



The Near-Death of Brennan Long: Autopsy of an Abusive Restraint



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TABLE OF CONTENTS

Executive Summary

The Near-Death of Brennan Long

The Official Investigations

P&A's Investigation and Methodology

Kentucky's Rules for Restraining Students in School

Williams Violated State Law

- **Brennan was not an imminent risk of harm**
- **Williams restrained Brennan to force compliance**
- **Restraint was a substitute for appropriate supports**
- **Williams did not use less restrictive interventions**
- **Williams used excessive force**

Additional Concerns

- **Lack of Transparency**
 - **Missing and destroyed evidence**
 - **Misrepresentations**
- **Lack of Training**
- **Culture of Restraint**

Conclusions

Recommendations

Executive Summary

On November 11, 2014, Sherman Williams, an aide at Brennan Long’s school, broke Brennan’s femur bones. Brennan, who was 16 years old and has autism, suffered severe injuries—he spent eight days in the Pediatric Intensive Care Unit at Kosair Children’s Hospital¹ where doctors surgically implanted titanium rods in each of his legs. He suffered multiple complications, including a partially collapsed lung and massive blood loss. After his discharge from Kosair, he spent the next 25 days in a rehabilitation facility. Brennan’s injuries were so severe that Kosair’s Forensic Medical Team and Child Protective Services both classified his case as a near-fatality.

Kentucky Protection & Advocacy learned of Brennan’s injuries during a May 16, 2016 meeting of the Kentucky Child Fatality and Near-Fatality External Review Panel. The Panel is a statutorily created oversight committee that conducts comprehensive reviews of all deaths and near-deaths of children where abuse or neglect is suspected.² The Panel expressed grave concerns that—despite the “horrific” nature of Brennan’s injuries—Child Protective Services declined to substantiate abuse because they could not determine the mechanism of Brennan’s injuries and the Commonwealth Attorney’s office declined to prosecute.

The Panel learned Brennan was injured at school and the only witness accounts taken were those of school staff members. Brennan attended The Binet School, a specialized school in the Jefferson County Public School system that serves students in elementary through high school with significant learning, developmental, or behavioral problems and whose “learning is frequently obstructed by the inability to process and receive information.”³ Brennan, who is verbal but has limited communication skills, was never interviewed. Brennan’s seven classmates, who have varying levels of verbal impairments, were never interviewed. Williams, in a written statement provided to the school, stated he placed Brennan in a “cradle hold” when he could not de-escalate Brennan’s aggressive behavior. Staff corroborate this story, although a witness has since come forward and

¹ Kosair Children’s Hospital has since been renamed Norton Children’s Hospital.

² KRS 620.055

³ Kentucky Department of Education School Report Card, 2014-15 School Year, Binet School, <https://applications.education.ky.gov/src/Profile.aspx>, visited November 15, 2016

claims Brennan was having no unusual or aggressive behaviors that day and she saw Williams positioned on top of Brennan during the restraint.

The type of hold described by Williams and staff, however, does not place any pressure on the student's legs and could not have caused Brennan's injuries.⁴ Williams retained an attorney and has declined to make any further statements or provide further information. Without an adequate explanation of *how* Brennan was injured, investigative agencies declined to substantiate abuse. Williams returned to his position as an aide at Binet.

Protection and Advocacy opened an investigation after the Panel meeting. We conclude Williams' restraint was improper and violated state law. Brennan did not present an imminent risk of harm when restrained. Rather, Williams restrained Brennan to force him to comply with his directions. Williams failed to use appropriate behavioral supports and less restrictive interventions. Williams used excessive force to restrain Brennan. For these reasons, we additionally find Williams' actions constitute abuse as defined by federal law.

⁴ March 23, 2015 Forensic Medicine Consult Report, Addendum #1; December 23, 2015 Report of Dr. Michael Voor, Ph.D.

The Near-Death of Brennan Long

Brennan’s family moved to Louisville, Kentucky from Virginia in June 2014. Brennan, who was diagnosed with autism at age seven, had attended The Faison School in Virginia. The Faison School is a specialized school for individuals with autism that operates year round.⁵ At Faison, Brennan made significant progress both socially and academically. When the Longs moved to Louisville, they immediately enrolled Brennan in Jefferson County Public Schools (JCPS) so he could attend summer school through Extended School Year services.

That summer, Brennan received Extended School Year services at Churchill Park—a school for children in special education—and reportedly did well.⁶ In the fall, Brennan’s parents placed him at The Binet School, which is a special needs school that serves JCPS students in elementary through high school who have significant learning, developmental, or behavioral problems.⁷ Binet says that the school “provides successful learning experiences through a highly structured and supportive environment.”⁸

Brennan’s parents both say November 11, 2014 started out as a normal day.⁹ But at around 10:00 a.m., Binet Principal Rhonda Hedges called Brennan’s father, Brian Long, and told him Brennan had injured his leg and an ambulance was on the way. Mr. Long immediately drove to Binet and arrived before the ambulance left; he rode to Kosair in the back of the ambulance with Brennan.¹⁰

⁵ The Faison Center, <http://faisoncenter.org/>, visited November 14, 2016

⁶ Educational Records of Brennan Long, obtained from JCPS on September 3, 2016

⁷ Educational Records of Brennan Long, June 5, 2014 ARC Summary, obtained from JCPS on September 3, 2016

⁸ Kentucky Department of Education School Report Card, 2014-15 School Year, Binet School, <https://applications.education.ky.gov/src/Profile.aspx>, visited November 15, 2016

⁹ January 7, 2015 Interview of Brian Long by LMPD Detective Eric Boswell

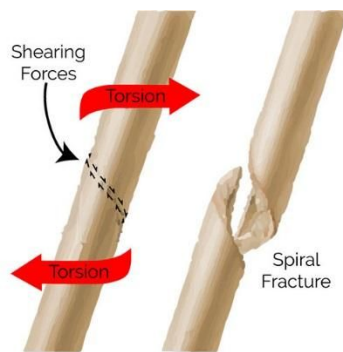
¹⁰ Id.

Kosair diagnosed Brennan with two broken femurs. The femur, or upper leg bone, is the largest and strongest bone in the human body. Dr. Melissa Currie, a forensic pediatrician who specializes in child abuse and who sits on the Review Panel, called Brennan's injuries "highly unusual" and said that "[t]hese were very severe injuries; unlike anything I've ever seen."¹¹

"These were very severe injuries; unlike anything I've ever seen"

-Dr. Melissa Currie-

Neither was a simple break. Brennan's left femur bone had a spiral fracture. A spiral fracture occurs when the bone is bent and twisted at the same time. Brennan's right femur had a type of comminuted fracture known as a butterfly fracture. A comminuted fracture indicates more than two breaks and a butterfly fracture is a break where two fracture lines meet and to create a large wedge-shaped fragment that looks like a butterfly. Comminuted fractures require an extreme amount of force and energy to fragment the bone and this type of break is associated with high-impact traumas such as car accidents or falls from great heights.¹²



Spiral Fracture



Butterfly Fracture

Brennan underwent surgery the next day to insert titanium rods into each leg to repair the damage. He suffered multiple complications during his hospitalization: he required multiple blood transfusions; he had a partially

¹¹ Currie, Dr. Melissa, Panel Member and Forensic Pediatrician, Statement to the Child Fatality and Near-Fatality Review Panel Meeting (May 16, 2016)

¹² Femur Shaft Fractures, American Academy of Orthopaedic Surgeons, <http://orthoinfo.aaos.org/topic.cfm?topic=A00526>, visited November 15, 2016

collapsed lung; and he developed acute pancreatitis. Brennan spent eight days in the Pediatric Intensive Care Unit at Kosair and an additional 25 days in a rehabilitation facility. Although Brennan has learned to walk again, his feet are permanently turned out and he walks with a slight limp. He has also been diagnosed with Post-Traumatic Stress Disorder and becomes extremely anxious when anyone stands behind him or approaches him from behind.

