then ran to the door. The staff blocked the door and the student started kicking the staff. The staff led the student to the transition room and placed the student in a restraint hold for 12 minutes. The Behavior De-briefing Checklist indicates that some redirection took place and the student was separated from the class and taken to the transition room. There is no indication of any of the other de-escalation techniques were used other than redirection and then the student is taken to the transition room where the physical aggression escalated. The use of the transition room is not in the student's BIP. The school site administrator's assistance was not sought for this incident. The school site administrator's assistance was sought for only 1 of the 10 student BERs. There is no documentation of contact with the parent regarding the BERs. Evidence for this finding is based on the student's 10 BERs, and the student's August 26, 2016, IEP and BIP.
41. Student eight has a special education eligibility of ED and OHI. The student was nine years old and in the fourth grade attending the Old Orchard SDC ED regional program. Evidence of this finding is the student's November 7, 2016, IEP.
42. Student eight has a BIP with documented problem behaviors that impede learning of verbal and physical aggression toward staff and peers, elopement, self-injurious behavior, spitting, and jumping on furniture. The triggers of unwanted behaviors are transition to a new activity, denied access to a preferred activity, or a feeling of not accomplishing a given task. The student's BIP identifies redirection, breaks, a squeeze toy, use of a soft voice, a chewy toy, weighted vest, and foot stomping outside as behavior interventions to control unwanted behaviors. The use of NCI restraint holds are permitted if the student is unable to control the student's body or is behaving unsafe.
43. Student eight was restrained 77 times recorded in 25 BERs for the period examined. On September 9, 2016, the student was disruptive in class after transition to the next activity and was led to the transition room by the staff and administration after the student used inappropriate language in class and began hitting staff. In the transition room the student was restrained seven times with holds ranging from one minute to four minutes. On November 17, 2016, the student was disruptive in class and was told to stop. The student kicked over a desk and was taken to the transition room where the student kicked and hit staff and was restrained eight separate times. Once the student kicked over the desk, the student was taken to the transition room where no de-escalation techniques were documented. Out of 25 BERs, the school site administrator's assistance was sought five times. There are eight e-mails to the

parents within 24 hours notifying them of the use of restraint on the student. There is a March 21, 2017, e-mail to the parents, notifying them of behavior incidents on March 6 and 16, 2017. The March 6 and 16, 2017, student BERs were not provided to the CDE. Evidence for this finding is based on the student's 25 BERs, e-mails from the District to the parents regarding unsafe behavior, and the student's November 7, 2016, BIP.

44. Student nine has a special education eligibility of OHI and autism. The student was eight years old and in the third grade, attending the Old Orchard SDC ED regional program. Evidence for this finding is based on the student's triennial October 18, 2016, IEP.
45. Student nine has a BIP that documents unwanted behaviors of non-compliance, climbing on furniture, elopement, and physical aggression of hitting, kicking, punching, throwing objects, head-butting, and verbal negative comments toward peers. Behavior interventions of short directions like "sit down, line up, or get your jacket" tends to work with the student, frequent breaks, hand holding by an adult, increased attention from staff, offering solutions and choices, and use of a quiet calm voice to redirect de-escalates the unwanted behaviors. NCI holds can be used to control behavior if the student is a danger to self or others. Evidence of this finding is the October 18, 2016, BIP.
46. Student nine was restrained 35 times recorded in 16 BERs. The student's restraints ranged from 1 minute to 10 minutes. On March 23, 2017, the student ran out of the classroom and hit and kicked a staff member. The student was led to the transition room and placed in several restraints with one restraint hold lasting 10 minutes. Some redirection was tried during this incident, but removal to the transition room was the primary documented behavior technique used. The school site administrator's assistance was not sought for this incident, nor for any of the student's 16 BERs. The parent was e-mailed 11 times regarding the 16 BERs. Evidence for this finding is based on the student's 16 BERs, e-mails from the District to the parents regarding the BERs, and the student's October 18, 2016, BIP.
47. Student 10 has a special education eligibility of ED, and is an English language learner. The student was ten years old and in the fifth grade, attending the Old Orchard SDC ED regional program. Evidence for this finding is the student's August 31, 2016, annual IEP.
48. Student 10 has a BIP for targeted behaviors listed as non-compliance, physical and verbal aggression, elopement, work avoidance, destruction of property, disruption of the class, and inappropriate language. De-escalation techniques to be used on the student when unwanted behaviors occur: allow short breaks, remove the non-preferred task, provide space around the student and place an adult nearby, utilize preferred

tasks, and use of a calm tone and clearly state directives and expectations. If aggressive behavior continues after behavior intervention techniques are tried, NCI restraint may be used. Evidence for this finding is the August 31, 2016, BIP.

