


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 WILL  
ROGERS ELEMENTARY SCHOOL**

**March 9, 2007**

**I. INTRODUCTION**

The Legal Center for People with Disabilities and Older People (“The Legal Center”) is the Protection and Advocacy System for Colorado. The Legal Center is required to conduct abuse and neglect investigations in settings that serve people with disabilities. The Legal Center’s authority to conduct abuse and neglect investigations extends to District eleven schools 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 use of seclusion and restraint of: Kayla Rhuby; Alex Gilliland; Christopher Spiliotis; Michael Gates; and A. T.<sup>1</sup> while in attendance at Will Rogers Elementary 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 complaints that students with a range of emotional, mental health and/or developmental disabilities were subjected to improper use of restraint and seclusion by school staff at Will Rogers Elementary. Specifically, The Legal Center was informed that Kayla Rhuby was forced in to the time out room and left for a period of over one hour and after several requests to use the restroom were denied, Kayla urinated in her pants and was forced to sit in her own urine in order to be given permission to leave the time out room. The Legal Center was also informed that Michael Gates, Christopher Spiliotis, Alex Gilliland, and A.T. had been restrained by a teacher and three paraprofessionals and placed in the time out room on many occasions for periods of time that would often exceed thirty minutes.

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

---

<sup>1</sup> The name of this student will not be used or released for privacy purposes.

## II. EXECUTIVE SUMMARY

Five elementary students with disabilities who attended Will Rogers Elementary were collectively subjected to 45 different incidents of restraint and seclusion by one teacher and four paraprofessionals.

Alex Gilliland, Kayla Rhuby, Christopher Spiliotis, Michael Gates, and A.T. collectively spent over eleven hours in the school's time out room. Each incident of seclusion involved staff physically forcing the students into the time out room. These same five students collectively were restrained no less than eighteen different times.

Alex Gilliland, an elementary student with multiple disabilities, spent most of his time at Will Rogers Elementary sitting facing a wall, held down by staff, or locked in a time out room engaging in self-injurious behavior that often left him bloody. Alex endured no less than fourteen different incidents of improper restraint or seclusion while attending Will Rogers Elementary. Students witnessed Alex spending most of his time in the school's time out room. Alex's mother attempted to comfort Alex who was terrified to attend school and unable to communicate the reasons.

A.T., also a student with multiple disabilities at Will Rogers Elementary, was often secluded in the school time out room for lengthy periods of time. A.T. attempted to strangle herself with her own clothing on no less than two different occasions in a two week time frame after being placed in the time out room, the staff continued to place A.T. into the time out room on at least eight subsequent occasions.

Kayla Rhuby was secluded in the time out room often, and on one occasion was denied the opportunity to use the restroom, wet her pants, and was then forced to sit in her own urine for no less than ten minutes as a condition of leaving the time out room.

Christopher Spiliotis spent an average of one hour in the time out room each time he was secluded while at Will Rogers Elementary. Christopher's mother complained to Christopher's teacher about the excessive use of time out and the denial of Christopher food until he came out of the time out room, sometimes as late as the end of the day.

Michael Gates was often restrained by Will Rogers staff in response to his disability related behaviors. Michael's grandparents and legal guardians think the treatment Michael received while at Will Rogers contributed to a steady decline in Michael's behavior.

The Legal Center learned of incidents involving restraint and seclusion at Will Rogers Elementary from complaints by parents of students who spent time in the Learning Lab, students who spent time in the Learning Lab, former Learning Lab staff, and staff interviews.

Information provided to The Legal Center shows the occurrence of the following incidents involving the restraint and/or seclusion of the five students. For purposes of this report, the term “restraint” refers to a physical restraint. Under the Colorado Department of Education’s Restraint/Seclusion Rules, a physical restraint is the use of bodily or physical force to limit an individual’s freedom and does not include a physical hold that lasts less than five minutes.<sup>2</sup>

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.<sup>3</sup> The time out room at Will Rogers Elementary was being utilized as seclusion when students were placed in the room with the door closed and restricting a 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.<sup>4</sup> 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.<sup>5</sup> Restraint and seclusion may never be used as a means to punish a student or to gain compliant behavior.<sup>6</sup> Finally, any restraint or seclusion must end once the need to ensure for the safety of the student or others has ended.<sup>7</sup>

As noted in further detail below, the facts do not support that these five students were engaged in emergency behavior that would warrant the use of restraint or seclusion. These 45 incidents took place after problematic behavior occurred and lasted well beyond the time necessary to end any alleged emergency. Additionally, while the teacher and paraprofessionals reported the behavior that eventually led to the use of restraint or seclusion, staff did not report with the same detail their response to escalating behavior or what made these students try to hit, kick, threaten or bite. It was not uncommon that student behavior would escalate when the student was told he/she was going to the time out room. Student witnesses said they saw students kick, hit and bite staff while trying to get away as the staff was forcing the student into the time out room. Student witnesses also said they watched crying students held down and dragged into the time out room on a regular basis. Parents said they had to console students so frightened to attend school the students would often cry or become hysterical.

Ultimately, The Legal Center has found that Will Rogers staff has violated many of the Rules governing the use of restraint and seclusion. The remaining portion of this report

---

<sup>2</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.00(2)

<sup>3</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.00(3)

<sup>4</sup> See 1 Colo. Code Regs. 301- 45.