The Official Investigations

Kosair's Forensic Medical Team and Child Protective Services (CPS) immediately opened investigations into Brennan's injuries. Louisville Metro Police Department's Crimes Against Children's Unit (LMPD) declined the case, deferring to the school district to investigate the incident.¹³ After Dr. Currie and JCPS voiced significant concerns that the severity of the injuries required an independent investigation, LMPD police detective Eric Boswell was assigned to the case and an investigation was opened.

On January 2, 2015, the Kosair Forensic Medical Team, which does not have independent authority to collect evidence beyond a review of the medical records and those documents provided to them by outside agencies, concluded that based on their records they could not determine how Brennan's injuries occurred and declined to substantiate abuse.¹⁴ On May 12, 2015, the Commonwealth Attorney's office declined the case for prosecution and LMPD closed its investigation.¹⁵ On May 18, 2015, CPS, also citing the inability to establish the mechanism of Brennan's injuries, declined to substantiate abuse.

On May 18, 2016, exactly one year after CPS declined to substantiate abuse, Brennan's case was reviewed by Kentucky's Child Fatality and Near Fatality External Review Panel. Panel members at that meeting expressed deep concern that the investigative agencies closed Brennan's case before the cause of Brennan's injuries was determined. The Panel kept its review open to further determine the appropriateness of the investigations into Brennan's injuries.

¹³ Yetter, Deborah & Ross, A., Louisville Courier-Journal, Expert Finds JCPS Broken Leg Case Abuse, (August 17, 2016), <http://www.courier-journal.com/story/news/politics/2016/08/17/expert-finds-icps-broken-leg-case-abuse/8799466/>, visited November 15, 2016

¹⁴ Currie, Dr. Melissa & Curtsinger, C., Forensic Medicine Consult Report, PRM 2014-895, January 2, 2015

¹⁵ Casenote, Detective Boswell, Louisville Metro Police Department

The Panel reconvened on July 18, 2016 and continued its discussion of Brennan's injuries. Brennan's parents attended the meeting and Mr. Long addressed the Panel. He provided the expert opinion of biomedical engineering expert, Michael Voor, Ph.D., who concluded it would take 544 pounds of force applied to each of Brennan's legs one after the other or in excess of 1,000 pounds of force simultaneously to both legs to cause his injuries.¹⁶ After considering the new information, the Panel classified Brennan's injuries as caused by "abuse."¹⁷ The Panel recommended CPS and LMPD review and possibly reopen their investigations to determine how Brennan's injuries occurred.¹⁸

On August 13, 2016, after considering new information, including Dr. Voor's expert report, Kosair's Forensic Medical Team revised its report and concluded that Brennan's injuries were caused by abuse. The Team, led by Dr. Currie, requested law enforcement and CPS re-open their investigations and requested that the appropriate authorities investigate the culture at Binet school "as an issue of child safety."¹⁹

"These injuries are diagnostic of near-fatal child physical abuse."

Forensic Medicine Consult Report

CPS and LMPD have re-opened, but at the publication of this report have not concluded, their investigations. LMPD has also opened an internal investigation into the LMPD's initial investigation of this case.

The Longs reached a \$1.75 million settlement from JCPS for Brennan's injuries, but they have pursued the continued investigation into Brennan's injuries to determine how he was injured.²⁰ They are particularly concerned by the fact that Williams continues to work as an aide in the same school and classroom where Brennan was injured.

¹⁶ Voor, Ph.D., Michael, Expert Report, December 23, 2014

¹⁷ Yetter, Deborah, Louisville Courier-Journal, Ky panel: JCPS Student's broken legs "abuse", July 18, 2016, <http://www.courier-journal.com/story/news/politics/2016/07/18/ky-panel-jcps-students-broken-legs-abuse/87239852/>, visited November 14, 2016

¹⁸ Id.

¹⁹ Currie, Dr. Melissa & Curtsinger, C., Forensic Medicine Consult Report, PRM 2014-895, August 13, 2016, Addendum #2

²⁰ Interview with Brian and Kim Long, July 14, 2016

P&A's Investigation and Methodology

P&A has the authority to investigate allegations of abuse and neglect of individuals with intellectual and developmental disabilities under the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (PADD Act), a federal law. The PADD Act defines abuse as:

“any act or failure to act which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with developmental disabilities, and includes but is not limited to . . . the use of excessive force when placing such an individual in bodily restraints [and] the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations. . . .”

²¹

In light of the severity of Brennan's injuries and the failure of the investigative agencies to explain those injuries or definitively rule out abuse, P&A opened an investigation.

P&A reviewed the CPS casefile, the LMPD casefile, Brennan's educational records, Brennan's medical records, the forensic medical consult report, the expert biomedical engineering report of Dr. Michael Voor, relevant statutory and regulatory law, JCPS policies and procedures, and JKM Safe Crisis Management policies and training materials. P&A also reviewed audio recordings and taped interviews of JCPS staff, EMS responders, and Brennan's parents and grandmother conducted by LMPD. P&A interviewed Dr. Melissa Currie, Joseph Mullin, Jr. (owner of the safe crisis management program used by Jefferson County Public Schools and in which Williams was trained), Dr. Voor, J. Doe (a witness to the restraint), and Brennan's mother and father.

Binet staffs' official written statements and interviews with CPS and LMPD are consistent: Brennan was agitated and aggressive from the time he got on the bus that morning. He was pushing into staff and peers, biting himself on the arm, mouthing recycling bins as the class gathered them, pushing the

²¹ 45 C.F.R. § 1326.19

recycling bins into others, getting into others' faces, putting his hands down his pants, not staying in his assigned area, hitting and kicking, and repeatedly pushing his chair away from the table. Williams was not assigned to be in Brennan's class, but he came in the classroom when he saw Brennan's teacher escorting him to the classroom in an extended arm restraint (although Brennan's teacher says Brennan was calm when they returned to the room). There are varying accounts of Brennan's behavior in the classroom, with the only consistently reported behavior at the time of the restraint was that Brennan was pushing his chair back from the table. Staff maintained Williams used verbal redirection and proximity control to de-escalate Brennan with no success. Williams restrained Brennan as he sat in his chair and ultimately took him to the floor.

Some staff reported hearing a loud noise when Williams took Brennan to the ground and others said there was no noise, but that Brennan pushed back against Williams for 30-60 seconds before he suddenly stopped resisting. Williams immediately stopped the restraint, examined Brennan's legs, and called a "Code 4" requesting immediate assistance from the school nurse.

The problem is that staffs' explanation of Williams' actions does not explain Brennan's injuries. Staff claimed that Williams placed Brennan in a cradle hold while he was sitting in his chair and then pulled Brennan up from the chair, kicked the chair out of the way, and transitioned Brennan to the ground in a cradle hold. Williams' co-worker Susy Clearwater reported to CPS that "at the time she thought that it was such a 'beautiful take down' because he did such a good job," and that she has a clear view of the entire takedown and no force was used.²²

As demonstrated by Charlie Cheek, an instructor with JKM Training in a video for The Courier-Journal,²³ the cradle hold (or the seated kneeling cradle assist once on the floor) is achieved by nudging a student slightly off balance and then stepping back to lower the student to the floor. As staff described, there is absolutely no pressure or force placed on a student's legs.

²² November 25, 2014 Interview of Susy Clearwater by CPS Caseworker Barbara Scheer

²³ Yetter, Deborah & Ross, A, JCPS pays \$1.75M after boy's legs broken, May 27, 2016,

<http://www.courier-journal.com/story/news/education/2016/05/27/jcps-pays-175m-after-boys-legs-broken/84916428/>, visited November 14, 2016



JKM instructor Charley Cheek demonstrates "seated-kneeling-cradle-assist." Alton Strupp, CJ



JKM instructor Charley Cheek demonstrates "seated-kneeling-cradle-assist." Alton Strupp, CJ



JKM instructor Charley Cheek demonstrates "seated-kneeling-cradle-assist." Alton Strupp, CJ

But force was necessary to break Brennan's femur bones. P&A reviewed the Expert Report by Dr. Michael Voor. Dr. Voor is a biomedical engineer at the University of Louisville. He founded the Orthopaedic Bioengineering Laboratory at the University of Louisville School of Medicine Department of Orthopaedic Surgery. He was retained by the Longs to determine if Brennan's injuries could have been caused by the restraint as described by Binet staff. Dr. Voor's Expert Report notes that it would have required in excess of 500 pounds of force applied separately to each of Brennan's femur bones to break them consecutively or in excess of 1,000 pounds of force to break them at the same time. He concluded with a reasonable degree of scientific certainty that Brennan's legs could not have been broken in the manner described by staff.