49. Student 10 was restrained 23 times during the 2016–17 SY. On December 9, 2016, the student attempted to elope from the classroom and staff blocked the exit. The student began to throw items and tip over a bookcase. The student was escorted to the transition room. Once in the transition room the student pushed, kicked, and hit staff. The student was placed in an NCI Team Control Position (restraint) for five minutes. The student was released from the hold when the student dropped to the knees and was returned to the classroom. After about 10 minutes back in the classroom the student became frustrated with the class activity and wrapped a phone cord around his neck and stated that, "I am going to kill myself" and "I just want to die." The staff removed the cord and a short time later, while still in the classroom the student took a cord from the computer mouse and wrapped it around the neck. The student was escorted to the transition room. In the transition room the student became aggressive with staff by hitting, biting, kicking, and punching staff. The student was placed in an NCI Team Control Position for one minute and released. The student continued hitting staff and was placed in a Team Control Position restraint for five minutes and released. The student then began hitting staff with a closed fist and the student was placed in a Team Control Position for 30 minutes. Some redirection was used but the primary behavior intervention technique was separation of the student from the group to the transition room, and this is not in the student's BIP. Because of the self-harm threats, a Psychiatric Mobile Response Team was called and the student stayed with staff until the student was picked up by the parent from school. There is no indication on the BER that the parent was notified within 24 hours of the seven restraints on this day and of the self-harm threats. Evidence for this finding is based on the August 31, 2016, IEP and BIP, and the student's BERs.
50. Student 11 has a special education disability of ED and was eight years old, in the third grade attending the Old Orchard SDC ED regional program. Evidence for this finding is based on the February 14, 2017, triennial IEP.
51. Student 11 has a BIP for inappropriate unwanted behaviors of refusing to follow directions, destroying teaching materials, being physically assaultive towards staff and peers, and wondering around the classroom out of seat. Triggers of behavior are transition back to the classroom after recess, direction to do school work, and feelings of not knowing the answer. Behavior intervention techniques are loss of recess privileges, breaks away from the classroom, and NCI restraint techniques when the student is a danger to self and/or others. Evidence for this finding is the February 14, 2017, BIP.
52. Student 11 was restrained 15 times recorded in seven BERs. The student's restraint duration ranged from 1 minute to 10 minutes. On September 14, 2016, the student

pushed a table into the wall, blocking staff. The student then attempted to elbow and kick staff. The staff placed the student in a restraint for 10 minutes. The school psychologist was able to calm the student. On September 21, 2016, the student was placed in a seven minute team controlled position for targeted behaviors and release upon dropping to the knees. The behavior intervention techniques used on the student were redirection and removal to the transition room. The school site administrator's assistance was not sought for this incident. Out of seven BERs examined the school site administrator's assistance was sought only one time. Although the BERs indicate the parent was notified of the restraints there was no evidence provided of the notifications. Evidence for this finding is based on the student's seven BERs, and the February 14, 2017, BIP.

53. Student 12 has a special education eligibility of ED, was seven years old, and in the second grade attending Old Orchard SDC ED regional program. The student is noted as an English language learner. Evidence for this finding is based October 10, 2016, IEP.
54. Student 12 has a BSP for unwanted and unsafe behaviors of oppositional and argumentative behavior, physical threats, aggression towards others, disruption of class, and elopement. The triggers for these behaviors are transitions, non-preferred tasks, classwork, and when presented with expectations. Behavior interventions documented in the BSP are redirection, reminders of expected behavior, and rewards of expected behaviors, provide supervised breaks, remove student to a safe spot, and use a calm voice. The BSP states that disciplinary procedures for physical aggression will be followed—NCI restraint holds will be utilized if the student is a danger to self or others. Evidence for this finding is based on the student's October 10, 2016, BSP.
55. Student 12 was restrained nine times from August 31, 2016, to March 16, 2017, as evidenced by the five BERs provided by the District. On November 9, 2016, the student was being disruptive in class by talking to another student and when asked to stop, the student got up and walked around the classroom. The student refused to return to the seat, so the student was escorted to the transition room where the student hit, kicked, and pushed staff. The student was placed in an NCI control hold for five minutes. The student then ran around the transition room turning on and off the lights, charging staff, and pushing staff in order to leave the transition room, when the student was placed in an NCI control hold for four minutes. After the student was released from the hold, the student kicked staff and was placed in a NCI control hold for three minutes. The student continued to kick staff and he was placed in a NCI control hold for three minutes. The student spit at staff, ran around the transition room, and then kicked staff when placed in an NCI control hold for five minutes. The BER indicates that redirection was attempted and the staff used blocking techniques and child restraint. The BER indicates the parent was contacted

