

The Legal Center for People with Disabilities and Older People



Colorado's Protection & Advocacy System

PUBLIC REPORT OF AN INVESTIGATION INTO THE IMPROPER USE OF RESTRAINT AND/OR SECLUSION OF STUDENTS WITH DISABILITIES AT KENTON AND LANSING ELEMENTARY SCHOOLS

JUNE 26, 2007

I. INTRODUCTION

The Legal Center for People with Disabilities and Older People (“The Legal Center”) is the Protection and Advocacy System for Colorado. As Colorado’s Protection and Advocacy System, The Legal Center is required to investigate complaints regarding allegations of abuse and neglect in settings that serve people with disabilities.¹ The Legal Center’s authority to conduct abuse and neglect investigations extends to Aurora Public Schools (the “District”) because they provide services for students with disabilities.

This report presents the results of the investigation conducted by The Legal Center into the circumstances surrounding the restraint and seclusion of: A.B. and A.S. while in attendance at Lansing and Kenton Elementary schools for the 2005-2006 and 2006-2007 school years. The Legal Center releases this report as part of its efforts to prevent the abuse and neglect of people with disabilities in Colorado schools.

The Legal Center received a complaint that A.B. was subjected to the improper use of restraint while attending the Life Skills Program at Lansing Elementary. Specifically, The Legal Center was informed that A.B. was being tied to a restraint chair on many occasions and left for periods exceeding five minutes. During the course of the investigation, The Legal Center was also informed that A.S. had been restrained in a restraint chair and secluded in a tent on many occasions for unknown periods of time in the Life Skills Program at both Kenton and Lansing Elementary schools. The Life Skills Program is a self-contained classroom dedicated to the provision of educational and related services to students with a variety of disabilities.

The Legal Center initiated an abuse and neglect investigation at Lansing Elementary and Kenton Elementary after receiving these complaints.

¹ See Protection and Advocacy for Individuals with Mental Illness Act (“PAIMI Act”), 42 U.S.C. § 10801 *et seq.*; Developmental Disabilities Assistance Bill of Rights Act (“DD Act”), 42 U.S.C. § 15001, *et seq.*; and Protection and Advocacy of Individual Rights Program (“PAIR”), 29 U.S.C. § 794e, *et seq.*; and all of the accompanying regulations.

II. SUMMARY OF FINDINGS AND CONCLUSIONS

The Legal Center's investigation concludes:

1. The Aurora Public School District has not ensured compliance with the Colorado Department of Education's Rules for the Administration of the Protection of Persons from Restraint Act² and Protection of Persons from Restraint Act.³
2. The Aurora Public School District has not created and submitted an annual restraint and seclusion report as required by the Colorado Department of Education's Rules for the Administration of the Protection of Persons from Restraint Act.
3. Lansing and Kenton Elementary Life Skills Program staff engaged in a pattern and practice of improper use of restraint and seclusion.
4. Lansing and Kenton Elementary Life Skills Program staff used devices intended for occupational therapy as mechanical restraints.
5. Lansing and Kenton Elementary Life Skills Program staff did not have an adequate basis to use restraint in the incidents involving the two students.
6. Lansing and Kenton Elementary Life Skills Program staff failed to properly document the use of restraint in the Individual Education Plans of the two students.
7. Lansing and Kenton Elementary Life Skills Program staff failed to hold Individual Education Plan meetings after restraining the two students.
8. Lansing and Kenton Elementary Life Skills Program staff failed to provide the parents/guardians of the two students with same-day verbal notification and written notification of the restraint within 36 hours.
9. Lansing and Kenton Elementary Life Skills Program staff failed to gain parent/guardian informed consent prior to restraining the two students.

III. SUMMARY OF RECOMMENDATIONS

Based on its findings and conclusions, The Legal Center recommends a number of actions be taken by the Aurora Public School District and staff in each Life Skills Program within the District.

1. Ensure District-wide compliance with the CDE and District restraint and seclusion rules with the use of a corrective action plan.
2. Eliminate the use of occupational therapy devices as mechanical restraints.
3. Obtain Child Welfare League of America restraint and trauma training for all special education staff and building administrators in Aurora Public Schools.
4. Train all special education staff and building administrators regarding the requirements of the Colorado Department of Education's rules of the use of restraint and seclusion including:
 - i. Individual Education Program content requirements;

² See 1 Colo. Code Regs. 301-45.

³ See Colo. Rev. Stat. § 26-20-108.

- ii. Individual Education Program meeting requirements;
 - iii. reporting requirements;
 - iv. consent requirements;
 - v. and mechanical restraint requirements.
5. Ensure the proper use of the District's informed parent consent form for the use of restraint and seclusion.
 6. Prepare and submit an annual District-wide restraint and seclusion report.
 7. Ensure the inclusion of proper risk assessments that address possible psychological and health risks associated with the use of restraint or seclusion for a student.

IV. EXECUTIVE SUMMARY

The Legal Center learned of incidents involving restraint at Lansing Elementary from a complaint by an interested party who spent time in the Life Skills classroom. After initiating our investigation in response to this complaint, other concerns arose from parents of another student in the Life Skills Programs at both Lansing and Kenton Elementary schools.

Information contained in documents and interviews support the finding that at least two students in the Life Skills Programs at Kenton and Lansing Elementary schools were improperly restrained and/or secluded.

For purposes of this report, the term “restraint” refers to a mechanical restraint. Under CDE’s Restraint/Seclusion Rules, a mechanical restraint means a physical device used to restrict the movement of an individual or the movement or normal function of a portion of his or her body.⁴ CDE’s restraint rules clearly prohibit the use of occupational therapy devices for purposes of mechanical restraint.⁵

The term seclusion is defined by the Colorado Department of Education’s Restraint/Seclusion Rules as the placement of a student alone in a room from which egress is prevented.⁶ The tent at Kenton and Lansing Elementary schools was being utilized as a place for seclusion when at least one student was placed in the tent with the entrance zipped shut restricting the student’s ability to leave.

In Colorado, the use of restraint or seclusion is only permitted in emergency circumstances. An emergency is the serious, probable, imminent threat of serious bodily harm to self or others.⁷ The Individuals with Disabilities in Education Act 2004 clarifies serious bodily injury as being a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.⁸ Restraint and seclusion may never be used as

⁴ See 1 Colo. Code Regs. 301-45-2620-R-2.00(6).

⁵ See 1 Colo. Code Regs. 301-45-2620-R-2.01(5).

⁶ See 1 Colo. Code Regs. 301- 45 – 2620-R-2.00(3).

⁷ See 1 Colo. Code Regs. 301- 45.

⁸ See 34 C.F.R. 300.530(i)(3).

a means to punish a student or to gain compliant behavior.⁹ Finally, any restraint or seclusion must end once the need to ensure for the safety of the student or others has ended.¹⁰

As noted in further detail below, the facts do not support that A.B. and A.S. were engaged in emergency behavior that would warrant the use of restraint or seclusion. Additionally, staff in the Life Skills Programs utilized devices meant for occupational therapy as mechanical restraints as a way to address problem behaviors.

Ultimately, The Legal Center has found that Life Skills Program staff at Kenton and Lansing elementary schools has violated many of the Rules governing the use of restraint and seclusion. The remaining portion of this report will go in to further detail as to the incidents giving rise to The Legal Center's findings and the recommendations given to Aurora Public Schools to correct these acts.

V. CASE SUMMARIES

A. A.B.

A.B. is a five-year old student with multiple disabilities that include cognitive impairments. A.B. started school at Lansing Elementary in the Life Skills Program shortly after the start of the 2006-2007 school year.