<sup>5</sup> See 34 C.F.R. 300.530(i)(3)

<sup>6</sup> See 1 Colo. Code Regs. 301- 45 – 2620 – R- 2.01(4)

<sup>7</sup> See 1 Colo. Code Regs. 301- 45 – 2620 – R- 2.02(1)(a)(vii)

will go in to further detail as to the incidents giving rise to The Legal Center's findings and the recommendations given to District Eleven schools to correct these egregious acts.

### **III. SUMMARY OF FINDINGS AND CONCLUSIONS**

The Legal Center's investigation concludes:

1. District Eleven has not ensured compliance with the Colorado Department of Education's Rules for the Administration of the Protection of Persons from Restraint Act<sup>8</sup> and Protection of Persons from Restraint Act<sup>9</sup>.
2. District Eleven 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. The Will Rogers Elementary school Learning Lab policy violates the Colorado Department of Education's Rules for the Administration of the Protection of Persons From Restraint Act.
4. Will Rogers Elementary Learning Lab staff has engaged in a pattern and practice of improper use of restraint and seclusion.
5. Will Rogers Elementary Learning Lab staff did not have an adequate basis to use restraint or seclusion in the majority of the 45 incidents involving the five students.
6. Will Rogers Elementary Learning Lab staff failed to engage in de-escalation prior to restraining or secluding the five students.
7. Will Rogers Elementary Learning Lab staff violated time requirements pertaining to the use of seclusion/time out.
8. Will Rogers Elementary Learning Lab staff failed to properly document the use of restraint and seclusion in the Individual Education Plans of the five students.
9. Will Rogers Elementary Learning Lab staff failed to hold Individual Education Plan meetings after restraining and/or secluding any of the five students.
10. Will Rogers Elementary Learning Lab staff failed to provide the parents/guardians of the five students with written notification of the restraint or seclusion within 36 hours.
11. Will Rogers Elementary Learning Lab staff failed to gain parent/guardian consent prior to restraining or secluding any one of the five students.

### **IV. SUMMARY OF RECOMMENDATIONS**

Based on its findings and conclusions, The Legal Center recommends a number of actions be taken by District Eleven and staff at Will Rogers Elementary school.

---

<sup>8</sup> See 1 Colo. Code Regs. 301- 45.

<sup>9</sup> See Colo. Rev. Stat. § 26-20-108.

1. Bring District and school policies pertaining to time out, seclusion and restraint in line with the Colorado Department of Education rules regarding the use of restraint and seclusion.
2. Ensure district wide compliance with the CDE restraint and seclusion rules with the use of a corrective action plan.
3. Obtain Child Welfare League of America restraint and trauma training for all special education staff and building administrators in District Eleven.
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 Plan content requirements;
  - ii. Individual Education Plan meeting requirements;
  - iii. Reporting requirements;
  - iv. Consent requirements;
  - v. and when an action constitutes time out rather than seclusion.
5. Create a parent consent form for the use of restraint and seclusion that includes provisions for proper risk assessments.
6. Prepare and submit an annual district wide restraint and seclusion report.

## **V. BACKGROUND**

### **A. Summary of Incidents**

Christopher Spiliotis is an eleven-year-old student who attended Will Rogers Elementary during the 2005-2006 school year. The incidents below took place while Christopher was a student at Will Rogers Elementary.

1. On October 7, 2005, Christopher was secluded for a period of 40 minutes because he had thrown a pencil out of frustration.
2. October 10, 2005, Christopher was restrained and placed in the time out room for an unknown period of time after climbing on a desk and attempting to kick and hit staff.
3. On October 11, 2005, Christopher was carried to the time out room and secluded for 30 minutes after being disruptive.
4. On October 13, 2005, Christopher was secluded for two hours for engaging in disruptive behavior.
5. On October 14, 2005, Christopher was carried to the time out room and left for an unknown length of time because he flipped a chair in the Learning Lab.
6. On October 17, 2005, Christopher was carried to the time out room and left for an unknown length of time after being "unsafe" with a chair.
7. On October 18, 2005, Christopher was carried to the time out room on two different occasions and left for an unknown length of time because he attempted to turn a desk over, refused to work, and attempted to run from the Learning Lab.

Kayla Rhuby is an eleven-year-old student who attended Will Rogers from the middle of the 2005-2006 school year through the early fall of the current school year. The following incidents took place while Kayla attended Will Rogers Elementary.