on November 9, 2016. There was no evidence the District contacted the parent about the five other BERs. Evidence for this finding is based on October 10, 2016, IEP and BSP, and the student's five BERs.

56. Student 13 has a special education eligibility of ED and OHI. The student was seven years old and in the second grade, and attends the Old Orchard SDC ED regional program. Evidence for this finding is based on the student's annual February 15, 2017, IEP.
57. There was documentation of an FBA and a BIP completed in September 2016 for the student. The CDE requested the BIP for student 13, but none was provided by the District at the time of the report. Evidence for this finding is the IEPs notes from the February 15, 2017, IEP.
58. Student 13 was restrained 108 times recorded on 42 BERs. The student's documented behaviors in the student's IEP include: leaving the area without permission; disruptive behaviors of kicking, pushing, striking or throwing objects (including pushing desks and kicking walls); and aggressive behavior towards other students or staff by hitting, kicking, or striking others. The District's BERs show that incidents that caused the 108 restraints used on the student are for yelling, pushing, hitting, head-butting, biting, and scratching staff in the transition room. On May 5, 2017, the student sustained a nose bleed and a poke to the eye during a restraint. The student's guardian was notified by e-mail of the restraint incidents. There is no evidence that an IEP meeting was convened to revise the student's BIP or change placement. The guardian requested a change of placement in a March 24, 2017, IEP amendment for the student due to the increased negative behaviors at school. The District continued to offer the SDC placement at the Newhall SDC-5 ED program for the student and the guardian is holding the student out of school. The student's restraints ranged from one minute to seven minutes. Out of 42 BERs, the school site administrator's assistance was sought 12 times. There was evidence provided that contacts were made with the student's guardians within 24 hours. Evidence for this finding is based on the student's 42 BERs, the student's February 15, 2017, IEP, and a telephone call to student's guardian, and e-mails from the District to the student's guardians.

OVERALL FINDINGS STUDENTS 1-13

59. The District staff use the threat and use of restraint to modify or discourage behavior. For seven students, the District staff reminded, encouraged, or told students to have a calm body or they would be placed in a restraint hold. The BER for Student seven indicates the student was warned prior to being placed in a hold on December 7, 2016, and February 8 and March 7, 2017. Student five was warned to calm the body prior to being placed in a hold on October 10 and November 28,

2016, and January 26, 2017. Student six was warned to calm the body prior to being placed in a hold on September 22, October 5, 12, and 17, November 15 and 30, 2016, and January 25 and March 7, 2017. On May 24, 2017, a student was told that an NCI hold would be utilized if the behavior continued prior to being placed in a one-minute hold, and the student was reminded a hold would be used during restraints used on January 18, February 15 and 28, and March 6, 2017. A student was reminded restraint holds would be used prior to behavior emergency incidents on October 18, 2016, and March 20, 2017. A student was reminded a restraint hold would be used prior to a restraint on June 2, 2017. Evidence for this finding is based on the review of the 285 student BERs.