The Legal Center received a complaint in December of 2006 that A.B. was being improperly restrained in a restraint chair meant to serve as an occupational therapy device and certain staff in the Life Skills Program was very concerned about the use of this chair.¹¹ The complainant relayed information that depicted scenes of A.B. being placed in the restraint chair for lengthy amounts of time sometimes lasting over thirty minutes. The use of the restraint chair was in response to A.B.'s hyper-active behaviors. Staff later revealed in interviews that there were several other techniques that could be used to successfully re-direct A.B. other than the use of the restraint chair and A.B. never engaged in behavior that rose to the level of an emergency. Further, staff who observed the use of the restraint chair believed it was being used for punitive purposes.

Despite requirements to notify parents of the use of restraint verbally the same day of the incident and in writing within 36 hours of the incident, A.B.'s mother was never provided with any notice; nor were any Individual Education Program meetings held after those incidents involving the use of the restraint chair.

⁹ See 1 Colo. Code Regs. 301- 45 – 2620 – R- 2.01(4).

¹⁰ See 1 Colo. Code Regs. 301- 45 – 2620 – R- 2.02(1)(a)(vii).

¹¹ See Exhibit 1.

B. A.S.

A.S. is a ten year old student with multiple disabilities that include Down Syndrome and cardiac conditions. A.S. started attending Kenton Elementary in the Life Skills Program at the start of the 2005-2006 school year.

During the course of its investigation, The Legal Center was given information by staff that A.S. had been restrained in a restraint chair. Additionally, A.S.'s parents complained of an incident involving A.S. being zipped up in a small camping tent,¹² unable to exit, screaming, crying and over-heated. A.S.'s parents were not only concerned about the use of the tent, but the potentially lethal consequences of A.S.'s physical condition, which as a result of a serious heart condition renders A.S. very sensitive to increased blood pressure and body heat.

A.S. has a history of very difficult behaviors that include hitting, kicking, scratching and biting. When A.S. first started attending the Life Skills Program at Kenton Elementary, staff stated that A.S. was regularly strapped in a restraint chair in response to her difficult behavior, despite possessing information that specifically stated such conduct was unlawful. Staff further commented that the chair was not effective in addressing A.S.'s behaviors. The Life Skills staff began placing A.S. in a small camping tent as a place where A.S. could calm down. Staff believed that the use of the tent did help A.S. and that the overall number of difficult behaviors decreased with its use. Staff also said that there were times when A.S. wanted out of the tent and was not allowed out and that she would remain in the tent longer than the pre-determined time limit if staff did not believe she was ready to come out of the tent.

Similar to A.B.'s mother, A.S.'s parents were not provided with notification of the incidents involving A.S. spending time in the restraint chair or tent, nor were any Individual Education Program meetings held after any incidents involving the use of the restraint chair.

VI. SUMMARY OF INTERVIEWS

In preparation for conducting an investigation, the staff of The Legal Center reviewed a wide range of information provided by the District, conducted research regarding relevant restraint, seclusion, and time out information, and reviewed the records from the District and the student's parents. Starting in December of 2006, The Legal Center initiated its investigation. This investigation included a series of interviews with those who had been involved in the complaints pertaining to the improper restraint and seclusion of the two students. Interviews were conducted with twelve individuals.

The purpose of this investigation was to formulate recommendations that will improve the response of educators and administrators at Aurora Public Schools to individuals with disabilities who are experiencing challenging behaviors.

¹² See Exhibit 2.

A. Interviews Pertaining to the Restraint of A.B.

1. District Special Education Consultant

The District's Consultant is a special education consultant and has worked with the Life Skills Program in Aurora for 18 years. The District's Consultant was interviewed at Lansing Elementary on January 26, 2007. The District's Consultant works with eight different school programs, seven of which are Life Skills Programs and one Autism Program.

The District's Consultant stated that she works with staff in the Life Skills Program at Lansing on an as needed basis. At the start of the school year the District's Consultant said she worked with Teacher #1, the Life Skills Program teacher, three days a week because Teacher #1 was a new teacher in the Life Skills Program. Now, the District's Consultant consults with Teacher #1 about once every two weeks.

The District's Consultant said paraprofessionals at Lansing had voiced some concerns to her about the treatment of students in the Program, and the District's Consultant asked those staff to put their concerns in writing. The District's Consultant said that she received a written complaint from a Life Skills Program paraprofessional in November, 2006. The District's Consultant stated that she informed the Principal of Lansing, of this complaint but no other steps were taken beyond this notification by the District's Consultant.

The District's Consultant said A.B. came to Lansing from Peoria Elementary, and initially the District's Consultant didn't have any huge concerns about A.B. The District's Consultant described A.B. as active, but not any more so than any other student, until about the middle of October, 2006. The District's Consultant said A.B. had a lot of seizure activity and would engage in running and hiding in the classroom. The District's Consultant said a behavior support plan was developed with the help of the School Psychologist.

With regard to the use of the restraint chair, the District's Consultant stated that A.B.'s mother had given staff permission to use a chair with straps as part of the behavior support plan. The District's Consultant stated that staff explained to A.B.'s mother that the chair had a strap and would be used for a period of one to five minutes in response to A.B. engaging in problem behavior. The District's Consultant said that she did not give staff instructions about how to get A.B. to the chair or instructions about how to monitor the use of the chair, nor were any instructions given about when reports about the use of the chair should be provided to A.B.'s mother. The District's Consultant stated that she didn't have any research-based information that supported the use of the restraint chair but said she relied on personal experience when making the recommendation to use the chair for A.B. The District's Consultant said at that time she did not see a need for an outside consultant to work with staff to help A.B.

The District Consultant said she had heard A.B. was in the chair for 35-40 minutes. The District's Consultant went on to state that she was flabbergasted when she heard that, if it is true. The District's Consultant did not investigate this claim.

When asked if the restraint chair was used for other students in other schools, the District's Consultant said this type of chair was used for students who engaged in self-injurious behaviors, had severe developmental disabilities, needed help sitting up, or would run from the classroom. When asked how many students were placed in a restraint chair to prevent running, the District's Consultant speculated about five students. The District's Consultant said that some of those students were utilizing a desk with a locked tray and not chairs with straps.

When asked what the pattern and practice was to get students to a restraint chair, the District's Consultant stated that a hand-over-hand escort is utilized and in some cases, if staff is Crisis Prevention Intervention certified, a student may need to be carried.

According to the District's Consultant, since receiving a complaint from The Legal Center about the use of the restraint chair, staff in the Life Skills Program at Lansing is now utilizing a carpet square for A.B.'s time out space. The District's Consultant doesn't know if A.B.'s behavior has become worse without the use of the restraint chair.

When asked if the District's Consultant has seen CDE's rules governing the use of restraint, the District's Consultant stated that she had seen parts of the rules at a special education training about three years ago. The District's Consultant said that she had never seen CDE's guidelines for the use of timeout. The District's Consultant stated that she had seen the District's restraint policy within the last year and that she had received Crisis Prevention Intervention training in August of 2006.

2. Lansing Elementary School Psychologist

The School Psychologist has worked for the District for two years. The School Psychologist was interviewed at Lansing Elementary on January 24, 2007. According to the School Psychologist, A.B. is a student in the Life Skills Program at Lansing with multiple disabilities that include both cognitive and behavior problems. The School Psychologist works with A.B. about 2 times a week. The School Psychologist monitors A.B.'s behavior and tries to keep A.B. on task and redirect A.B. when needed. The School Psychologist provides A.B. with positive feedback, stickers, rewards and very direct instructions. The School Psychologist doesn't use or know about the effectiveness of the restraint chair and can usually redirect A.B. without having to use time out.

The School Psychologist stated A.B.'s problem behaviors include "typical stuff" such as not doing work, running in the classroom and hiding under tables. The School Psychologist said that she has not seen A.B. run but has been told from others that A.B. does run but has never left the building.

With regard to the use of time out and the restraint chair, the School Psychologist stated that A.B.'s behavior plan requires that a choice be presented to A.B. to comply with instructions and if she does not comply she goes to the restraint chair. The School Psychologist said the restraint chair is in the corner of the room near a divider so A.B. can't see what is going on around her and can calm down. The School Psychologist did state the chair has straps. The School Psychologist said the restraint chair should be used if A.B. is biting or flailing as a way to keep her and the adults around her safe. The School Psychologist said A.B. hasn't ever displayed such behavior and the School Psychologist has never observed A.B. in the restraint chair.