P&A interviewed J. Doe, a former JCPS aide who was in the room at the time of the restraint. Doe spoke to P&A on the condition of anonymity in this report, but has since been interviewed by CPS. Doe's account contradicts much of the witness accounts by other staff. Doe stepped forward after multiple media outlets reported Brennan's story. Doe recalled that Brennan was acting normally that day. As an individual with autism, Brennan did typically engage in behaviors such as getting into other's space, loud vocalizations, and mouthing object, but Doe denied that Brennan was being aggressive or unusually agitated the morning he was injured. Doe did not perceive that Brennan was a risk of harm to staff or other students.

Doe also contradicted staff's account that Brennan was placed in a "cradle hold." Doe did not see the actual take-down, but heard a loud "pop" and looked up to see Williams on top of Brennan. Brennan was sitting on the floor, folded forward with his legs "crisscross applesauce" underneath him. Williams was on top of Brennan with his bodyweight—an estimated 300 to 350 pounds—fully on top of Brennan.

Kentucky's Rules for Restraining Students in School

The definition of abuse under the PADD Act includes the use of excessive force in a restraint and the use of restraints in contravention of Federal and State laws and regulations.²⁴ Despite the introduction of proposed legislation repeatedly the last three years, the federal legislature has failed to pass legislation limiting the use of restraint in public schools.

In January 2009, P&A’s parent organization, the National Disability Rights Network, published “School Is Not Supposed To Hurt,” documenting national restraint- and seclusion-related injuries and deaths.²⁵ In May of that year, a

Government Accountability Office report revealed “hundreds” of cases of abuse—including deaths—due to the misuse of restraint and seclusion. That report also revealed that restraint and seclusion were used on a disproportionate number of children with disabilities. Two months later, Education Secretary Arne Duncan

A Government Accountability Office report documented “hundreds” of cases of abuse—including deaths—due to the misuse of restraint and seclusion in public schools.

responded to these troubling reports by urging states to regulate the use of restraint and seclusion in schools “to ensure that every Student is safe and protected.” The Kentucky Department of Education responded to these concerns by adopting policy guidance on the use of restraint and seclusion in public schools and convened an advisory group to establish state regulations regulating the use of restraint and seclusion in Kentucky’s schools.

In February 2012, Kentucky’s regulation of the use of restraint and seclusion in public schools became law. The regulation, deemed advisable for the physical welfare and safety of public school children,²⁶ outlines the circumstances in which a teacher or school staff member may use physical restraint on a student. That regulation prohibits the use of restraint for punishment or discipline, to force compliance, or as a substitute for appropriate behavioral supports.²⁷

²⁴ 45 C.F.R. § 1326.19

²⁵ National Disability Rights Network, School Is Not Supposed To Hurt, January 2009, <http://www.ndrn.org/images/Documents/Resources/Publications/Reports/SR-Report2009.pdf>, visited November 15, 2016

²⁶ 704 KAR 7:160

²⁷ 704 KAR 7:160 Section3(1).

The regulation further restricts the use of physical restraints to only those situations where:

“The student’s behavior poses an imminent danger of physical harm to self or others . . . [and] less restrictive behavioral interventions have been ineffective in stopping the imminent danger of physical harm to self or others, except in the case of a clearly unavoidable emergency situation posing imminent danger of physical harm to self or others”.²⁸

The law also specifies that when implementing a physical restraint, staff may use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.

The use of restraint in schools is also regulated by KRS 503, which provides a criminal statutory privilege for the use of force in the classroom. The statute justifies the use of force in the classroom, but does not provide an unlimited right to the use of force. There are three limitations. First, the justification is unavailable where the staff’s decision to use physical force or the amount of force used is wanton or reckless.²⁹ Second, staff must understand facts and circumstances material to his decision to use physical force.³⁰ Third, staff cannot wantonly or recklessly injure or create a risk of injury to the student.³¹

Williams’ Restraint Violated State Law

Physical restraints are not evidence-based practices and there is growing research that shows that restraints do not change behavior and they may actually increase aggression in children.³² Restraint is an emergency intervention that should be used as a response to a situation in which the child would otherwise hurt themselves or others. For this reason, Kentucky

²⁸ 704 KAR 7:160 Section 3(3).

²⁹ KRS 503.120

³⁰ Id.

³¹ Id.

³² Magee, Sandy K. & Ellis, J., The Detrimental Effects of Physical Restraint as a Consequence for Inappropriate Classroom Behavior, Journal of Applied Behavior Analysis, 501, (Winter 2001); <http://www.cehd.umn.edu/ceed/publications/tipsheets/preschoolbehavior/physrest.pdf>, visited November 15, 2016

law prohibits the use of restraint: 1) unless the student presents an “imminent risk of physical harm” to himself or others; 2) to force compliance; 3) as a substitute for appropriate behavioral interventions; 4) unless less restrictive interventions are ineffective; and 5) with the amount of force in excess of that reasonably believed to be necessary to protect the student or others from imminent danger of physical harm.³³

1. Brennan was not an imminent risk of physical harm to anyone.

The restraint happened during Brennan’s Life Skills class, which went from 9:05 a.m. to 9:55 a.m. The class, eight students total, spent that morning collecting recycling bins. Brennan’s teacher, Seth Stillman, followed a strict schedule in which the students lined up in the hall and then walked to each room; Stillman would get the recycling bin and give it to a student. They would collect three bins and return to the classroom. Then they would go back and collect more bins until they had collected all recycling in the school.

Stillman noted that Brennan had been unusually agitated and aggressive all morning. He said Brennan was getting in people’s faces, putting his hands down his pants, biting his arm, and pushing toward staff. Stillman said Brennan was biting the recycling bin, which he categorized as “another form of aggression.”³⁴ Within the first ten minutes of class, Brennan pushed and shoved one of the aides and Stillman escorted him in an extended arm hold (a restraint that was not documented) to the time out room. Brennan calmed down within 30 to 60 *seconds* of being in the time out room and he rejoined his class.

Brennan’s class returned to the classroom at approximately 9:50 a.m. Williams came into the room although Stillman was not sure why. Brennan continued to get out of his seat and push his chair back from the table. Stillman, who was then completing paperwork, heard staff redirect Brennan to stay in his seat and “have safe hands.” Stillman characterized Brennan as being noticeably aggressive, exhibiting all of the described behaviors at once (pushing chair back, getting in people’s faces, loud vocalizations). He looked up and saw Williams standing behind Brennan, who was pushing his chair into Williams. He looked up about a minute later and they were on the floor with Brennan’s legs in front of him in a “scripted” cradle hold position.

³³ 704 KAR 7:160 Section 3(1)

³⁴ November 25, 2014 Interview of Seth Stillman by LMPD Detective Boswell

The staff interviewed repeatedly characterize Brennan's behaviors of mouthing the recycling bin, making loud vocalizations, getting up from his chair, pushing his chair away from the table, putting his hands in his pants, and biting his own arm as "aggressive." Getting up from a chair, putting your hands down your pants, and biting on a recycling bin—even if done collectively—are not aggressive behaviors without some other behavior that conveys a threat of violence or physical assault. Staff did not identify any behavior that, by its nature or intensity, conveyed the requisite threat of violence of assault.

Further, the decision to restrain a student must be based on that student's *imminent* risk of physical harm to himself or someone else. Stillman took Brennan to time out because he was pushing and shoving an aide at the beginning of class, but that prior behavior is not sufficient basis for imposing the restraint at the end of class. Examining accounts of Brennan's behavior immediately before the restraint, it is clear that Brennan did not present the requisite "imminent risk of physical harm" to justify the restraint.

Binet aides Susy Clearwater and Pam Chesher, who witnessed the restraint, participated in video re-enactments for CPS. Their accounts differ, but Brennan did not present a risk of physical harm under either, and both accounts support clearly show Williams' actions were inappropriate and likely escalated Brennan's behaviors.