60. There were 285 BERs for 31 students provided by the District for review, in which the students were restrained 593 times. The earliest BER provided by the District is dated August 18, 2016, and the most recent BER is dated June 12, 2017. Of the 593 times restraint was used on students, 472 restraints took place in the school transition room. Evidence for this finding is based on the review of 285 BERs.
61. Restraints used on students ranged from 20 seconds to 30 minutes in length per restraint. Out of the 31 students, 14 students' BERs were determined to have emergency interventions with longer than is necessary restraints to contain predictable and repetitive behaviors. Evidence for this finding is based on the 285 student BERs.
62. Of the 31 students reviewed who were restrained at District schools, there is no evidence that the BERs are maintained in the student files. The BERs provided by the District for review were copies of the BERs obtained from the Santa Clarita SELPA. It is unclear where the original BERs are being maintained at the time of this investigation. Evidence for this finding is based on the November 8, 2017, on-site visit, the November 9, 2017, interview with the District, and the November 21, 2017, interview with the SELPA director.
63. Although the BER template has a box to indicate that parents have been notified and by whom, the District has provided some but not all of the contact documentation, including e-mails or phone logs to substantiate that the parents are notified of the BER. Evidence for this finding is based on the review of the BERs and evidence of parent contact provided from the District.
64. In reviewing 285 BERs submitted by the District, 19 BERs were not completed immediately. There were 10 BERs that indicate the report was completed one day after the incident, 3 BERs indicate the report was completed two days after the incident, 2 BERs indicate the report was completed three days after the incident, 3 BERs indicate the report was completed four days past the date of the incident, and 1 BER indicates the report was completed five days past the date of the incident. There

were nine student files that contained incomplete or inaccurate BERs, including inaccurate hold times based on the nature and description of the event in the report. Evidence for this finding is based on the review of 285 student BERs.

65. In reviewing 285 BERs submitted by the District, there were five BERs that indicated the administrator was not notified immediately, 8 BERs indicated the administrator was notified, but did not review the report immediately, and 6 incomplete or inaccurate BERs including 2 BER reports that indicate the administrator was notified of the incident prior to the incident occurring. There were 3 BERs where the administrator was notified 1 day after the incident, 1 BER indicated the administrator was notified 6 days after the incident, and 1 BER that indicates the administrator was notified 16 days after the incident. There were 2 BERs that indicate the administrator was notified after school hours. In addition, there were 8 BERs that were not reviewed immediately, including 2 BERs reviewed 1 day after the incident, 3 BERs reviewed 2 days after the incident, 2 BERs reviewed 3 days after the incident, and 1 BER that was reviewed 6 days after the incident. Evidence for this finding is based on the review of 285 BERs.
66. All 31 students the District identified as experiencing restraints in the last year have a BIP or a BSP. In many of the behavior incidents examined, the behavior interventions were ineffective or not used effectively, however there was no evidence in the 31 students examined that the District convened an IEP team meeting to review and/or revise the student's BIP/BSP to address the behavior emergency and modify the student's BIP or BSP. Evidence for this finding is based on the review of 285 BERs, and the 31 student files.

Conclusion: EC Section 56521.1(a) Jane Doe

The District failed to meet the requirements of EC Section 56521.1(a). Jane Doe was restrained 43 times in approximately a one-month time period, and of those 43 restraints, 25 were a result of predictable behaviors including lunging, running, or acting out toward peers. The District used restraint when the student demonstrated a pattern of predictable behaviors for more than half of the incidents when restraint was used. **The District is out of compliance.**

Conclusion: EC Section 56521.1(a) Students 1-13

The District failed to meet the requirements of EC Section 56521.1(a). The BERs and other documentation reviewed fail to establish that the use of physical restraint was necessary on each occasion it was applied to modify and or control behavior. The analysis of 285 BERs, IEPs, and BIPs for 31 students who were restrained 593 times at District school sites in the last year, demonstrates that the District is using physical

restraint as method to modify and control ongoing and predictable behavior. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS EC Section 56521.1(a)

The District failed to meet the requirements of EC Section 56521.1(a). The BERs and documentation fail to establish that the use of physical restraint was necessary on each occasion. **The District is out of compliance.**

Conclusion: EC Section 56521.1(b) Jane Doe

The District failed to meet the requirements of EC Section 56521.1(b). The evidence does not demonstrate that all of the recommended strategies and supports in the student's BIP were used prior to the student being restrained. **The District is out of compliance.**

Conclusion: EC Section 56521.1(b) Students 1-13

The District failed to meet the requirements of EC Section 56521.1(b). The review and analysis of 285 BERs and the 593 restraint used to control continuing patterns of student behavior demonstrates that for these students the use of restraint was used as a substitute for the systematic behavior interventions described in the student's BIP or BSP. Additionally, the BERs reflect that the use of physical restraint was utilized as a behavior intervention. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS EC Section 56521.1(b)