1. On March 6, 2006, Kayla was carried to the time out room and left for a period of at least 10 minutes after engaging in non-compliant behavior. While in the time out room Kayla asked for and was denied the opportunity to go to the bathroom.
2. On April 4, 2006, Kayla was secluded for at least a full class period after she attempted to grab staff and leave the Learning Lab.
3. On April 5, 2006, Kayla was secluded for a period of over one hour after she attempted to grab staff and leave the lab. While in the time out room Kayla kept screaming she needed to go to the bathroom and she wanted out of the time out room. Kayla eventually wet her pants and was still not let out of the time out room. Kayla was forced to sit in her own urine for a period of no less than ten minutes before she was allowed to exit the time out room.
4. On April 10, 2006, Kayla was restrained for an unknown period of time after she left school grounds.
5. On May 11, 2006, Kayla was carried to the time out room after she attempted to climb book shelves in the Learning Lab. While in the time out room Kayla twisted the teacher's arm and was restrained for an unknown period of time.
6. On August 17, 2006, Kayla was restrained for an unknown length of time after attempting to leave the classroom and school building and attempting to bite a staff person.
7. On August 24, 2006, Kayla was restrained for an unknown period of time after she exited the school building and walked through the local neighborhood. Kayla had engaged in this same act on at least one other occasion and was not previously restrained.
8. On October 2, 2006, Kayla was restrained for a period of 5 minutes after she kicked a door in the classroom. During the restraint Kayla bit a staff person.
9. On September 21, 2006, Kayla was restrained for a period of 10 minutes after attempting to hit and bite Learning Lab staff.

Michael Gates is an eleven-year-old student who is currently a student at Will Rogers Elementary. The following incidents took place while Michael was a student at Will Rogers Elementary.

1. On October 5, 2006, Michael was restrained for a period of 5 minutes after he bit himself.
2. On October 16, 2006, Michael was restrained three different times. Michael was restrained the first time for 12 minutes after he threatened staff. Michael was restrained the second time for 2 minutes after he attempted to run from the Learning Lab. Michael was restrained the third time for 5 minutes after he bit himself.

3. On October 23, 2006, Michael was restrained for an unknown period of time and placed in the time out room for an unknown period of time after he threw chairs in the Learning Lab.
4. On March 21, 2006, Michael was placed in the time out room for an unknown period of time after being disruptive in class.

Alex Gilliland is a student who attended Will Rogers Elementary during the 2005-2006 school year. The following incidents took place while Alex was a student at Will Rogers Elementary.

1. On September 13, 2005, Alex was carried to the time out room and secluded for 15 minutes after Alex attempted to run from the Learning Lab, hit, kick and bite staff.
2. On September 17, 2005, Alex was restrained and carried to the time out room for an unknown period of time after he attempted to hit staff and climb wall dividers. While in the time out room Alex engaged in self-injurious behavior where he punched himself in the nose enough to cause bruising and bleeding.
3. On September 26, 2005, Alex was taken to the time out room and restrained for an unknown period time after he attempted to break a food tray. While in the time out room Alex engaged in self- injurious head-banging.
4. On October 7, 2005, Alex was secluded for a period of 40 minutes after he attempted to hit, scratch, kick and bite staff. Alex engaged in self- injurious head-banging while in the time out room.
5. On October 18, 2005, Alex was placed the time out room for an unknown period of time after he hit other students in morning group. Alex engaged in self- injurious head-banging while in the time out room.
6. On November 1, 2005, Alex was restrained for 30 minutes and secluded for 20 minutes after he attempted to hit and throw books at staff.
7. On February 10, 2006, Alex was placed in the time out room for an unknown period of time after he attempted to bite staff.
8. On February 13, 2006, Alex was taken to the time out room for an unknown period of time after he hit the teacher and broke her glasses.
9. On February 14, 2006, Alex was physically carried to the time out room on two different occasions and left for an unknown period of time because he was “unwilling to follow directions”. Alex engaged in self- injurious head-banging and punching while in the time out room.
10. On February 23, 2006, Alex was placed in the time out room for an unknown period of time when he “became violent”. While in the time out room, Alex engaged in self- injurious behavior to the extent he made himself bleed.
11. On March 6, 2006, Alex was secluded “most of the day” because he would not follow directions and engaged in “unsafe” conduct.
12. On March 10, 2006, Alex was placed in the time out room for an unknown period of time after he attempted to hit staff.

13. On April 4, 2006, Alex was placed in the time out room for an unknown period of time after he attempted to hit staff.
14. On April 19, 2006, Alex was restrained on two different occasions and was taken to the time out room on two different occasions for unknown amounts of time because he threatened to harm staff.

A.T. is a student who attended Will Rogers Elementary during the 2005-2006 school year. The following incidents took place while A.T. was a student at Will Rogers Elementary.

1. On November 13, 2005, A.T. was carried to the time out room for an unknown period of time after attempting to hit staff. While in the time out room A.T. climbed on a door knob to reach a ceiling panel and hit the teacher over the head with the panel.
2. On November 15, 2005, A.T. was carried to the time out room and left for an unknown period of time after she “became violent”. While in the time out room A.T. engaged in self- injurious behavior and used her clothes to try and strangle herself. A.T.’s clothes were taken from her but she was not let out of the time out room.
3. On November 28, 2005, A.T. was placed in the time out room for an unknown period of time after she attempted to bite and hit staff. While in the time out room A.T. engaged in self- injurious behavior and attempted to use her clothes to try and strangle herself. A.T.’s clothes were taken from her but she was not let out of the time out room.
4. On November 29, 2005, A.T. was restrained and carried to the time out room where she remained for an unknown period of time after she attempted to bite staff.
5. On December 5, 2005, A.T. was placed in the time out room for an unknown period of time after she hit her teacher.
6. On December 15, 2005, A.T. was placed in the time out room for an unknown period of time after she ran out of the Learning Lab. While in the time out room A.T. engaged in self- injurious behavior when she cut herself with her pen. The pen was taken from A.T. but she was not let out of the time out room.
7. On January 25, 2006, A.T. was carried to the time out room and left for an unknown period of time after attempting to hit staff.
8. On February 10, 2006, A.T. was placed in the time out room for an unknown period of time. While A.T. was in the time out room she screamed repeatedly she wanted out and when she was not let out, A.T. urinated on the time out room floor. Next, A.T. tried to choke herself.
9. On February 21, 2006, A.T. was restrained for an unknown period of time after she attempted to hit staff.
10. On February 28, 2006, A.T. was placed in the time out room for an unknown period of time after she ripped the fabric on a wall divider.
11. On March 1, 2006, A.T. was carried to the time out room and left for an unknown period of time after she threw a chair in the Learning Lab and hit her teacher. While in the time out room, A.T. attempted to strangle herself using her clothes. A.T.’s clothes were taken, but she was not let out of the time out room.