When asked how long A.B. may spend in the restraint chair, The School Psychologist stated the behavior plan dictated two minutes but A.B. may spend more time in the chair. The School Psychologist said A.B. will spend as much time in the restraint chair as necessary for staff to determine that A.B. has calmed down. The School Psychologist has never given instructions to strap A.B. in the chair and has not witnessed anyone else giving the teacher instructions to strap A.B. to the chair. The School Psychologist said she never told Teacher #1 to use the chair and that Teacher #1 told the School Psychologist about her use of the restraint chair and the need to put it in the behavior plan. The School Psychologist stated that she questioned Teacher #1 about the purpose of the restraint chair and was told it was being used for safety purposes.

When asked about communication with A.B.'s mom, the School Psychologist stated that at an IEP meeting the issue of A.B.'s behavior was discussed. The School Psychologist stated staff gave updates to A.B.'s mom on the supports that work for A.B. and those that do not. A.B.'s mom provided information about A.B. to staff. The School Psychologist said A.B.'s mom stated A.B. was hard to handle and talking sternly to her helps. The School Psychologist stated the use of the restraint chair was not discussed at this Individual Education Program meeting. According to the School Psychologist, A.B.'s behavior plan was updated in October, 2006. The School Psychologist stated that A.B.'s behavior did not improve after this behavior plan was implemented.

The School Psychologist said A.B.'s mom called a meeting in December because she wanted to discuss the behavior plan again. The School Psychologist said A.B.'s mom was told that staff would have to call her to pick up A.B. when A.B. got out of control. There were no changes to the behavior plan made at this meeting and there was no discussion about the use of the restraint chair. The School Psychologist thinks that Teacher #1 discussed the use of the chair with A.B.'s mom. The School Psychologist does not know if the restraint chair is still being used.

The School Psychologist did not receive any staff voice complaints or concerns to her about the use of the restraint chair and she is not aware of any other schools that use this type of chair.

When asked if the School Psychologist has ever seen CDE's rules governing the use of Restraint or Time Out she stated that she has not seen them recently or at anytime

while she has been working with Aurora Public Schools. The School Psychologist stated that she received CPI training and that the District's rules regarding the use of restraint were reviewed at this training. The School Psychologist stated that she has never seen the District's documents regarding the use of restraint.

3. Lansing Life Skills Paraprofessional #1

Paraprofessional #1 started working in the Life Skills Program at Lansing in October of 2006. Paraprofessional #1 was interviewed at Lansing Elementary on January 9, 2007. When Paraprofessional #1 started work with the District she stated she received training on how to tube feed students but did not receive any training regarding the use of time out, restraint or how to handle crisis situations.

Paraprofessional #1 said that Teacher #1, the Life Skills Program teacher at Lansing, told her to strap A.B. in the restraint chair when she was having attention span problems. Paraprofessional #1 stated she was not given any other instructions from Teacher #1 about how to respond to A.B.'s behavior. Paraprofessional #1 said she was simply told to move A.B. straight to the restraint chair.

When asked about A.B.'s reaction to the use of the chair, Paraprofessional #1 stated that A.B. would not fight staff but that she would go limp and staff wouldn't be able to move her from that position. Paraprofessional #1 said she felt uncomfortable about the use of the restraint chair and would continue to try to re-direct A.B. so she wouldn't have to use the restraint chair.

When asked about how long A.B. would be in the restraint chair, Paraprofessional #1 stated the time would vary from a couple of minutes to forty minutes. Paraprofessional #1 said that staff would watch A.B. while she was in the chair and A.B. would try to wiggle her way out of the chair. Paraprofessional #1 said that she did pick A.B. up and put her in the restraint chair, but only one time, and after that, Paraprofessional #1 refused to use the chair.

When asked if there was any parental notification of the use of the chair, Paraprofessional #1 stated there was no such notification. Paraprofessional #1 went on to say that on one occasion, A.B.'s mom came in to the classroom and saw A.B. strapped in to the chair. At this time, Teacher #1 informed A.B.'s mom that A.B. had tried to run out of the classroom and Teacher #1 then proceeded to say to A.B., "Tell your mom what you did!" Paraprofessional #1 said that she thought A.B.'s mom looked visibly upset.

Paraprofessional #1 stated there were no meetings to discuss the use of the restraint chair and no one knew it was being used outside of the Life Skills classroom until Paraprofessional #1 told the school Principal. Paraprofessional #1 said the Principal seemed concerned about the use of the restraint chair and told Paraprofessional #1 she would speak with Teacher #1 about the use of the restraint chair.

Paraprofessional #1 stated a time out log was not kept and she hadn't seen any District or CDE rules or policies pertaining to the use of restraint or time out.

4. Lansing Life Skills Paraprofessional #2

Paraprofessional #2 is a paraprofessional in the Lansing Life Skills Program. Paraprofessional #2 was interviewed at Lansing Elementary on January 9, 2007. Paraprofessional #2 stated that she received No Child Left Behind training when she started working for the District but did not receive any training about restraint or time out use.

When asked about A.B., Paraprofessional #2 described her as a student with lots of energy who can often be disruptive. Paraprofessional #2 stated that A.B.'s behavior often upsets Teacher #1, the Life Skills Program teacher, and in response to the disruptiveness, Teacher #1 has strapped A.B. in the restraint chair. Paraprofessional #2 stated because A.B. is five years old Paraprofessional #2 didn't think A.B. could be in the chair longer than five minutes. However, Paraprofessional #2 stated on one specific occasion A.B. had been in the chair for approximately eight minutes, when Paraprofessional #2 asked Teacher #1 if it was time to let A.B. out of the restraint chair, Teacher #1 did not allow A.B. to be released because A.B. "... had not been broken yet." Paraprofessional #2 stated A.B. ended up in the chair for 25 minutes. Paraprofessional #2 said she questioned Teacher #1 about the incident to which Teacher #1 told Paraprofessional #2 she had parent permission. Paraprofessional #2 stated A.B. was placed back in the restraint chair about ten minutes later and Paraprofessional #2 questioned the use of the chair again and was told by Teacher #1 that it was fine because she had permission. Paraprofessional #2 said she never saw any consent form regarding the use of the restraint chair. Paraprofessional #2 also said the use of the restraint chair appeared to be a disciplinary tool.

Paraprofessional #2 said that the use of time out or the restraint chair was never documented.

5. Lansing Elementary School Principal

The school Principal at Lansing Elementary was interviewed on January 9, 2007. The Principal stated that the District's Consultant handles the program supervision in the Life Skills Program. The Principal stated that she does attend the IEP meetings for kids in the Life Skills Program. The Principal said that she received Crisis Prevention Intervention training three years ago but has never received any training pertaining to the use of timeout or seclusion. The Principal stated that Lansing uses the District's policies pertaining to time out and restraint.

With regard to A.B., The Principal said that she first heard concerns in October when Paraprofessional #1 came to her with questions about the use of the restraint chair. The Principal instructed Paraprofessional #1 to talk over her concerns with the Life Skills

team. The Principal said that she also spoke with the District Consultant about the use of the restraint chair and was told it was being used for time out purposes.

The Principal said that she did have at least one meeting with A.B.'s mom, and the use of the restraint chair was not discussed. The Principal and other staff from Lansing explained to A.B.'s mom that staff was having a hard time trying to work with A.B. The Principal also said that staff explained to A.B.'s mom that if A.B.'s behavior couldn't be managed then A.B.'s mom would have to come pick A.B. up from school.

The Principal said she understood that A.B. was not supposed to be in the restraint chair for more than five minutes. The Principal was not aware of any documentation kept on when or how long A.B. was in the restraint chair. The Principal also said she does not know how long A.B. may have been in the restraint chair.