In her written statement, Susy Clearwater says that when Brennan returned from recycling, he could not stay in his seat, , was getting in other's faces and had bite marks on his arms from self-abuse. She says Williams came behind Brennan and used proximity control and that then "B[rennan] became aggressive; jumping up, pushing and kicking chair."³⁵ Clearwater demonstrated Williams' use of proximity control for the CPS Investigator in the video re-enactment:

³⁵ November 11, 2014 Written Statement of Susy Clearwater



Clearwater demonstrating Williams' use of proximity control

Proximity control is a technique in which a teacher stands near or next to a student who is off task to encourage student to become aware of the behaviors and self-correct.³⁶ The move demonstrated by Clearwater is not proximity control; Williams was not just standing next to or near Brennan. Instead, he reduced Brennan's ability to move. Kentucky law defines a physical restraint as:

“a personal restriction that immobilizes or reduces the ability of a student to move the student's torso, arms, legs, or head freely, but does not include:

- (a) Temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a student to move voluntarily to a safe location;
- (b) A behavioral intervention, such as proximity control or verbal soothing, used as a response to calm and comfort an upset student;
- (c) Less restrictive physical contact or redirection to promote student safety; or
- (d) Physical guidance or prompting when teaching a skill or redirecting the student's attention.³⁷

Proximity control, when done correctly, is not a restraint, but a reduction of movement—such as the restriction Clearwater demonstrated Williams' used on Brennan—is a physical restraint.

Brennan being out of his seat and pushing his chair getting out of his chair do not arguably present an imminent risk of harm justifying the use of restraint.

³⁶ <https://sped-843.wikispaces.com/Proximity+Control>, visited November 14, 2016

³⁷ 704 KAR 7:160 Section 1(10)

Furthermore, Williams came up behind Brennan and initiated the restraint *while Brennan was sitting in a chair* and no staff allege that other students or staff were near him. Even if Brennan's could reasonably be held to have created a risk of harm to others, at the time Williams came up behind Brennan and initiated the restraint those behaviors—and the requisite risk of harm—had passed.

Aide Pam Chesher's written statement, interviews, and video recreation of the restraint are even more troubling. She confirms that Brennan's behaviors did not create an imminent risk of harm for himself or others, but that Williams restrained Brennan because he would not stop pushing his chair back from the table. In her written statement, she recalled:

We went back to Lifeskills and Brennan seemed agitated again. He was not following directions. He was pushing his chair back to the stove and we asked him to come up to the table. He did come back to the table, but he continued to push himself onto the stove [which was off]. At that time, Mr. Williams came into Lifeskills and told him to get up to the table. Brennan started to push his chair back and Mr. Williams gave Brennan the instruction to stop getting up and pushing his chair back. Mr. Williams put Brennan in a cradle hold [in the chair] and no force was observed.³⁸

Williams put Brennan in a cradle hold in his chair for continuing to push his chair back from the table. Then, when he released Brennan from the restraint, Chesher demonstrated how Brennan began to "hit" Williams. According to Chesher, Brennan "hit" at Williams once and Williams said, "Stop." He hit at Williams again and Williams said, "No." He hit at Williams a third time and he said, "Do it again and I will take you down." Brennan hit at Williams again and Williams took him to the floor.³⁹ While hitting is a behavior that can pose an imminent risk of harm, Chesher shows that Brennan was sitting in a chair at a table and that Williams was standing directly behind him. Brennan, without turning around, hits backward at Williams three times:

³⁸ November 18, 2014 Written Statement of Pam Chesher

³⁹ Id.



Chesher demonstrating how Brennan “hit” Williams

Brennan, hitting backward from a seated position, could not have generated enough force to reasonably be considered a risk of harm. And Williams, who was standing behind Brennan, needed only to lean to the left or take a single step back to prevent Brennan from making any contact at all.

We conclude that Brennan was restrained when he did not present an imminent risk of physical harm to himself or others. He was restrained ostensibly for being out of his chair (while sitting in a chair), for repeatedly pushing his chair back from the table, or for continuing to “hit” at Williams. Because none of these actions present an imminent risk of harm, the restraint was unlawful.

2. Williams restrained Brennan to force him to comply with his directions

Kentucky law prohibits the use of restraint “to force compliance or to retaliate.”⁴⁰ As described fully above, Williams restrained Brennan to force him to comply with either his demand to stay in his chair, to keep his chair at his table, or to stop “hitting” him.

Brennan’s educational record contains two relevant staff notes. One note, dated September 23, 2014, appears to summarize a conversation between Mr. Long and staff (the note does not identify the staff). Mr. Long emailed Principal Hedges at 4:09 p.m. with a request

⁴⁰ 704 KAR 7:160 Section 3(1)(b)

to discuss Brennan's behavior. He stated, "The yellow sheets don't seem to indicate any improvement. I need to be clear on what strategies are being used by the staff to help improve his yellow sheet behavior."⁴¹ Ms. Hedges responded at 4:57 p.m., "We have parent teacher conference on 7th do you want set up team meeting then? Let me know a good time."⁴² The note, however, stated, "We discussed that we have tried several times to work with him on pushing back from the table and redirection. Staff felt this is a game for Brennan."⁴³

The second, dated October 14, 2014, summarizes a parent teacher conference with Mr. Long and ECE Teachers Seth Stillman and Carrie Gabbard, and Principal Rhonda Hedges. It stated, "Staff discussed the greatest problem with Brennan is his pushing away from table." The note concluded that staff would like to revise Brennan's Individual Education Plan (IEP) and narrow its focus to "areas of concern." The parties agreed to set an ARC (a committee of educational professionals, parents, and others responsible for drafting the student's IEP), but the next ARC meeting was not held until December 5, 2014. According to the Conference Summary, an ARC was scheduled to have been held on November 12, 2014, but was cancelled due to Brennan's hospitalization.

While Brennan's educational record supports staff's assertions that Brennan engaged in mouthing objects, biting his arm, and getting into other's personal space, the fact was that Brennan's repeated refusal to keep his chair at his table and pushing back from his table was the behavior staff considered particularly problematic. This supports the conclusion Williams put Brennan in a cradle hold—one that broke both of his femurs—because Brennan failed to comply with his demand that Brennan stop pushing his chair away from the table and stop hitting backward at him. This is an inappropriate and illegal use of restraint in a public school.

3. Restraint was used as a substitute for appropriate supports.

⁴¹ Educational Records of Brennan Long, September 23, 2014 email from Brian Long to Rhonda Hedges, obtained from JCPS on September 3, 2016,

⁴² Id.

⁴³ Educational Records of Brennan Long, September 23, 2014 Staff Note, obtained from JCPS on September 3, 2016

Kentucky's law on restraints prohibits the use of restraints as a substitute for appropriate supports and requires staff to try less restrictive interventions before using restraint. These provisions are similar, but not identical. Behavior supports are strategies staff use to understand why a student is behaving a certain way (the function of the behavior) and to prevent, decrease, or eliminate that behavior. Behavioral interventions are strategies teachers can use to stop an unwanted behavior once it starts. Restraint is the most restrictive behavior intervention.⁴⁴

Brennan's teachers and staff had a behavior plan that clearly detailed strategies and supports they could use to prevent and respond to all of the behaviors that Brennan had that day; they failed to implement any part of that plan. The plan had been initially written by Brennan's school in Virginia, but it was reviewed and adopted as written by Binet on June 5, 2014 by the ARC. Under federal education law, Binet was responsible for ensuring that all staff and teachers who worked with Brennan were familiar with the plan and used the strategies to address Brennan's behavioral needs.

Brennan's plan identified six target behaviors: spitting; aggression (biting, hitting, kicking, pushing, scratching); self-injury (biting); loud vocalizations; inappropriate touching; and mouthing objects. The plan identified the underlying function of these behaviors to be attention seeking or automatic positive reinforcement (the behavior itself is reinforcing). The plan provided various strategies for staff to use to prevent the unwanted/target behavior as well as ways for staff to respond when Brennan exhibited one of the target behaviors.