## **B. Summary of Student Interviews**

### **Michael Sanchez:**

Michael was interviewed on November 20, 2006. Michael was a student at Will Rogers Elementary last year and spent time in the Learning Lab. Michael spent most of his interview talking about what he witnessed while in the Learning Lab. Michael saw staff restrain Alex Gilliland, A.T. and Michael Gates on more than one occasion. Most of the time Michael said staff would hold student's arms criss-crossed behind his/her back while another staff member would hold the student's legs. On one occasion, Michael said he saw Learning Lab staff restrain Kayla Rhuby face down.

With regard to the time out room, Michael said it was very common to see students spend half of the school day in the learning lab. Michael stated he would go to the Learning Lab before lunch and see a student in the time out room who would still be in the time out room later in the afternoon when Michael would return to the lab. Michael said he saw Alex Gilliland in the time out room the most often and he believed staff was very mean to Alex. Alex told Michael on many occasions that he never wanted to go back to the Learning Lab because of the mean teachers and the time out room.

### **Michael Gates:**

Michael was interviewed on October 11, 2006. Michael attended Will Rogers last school year and a portion of the current school year. Michael stated that Teacher #1 and Paraprofessional #1 would restrain him by holding his arms criss-crossed behind him while the other staff person sat on his legs. Michael believed that he was restrained for a long time. Michael said that he had been restrained on two different occasions this school year.

Michael said that he would often bang his head when he was in the time out room and that staff would call his grandma to come pick him up when he engaged in this behavior. Michael said he thought he went to the time out room about five times last year and about two times this year and thinks he spent between 11 and 15 minutes each time in the time out room. Michael said he knew how long he was in the time out room because a timer was used by staff. To get out of the time out room, Michael said he had to sit facing the door. Michael indicated it was hard to sit calmly on the floor for a long time because the floor is hard tile. Michael said Alex Gilliland spent the most time in the time out room, almost everyday last year.

### **Kayla Rhuby:**

Kayla was interviewed on October 4, 2006. Kayla has been attending Will Rogers Elementary since late last school year and has spent a lot of time in the Learning Lab.

Kayla began the interview by describing an incident that occurred late last spring. Kayla said she was placed in the time out room shortly after arriving at school and was not let out until 2p.m.. Kayla said she looked at the clock when she came out of the time out room when her mother arrived to pick her up from school. Kayla said she was placed in the time

out room because she had a melt-down, which Kayla described as her going to a stormy place with monsters. Kayla said she doesn't think she was doing anything except zoning out because that is what happens when she first starts to "meltdown". Kayla said she was in the room so long that she wet her pants. Kayla also said that she was not allowed to eat the entire time that she was in the time out room. Kayla said she has had to go to the time out room almost every day this year but that she isn't supposed to spend more than three minutes in timeout. Kayla said she never goes to the time out room on her own and that staff has to carry her to get her in to the time out room. Kayla said she is zoned out when this occurs but staff tells her later she was trying to bite, hit and kick them. Kayla has observed Chris Spiliotis and Michael Gates spending time in the time out room.

Kayla said that there have been times when staff has held her down. Staff will make Kayla sit down, then one staff person will hold her arms criss-crossed behind her and another staff person will hold her legs.

### **Christian Harris:**

Christian Harris is a twelve-year-old student who attended Will Rogers Elementary last school year. Christian was interviewed on October 3, 2006 and spent time in the Learning Lab and spoke about what he witnessed while he was in the learning lab.

Christian stated the Learning Lab has a time out room. When staff wanted a student to go to the time out room, Christian would observe staff grab a student by the wrist and pull him/her to the time out room. Christian said he saw a paraprofessional engage in this practice most often. Christian said students had to go to the time out room when they got upset. It was common that students were crying when they had to go in the time out room. Christian said in order to keep from going to the time out room students would lie on the floor or try to get away from staff. In response to this action, Christian said he saw staff drag students, with one staff grabbing a student under the arm-pit and the other holding the student's legs. Christian said staff would occasionally peek into the time out room but most of the time they would stand around talking, sometimes making fun of the student who was in timeout. Christian stated that the blinds on the window for the time out room were always closed and that staff had to peek through the blinds to see into the room.

Christian said that teachers would yell at students, "Calm down or you will go to time out!" Christian said this was the only warning that staff would give before a student was sent to the time out room. Christian said he didn't think kids liked being in the time out room because they often got worse and more upset when they were in the room. Christian said he thinks kids would bang their heads on the walls on the time out room because of the sounds that came from the time out room. Christian also stated that students would be left in the time out room even after they were calm.