When asked if A.B. was seen by the school nurse, the Principal said A.B. saw the nurse any time she had a seizure. The Principal did not believe that A.B. ever had a seizure after spending time in the restraint chair.

The Principal does not believe the restraint chair was used for any other students. The Principal said that there was no known protocol about discussing the use of the restraint chair or time out with parents of students in the Life Skills Program.

The Principal stated she had seen the District's policies regarding the use of restraint and seclusion but doesn't know how or if such information would be communicated to other staff.

6. Lansing Life Skills Teacher #1

Teacher #1 is the teacher for the Life Skills Program at Lansing and has only been working for the district for one year. Teacher #1 was interviewed at Lansing Elementary on January 9, 2007. Teacher #1 received training on Individual Education Program use and the Life Skills Program from the District Consultant. Teacher #1 stated that she did receive Crisis Prevention Intervention training and thinks she has seen the District's policies on the use of restraint and seclusion.

Teacher #1 stated she relies upon the District Consultant for direction in the Life Skills Program and sees the District Consultant 2-3 times a month and speaks with the District Consultant regularly on the phone.

Teacher #1 indicated that she kept a spreadsheet about A.B. and notes in A.B.'s back and forth book. Teacher #1 stated that she, the District Consultant and the Life Skills paraprofessionals had access to the spreadsheets.

Teacher #1 stated she was told to use the restraint chair for A.B. to protect the safety of A.B. and others. Teacher #1 said she was told to use the chair for a two minute time period. Teacher #1 said the District Consultant instructed her to use the chair.

Teacher #1 further stated the chair is used when A.B.: attempts to run away from staff, squirms, hides under tables, or gets tunnel vision and has no idea how to refrain from hurting herself. Teacher #1 stated that she did speak with A.B.'s mom about the use of the restraint chair for A.B. Teacher #1 said that A.B.'s mom was 100% for the use of the restraint chair. Teacher #1 said that she told A.B.'s mom the chair would be used for a two minute time period.

Teacher #1 said the use of the chair was documented in A.B.'s back and forth book and the documentation of the length of time A.B. spent in the chair was included. Teacher #1 said A.B. was never in the restraint chair for more than two minutes. Teacher #1 said a timer was not used but that she would stand and watch the clock to keep track of time. When asked if Teacher #1 consulted with the District Consultant about the two minute time restriction for the restraint chair, Teacher #1 said she was sure she did but that she wasn't sure whether the District Consultant ever saw the restraint chair being used with A.B.

When asked how Teacher #1 got A.B. to go to the restraint chair, Teacher #1 stated that she thinks she would walk her by the hand and that she was not physically able to pick up A.B. Teacher #1 also said that so much was going on that she couldn't really recall how she would get A.B. to the restraint chair. While A.B. is in the restraint chair, Teacher #1 said that A.B. will scream, "NO Mom!" and "NO Sasha!" Teacher #1 said she would then ask A.B. if she was ready to come out of the restraint chair, whether A.B. was sorry for what she did and if A.B. realized what she did was dangerous.

When asked if Teacher #1 had met with A.B.'s mom to discuss A.B.'s behaviors, Teacher #1 stated that three meetings had been scheduled that A.B.'s mom failed to attend but that A.B.'s mom did attend a meeting with the Principal, the School Psychologist and the District Consultant. Teacher #1 said she was unable to attend that meeting.

Teacher #1 said that she had seen the CDE restraint rules and time out guidelines but wasn't sure whether she had seen them while she was at Lansing.

7. A.B.'s Mother

A.B.'s mom was interviewed on March 28, 2007. A.B.'s mom stated that A.B. started school at Crawford Elementary but switched to Lansing Elementary in late August 2006. According to A.B.'s mom, A.B. went to Lansing Elementary because it has a Life Skills Program and the District thought it would be a better placement for A.B.

A.B.'s mom said she has had some problems with Teacher #1 at Lansing Elementary. A.B.'s mom said that she feels Teacher #1 is too tough on A.B. A.B.'s mom said that she has complained to the Principal about Teacher #1. A.B.'s mom said she receives phone calls from school often asking her to come get A.B. because staff can't deal with A.B.

When asked about the use of the restraint chair, A.B.'s mom stated that around November or December of 2006 there was a meeting with the Principal, Speech Therapist and District Consultant. At this meeting, A.B.'s mom said she was told the restraint chair would be used for about 1-2 minutes for purposes of time out. A.B.'s mom stated she was told it was a special chair just for A.B. A.B.'s mom said she feels like the chair was pushed on her and told staff she didn't like the chair because A.B. needs to be with other kids, not isolated. A.B.'s mom stated she was not shown the restraint chair. A.B.'s mom said she has a notebook with a handwritten note regarding the restraint chair and this note is the only documentation she has regarding the use of the restraint chair.

According to A.B.'s mom, A.B.'s temper has gotten worse recently. A.B.'s mom said that A.B. grinds her teeth and throws things and these outbursts did not occur prior to A.B. attending Lansing. A.B.'s mom said that she noticed these behavior changes in January of this year.

When asked if the District talked with A.B.'s mom about the use of other de-escalation techniques other than the restraint chair, A.B.'s mom stated staff would use bubbles to calm A.B. down. A.B.'s mom said the staff at Lansing started saying they couldn't deal with A.B. running and her safety was an issue so A.B.'s mom thinks that is how the use of the restraint chair was initially addressed. A.B.'s mom said there wasn't a lengthy discussion about how long the chair would be used; she was just told it would be for a period of 1-2 minutes.

A.B.'s mom said she talked with teachers daily and Teacher #1 would always say "We had a horrible day," or "We had the worst day ever." A.B.'s mom says that she is told A.B. has a good day when A.B. will sit and be quiet. A.B.'s mom stated that on her visits to the school she sees the paraprofessionals working with A.B. a lot but never Teacher #1.

A.B.'s mom stated that she had five different meetings set with Lansing and District staff, and the use of the restraint chair only came up at one meeting.

B. Interviews Pertaining to the Restraint and Seclusion of A.S.

1. The District Special Education Consultant

The District Consultant was interviewed on May 24, 2007 at Lansing Elementary about the treatment of A.S., a student in the Life Skills Program at Lansing. According to the District Consultant, A.S. came to the District from Denver Public Schools ("DPS") but the District Consultant wasn't sure when A.S.'s file came to the District but did recall that A.S. came without a Behavior Support Plan. The District Consultant stated that she did recall seeing evaluation information about A.S. The District Consultant said the basis for the decision to place A.S. in a Life Skills Program is her cognitive abilities and the similarity with this program to the DPS program A.S. attended previously.

According to the District Consultant, A.S. would engage in problem behavior that included scratching, biting, hitting, and spitting. The District Consultant said that this behavior would occur when a demand was placed on A.S. or when A.S. didn't want to do something.

When asked if the District Consultant was aware if A.S. had any health concerns, the District Consultant stated she knew that A.S. had heart surgery and was taking medication as a result. The District Consultant said she was aware medication for the heart condition was necessary, but the District Consultant had no discussions with the parents of the relationship between A.S.'s medications and behavior modification. The District Consultant stated to her knowledge there was no relationship between behavior support interventions and A.S.'s heart condition.

The District Consultant said she has met with A.S.'s parents four or five times at Individual Education Program and progress meetings. The District Consultant said she questioned the ability of A.S.'s mother to understand English, but A.S.'s mother said she doesn't need an interpreter when the District has offered to provide one. The District Consultant stated that she didn't think the parents were ever defensive and that they listened to staff recommendations in these meetings. Additionally, the District Consultant said she never received any concerns or complaints from A.S.'s parents directly.

When asked what type of behavior interventions were tried with A.S., the District Consultant stated staff used a number of different tactics. The District Consultant said staff used fidget toys and a tool belt with various things hanging off the belt to keep A.S.'s hands occupied. The District Consultant also stated that staff would hold A.S.'s hands and say "quiet hands," a tactic that the District Consultant said worked every once in awhile. The District Consultant said staff also used a restraint strap along with a large chair with a tray in front. The District Consultant said that A.S. would slip down in the chair and could get out of the chair so staff used a restraint strap to keep A.S. in the chair. The District Consultant called the strap a restraint but said it isn't used anymore.