The District failed to meet the requirements of EC Section 56521.1(b). The District's use of restraint was used as a substitute for the systematic behavior interventions described in the student's BIP or BSP. **The District is out of compliance.**

Conclusion: EC Section 56521.1(c) Jane Doe

The District failed to meet the requirements of EC Section 56521.1(c). The BERs and other documentation do not provide sufficient justification of why such interventions were used for the length of time that restraints were applied and were necessary to control the behavior, and fails to establish that the school site administrator or law enforcement agency was notified as required. **The District is out of compliance.**

Conclusion: EC Section 56521.1(c) Students 1-13

The District failed to meet the requirements of EC Section 56521.1(c). The BERs and other documentation do not provide sufficient justification to demonstrate that no

emergency interventions are used for longer than necessary to control the behavior, and fails to establish that the school site administrator or law enforcement agency was notified as required. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS *EC* Section 56521.1(c)

The District failed to meet the requirements of *EC* Section 56521.1(c). The BERs and documentation fail to establish that physical restraint was only used for a duration that was necessary to control the behavior, and fails to establish that the school site administrator or law enforcement agency was notified as required. **The District is out of compliance.**

Conclusion: *EC* Section 56521.1(d) Jane Doe

The District failed to meet the requirements of *EC* Section 56521.1(d). As stated in finding of fact 12, the District used unnecessary force on November 1, 2016. **The District is out of Compliance.**

Conclusion: *EC* Section 56521.1(d) Students 1-13

The District failed to meet the requirements of *EC* Section 56521.1(d). The BERs and documentation fail to establish that emergency interventions did not include an amount of force that exceeds that which is reasonable and necessary under the circumstances. Indeed, several students were injured including vomiting and spitting up blood and injuries to the eye. **The District is out of Compliance.**

SUMMARY OF CONCLUSIONS *EC* SECTION 56521.1(d)

The District failed to meet the requirements of *EC* Section 56521.1(d). The BERs and documentation fails to sufficiently establish that the force used during physical restraints were necessary to control behavior. **The District is out of Compliance.**

EC Section 56521.1(e) Jane Doe

The District failed to meet the requirements of *EC* Section 56521.1(e). The District failed to notify the parent within one school day when an emergency intervention was used and failed to maintain a copy of BER in the student's file. **The District is out of compliance.**

EC Section 56521.1(e) Students 1-13

The District failed to meet the requirements of *EC* Section 56521.1(e). A review and analysis of the 285 BERs demonstrates that the parent, guardian, or foster parent was

not notified in all instances within one school day if an emergency intervention was used or serious property damage occurred. The District also failed to ensure copies of BERs are maintained in the file of the individual with exceptional needs. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS EC Section 56521.1(e)

The District failed to meet the requirements of EC Section 56521.1(e). The District did not notify the parent, guardian, or foster parent in all instances within one school day on those occasion when an emergency intervention was used or serious property damage occurred. The District also did not maintain copies of BERs in the file of the individual with exceptional needs. **The District is out of compliance.**

EC Section 56521.1(f) Jane Doe

The District failed to meet the requirements of EC Section 56521.1(f). The District did not complete BERs when emergency interventions were used. The evidence does not demonstrate that the special incident reports completed by the BLC were immediately forwarded or reviewed by a District administrator. **The District is out of compliance.**

EC Section 56521.1(f) Students 1-13

The District failed to meet the requirements of EC Section 56521.1(f). Of the 285 BERs reviewed, the evidence fails to establish that all BERs were immediately forwarded or reviewed by a District administrator. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS EC Section 56521.1(f)

The District failed to meet the requirements of EC Section 56521.1(f). Although the evidence demonstrates the District completed 285 BERs for 31 students, not including Jane Doe, the evidence fails to demonstrate BERs were immediately forwarded or reviewed by a District administrator. **The District is out of compliance.**

EC Section 56521.1(h) Jane Doe

The District failed to meet the requirements of EC Section 56521.1(h). Although the District convened an IEP team meeting on October 28, 2016, the District failed to address the incidents of physical restraints prior to the IEP meeting per EC Section 56521.1(h). **The District is out of compliance.**