**Alex Gilliland and A.T. could not be reached for interviews.**

### **C. Summary of Parent Interviews**

#### **Sue Kuiper:**

Sue stated at the beginning of the last school year staff did ask her if they should use the time out room for Christian, to which Sue answered no. Sue never had a tour of the Learning Lab or the time out room.

#### **Christie Penny:**

Christie is Christopher Spiliotis' mother. Mrs. Penny stated that Chris never had outbursts at home, only while he was at Will Rogers Elementary. Mrs. Penny believed that Chris' increasing emotional problems could be directly attributed to his being mistreated by staff at Will Rogers elementary. Chris would complain to his mom about having to go to the time out room. At the two Individual Education Plan meetings that were held during the school year, Mrs. Penny was never asked to give permission to use the time out room or physical interventions and she was never given a tour of the Learning Lab or the time out room. Mrs. Penny never received any incident reports detailing the use of the time out room or the use of restraints. Mrs. Penny stated that she did complain to Teacher #1 about failure to meet Chris' needs but said she was met with major resistance.

#### **Penny Gilliland:**

Penny was interviewed on November 20, 2006. Penny is Alex Gilliland's adoptive mom. Penny Gilliland and Lindy Sanchez live in the same household with Alex Gilliland and Michael Sanchez.

Penny stated that on one occasion she was called to pick Alex up from school at Will Rogers Elementary and found him sitting in a pool of his own blood in the time out room. Penny stated that Alex would often come home from school with bloody clothing. Penny would call the school to get information about why Alex's clothing was bloody and wouldn't receive any return calls. Penny requested Individual Education Plan meetings on two different occasions and those meetings did not occur.

Penny described an incident last year when staff called her to come get Alex because he was in the time out room and had started pulling out his teeth. When Penny arrived at the school, staff were laughing at Alex and acting inappropriately. No staff action had been taken to intervene in Alex' self-abusive behavior. Penny stated she never received any incident reports from the school, nor did she ever receive a tour of the time out room.

Penny also stated Alex would often cry before school and that he had a hard time communicating to her why he was so afraid to attend school at Will Rogers.

**Lindy Sanchez:**

Lindy was interviewed on November 20, 2006. Lindy is Michael Sanchez' adoptive mom. Lindy stated staff at Will Rogers Elementary constantly called her and Penny to pick up Alex from school. Staff at Will Rogers Elementary seemed unable to deal with Alex. Most often when Lindy came to the school, she found Alex either in the time out room or sitting in a corner facing the wall.

**William Baumann:**

Bill Baumann is Michael Gates' grandfather and legal guardian and was interviewed on October 12, 2006. Bill stated he had often been called by Learning Lab staff to pick Michael up from Will Rogers Elementary. Bill had been called at least two times this school year and on one occasion he entered the Learning Lab to find staff restraining Michael. Bill stated staff immediately released Michael when he entered the room. Bill said he and his wife have never received any restraint or seclusion incident reports. Bill also stated no Individual Education Plan meetings have ever been called in response to time spent in the time out room or following the use of restraint.

**Patti Baumann:**

Patti was interviewed on October 11, 2006. Patti stated she has never received any kind of seclusion or restraint incident report forms and no Individual Education Plan meetings were ever called to alter Michael's behavior support plan. Patti was never given a tour of the time out room at Will Rogers Elementary.

**D. Summary of Staff Interviews**

**Paraprofessional #1:**

Paraprofessional #1, a special education paraprofessional, works with students in the learning lab at Will Rogers Elementary. Paraprofessional #1 did receive CPI training and has reviewed the Colorado Department of Education restraint/seclusion rules. Paraprofessional #1 has not received any positive behavior support training from district staff or an outside consultant in the past year.

When questioned about the use of the time out room, Paraprofessional #1 stated that staff determines whether to close the door to the room based on the degree of threats being made by a student or out of a concern for safety. Paraprofessional #1 explained that to leave the time out room a student must sit calmly with his/her legs crossed in front of the time out room door for one minute of every year of the student's age. Paraprofessional #1 stated the clock starts over if a student does not remain calm for the entire minute/age time period. According to Paraprofessional #1, staff did not log time in the time out room until this school year.

Paraprofessional #1 did receive a complaint from a former school social worker last school year about the use of the time out room. Paraprofessional #1 stated that staff explained the use of the time out room to the former social worker, who proceeded to inform Paraprofessional #1 and the other staff in the Learning Lab that she did not want to participate in the use of the time out room.

According to Paraprofessional #1, physical interventions most commonly involve a two-person basket hold. If a student kicks, a third person restrains the student's legs. Paraprofessional #1 stated that the Principal is made aware of all physical interventions. Paraprofessional #1 stated that she does have authority to determine whether a student may be restrained.

Paraprofessional #1 stated that Christopher Spiliotis' average length of time spent in the time out room was one hour. Paraprofessional #1 also stated that Alex Gilliland would engage in self-injurious behavior while he was in the time out room and that staff would back off when he made himself bleed. On occasion Alex was sitting in his own blood until his mother arrived at school and asked him to clean up the blood.