If Brennan was having the behaviors described by staff, Brennan should have been given a picture schedule of activities he was to complete and a visual reminder of the rules and contingencies (what he needed to do/not do to earn rewards). Brennan should have carried a timer set to 5 minutes and he should have been given a reward—social praise and a Skittle, for example—if he did not have a target behavior before the timer went off. Brennan should also have earned tokens throughout the instructional period for following the rules. If Brennan exhibited a behavior, staffs' response should have been to point to the picture board with the rule Brennan broke

⁴⁴ JKM Training Manual, Section 7

and reset his timer for an additional five minutes and he should not have earned any tokens.

Brennan should have received all of these behavioral supports, but there is no evidence in the record to show he receive *any* of them. There is no mention of any of these supports or interventions in any of the staffs' witness statements or interviews. No staff noted that Brennan or staff used or even had a timer, gave Brennan any visual cues or reminders, or showed him a picture schedule of the class activities he was to participate in or a picture board with the rules. No staff mentioned a token system or Brennan losing tokens or re-enforcers for his behavior. Brennan's teacher did tell Detective Boswell that when recycling the class would complete three rooms and then "sometimes" he gave them a small, edible re-enforcer, but this strategy was class-wide, not consistent, and not tailored to Brennan's individual needs.⁴⁵

It appears staff primarily addressed Brennan's behaviors using verbal redirection. Brennan's teacher, Seth Stillman, told the LMPD Detective that staff had been "pretty much redirecting him all class long saying, 'Stay in your area' and 'Keep your hands to yourself.'"⁴⁶ But verbal redirection without the visual supports and consequences required by Brennan's behavior plan were not only ineffective, but, because the function of Brennan's behaviors was primarily attention,⁴⁷ likely served to *reinforce and increase* Brennan's use of these unwanted behaviors.

Staff also claim "proximity control" was also used to redirect Brennan that morning. Proximity control is a behavior strategy where the teacher walks or stands near or next to the student to encourage the student to self-correct his behavior (as opposed Clearwater's demonstration of "proximity control"). The staff's proximity and *attention to the student* draws that student's attention to their behaviors and motivates the student to behave. Generally, proximity control is used to address inattention and impulse behaviors. Like verbal redirection, proximity control was not a part of Brennan's behavior plan and, because it is based on the student *gaining the*

⁴⁵ November 25, 2015 interview of Seth Stillman by LMPD Detective Boswell

⁴⁶ Id.

⁴⁷ Educational Records of Brennan Long, February 3, 2014 Faison School Behavior Intervention Plan, obtained from JCPS on September 3, 2016

teacher's attention it would have reinforced Brennan's negative behaviors and increased the occurrence of those behaviors.

On June 4, 2014, JCPS adopted Brennan's behavior plan from The Faison School. In doing so, the school was obligated to actually provide Brennan with those supports and respond to negative behaviors in the manner set forth in the behavior plan. They failed to do so. Instead, the staff used interventions that were not only ineffective in addressing his behaviors, but actually served to reinforce and increase those behaviors. When Brennan exhibited unwanted (but not dangerous) behaviors and those two interventions inevitably failed, staff simply restrained Brennan. This failure to use the identified supports that would arguably have addressed Brennan's behaviors is a violation of the clear language of the law.

4. Williams did not use less restrictive interventions before restraining Brennan.

Kentucky prohibits the use of restraint unless "less restrictive behavioral interventions have been ineffective in stopping the imminent danger of physical harm to self or others, except in the case of a clearly avoidable emergency situation posing imminent danger of physical harm to self or others."⁴⁸ Williams violated this mandate when he restrained Brennan without trying to address Brennan's behaviors through less restrictive means but instead moving straight to a restraint.

As discussed fully above, Brennan's behavior plan identifies less restrictive, evidence-based interventions tailored to stop the identified behaviors. They include re-setting Brennan's timer, verbal and visual reminders of both the rules and consequences, and actual consequences in the form of loss of tokens and/or re-enforcers. Not one single staff reported—directly or anecdotally—using any of these interventions with Brennan that morning. Instead, they used verbal redirection and proximity control, which were not part of his behavior plan and would have served to reinforce his behaviors.

Brennan's teacher did report that he took Brennan to the time out room that morning and that it quickly and effectively

In time-out, Brennan
calmed down after
30 – 60 seconds.

⁴⁸ 704 KAR 7:160 Section 3(3)(d)

de-escalated Brennan. In fact, Brennan was able to return to the classroom after less than a minute in time out. And time out is particularly effective where, like Brennan, the student's behaviors are attention seeking. There was no clearly unavoidable emergency that required Williams to restrain Brennan and there is no explanation for why Williams did not escort Brennan to the time out room which had effectively de-escalated Brennan shortly before.

5. Williams Used Excessive Force to Restrain Brennan

The central question in the investigations of the Kosair Forensic Medical Team, LMPD, and CPS was the mechanism of the injury. They knew the restraint as described by Binet staff could not have caused Brennan's "horrific" injuries, but there was still a question of how Brennan's injuries occurred. Without an answer to this question, neither the forensic team nor LMPD nor CPS substantiated abuse.

Then the Longs presented an analysis completed by Dr. Michael Voor, a professor of biomedical engineering and orthopaedic biomechanics at the J.B. Speed School of Engineering at the University of Louisville and the Director of the Orthopaedic Bioengineering Laboratory at the University of Louisville School of Medicine. After reviewing the evidence and witness statements and accounts (he did not consider J. Doe's account in his opinion), he concluded the "forces and movement required to generate sufficient stresses in the bone tissue to cause these fractures could not have existed under the circumstance as they were described."⁴⁹

Dr. Voor also calculated the amount of force needed to break Brennan's femurs in the manner in which they were broken. It would take either 544 pounds of force applied first to one leg and then the other, or more than 1,088 pounds of force to simultaneously break both of Brennan's legs. Dr. Voor believes Brennan's legs were most likely broken simultaneously, which means that Williams used over 1,000 pounds of force when he restrained Brennan.

Brennan's legs were hit with 544 pounds of force separately or hit with twice as much force to both legs simultaneously.

-Dr. Voor Expert Report-

⁴⁹ Voor, Ph.D., Michael, Expert Report, December 23, 2014

After reviewing Dr. Voor's formal biomedical analysis and other documents, the Forensic Medical Team at Kosair drafted an addendum to its original report. The Forensic Team cited this information as a basis to revise their earlier finding and to substantiate abuse. The Team concluded:

The mechanism of injury that was described by witnesses is without question an implausible explanation for the type and severity of Brennan's injuries. Given that, these are consistent with an acute physical assault. Given that the assault was reportedly perpetrated by an individual who was in a caregiving role, these injuries are diagnostic of near-fatal child physical abuse.⁵⁰

Dr. Voor has since considered the account provided by J. Doe to determine if her account is consistent with Brennan's injuries. He concluded that it would be extremely difficult for Williams to generate the force needed to cause Brennan's injuries given the fact that he was standing behind Brennan. The nature of Brennan's injuries indicates there was pressure at both the knees and hips; yet he noted that Brennan had no other significant injuries, such as to his spine or hips. He hypothesized Brennan's legs may have been bent over or pushed up into an object like a table or chair. He believes we are still missing critical information that would explain what actually happened.

Under Kentucky Law, school staff "shall use only the amount of force reasonably believed to be necessary to protect the student or others from imminent danger of physical harm."⁵¹ To the extent Brennan did not present an imminent danger of physical harm, Williams acted unlawfully in the use of *any* force. And even if Brennan reasonably was an imminent danger for hitting Williams, we conclude that in excess of 1,000 pounds of force was not reasonably necessary for Williams to protect himself from a student who was sitting in a chair with his back to Williams swatting backward at him when he could have simply taken a step back from Brennan.

While we still do not know the exact mechanism of Brennan's injuries, like Kosair's Forensic Medical Team, we find the nature and extent of those

⁵⁰ Currie, Dr. Melissa & Curtsinger, C., Forensic Medicine Consult Report, PRM 2014-895, January 2, 2015

⁵¹ 704 KAR 7:160 Section 3(4)

injuries, combined with the fact Williams used more than 1,000 pounds of force in his restraint, are conclusive evidence Williams used excessive force.