EC Section 56521.1(h) Students 1-13

The District failed to meet the requirements of *EC* Section 56521.1(h). For students 1-13, the District failed to convene student IEP team meetings to review and revise students' BIPs or BSPs when emergency interventions were used, in cases in which previously designed interventions were ineffective to determine if the incidents constituted a need to modify the BIPs. **The District is out of compliance.**

SUMMARY OF CONCLUSIONS *EC* Section 56521.1(h)

The District failed to meet the requirements of *EC* Section 56521.1(h). As noted above, although an IEP meeting was held for Jane Doe, the IEP team failed to address incidents of physical restraints that occurred prior to the IEP meeting per *EC* Section 56521.1(h). The evidence fails to establish that the District convened student IEP meetings to review and revise BIPs or BSPs when an emergency intervention was used, and or where a previously designed intervention was ineffective, to determine if the incident constitutes a need to modify the positive BIPs. **The District is out of compliance.**

SUMMARY OF ALLEGATION TWO

The Complainant alleges the District failed to provide pupil records within five business days, in violation of *EC* Section 56504. Specifically, the Complainant alleges the student's pupil records were requested on May 19, 2017. The Complainant alleges the District provided most records promptly, except for records maintained by the BLC that are personally identifiable to the student and maintained by BLC, including incident reports on restraint used on the student, behavior logs, and the student's individual service agreement (ISA).

APPLICABLE CITATION

EC Section 56504 requires:

The parent shall have the right and opportunity to examine all school records of his or her child and to receive copies pursuant to this section and to Section 49065 within five business days after the request is made by the parent, either orally or in writing. The public agency shall comply with a request for school records without unnecessary delay before any meeting regarding an [IEP] or any hearing pursuant to Section 300.121, 300.301, 300.304, or 300.507 of Title 34 of the Code of Federal Regulations or resolution session pursuant to Section 300.510 of Title 34 of the Code of Federal Regulations and in no case more than five business days after the request is made orally or in writing. The parent shall have the right to a response from the public agency to reasonable

requests for explanations and interpretations of the records. If a school record includes information on more than one pupil, the parents of those pupils have the right to inspect and review only the information relating to their child or to be informed of that specific information. A public agency shall provide a parent, on request of the parent, a list of the types and locations of school records collected, maintained, or used by the agency. A public agency may charge no more than the actual cost of reproducing the records, but if this cost effectively prevents the parent from exercising the right to receive the copy or copies, the copy or copies shall be reproduced at no cost.

FINDINGS OF FACT

67. On May 19, 2017, the Complainant submitted a request for a copy of the student's pupil records, which the District received on the same day. Evidence for this finding is based on the fax from the Complainant and the District, date stamp dated May 19, 2017.
68. The District provided the requested records to the Complainant, except for behavior logs and the student's individual service agreement (ISA) with BLC. Evidence for this finding is based on the complaint letter dated October 10, 2017, and the District's response to the complaint letter dated November 8, 2017.
69. The Complainant submitted a second request for the missing records on June 15, 2017, and the District responded to the second request on the same date, stating the District was not in possession of any additional BLC related documents. The Complainant received missing records including behavior logs from BLC directly at a later date. Evidence for this finding is based on the complaint letter dated October 10, 2017, and the District's response to the complaint letter dated November 8, 2017.

CONCLUSION

The District failed to meet the requirements of *EC* Section 56504. Although the District did not provide a copy of the ISA to the Complainant, an ISA is a business agreement between the District and the NPA and is not a part of the student's pupil records. However, the District did not provide a copy of the student's behavior logs and incident reports completed by BLC staff, which are personally identifiable to the student and therefore, maintained by a contractor of the District and should have been provided.

The District is out of compliance.

SUMMARY OF ALLEGATION THREE

The Complainant alleges the District failed to ensure parents the opportunity to examine records, in violation of *Code of Federal Regulations*, Title 34 (34 *CFR*), Section

300.501(a). Specifically, the Complainant alleges that the District's failure to provide notification on the use of restraint to the student, denied the parent the opportunity to participate in the decision-making process regarding the student's education and denied the student FAPE. The Complainant alleges that if the District had completed and maintained properly completed BERs in the student's record, the student's parents could have addressed the restraints at the October 28, 2016, IEP team meeting and made revisions to the IEP before the use of restraint escalated in November 2016.