#### **Paraprofessional #2:**

Paraprofessional #2 was interviewed on November 2, 2006. Paraprofessional #2, a paraprofessional who works in the Learning Lab at Will Rogers Elementary, has received Crisis Prevention Intervention training and recently reviewed the Colorado Department of Education's restraint and seclusion rules. When shown a copy of the rules, Paraprofessional #2 stated she had only seen them when counsel for the district provided them to her the previous week.

According to Paraprofessional #2, time in the time out room was documented in the back-and-forth books that were sent home with the students to their parents. Paraprofessional #2 said that the decision to close the door to the time out room is made based on whether a student was calm. When a student is being aggressive the door is closed and may be held shut by staff. Paraprofessional #2 stated that time in the time out room ends once a student sits calmly with their legs crossed in front of the time out room door for one minute of every year of the student's age and the clock starts over if a student does not remain calm for the entire minute/age time period. Paraprofessional #2 stated that the time out log is filled out by whichever staff is present at the time the time out room has been used.

Paraprofessional #2 stated that restraints are used and that most commonly two to three staff members are involved for safety purposes. Paraprofessional #2 stated that a CPI two-person escort is used to move unruly students. If the student is carried, a three-person technique is used. Paraprofessional #2 stated the special education teacher in the Learning Lab makes the decision whether to restrain a student.

When asked about an incident involving Kayla Rhuby being placed in the time out room for a long period of time in April of 2006, Paraprofessional #2 said she did recall the incident and it was possible that Kayla was in the time out room for an hour. Paraprofessional #2 stated that Kayla was placed in the time out room because she had been hitting, kicking and biting staff. Paraprofessional #2 stated Kayla would have been let out of the time out room had Kayla asked to use the bathroom. Paraprofessional #2 stated that staff did have to restrain Kayla on occasion because she would become violent and hit, kick or bite staff.

Paraprofessional #2 stated that Alex Gilliland did engage in self-injurious behavior when he was in the time out room and that staff would restrain Alex to keep him from hurting himself. Paraprofessional #2 stated that using restraints on Alex would often cause Alex's bad behavior to escalate.

Paraprofessional #2 also stated that Christopher Spiliotis spent a lot of time in the time out room last school year.

**Paraprofessional #3:**

Paraprofessional #3 was interviewed on November 2, 2006. Paraprofessional #3, a paraprofessional who works in the Learning Lab at Will Rogers Elementary, doesn't believe that she has ever seen any policies regarding the use of time out, restraint or seclusion. Paraprofessional #3 stated that as of this school year, staff in the Learning Lab does document both the use of the time out room and physical interventions. Paraprofessional #3 was not aware as to whether parents were given the information documenting use of the time out room or physical interventions but did say that parents would know if the student went to time out or had to be restrained based on information sent home to parents in a student's back and forth book.

Paraprofessional #3 stated that when a student refuses to go to the time out room that student is placed in a basket hold and carried by staff to the time out room. Paraprofessional #3 says that any Learning Lab staff member may make the decision to restrain or seclude a student.

Paraprofessional #3 has never seen a copy of any of the Individual Education Plans for any of the students in the learning lab.

Paraprofessional #3 recalled an incident where Kayla Rhuby was in the time out room for several hours in the spring of 2006 but does not recall what incidents led to her being placed in the time out room. Paraprofessional #3 also stated that she knew that Kayla wet her pants while she was in the time out room but could not recall if Kayla had asked to come out of the time out room prior to her wetting her pants.

Paraprofessional #3 stated that Christopher Spiliotis spent a lot of time in the time out room, even in comparison to other students who were placed in the time out room.

Paraprofessional #3 also noted that Alex Gilliland engaged in self-injurious behavior while he was in the time out room and further stated she knows that Alex made himself bleed while he was in time out and she does not know what staff does, if anything, to prevent this behavior.

Paraprofessional #3 stated that no meetings were held after students had been restrained or secluded in the time out room and that no outside experts had been called in to work with any particular student or staff.

**Paraprofessional #4:**

Paraprofessional #4 was interviewed on November 3, 2006. Paraprofessional #4 worked as a paraprofessional in the Learning Lab at Will Rogers Elementary last school year. Paraprofessional #4 did recall the incident involving Kayla Rhyby in time out and wetting her pants. Paraprofessional #4 said she believed that Kayla was in the room for approximately 30 minutes after attempting to hit and kick staff. Paraprofessional #4 said Kayla was hollering she wanted out of the time out room and had to go to the bathroom. Kayla was not let out of the time out room because she was not calm.

Paraprofessional #4 stated the time out room was used in response to kids who were out of control or attempted to run. Paraprofessional #4 said staff would block the door so that students could not leave the time out room. In order to leave the time out room a student must sit quietly for one minute per year of the student's age and that there was no maximum amount of time a student might spend in time out. A two-to-three person hold is used to transport students to the time out room when the student does not go to the room voluntarily.

Paraprofessional #4 stated A.T. would engage in self-injurious behavior while she was in the time out room. A.T. would take her clothes off and attempt to choke herself with the clothes.

Paraprofessional #4 stated Christopher Spiliotis spent a lot of time in the time out room.

Paraprofessional #4 did observe Alex Gilliland engage in self-injurious behavior while he was in time out. Paraprofessional #4 said Alex would make himself bleed and bang his head in the time out room. Paraprofessional #4 said sometimes staff would intervene.