Additional Concerns

In the course of our investigation, P&A was deeply disturbed by the lack of transparency and cooperation by Binet School staff; the lack of training for lower level support staff in the areas of disability and restraint; and a culture of restraint that appears to prevail at Binet.

Lack of Transparency

Brennan's injuries occurred on school grounds in a classroom where he and his peers are non-verbal or have limited communication abilities. As in any case where a child is injured at school, Brennan's parents were necessarily reliant on the school for information regarding what happened and why. But Brennan, although verbal, has limited communication skills and Binet maintained the students present when Brennan was restrained are all non-verbal. In this case, Brennan's parents were wholly reliant on the school to tell them what happened. Similarly, investigators with CPS and LMPD relied on the school to be transparent and forthcoming in their cooperation with the official investigations.

While on the surface it appears that Binet staff and administrators were cooperative with the investigations, a closer look reveals that perhaps the good faith reliance on the school to be forthcoming with evidence and information was misplaced.

First, we know that staffs' account of what happened does not account for Brennan's injuries. While all of the other witnesses in the room admitted that they did not see or have a clear view of what happened when Williams and Brennan went to the floor, Susy Clearwater told CPS that she had a "clear view of the entire hold and management from start to finish" and that it was a "beautiful takedown."⁵² Williams' written statement, while not detailed, does not provide additional detail. The forensic medical report calls the staff's account "without question an implausible

**Staff's account is
"without question an
implausible
explanation" for
Brennan's injuries.**

⁵² November 25, 2014 interview of Susy Clearwater by CPS Caseworker

explanation”⁵³ and Dr. Voor’s expert opinion agrees that staff explanations are “inconsistent” with Brennan’s injuries.⁵⁴ Transparency requires honesty and the scientific analysis clearly shows Binet staff could not have been fully honest in their explanation of Brennan’s injuries.

Second, staff’s story is founded on the premise that Brennan had been unusually agitated and aggressive from the time he got on the bus until he was restrained. Other than staff accounts, there is no evidence to support this premise because Binet has never produced videos and documents that would have evidenced Brennan’s behavior that morning. The evidence that was produced—video of Brennan on the bus that morning—shows Brennan to have been calm and cooperative during the bus ride. Transparency requires full disclosure of all of the facts and evidence. Binet was in full control of video and documentary evidence of Brennan’s behavior but, as discussed below, that evidence was not preserved.

Missing and Destroyed Evidence

Binet has two video cameras pointing to the front and back doors of the building. There is also at least one video camera in the hallway outside Brennan’s classroom. While neither of these videos would have shown the actual restraint (there were no cameras in Brennan’s classroom), they presumably would have shown Brennan’s demeanor and behavior when he entered the building in the morning and when he was in the hallway collecting recycling and going to and from the time out room. Those videos have not been produced.

JCPS was on notice that they needed to preserve those videos. On November 24, 2014, the Long’s attorney sent a letter to JCPS Superintendent Donna Hargens and Binet Principal Rhonda Hedges requesting they take steps to preserve all evidence—including video evidence—and advising them of the consequences in civil court for the failure to do so.⁵⁵

⁵³ Currie, Dr. Melissa & Curtsinger, C., Forensic Medicine Consult Report, PRM 2014-895, August 13, 2016, Addendum #2,

⁵⁴ Voor, Ph.D., Michael, Expert Report, December 23, 2014

⁵⁵ November 24, 2014 Letter from Darryl Durham to JCPS Superintendent Donna Hargens and Binet Principal Rhonda Hedges

The Longs requested to see video from the hallway during a debriefing session held on December 12, 2014.⁵⁶ Principal Hedges told the Longs that she had reviewed the video and that the camera was pointed in the wrong direction, but did not show the video to the Longs.

On December 12, 2014, Detective Boswell emailed JCPS Director of Security and Investigations Stan Mullins to confirm whether Binet had video cameras at the facility and, if so, what they covered recorded.⁵⁷ Mullins responded that there are no cameras at Binet.⁵⁸

Detective Boswell apparently learned of the video cameras at the front and rear entry, because he submitted a request for these video recordings to the

“Neither the Principal of Binet or Seneca had requested the video recording saved.”

JCPS response to Grand Jury Subpoena

Grand Jury on December 19, 2014. On January 14, 2014, the Jefferson County Grand Jury subpoenaed all surveillance video from the front and rear entrance of Binet from November 11, 2014, beginning at 6:30 a.m. and ending at 10:30 a.m. On January 24, 2015, Mullins informed Detective Boswell that the “video does not

exist and can’t be recovered with our resources.⁵⁹ The reason is that the custodian of the video is Seneca and their policy is to record over a video after 28 days, unless the video is saved to DVD or USB. Neither the Principal of Binet or Seneca had the requested video recording saved before December 11, 2014.”⁶⁰

P&A also requested from JCPS copies of any video recordings from the front and rear entry at Binet and from the hallway of Binet. JCPS confirmed those videos no longer exist.

JCPS and Binet also failed to produce a copy of Brennan’s behavior sheet from November 11, 2014, which would have documented Brennan’s behaviors. Brennan’s teachers tracked instances of target (unwanted)

⁵⁶ Interview with Brian and Kim Long

⁵⁷ Detective Boswell case notes

⁵⁸ Id.

⁵⁹ January 27, 2015 letter to Carol Cobb, Jefferson County Grand Jury, from Stan Mullen

⁶⁰ Id.

behavior, which for Brennan included all of the behaviors staff complained Brennan was engaging in that morning.

Brennan’s teachers had been tracking his behavior for the entire day—starting and ending with his bus rides—from the first day of school. In the 49 days Brennan attended Binet, staff documented the same behaviors that he was ultimately restrained for a total of 267 times (possibly more as teachers may have documented multiple occurrences of a behavior as a single occurrence). JCPS bus aide Heather Millby told Detective Boswell that Brennan had a history of behavior problems on the bus, but a review of the behavior data sheets shows he had zero documented behaviors on the bus.

In 49 days,
Brennan engaged
in the same
behaviors 267
times.

If the data sheet had shown that Brennan had numerous behaviors the morning of November 11, it would have given credibility to the staffs’ claims that Brennan was unusually agitated and aggressive that morning and that he had been acting out all day. On the other hand, a data sheet that showed an absence of or normal occurrence of those behaviors would have given credibility to J. Doe’s claim that Brennan was not unusually aggressive and was acting normally that day. We do not know the nature or extent of behaviors recorded on the data sheet because JCPS has never produced it or accounted for its absence.

The only real evidence JCPS produced, video from the bus ride, refutes staffs’ account that Brennan was aggressive the morning of November 11. The remaining real evidence—video recordings and data sheets—is missing or was destroyed. The failure to secure and preserve this evidence raises significant concerns regarding the school and district’s cooperation and transparency in the investigations into Brennan’s injuries.

Misrepresentations

In addition to the general fact that staffs’ account of the restraint is implausible, statements by JCPS bus aide Heather Millby and Binet Principal Rhonda Hedges are false. While these statements (or omissions) could be brushed off as innocuous mistakes, together they undermine the credibility of the staff and the transparency of the investigation.

First, the record indicates several staff have questioned whether Brennan suffered a medical condition or took medication that compromised his bone density or strength. As late as November 2016, staff at Binet represented that Brennan was taking a medication that could have made his bones fragile and that his bone condition caused or contributed to his injuries.⁶¹ The Kosair Forensic Medical Team reviewed Brennan’s medical records and medication list and found that Brennan’s bone strength and density were “absolutely not” compromised by any bone condition or medication.⁶²

A second misrepresentation was made by bus aide Heather Millby, who greeted Brennan on the bus on the morning of November 11. Her account sets the tone for the day. According to Millby, Brennan had a history of behaviors on the bus, but as noted above were never entered on a date sheet. She recalled that the morning of November 11, Brennan was unusually agitated and theorized that it was because his routine was changed when his mother, rather than his father, put him on the bus that morning. She told Detective Boswell that Brennan rocked in his seat when agitated and that the morning of November 11 he rocked so hard she had to tell him to stop rocking several times. She also told Detective Boswell that Brennan was grabbing repeatedly at her breasts and bottom.