After trying different tactics, the District Consultant said that A.S.'s teacher in the Life Skills Program at Kenton Elementary came up with the idea of the use of a tent after the teacher read it was a good idea to help with calming and because the other interventions did not seem to be working.

The District Consultant said that A.S. likes a lot of attention from adults and that A.S. acts out when she wants attention.

When asked what behavior led to the use of the restraint chair, the District Consultant stated aggression, spitting, hitting, and unsafe behavior. The District Consultant stated the restraint chair wasn't necessarily effective. The District Consultant stated that A.S. was watched closely while she was in the restraint chair, and staff started to use the tent when the restraint chair was no longer effective. The District Consultant and staff believed the tent would be more calming for A.S.

The District Consultant said that she only observed A.S.'s problem behavior 1-2 times. The District Consultant said she witnessed A.S. hit someone and the teacher or paraprofessional would tell A.S. hitting was inappropriate and would walk A.S. to the restraint chair. Initially when taken to the restraint chair, the District Consultant said that A.S. cried but then would sit in the chair until the timer went off. The District Consultant observed A.S. in the chair for 5 minutes.

When asked about the use of the tent, the District Consultant stated it was calming with blankets and a teddy bear. The District Consultant stated that the use of the tent was more voluntary than the use of the restraint chair. The District Consultant said she isn't sure how the use of the tent was presented to A.S. The District Consultant said A.S. went voluntarily to the tent. The District Consultant isn't sure if the tent was zipped closed and isn't sure if a timer was used. The District Consultant thinks the tent was an effective behavior support tool for A.S.

The District Consultant did not witness an incident that involved A.S. being in the tent, unable to exit, and upset as a result. The District Consultant said she heard of this incident and was told that A.S. was aggressive and in and out of the tent all morning. The District Consultant said that A.S.'s mom was called but wasn't able to come right away. The District Consultant was told when A.S.'s mom arrived A.S. was crying and hot and sweaty. The District Consultant also said she heard that A.S.'s mom did not appear to be angry when she picked A.S. up. The District Consultant isn't sure if A.S. was in the tent when A.S.'s mom arrived.

Following this incident, the District Consultant said the tent is no longer being used and staff uses a regular chair behind some dividers away from the group as a time out space.

The District Consultant stated that A.S.'s parents were informed of the use of both the tent and restraint strap and that a consent form was signed. When asked why consent was being sought to use the chair with the strap, the District Consultant said consent was sought for legal reasons, because the chair and strap were restraints.

2. Kenton Life Skills Long-Term Substitute Teacher #2

Teacher #2 is a long-term substitute teacher who came to work with students in the Life Skills Program who were transferred to Lansing Elementary from Kenton Elementary. Teacher #2 was interviewed on May 24, 2007 at Lansing Elementary about the treatment of A.S., a student in the Life Skills Program now at Lansing. Teacher #2 has worked with A.S. since the beginning of March. Teacher #2 has been with the District since 2001 and has a special education teaching license.

When asked about A.S.'s behaviors, Teacher #2 stated A.S. got aggressive when she became frustrated. Teacher #2 said A.S. gets frustrated when she doesn't want to do something anymore or when she has a difficult time with communication. Teacher #2 also said A.S. doesn't like to sit for very long. Teacher #2 was first provided with A.S.'s

Individual Education Program at the beginning of March. Teacher #2 felt the Behavior Support Plan was good. Teacher #2 is not aware if A.S. has any health issues.

When asked about the use of the tent, Teacher #2 stated it was already being used by staff when she started working with A.S. Teacher #2 said she was told the tent was used to help calm A.S. Teacher #2 said the tent was helpful. Teacher #2 said any aggressive behavior such as scratching, hitting, biting, kicking and spitting would serve as the basis for a decision to have A.S. use the tent. Staff would call A.S.'s mom to come get A.S. at school if A.S.'s behavior escalated to scratching, kicking, or anything that hurt other students. Teacher #2 said the tent was used 75% of the time but that it hasn't been used in awhile. Teacher #2 thought A.S. liked the tent because A.S. would do things so she could get into the tent and would say, "Swing? Tent? Jump?"

Teacher #2 stated that A.S. is able to open and close the tent door. Teacher #2 said that a staff person would escort A.S. to the tent by taking her by the hand and then a staff person would stay close by. Teacher #2 said a timer was used "intermittently" and in general A.S. was in the tent a few minutes. Teacher #2 said she didn't witness A.S. not being able to get out of the tent or come out on her own and the tent usually calmed her down.

On the day where A.S. was reportedly zipped in the tent, unable to exit and upset, Teacher #2 said she interacted with A.S.'s mom, and that A.S.'s mom was upset but Teacher #2 thought it had to do with having to pick A.S. up at school. Teacher #2 said that on the day of this incident, staff was expecting A.S.'s mom because A.S. had scratched another student and A.S.'s mom was called to come pick A.S. up from school. According to Teacher #2, A.S. was more aggressive that day and was in and out of the tent a lot. Teacher #2 said A.S.'s mom took more than the 30 minutes specified in the Individual Education Program to come and pick A.S. up. Teacher #2 stated she was writing in the back and forth book in the back of the classroom when A.S.'s mom came and found A.S. crying. Teacher #2 said that A.S.'s mom asked if A.S. had eaten. Teacher #2 told her no but said that A.S. could stay for lunch and have a hot dog or take one with her.

Teacher #2 said the first day back from spring break she was told there was an email from A.S.'s parents who were upset because A.S. was found crying, hot and sweaty when A.S.'s mom came to pick A.S. up from school. Teacher #2 said the tent was removed the next day and staff was instructed to use a timeout space to help A.S. calm down.

Teacher #2 explained A.S. goes to timeout in the chair for two minutes when she is aggressive. Teacher #2 stated that for purposes of calming down, A.S. uses a mat with a blanket and the time period may exceed two minutes.

Teacher #2 said staff documents student behavior now and that staff didn't have a system for documenting when she first started working in the Life Skills Program. Teacher #2 said that it seems as though A.S. is doing a little better now. Teacher #2 said

she is concerned that A.S.'s behaviors will escalate without the use of the tent. Additionally, Teacher #2 stated that she has never seen a chair with a strap being used for A.S.

When asked if Teacher #2 had received training from the District on restraint and seclusion, Teacher #2 stated that it had been a few years and she wasn't sure if the District provided Crisis Prevention Intervention training to her. Teacher #2 does remember that at the training participants discussed the use of restraints and how to deescalate students. Teacher #2 doesn't remember any paperwork about restraint or seclusion policies.

3. Kenton Life Skills Paraprofessional #3

Paraprofessional #3 started with the District in 1985 as a paraprofessional. Paraprofessional #3 has been working with students in the Life Skills Program at Kenton Elementary for six years. Paraprofessional #3 was interviewed on May 24, 2007 at Lansing Elementary about the treatment of A.S., a student in the Life Skills Program now at Lansing.

When asked about A.S.'s behavior, Paraprofessional #3 said that A.S. engaged in hitting, biting, and kicking. Paraprofessional #3 said that A.S.'s behavior started getting better at the end of the first year and she feels the use of the tent helped.

When asked about the use of a restraint strap, Paraprofessional #3 stated that staff used a restraint strap on a chair when A.S. was sent to time out. Paraprofessional #3 said this practice was used with any student in the Life Skills Program at Kenton who needed time out. Paraprofessional #3 said the restraint strap was used on A.S. as with any other student who acts out, which means the student is strapped to the time out chair for 3-5 minutes. Paraprofessional #3 thinks the restraint strap was used for all incidents involving time out. Paraprofessional #3 said the predetermined time for time out is about 3-5 minutes and a timer is always used and time out is always documented. Paraprofessional #3 stated that staff would start the time over if A.S. or any student acted out during the time out so time out could exceed the 3-5 minute time period. Paraprofessional #3 believes that time out was used often with A.S. Paraprofessional #3 said the restraint strap has been used by staff if kids won't stay in the chair since she started working at Kenton.