Paraprofessional #4 was not aware of any behavior experts being consulted to help staff respond to the problem behavior of the five students.

**Teacher #1:**

Teacher #1 was interviewed on November 3, 2006. Teacher #1, a special education teacher in the Learning Lab at Will Rogers Elementary, stated that she is responsible for

overseeing and reporting on all activities, including arranging Individual Education Plan meetings, for students in the Learning Lab. Teacher #1 stated that she is familiar with the Colorado Department of Education's rules regarding the use of restraint and seclusion and she has received Crisis Prevention Intervention training.

Teacher #1 was present at least part of the time Kayla Rhuby was in the time out room during the incident that led to Kayla wetting her pants. Teacher #1 stated that Kayla was not in the time out room voluntarily but cannot recall whether Kayla was carried to the room. Teacher #1 thinks Kayla may have been in the room for a period ranging from 30-40 minutes. Teacher #1 can't recall if she observed Kayla through the window. Teacher #1 doesn't know why Kayla wet her pants as she had never done that on any other occasion. Teacher #1 stated that no Individual Education Plan meeting followed this incident and that no changes were made to Kayla's Individual Education Plan.

Teacher #1 said that students who want to be let out of the time out room are not always let out, especially if the student is acting aggressively. Students must sit calmly in front of the door with their legs crossed for a minute per year of their age before they may exit the time out room. If the student does not remain calm for that entire period, the clock starts over. Teacher #1 states that staff absolutely will hold the door to the time out room shut if a student is being aggressive. Teacher #1 stated that there is no maximum amount of time a student may spend in the time out room and that individual circumstances will dictate how long a student spends in the time out room. Teacher #1 stated that she did receive a complaint from a school social worker and Julie Rhuby about the use of the time out room. Teacher #1 didn't take any action in response to these complaints.

Teacher #1 recalls an incident involving A.T. climbing on the door knob in the time out room. Teacher #1 saw A.T. climbing on the door knob and went in to the time out room where A.T. proceeded to hit Teacher #1 over the head with a ceiling panel. A.T. was then restrained and school security was called to respond. Teacher #1 stated no Individual Education Plan meeting followed this incident.

When asked about the effectiveness of the time out room for certain students, Teacher #1 stated the use of the time out room was ineffective for A.T., Christopher Spiliotis and Alex Gilliland. Teacher #1 stated that she never asked for help from the district or an outside expert to address these students' behaviors.

Teacher #1 stated the school does not seek parent permission to use the time out room. Teacher #1 said all parents see the time out room before it is used. The use of restraints is not detailed in a student's Individual Education Plan but instead generally referenced in a student's IEP. Teacher #1 stated staff does not describe the use of restraints because they assume the parents already know about these types of interventions. Teacher #1 also stated the school does not conduct any risk assessments that would reveal medication or secondary health issues that may affect a student's response to a restraint.

**Administrator #1:**

Administrator #1 is an administrator at Will Rogers Elementary. Administrator #1 stated he has an active role with the students and staff in the learning lab. Administrator #1 reported that he is contacted by Learning Lab staff anytime there is a lengthy time out or restraint.

In regard to the incident involving A.T. hitting Teacher #1 with a ceiling panel, Administrator #1 called district security who responded and ultimately pressed charges against A.T. for her behavior. There was no Individual Education Plan meeting that followed this incident.

Administrator #1 stated that Christopher Spiliotis spent a lot of time in the time out room because he had severe emotional issues.

Administrator #1 was aware that Alex Gilliland engaged in self-injurious behavior and that he would make himself bleed. Administrator #1 said staff should use a restraint technique to keep a student safe in that kind of situation.

Administrator #1 described a good time out as a student sitting calmly in front of the time out room door.

Administrator #1 said parent permission is given by signing off on the Individual Education Plan and tours of the time out room are provided. Administrator #1 said a risk assessment to determine the impact of medication or a secondary health risk is always done prior to the use of a restraint but he could not produce any kind of risk assessment form or proof that such risk assessments do occur.

Administrator #1 did receive a complaint from a school social worker about the use of the time out room. Administrator #1 stated that the complaint was a personnel issue and the social worker was not viewed as a team player.

**Social Worker #1:**

Social Worker #1 was a social worker at Will Rogers Elementary last school year. Social Worker #1 made on-going complaints about the use of the time out room starting in September of 2005 to: Teacher #1; Administrator #1; the district director of Special Education; and law enforcement. Social Worker #1 complained about the excessive use of the time out room and the excessive time that students spent in the time out room. When Social Worker #1 spoke with Teacher #1 and Administrator #1, she claims neither were aware of the Colorado Department of Education's rules regarding the use of restraint, seclusion or time out and that she had to provide each of them a copy of the rules.

Social Worker #1 said that it was rare that students went to the time out room voluntarily and they were normally physically forced. Additionally, Social Worker #1 stated that staff did not monitor students in the time out room and would instead socialize.

After complaining to the administrator #1 about the use of the time out room, Social Worker #1 was told she was no longer allowed to intervene in situations involving students in the Learning Lab. Social Worker #1 does not think that Individual Education Plan meetings were ever held after students were restrained or secluded.