A review of the videotape of the bus ride that morning completely disproves Millby’s statement. Millby greeted Brennan and buckled him in his seat when he gets on the bus at 6:42 a.m., but did not speak to him or interact with him at all—including redirecting him—until the bus arrived at Binet 52 minutes later. In fact, she appeared to sleep through most of the bus ride. Brennan was calm and cooperative when he got on the bus and appeared to go to sleep for about 15 minutes. When he woke, he rocked in his seat for much of the remaining bus ride, but he did not appear to be agitated or anxious. Rather, Brendan appeared to be engaging in a self-stimulating behavior that is common in individuals with autism. Brennan’s father, who has viewed the video, agreed. He said Brennan commonly rocks during long car rides and does not appear agitated.

⁶¹ Statement by Representative Tom Burch, Kentucky Fatality and Near Fatality External Review Panel meeting, November 11, 2016.

⁶² Statement of Dr. Melissa Curry, Kentucky Fatality and Near Fatality External Review Panel meeting, November 11, 2016.

The video also disproves Millby's claim that Brennan was grabbing at her breasts and bottom. Brennan made no move to touch or grab Millby when he got on the bus and he sat alone in his seat until the bus arrived at Binet. As they waited to unload, Millby started to unhook Brennan's harness. Brennan did reach toward Millby, who responded with, "Are you touching me?" She then bent over him to unhook his harness and he made no attempt to touch her. Once he was unhooked, Millby remained in Brennan's seat and seemed to become increasingly irritated at Brennan as he reached out to her two more times, although she stayed in his seat. Millby finally asked, "Do I need to sit with you?" and said, "I'll sick Billy (a 21-year-old high-school student also on the bus) on you." Only then did Millby move away from Brennan and he made no further attempt to reach toward or touch her.



Brennan's seat on the bus

Millby unhooks Brennan without incident





Millby in Brennan seat's as he reaches toward her

Millby finally moves

Millby escorted Brennan off the bus where he was met by one of the school staff and escorted into the building.

Millby told Detective Boswell that Brennan continued to misbehave after he got off the bus. She told the detective that Brennan ignored teachers' instructions and had to be told to go back to his locker to put his things away. However, because Binet failed to produce video from either the school entrance or hallway and because there were no data sheets filled out, there is no further evidence to support Millby's claims.

P&A is most concerned by the apparent omissions made by Principal Hedges during the course of the investigation. In our interview with Doe, Doe said Hedges was aware that Doe was in the room at the time of the restraint and that Doe's account of what happened differed from the other staff. Detective Boswell relied exclusively on Hedges to identify witnesses to the incident in his interviews with Binet staff, but he was apparently unaware of Doe as a potential witness. While Doe does not allege Hedges prohibited Doe from speaking, we find it troubling that Detective Boswell was not made aware of Doe as a witness to the events.

P&A is also troubled by statements made by Hedges to Detective Boswell that the school did not know much about Brennan.⁶³ In her interview with Detective Boswell, Hedges told the detective that she wished they had known more about Brennan. She explained that Brennan's school would not release his educational records without a signed document from his parents, but that the Longs repeatedly failed to provide that document.

⁶³ November 25, 2014 interview of Rhonda Hedges by LMPD Detective Boswell

In fact, Brennan's former school, The Faison School, faxed JCPS Brennan's educational records on April 24, 2014 and May 9, 2014. The records and information faxed were comprehensive and included the school's

On June 5, 2014, Binet reviewed Brennan's educational records and adopted a detailed behavior plan from Brennan's former school.

instructional and behavioral programming, schedule, medical concerns, communication skills, preferred items, and a behavioral plan. These records, as well as a psychological evaluation from the prior school psychologist, were not just received by JCPS, but those documents were reviewed and relied on in a June 5, 2014

ARC meeting to develop and implement Brennan's JCPS IEP. In that meeting, Brennan's Behavior Intervention Plan from The Faison School was reviewed and adopted as written. Not only did Binet have—and rely on—documents from Brennan's former school, but two staff from The Faison School attended that meeting by phone. Significantly, *the signature page shows that Rhonda Hedges and Brennan's teacher Seth Stillman attended that meeting.*

Staffs' version of events is undercut by the scientific analysis of Brennan's injuries. The acts by staff, including those of Principal Rhonda Hedges, further undermines any confidence that Binet acted with transparency or provided full cooperation with the investigations into Brennan's injuries.

Lack of Training

P&A also noted comments of Brennan's bus driver Mike Smiley and J. Doe that they had concerns regarding how Williams treated students with disabilities, but they did not intervene or report those behaviors because they felt they lacked the training to judge those actions.

Smiley reported that he had been a bus driver since 2008 and he filled in on special needs routes the year before the incident, but the 2014-15 school year was his first year with his own special needs route. Smiley did not receive any training on working with special needs students or restraint; the only training he received in preparation for his new duties was training on wheelchairs and the lift.⁶⁴

⁶⁴ December 10, 2014 interview of Mike Smiley by LMPD Detective Boswell

Smiley noted concerns about the treatment of special needs students at Churchill Park School, another special needs school in the JCPS system. He told Detective Boswell that there had been a 19-year old student who he felt staff was very “rough” with and the other drivers, who had more experience than Smiley, told him staff had to be rough with the kids because the kids were rough with the staff.⁶⁵

When asked if he had concerns about Williams’ interactions with the children, Smiley reported that on the very first day of school one of the students, not Brennan, would not get on the bus. He said Williams responded by physically forcing the student on the bus; he basically “wrestled” him onto the bus which included picking him up and holding him down.⁶⁶ Smiley was “shocked”, but because the student’s mother was there, he assumed this was “standard operating procedure with these kids.” And, he said the child’s parents would “know a whole lot more about how much should be done and how much shouldn’t be done” than Smiley.⁶⁷

Doe also expressed concerns regarding Williams’ treatment of the special needs students. Although Doe did not believe Williams was malicious in his treatment of the kids, Doe, who has special needs children, felt his actions were inappropriate. Doe frequently witnessed Williams imitating or mocking students. For example, on the day of Brennan’s restraint Doe said Brennan had gotten into Williams’ face and made loud vocalizations—a stereotypical behavior for individuals with autism and a typical behavior for Brennan. Williams responded by doing the same back to Brennan. Doe did not report these concerns to administration out of fear of being perceived as being overly sensitive and because Doe had not been trained on restraint and believed Williams and the other staff, who accepted this behavior, would not act inappropriately because they had training and experience Doe did not have.

The record also supports the conclusion that support staff (i.e. Brennan’s bus driver and the school aides) either disregarded or were not aware of Brennan’s behavior plan. As discussed above, staff at school failed to

⁶⁵ Id.

⁶⁶ We note that Smiley’s description of Williams’ actions in physically forcing the student onto the bus qualifies as an unlawful restraint that was initiated when a student did not present the requisite risk of harm and was done to force compliance with the demand to board the bus.

⁶⁷ December 10, 2014 interview of Mike Smiley by LMPD Detective Boswell

provide Brennan any of the behavior supports or use proscribed behavioral interventions during the school day. But Brennan's behavior plan extended to the bus ride to and from school. The bus video from November 11 shows Brennan sitting on an almost silent bus for an hour while the two aides appear to sleep.

On the morning of November 11, Millby responded to Brennan by flinging his hand away from her and verbally redirected him ("Are you touching me?" and "Brennan" and "Keep your hands to yourself. Do you need me to sit with you?") Then she threatened to "sick" another student on him. Brennan's bus driver described that when they had "limited" problems with Brennan, Williams would sit with Brennan and "get him against the window" while Brennan repeatedly asked for "more space."⁶⁸ These are not behavioral interventions proscribed by Brennan's behavior plan and P&A considers Williams' pinning Brennan against the bus wall/window to be an unlawful restraint.

Binet staff failed to provide any of the behavioral supports or interventions as required by law. While we cannot conclude, based on the evidence provided, that this failure was a willful one, we do find it evidences the need for additional training to ensure that all staff who work with special needs students are aware of the existence of all students' behavioral plans, know how to implement them with fidelity, and actually implement the required supports and interventions.