When asked about the use of the tent, Paraprofessional #3 said the Life Skills teacher thought the tent would be a good idea for A.S. to help calm down. Paraprofessional #3 stated when A.S. gets bored she starts to hurt people. Paraprofessional #3 said the tent would get used when A.S. started to become very fidgety or appeared to be having increasing problem behavior. Paraprofessional #3 said she thought it was possible that A.S. had to go to the tent involuntarily. Paraprofessional #3 said that she could carry A.S., sometimes she would have to hold A.S. from the back to get her to go to the tent. Paraprofessional #3 explained if A.S. didn't want to stay in the tent staff would keep the door zipped closed. Paraprofessional #3 said that if A.S. was not

allowed to come out of the tent, A.S. would yell and make noise. Paraprofessional #3 said the length of time A.S. spent in the tent would vary and Paraprofessional #3 isn't sure if there was a set limit.

With regard to the reported incident of A.S. being zipped in the tent, hot, and crying, Paraprofessional #3 said she was in the room that day but did not witness everything. Paraprofessional #3 said she was around the child who got scratched by A.S. but isn't sure if she saw A.S. scratch the other child or if she just saw the scratches on the child later. Paraprofessional #3 wasn't working with A.S. at the time. Paraprofessional #3 can't remember if she let A.S.'s mom in the door or of someone else did. Paraprofessional #3 said A.S. was crying and Paraprofessional #3 assumed it was because A.S. wanted a hot dog. Paraprofessional #3 did not speak with A.S.'s mom. Paraprofessional #3 said she doesn't know if A.S. was in the tent when mom arrived but said she was informed later that A.S.'s parents were upset. Paraprofessional #3 said that after this incident the tent was just gone one day.

Paraprofessional #3 said she was concerned and irritated by the removal of the tent because A.S.'s parents had consented to it and staff didn't do anything wrong. According to Paraprofessional #3, the tent wasn't a problem and the parents consented and knew about the use of the tent and the restraint strap. Paraprofessional #3 said now there is an area with a mat and that A.S. kicks the wall and the blinds when she is in this new space. Paraprofessional #3 feels A.S. is worse now that the tent has been taken away. Paraprofessional #3 said A.S. doesn't have a place to relax now and A.S. can't get away from the noise.

When asked if Paraprofessional #3 knew if A.S. had any health conditions, Paraprofessional #3 stated that A.S. doesn't have seizures but that she is a typical Down Syndrome kid who throws up a lot.

Paraprofessional #3 said that she received direction about how to work with A.S. and the other students in the Life Skills Program meetings and when the District Consultant visits the Program. Paraprofessional #3 said that staff was told not to use the restraint strap anymore. According to Paraprofessional #3, restraint straps were being used often. At Kenton, Paraprofessional #3 said staff would tie the restraint straps around students to keep them in the group. Paraprofessional #3 said once the Kenton program moved to Lansing, staff was told they couldn't use the restraint straps.

Paraprofessional #3 said she had received restraint and time out training last year and the training included sessions on non-violent intervention and crisis training.

4. Kenton Life Skills Paraprofessional #4

Paraprofessional #4 has been with the District eight years as a paraprofessional. Paraprofessional #4 started working with A.S. two years ago. Paraprofessional #4 was interviewed on May 24, 2007 at Lansing Elementary about the treatment of A.S., a student in the Life Skills Program now at Lansing.

When asked to describe A.S.'s behaviors, Paraprofessional #4 stated they were terrible. Paraprofessional #4 stated that A.S. would scratch and draw blood. Paraprofessional #4 said that no one understands what staff in the Kenton Life Skills Program went through the year that A.S. joined the program because there were several students with challenging needs.

When asked about the use of a chair with straps, Paraprofessional #4 said staff had soft straps they would use to keep A.S. in place. Paraprofessional #4 said the minute A.S. wasn't strapped in she would be everywhere. Paraprofessional #4 said that during A.S.'s second year staff didn't tie A.S. up as much. Paraprofessional #4 also stated that staff made their own restraint straps.

According to Paraprofessional #4, the Life Skills teacher at Kenton brought a tent for A.S. because A.S. is aggressive and can hurt others. Paraprofessional #4 said that A.S. knew she could get out of the tent. Paraprofessional #4 said the tent worked and A.S. calmed down in the tent. Additionally, Paraprofessional #4 said the strength and frequency of A.S.'s behaviors got better over time.

Paraprofessional #4 said a small tent was used initially and A.S. didn't like to go in the tent all the time. Paraprofessional #4 said a timer was used and A.S. would go in the tent, sometimes, every five minutes. Paraprofessional #4 said that once staff knew that A.S. was going to the tent there were always two staff people involved in getting A.S. in the tent. Paraprofessional #4 said staff would take her hands and hold them up above A.S.'s head as they walked A.S. to the tent because otherwise A.S. would do more damage on the way to the tent. Paraprofessional #4 said staff would also take A.S.'s shoes so A.S. wouldn't kick. Paraprofessional #4 said the door to the tent was always closed but there were windows and A.S. knew how to get out. Paraprofessional #4 said that A.S. would yell, cry, or scream when she wasn't let out of the tent but that these were "elephant tears" and that A.S. would make herself cry. Paraprofessional #4 said staff didn't hurt A.S.. Paraprofessional #4 said she thinks the teachers did document the use of the tent but knows the paraprofessionals did not document the use of the tent.

Paraprofessional #4 said she was present the day of the reported incident. Paraprofessional #4 described the day as chaotic and said she didn't see A.S. placed in the tent but knew she had been to the tent. Paraprofessional #4 saw A.S.'s mom come in the classroom and says she doesn't know if A.S. was in the tent when A.S.'s mom got to school. Paraprofessional #4 thinks A.S. was upset because A.S. was having a bad day. Paraprofessional #4 said that A.S.'s mom wouldn't come get A.S. right away after she was called and that if the parent would have come in 30 minutes like the Individual Education Program requires, the incident would not have happened.

Paraprofessional #4 said after the reported incident the tent was gone, and Paraprofessional #4 only received a short explanation as to why the tent would no longer be used. Paraprofessional #4 was concerned about the tent not being used for A.S. because it was an easy fallback tool and without the tent staff has to do more one-on-one

work with A.S. Additionally, Paraprofessional #4 said A.S.'s behavior was worse after the tent was no longer being used.

Paraprofessional #4 said that she does know that A.S. has some heart problems but doesn't have any information as to the specifics of A.S.'s conditions.

Paraprofessional #4 did see the consent form for the use of the restraint straps and tent and believed the parents were totally agreeable. Paraprofessional #4 thinks the parents probably saw the tent before it was used and that, generally, the parents don't come in much to the classroom.

Paraprofessional #4 said if A.S.'s mom would have come in time, the reported incident wouldn't have happened, and the parents shouldn't yell at staff because it is not their job to care for A.S. if A.S. hurts other kids.

5. Kenton Life Skills Paraprofessional #5

Paraprofessional #5 has been with the District for sixteen years as a paraprofessional. Paraprofessional #5 has always been interested in working with kids with disabilities. Paraprofessional #5 was interviewed on May 24, 2007 at Lansing Elementary about the treatment of A.S., a student in the Life Skills Program now at Lansing.

Paraprofessional #5 started working with A.S. at Kenton Elementary. According to Paraprofessional #5, A.S. hits, bites, and scratches when A.S. gets frustrated. Paraprofessional #5 tried to make sure A.S. was safe and that others were safe too. Paraprofessional #5 would try holding A.S.'s hands to redirect A.S.