APPLICABLE CITATION

34 *CFR* Section 300.501(a) requires:

- (a) *Opportunity to examine records*. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.613 through 300.621, an opportunity to inspect and review all education records with respect to-
- (1) The identification, evaluation, and educational placement of the child;
 - and (2) The provision of FAPE to the child.

ADDITIONAL APPLICABLE CITATION

34 *CFR* 300.501(b)(1) requires, "The parents of a child with a disability must be afforded an opportunity to participate in meetings."

FINDINGS OF FACT

70. The parent was not notified prior to the October 28, 2016, IEP team meeting of restraint being used on the student or of the completion of any special incident reports involving the student. Furthermore, the District did not maintain a copy of the special incident reports in the student's education file. Evidence for this finding is based on the Special Incident Reports dated October 12 to October 27, 2016, the FBA report dated January 12, 2017, a review of the student's educational file, and contacts with the parent and Complainant.
71. Although the parent did not request to review the student's educational records prior to the October 28, 2016, IEP meeting, four special incident reports had been completed from the time period of October 12 to October 27, 2016. Evidence for this finding is based on the Special Incident Reports dated October 12 to October 27, 2016, and the FBA report dated January 12, 2017, a review of the student's educational file, and contacts with the parent and Complainant.

CONCLUSION

The District failed to meet the requirements of 34 *CFR* Section 300.501(a) and (b)(1). The District did not notify the parent prior to the October 28, 2016, IEP team meeting of

the four special incident reports or that the student had been restrained by the BLC. The District did not maintain copies of the special incident reports in the student's educational file, which resulted in the parent not being able to review any of the student's educational records. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

Allegation One

1. On or before March 31, 2018, the District Superintendent or a designee shall present this report to the District School Board. The Superintendent shall summarize to the Board the report findings, issues of noncompliance found, and corrective actions, and introduce a copy of the report into the School Board record. The Superintendent or designee shall also present for board adoption a copy of the newly proposed written District restraint policies and procedures developed in accordance with corrective action two below. Acceptable evidence should be a copy of the Board agenda item and minutes from the meeting that reflect that the District Superintendent or designee presented a copy of this report to the School Board, and a copy of the District's newly written policies and procedures for the proper use of restraint presented for Board adoption.
2. On or before March 31, 2018, the District, with the assistance of the Santa Clarita SELPA, shall develop written policies and procedures for the proper use of restraint under the guidelines of *EC* Sections 56521.1(a-h), obtain board adoption of these policies and procedures, and disseminate these written policies and procedures to all District staff. These District policies and procedures regarding the proper use of restraint shall at a minimum:
 - (1) Prohibit the use of emergency behavior interventions (restraint) for nonemergency predictable student behaviors.
 - (2) Prohibit the use of restraint to substitute for the use of systematic student specific behavior interventions that are designed to change, replace, modify, or eliminate targeted behaviors.
 - (3) Prohibit the use of restraint employed longer than necessary to contain an emergency behavior and if a restraint requires prolonged use staff shall always seek assistance of a site administrator or law enforcement and document this action.
 - (4) Prohibit the use of force in restraints that exceeds that which is reasonable and necessary.
 - (5) Require in all cases of restraint by District staff and NPA staff the notification of parents/guardians, documentation and proof of the contact, and the proper timely completion of a BER that shall be maintained in the student file.
 - (6) Require in all cases of restraint the forwarding of the BER to the school site administrator (principal or vice principal) for review and signature.

(7) Require in all cases of restraint the referral of the BER to the student's IEP team and documentation of this referral.

(8) Require and monitor that all staff including NPAs employed on District school sites engaged in the use of restraint are properly trained and hold a valid and up to date training certificate from a recognized training company.

(9) Appoint a senior District level staff member (named) to monitor the use of restraint in the District by all District staff including NPAs, review all BERs to ensure restraint is properly used, and to complete a report that shall be presented to the Superintendent and the Cabinet on a quarterly basis of any and all findings and recommendations.

Acceptable evidence should be a copy of the policies and procedures that address the requirements listed above, proof that the policies and procedures have been adopted by the District School Board, and proof these policies and procedures have been disseminated to all District staff, and a copy of the quarterly report identified in item 9 above.