A Culture of Restraint

On May 30, 2015, Dr. Melissa Currie received an email from a former Special Education Teacher at Binet. The teacher stated that, "When I worked at Binet I was horrified by what I saw. I tried everything I could to change the culture. I always felt students should only be restrained if they were a threat to themselves or others."⁶⁹ She went on to say that, "At Binet they throw students around and call it 'safe physical management.'"⁷⁰ She also noted that there is a code of silence at Binet that prevents staff and teachers from criticizing Hedges or reporting the misuse of restraint at the school. She called on Dr. Currie to continue to push for a review of Brennan's injuries as

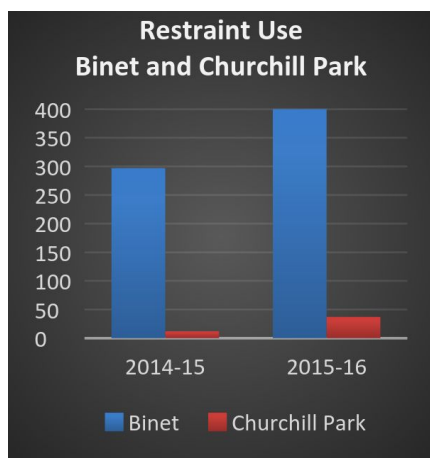
⁶⁸ Id.

⁶⁹ May 30, 2016 email from Patty Card to Dr. Melissa Currie

⁷⁰ Id.

well as Binet’s “longstanding mistreatment of students over the past several years.”⁷¹

These allegations are consistent with multiple statements Stillman (Brennan’s teacher) made to Detective Boswell. Stillman noted it is “pretty common for us to go hands on at this school.”⁷² He estimated the school’s crisis team is called to classrooms more than 10 times every day.⁷³ Stillman describes two other restraints in same period in which Brennan was injured: an extended arm hold on a different student that resulted in an injury requiring a visit to the nurse’s office, and the extended arm hold (not otherwise documented) on Brennan as Stillman escorted him to the time out room. Stillman further commented, “I personally pride myself in not taking students to time out [because] I think it’s a poor reflection on teachers if their students are always going to time out because they can’t manage their classroom.”⁷⁴ This statement is particularly alarming because the inference is that restraint is viewed as an acceptable practice while time out—an evidence-based and less restrictive intervention that effectively calmed Brennan—is disfavored.



The Kentucky Department of Education’s School Report Card shows how often Binet restrains and secludes its students. During the 2014-15 school year, the year in which Brennan was injured, Binet had 73 students enrolled at the school. Binet reported 297 restraints and 244 seclusions.⁷⁵ In contrast, Churchill Park School (a similar school for students with special needs where Brennan attended summer school) had 92 students and used restraint 12 times and seclusion 9 times that same year.⁷⁶ During the 2015-16 school year, Binet had 69 students, for

⁷¹ Id.

⁷² November 25, 2014 interview of Seth Stillman by LMPD Detective Boswell

⁷³ Id.

⁷⁴ Id.

⁷⁵ Kentucky Department of Education School Report Card, Binet School, <https://applications.education.ky.gov/src/Default.aspx>, visited November 14, 2016

⁷⁶ Kentucky Department of Education School Report Card, Churchill Park School, <https://applications.education.ky.gov/src/Default.aspx>, visited November 14, 2016

which it reported 444 restraints and 122 seclusions.⁷⁷ Churchill Park had 83 students and reported 37 restraints and 11 seclusions.⁷⁸

Under Kentucky law, going “hands on” with a student is strictly limited to those emergency situations in which a student’s behavior poses an immediate risk of physical harm. Continually going “hands on” can lead to a pervasive attitude that restraint is unavoidable and student-driven. Adults, both teachers and staff, often play as much a role in determining student behavior as the student himself. When restraint is seen as responsive and an acceptable classroom management strategy, other, less-restrictive interventions—like time-out—become an indication of a teacher’s lack of classroom management skills. The high frequency of restraint and calls for the crisis team, the staffs’ seemingly unquestioning acceptance of Brennan’s restraint despite his injuries, and the teacher’s comments and concerns about the use of restraint at and culture of Binet all evidence a need to review how Binet manages its students.

CONCLUSIONS

The initial investigations all held that the failure to identify the mechanism of Brennan’s injuries was a barrier to substantiate abuse or wrongdoing. We conclude that, where the allegations of abuse arise out of a restraint at a public school, the inquiry must look not only at the mechanism of the injury, but at the legality of the restraint and the amount of force used in that restraint. School staff are bound by state law to limit their use of restraint and seclusion. A restraint is unlawful where staff exceed those limitations. Where a student is injured in the course of an unlawful restraint, the restraint is abuse under federal law.

P&A concludes that Brennan was restrained contrary to state law. He did not present a risk of harm and was restrained to force his compliance. Williams, and other school staff, failed to provide behavioral supports and less restrictive interventions before using restraint. Williams’ restraint of

⁷⁷ Kentucky Department of Education School Report Card, Binet School, <https://applications.education.ky.gov/src/Default.aspx>, visited November 14, 2016

⁷⁸ Kentucky Department of Education School Report Card, Churchill Park School, <https://applications.education.ky.gov/src/Default.aspx>, visited November 14, 2016

Brennan was in contravention of state law. Accordingly, we find this constitutes abuse as defined by the PADD Act.

P&A also concludes Williams used excessive force to restrain Brennan. While the exact mechanism of Brennan's injuries remains unknown, we do know that Williams used at least 544 pounds of force consecutively (twice) or in excess of 1,088 pounds of force simultaneously to break both of Brennan's femur bones. It is difficult to imagine any scenario in which such a massive amount of force would be deemed reasonably necessary to protect a student or others from harm, but in this case—where Brennan did not present an imminent risk of harm—such force is clearly excessive.

Our investigation also raises significant questions regarding the actions of staff in the investigation of Brennan's injuries, a lack of training for support staff on working with children with disabilities and implementing behavioral supports and interventions detailed in the Individual Education Plan, and a culture of restraint at Binet.

RECOMMENDATIONS

P&A makes the following recommendations to reduce the use of restraint and seclusion in schools and to increase transparency and oversight of schools' use of these aversive procedures.

Kentucky Department of Education

- Complete a comprehensive review of JCPS' restraint practices as well as the use of restraint at Binet and schools specializing in educating students with disabilities and publish its findings;
- Conduct an audit of Binet School to ensure students are receiving behavioral supports and interventions as required under their Individual Education Plan, are receiving a free appropriate public education as required by the Individuals with Disabilities Education Act, and are not being subjected to unnecessary and abusive restraint;

- Include restraint and seclusion rates in new school accountability and performance measures developed in response to The Every Student Succeeds Act;
- Convene an advisory committee with the goal of revising regulatory language to increase oversight, transparency, and accountability of schools on a state level;
- Revise regulatory language to mandate debriefing sessions after any restraint that causes injury to a student or staff;
- Revise regulatory language to mandate schools report all “serious injuries” to students incurred during a restraint or seclusion to CPS and, where the child has a disability, to Kentucky Protection & Advocacy. We suggest defining “serious injury” as “any significant impairment of the physical condition as determined by a qualified medical personnel, including, but not limited to, “burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.”
- Develop guidance on restraint and seclusion reduction initiatives;
- Issue guidance to districts on the effective investigation of complaints or allegations arising out of the use of restraint or seclusion; and
- Develop free online training for parents on the use of positive behavioral supports, behavior intervention plans, and the use of restraint and seclusion in public schools.

Jefferson County Public Schools

- Re-open JCPS’ investigation into the restraint of Brennan Long and take appropriate personnel actions;
- Open an investigation into Binet Principal Rhonda Hedges’ actions in regard to lost evidence and statements made to LMPD and CPS in the course of their investigations into Brennan’s injuries;
- Develop training requirements for individuals working with students with disabilities, including transportation staff and classroom aides, that includes disability specific information, reading and implementing behavior intervention plans; and
- Develop and distribute educational information to parents of children with disabilities about positive behavioral supports, obligations of staff to implement behavior supports and interventions set forth in behavior intervention plans, and limitations on the use of restraint and seclusion in public schools.