When asked to describe the use of a chair with straps, Paraprofessional #5 said the restraint chair was used for time out. Paraprofessional #5 said A.S. wouldn't stay put so staff used a restraint strap to keep A.S. in the chair. Paraprofessional #5 doesn't remember if the use of the restraint chair was documented. Paraprofessional #5 said that A.S. was in the restraint chair a lot in the beginning of the time at Kenton.

Paraprofessional #5 said that she thinks use of the tent came after the restraint chair. Paraprofessional #5 said that if A.S. gets upset she can go in the tent to calm down. Paraprofessional #5 said that staff would take A.S.'s hands and tell A.S. she was going to the tent. Paraprofessional #5 stated that only one person took A.S. to the tent. Paraprofessional #5 said that staff would walk A.S. to the tent on those occasions that A.S. didn't want to go. Paraprofessional #5 stated that once A.S. was in the tent, staff zipped the door closed. Paraprofessional #5 said that a staff person would stay with A.S. while she was in the tent. Paraprofessional #5 said that most of the time A.S. went to the tent voluntarily. Paraprofessional #5 stated that A.S. could tell staff when A.S. was calm because A.S. would say "I'm ready" and then staff would let A.S. out of the tent. Paraprofessional #5 said a timer was used and she thinks the time was set for three

minutes. Paraprofessional #5 stated that when A.S. did not calm down, the timer would be started over. Paraprofessional #5 thinks the use of the tent was documented.

Paraprofessional #5 was present the day of the reported incident. Paraprofessional #5 worked with A.S. in the morning and A.S. was scratching Paraprofessional #5. In response to the scratching, Paraprofessional #5 tried to ignore A.S. but the behavior didn't get any better. Paraprofessional #5 said that A.S. scratched another student on the way to the tent. Paraprofessional #5 said that A.S. then proceeded to spend three minutes in the tent. Paraprofessional #5 said because A.S. scratched the other student, Paraprofessional #5 was instructed to keep A.S. away from the rest of the kids until A.S.'s mother came to pick A.S. up. After receiving these instructions, Paraprofessional #5 helped another staff person make hot dogs and doesn't know who put A.S. in the tent. Paraprofessional #5 said she knows that A.S. was crying when A.S.'s mom arrived but thought it was because A.S. wanted a hot dog. Paraprofessional #5 said that once she gave A.S. a hot dog, A.S. calmed down.

Paraprofessional #5 stated that after Spring Break, Teacher #2 told her that the use of the tent was being investigated and staff was told they couldn't use the tent anymore. Paraprofessional #5 was concerned about that decision because A.S. used the tent a lot.

Paraprofessional #5 said now A.S. goes to time out in a chair without straps but staff often restrain A.S. physically to get A.S. to stay in the chair. Paraprofessional #5 believes that A.S.'s behaviors are more intense now with the absence of the tent.

6. A. S.'s Father

A.S.'s father stated that A.S.'s Life Skills Program at Kenton Elementary was moved to Lansing Elementary during the spring of this year. A.S.'s father stated that his wife was called to come pick A.S. up from Lansing. A.S.'s father stated that when his wife arrived at Lansing and entered the Life Skills classroom she found A.S. zipped up inside a tent screaming and crying. A.S.'s father said when A.S. was let out of the tent, A.S. was very hot and sweaty and visibly upset. A.S.'s father said that his wife was horrified by finding A.S. in the tent and was very concerned because A.S. has a serious heart condition that could be dangerous if A.S. got too hot or emotionally worked up. A.S.'s father said his wife was also upset about the small size of the tent. A.S.'s father does not know if A.S. has been restrained; there has never been any documentation or report regarding the use of restraint, provided to him or his wife.

VII. FINDINGS AND CONCLUSIONS

Aurora Public Schools are part of a Colorado-operated entity managed under the authority of the Colorado Department of Education and also receive federal funds for their programs. Consequently, the schools within the Aurora Public School District are subject to both federal and state laws and regulations pertaining to the use of restraint and seclusion.

The Colorado Department of Education Rules governing the use of restraint/seclusion¹³ under The Protection of Persons from Restraint Act¹⁴ apply when restraint and/or seclusion take place in a school setting.

CDE's Restraint/Seclusion Rules dictate that restraint/seclusion may only be used in emergency situations where serious, probable and imminent threat of bodily injury with the ability to cause such injury is present.¹⁵ The Individuals with Disabilities in Education Act 2004 clarifies serious bodily injury as being a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.¹⁶

Restraint or seclusion may never be used as a punitive form of discipline or as a means to gain control or compliance of a student's behavior.¹⁷

Strapping a student in a chair is a mechanical restraint.¹⁸ Zipping a student in a tent and preventing that student's ability to exit the tent is seclusion.¹⁹

A. Improper Use of Mechanical Restraints and Occupational Therapy Devices for Restraint:

Life Skills Program staff has violated the majority of the applicable restraint and seclusion rules. The most significant departure from the rules is the use of occupational therapy devices as mechanical restraints. Under CDE's restraint rules, mechanical restraint means a physical device used to restrict the movement of an individual or the movement or normal function of a portion of the body.²⁰ CDE's restraint rules clearly prohibit the use of occupational therapy devices for purposes of mechanical restraint.²¹ While this report goes on to detail other restraint rules that have been violated, the very use of the restraint chairs and straps are reason alone to conclude that A.B., A.S. and other students in the Life Skills Programs were subject to abuse as a result of the pattern and practice of the use of these mechanical restraints.

The use of mechanical restraints was a routine practice in the Life Skills Programs. Both A.B. and A.S. had a history of behavior problems in school. Yet, school personnel implemented restraint and seclusion instead of modifying individualized positive behavior plans based upon a thorough assessment of the student. Staff never utilized occupational therapy or assistive technology evaluations. Instead, staff frequently used mechanical restraint as the primary means of intervening. As these events occurred repeatedly over time, the use of mechanical restraints became a routine practice.

¹³ See 1 Colo. Code Regs. 301-45.

¹⁴ See Colo. Rev. Stat. § 26-20-101, *et seq.*

¹⁵ See 1 Colo. Code Regs. 301-45-2620-R-2.01(1).

¹⁶ See 34 C.F.R. § 300.530(i)(3).

¹⁷ See 1 Colo. Code Regs. 301-45-2620-R-2.01(4).

¹⁸ See 1 Colo. Code Regs. 301-45-2620-R-2.00(6).

¹⁹ See 1 Colo. Code Regs. 301-45-2620-R-2.00(3).

²⁰ See 1 Colo. Code Regs. 301-45-2620-R-2.00(6).

²¹ See 1 Colo. Code Regs. 301-45-2620-R-2.01(5).

Program staff's on-going use of restraint chairs, belts, and/or straps for the purpose of restraining any student is a direct violation of CDE's rules and is directly prohibited. Additionally, while the tent used by A.S. can serve a legitimate therapeutic function, such therapeutic value is lost in any situation where A.S. was zipped inside the tent and unable to exit in a voluntary manner. Additionally, the District failed to provide any supporting occupational therapy evaluation that supported the use of the tent as an occupational therapy device.

B. No Basis for the Use of Restraint/Seclusion:

Interviews with Program staff detailed the lack of any serious probable and imminent threat of injury to self or others that would have justified the use of restraint or seclusion. Additionally, information in interviews and documentation did not provide information that emergency circumstances served as the basis for staff to engage in the use of restraint and seclusion.

Staff most often utilized restraint and seclusion when A.S. or A.B. were generally non-compliant, illustrating behaviors that failed to rise to the level of an emergency. In the instances where these students physically engaged staff, nothing in the interviews or written documents shows that staff faced substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The use of restraint and seclusion without proper cause is unlawful. As shown by the evidence, Life Skills Program staff engaged in a pattern and practice of improper use of restraint and seclusion.