3. On or before June 30, 2018, the District shall conduct an all-day training for all District special education teachers, special education aides, school psychologists, school site administrators, and all District agents and sub-contractors on all legal aspects set forth in *EC* Section 56521.1(a-h), the development and implementation of BIPs, and behavior strategies and supports to reduce the use of restraint. The training shall be conducted by persons not affiliated with the District or SELPA, and this trainer must be approved by the CDE prior to the training. The District shall submit to the CDE by February 1, 2018, a proposed training agenda and trainer for CDE approval. Acceptable evidence should be a copy of the training agenda, the name of the CDE approved trainer and a list of staff trained, including job titles and signatures.
4. On or before June 30, 2018, the District shall provide a two hour training for all District special education teachers, special education aides, school psychologists, school site administrators, and all District agents and sub-contractors all on how to accurately complete BERS as required by *EC* 56521.1. Training shall include the use of restraint, the definition of force including but limited to the antecedents giving rise to the use of physical restraint, the precise application of restraint and force, the precise description of duration and its use, the details justifying both restraint use and duration, and details of any harm resulting from the restraint and how the harm was addressed. Acceptable evidence should be a copy of the training agenda, name of the CDE approved trainer and a list of staff trained, including job titles and signatures.
5. On or before January 31, 2018, and every month thereafter for 12 months, until December 31, 2018, the District shall send to the CDE all BERs completed by the District for that preceding month. Acceptable evidence should be all the BERs

completed by District staff for each of the 12 months beginning in January 2018 and ending in December 2018.

6. On or before June 30, 2018, and ongoing thereafter for newly identified students, the District shall conduct parent training for parents who have students with BIPs or BSPs and/or who have students with IEPs that contain NCI restraint language. The training shall include at a minimum the requirements of proper use of restraint, the requirements of EC Section 56521.1 (a-h), description and demonstration of restrained holds that are used on students. This parent training should be offered on an ongoing basis for newly identified students. Acceptable evidence should include a copy of the training invitation mailed to parents, proof of mailing, training materials, the training agenda, and a list of parents who attended and signatures.

Jane Doe

7. As soon as possible but no later than January 31, 2019, the District shall provide Jane Doe with 80 hours of compensatory instructional services by a credentialed teacher. The compensatory hours shall be used to address any areas of need identified in Jane Doe's operative IEP. The selection of the teacher and the schedule for the provision of services shall be at the discretion of Jane Doe's parent. The 80 hours of compensatory services can be converted (hour for hour) to other educational programs or services, including summer programs, upon mutual agreement of the District and parent. Acceptable evidence should include: (1) a copy of a letter sent to the parent by January 15, 2018, offering the 80 hours of compensatory education to Jane Doe and proof of mailing, and (2) a copy of the compensatory education service logs, or documentation of compensatory services or programs provided to Jane Doe, by January 31, 2019, including the number of hours provided and the credentialed teacher's name and signature, or program service provider name and signature.

Allegations Two and Three

1. On or before January 31, 2018, the District shall provide a memorandum to appropriate school site administrators and special education staff who are responsible for implementing EC Section 56504 and 34 CFR Section 300.501(a), to include the following: (1) the text of the legal requirements of each section; (2) directing staff to comply with the requirements; and (3) disclosure of the non-compliance findings in this report. Acceptable evidence should include a copy of the memorandum and the distribution list, including the names and titles of the recipients.

RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Pursuant to *California Code of Regulations*, Title 5, Section 4665, either party may request reconsideration:

Within 35 days of receipt of the Department investigation report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s) or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied. . . . Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.

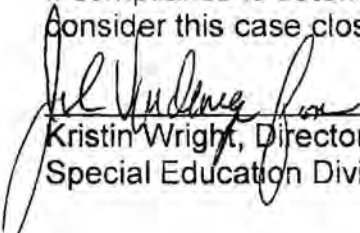
A request for reconsideration must be postmarked 35 days from the receipt of the investigatory report and sent to:

**Ana Marsh, Administrator II
Complaint Resolution Unit
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4623 Phone
916-327-8878 Fax**

Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

**Lisa Stie, Administrator
Focused Monitoring and Technical Assistance Unit One
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-324-8898 Phone
916-445-6803 Fax**

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.


Kristin Wright, Director
Special Education Division