## **VI. FINDINGS AND CONCLUSIONS**

District Eleven 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 District Eleven 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/seclusion<sup>10</sup> under The Protection of Persons from Restraint Act<sup>11</sup> apply when restraint and/or seclusion take place in a school setting.

The Colorado Department of Education'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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup>

### **A. No Basis for the Use of Restraint/Seclusion:**

Will Rogers Learning Lab staff has violated the majority of the applicable restraint and seclusion rules. The most significant departure from the rules is the lack of support for the use of restraint or seclusion. Information provided to The Legal Center fails to show serious probable and imminent threat of injury to self or others that would have justified the use of restraint or seclusion in all but a very few instances. Additionally, interviews with staff, students and parents did not provide information that emergency circumstances served as the basis for staff to engage in the use of restraint and seclusion.

---

<sup>10</sup> See 1 Colo. Code Regs. 301- 45.

<sup>11</sup> See Colo. Rev. Stat. § 26-20-101, *et seq.*

<sup>12</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.01(1)

<sup>13</sup> See 34 C.F.R. 300.530(i)(3)

<sup>14</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.01(4)

Staff most often utilized restraint and seclusion when students were either non-compliant or in an escalated state, neither of which rises to level of an emergency. In the instances where students physically engaged staff, nothing 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. In many circumstances a student would not physically engage staff until after the student was threatened with time in the time out room.

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

**B. Failure to Engage in Effective De-Escalation:**

Staff is required to exhaust less restrictive alternatives prior to using restraints or seclusion.<sup>15</sup> Learning lab staff failed to engage in effective de-escalation prior to utilizing restraint and seclusion, based on information provided by staff and students. As reported, students would engage in defiant behavior and were secluded or restrained without the benefit of de-escalation strategies. Staff also failed to seek support from the district or outside experts in identifying de-escalation strategies that would work for any one of these students.

**C. Time Limitations Not Followed:**

The use of restraint or seclusion may only be utilized for the time period necessary to eliminate the emergency.<sup>16</sup> Each student was left in seclusion on several occasions well beyond the time necessary to eliminate any alleged emergency. Learning lab staff required a student take a “good time out” before they were allowed leave the time out room. This requirement forces a student to sit, legs crossed, on the floor, in front of the time out room door, silently and calmly for one minute for each year of the student’s age. If the student fails to comply completely with this requirement, the clock starts over. The “good time out” requirement violates the seclusion rule that states seclusion must end once the emergency is over.

Further, staff failed to keep track of time for the majority of time students spent in the time out room. Based on staff’s practice of secluding students for time periods of up to two hours, one can only assume that these undocumented time periods exceeded the time limitations staff should have followed.

---

<sup>15</sup> See 1 Colo. Code Regs. 301- 45 – 2620 – R- 2.01(2)

<sup>16</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.01(3)(b)

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

A student's Individual Education Plan must address the specific circumstances, procedures and staff involved if there is a possibility that restraint/seclusion might be utilized.<sup>17</sup> Each Individual Education Plan failed to comply with this requirement.

**E. Failure to Hold IEP Meetings:**

An Individual Education Plan 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.<sup>18</sup> No Individual Education Plan meeting was held after any of these incidents, nor were any changes made to any of these student's behavior support plans as a result of the on-going use of restraint and seclusion. Staff had several opportunities to consult with parents, district staff or outside behavior experts, but failed to take such steps.

**F. 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.<sup>19</sup> Will Rogers staff did not act in compliance with these strict time requirements. Incident reports were not provided to parents in writing.

**G. Failure to Obtain Parent/Guardian Consent:**

When staff anticipates that it will utilize restraint or seclusion, written parent/guardian permission must be obtained.<sup>20</sup> Signing an Individual Education Plan that states CPI techniques may be utilized in an emergency does not fulfill this requirement. 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 which the consent is being sought.<sup>21</sup> The total failure to discuss the use of restraint and seclusion in any detail in these students' Individual Education Plans or behavior support plans, coupled with the absence of a restraint or seclusion consent form, illustrates that parent/guardian consent was not given to restrain or seclude students.

**VI. CONCLUSION**

The information produced in the course of this investigation clearly supports that Kayla Rhuby, Michael Gates, Christopher Spiliotis, Alex Gilliland and A.T. have been

---

<sup>17</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.02(1)(a)(v)

<sup>18</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R- 2.05(1)

<sup>19</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R- 2.04

<sup>20</sup> See 1 Colo. Code Regs. 301- 45 – 2620-R-2.02(1)(a)(viii)

<sup>21</sup> See 34 C.F.R. 300.9

repeatedly subjected to improper restraint and seclusion in violation of the Colorado Department of Education restraint/seclusion rules. Further, based on the number of occurrences and the egregiousness of each incident pertaining to each of these students, The Legal Center believes it is likely that improper use of restraints and seclusion exists on a systemic level in special education programs within District Eleven.

Consequently, the Legal Center asks that District Eleven and Will Rogers Elementary submit a corrective action plan that is consistent with The Legal Center's recommendations by April 25, 2007, 45 days from the receipt of this report. Once agreement on the action plan has been reached between The Legal Center, District Eleven and Will Rogers Elementary school, 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 District Eleven with its monitoring plan within 30 days of reaching an agreement on the corrective action plan.