C. Failure to Engage in Effective De-Escalation:

Staff is required to exhaust less restrictive alternatives prior to using restraints or seclusion.²² During interviews, staff revealed that in response to non-compliant behavior, A.B. and A.S., along with other students at Kenton, were strapped in a restraint chair or zipped in a tent and that other de-escalation techniques were not always used prior to utilizing restraint and seclusion practices. As reported, students would engage in non-compliant behavior that could be best described as hyper-activity or tantrum-like behavior. In response to this behavior, these students were secluded or restrained without the benefit of effective de-escalation strategies.

D. Time Limitations Not Followed:

The use of restraint or seclusion may only be utilized for the time period necessary to eliminate the emergency.²³

²² See 1 Colo. Code Regs. 301-45-2620-R-2.01(2).

²³ See 1 Colo. Code Regs. 301-45-2620-R-2.01(3)(b).

Both A.B. and A.S. were secluded or restrained on several occasions beyond the time necessary to eliminate any alleged emergency. Also, staff did not release A.B. or A.S. at the conclusion of any pre-determined time on those instances in which a timer was used if either student did not appear calm, instead the timer was re-set. The rules require that the restraint or seclusion end with the emergency, not when a student is calm.

E. Failure to Document Use of Restraint/Seclusion in IEP:

A student's Individual Education Program ("IEP") must address the specific circumstances, procedures and staff involved if there is a possibility that restraint/seclusion might be utilized.²⁴ Each IEP failed to comply with this requirement.

F. Failure to Hold IEP Meetings:

An IEP meeting must follow the use of restraint to determine if the supports and services identified in the student's behavior support plan are being provided and if so whether they are appropriate and what changes may be needed.²⁵ No IEP meeting was held after any of these reported incidents.

G. Failure to Notify Parent/Guardian:

Parents or guardians must be verbally notified the same day of the restraint and must receive a written report of the incident within 36 hours of the incident.²⁶ Program staff did not act in compliance with these strict time requirements. Incident reports were not provided to parents in writing and parents were never verbally notified on the same day of the use of restraints or seclusion.

H. Failure to Obtain Parent/Guardian Consent:

When staff anticipates that it will utilize restraint or seclusion, written parent/guardian permission must be obtained.²⁷ A 1-2 line statement in a back and forth book or piece of paper falls short of the informed consent requirement because it does not provide the parent/guardian with all of the information relevant to the use of restraint or seclusion. A parent would not understand what a restraint looks like and how it is to be used with a student without demonstration. Nor does a one line sentence in a back and forth book facilitate the kind of necessary discussion about whether a student has a secondary medical or psychological condition that is affected by the use of restraint or seclusion.

A parent/guardian must be fully informed of all information relevant to the activity for which consent is sought and must understand and agree to the activity for

²⁴ See 1 Colo. Code Regs. 301-45-2620-R-2.02(1)(a)(v).

²⁵ See 1 Colo. Code Regs. 301-45-2620-R-2.05(1).

²⁶ See 1 Colo. Code Regs. 301-45-2620-R-2.04.

²⁷ See 1 Colo. Code Regs. 301-45-2620-R-2.02(1)(a)(viii).

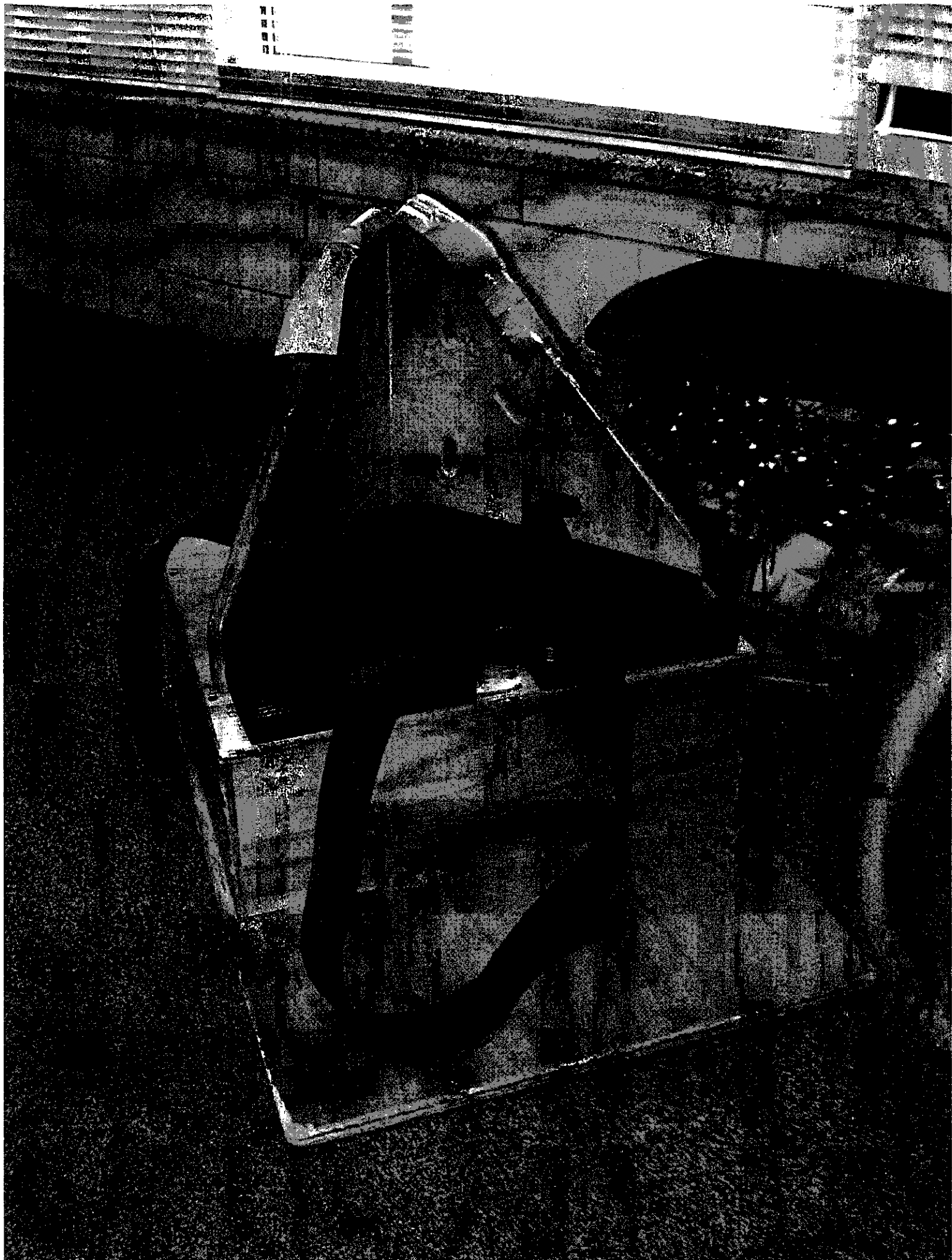
which the consent is being sought.²⁸ The failure to discuss the use of restraint and seclusion in any real detail in these students' IEPs or behavior support plans, coupled with the absence of the use of the District's own restraint or seclusion consent form, illustrates that parent/guardian consent was not given to restrain or seclude A.S. or A.B.

VIII. CONCLUSION

The information produced in the course of this investigation clearly supports that A.B. and A.S. have been repeatedly subjected to improper restraint and seclusion in violation of CDE rules. Further, based on the information provided to The Legal Center by staff during interviews, The Legal Center believes it is likely that the improper use of restraints and seclusion exists on a systemic level in special education programs throughout the District.

Consequently, the Legal Center asks that Aurora Public Schools submit a corrective action plan that is consistent with The Legal Center's recommendations by August 9, 2007, 45 days from the receipt of this report. Once agreement on the action plan has been reached between The Legal Center and Aurora Public Schools, implementation of the plan must occur immediately. Under its federal authority to monitor, The Legal Center will take action to ensure the implementation of the corrective action plan and will provide the District with its monitoring plan within 30 days of reaching an agreement on the corrective action plan.

²⁸ See 34 C.F.R. § 300.9.





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