

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-01**

### **PROCEDURAL HISTORY**

On January 4, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Everett School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On January 4, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On January 26, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On February 1, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

OSPI requested clarifying information from the District and on February 7, 2018, spoke to the District.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

### **OVERVIEW**

During the 2016-2017 school year, the Student was enrolled in the District and was found eligible to receive special education services. In late March 2017, the Student was restrained because he was exhibiting disruptive behaviors in the classroom. The assistant principal called the Parent on the day of the incident to discuss the Student's behavior, but did not specify that the incident involved restraint. In mid-April, the Parent first learned that the Student had been restrained when the Parent received an incident report form in the mail. After finding out that the Student had been restrained in March, the Parent contacted the District and expressed concern. The District followed up with the assistant principal involved in the restraint, and the assistant principal subsequently attended "Right Response" training. In May 2017, the Student was reevaluated, the District conducted a functional behavioral assessment (FBA), and a behavioral intervention plan (BIP) was developed for the Student. In June 2017, the Student's individualized education program (IEP) was updated to reduce the Student's instructional minutes and incorporate the May 2017 BIP. In June 2017, the District sent the Parent a letter, responding to her concerns regarding the restraint incident. The letter described the steps the District took to investigate the incident and the additional training that had been provided to staff. During the 2017-2018 school year, the Student attended two different schools in the District. The District

noted that during the 2017-2018 school year, the Student has not been restrained and that the Student's current teachers are all trained in the use of restraint.

The Parent alleged that the District failed to use restraint consistent with the requirements of WAC 392-172A-02110 and that the District failed to follow the required procedures for follow-up and reporting. Further, the Parent alleged that the staff that restrained the Student was not trained in the use of restraint. The District admitted these allegations and stated that it has taken all necessary corrective actions prior to the completion of the investigation.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation time period, which began on January 5, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

### **ISSUE**

1. Did the District use restraint and/or isolation consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year?

### **LEGAL STANDARDS**

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: 1) a substantial risk that: a) physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; b) physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or c) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or 2) the person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Imminent: Imminent as defined in RCW 70.96B.010 means: the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of

serious harm has dissipated; b) the restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Follow-up and Reporting Requirements: Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent/guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided and any recommendations for changing the nature or amount of resources available to the student and staff members to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

## **FINDINGS OF FACT**

### **Background Facts**

1. In March 2015, as a preschooler, the Student was initially found eligible for special education under the category autism.
2. In May 2016, the Student was reevaluated to help determine his educational placement for the 2016-2017 school year when the Student would be in first grade. The evaluation team found that the Student no longer qualified for special education services and the Student was exited from special education on May 24, 2016. The Student was then provided accommodations under a Section 504 plan.

3. In August 2016, according to the District's response, all District administrators received information on the changes in the state's isolation and restraint laws<sup>1</sup> at the District's 2016 Summer Leadership Institute.

#### **2016-2017 School Year**

4. At the beginning of the 2016-2017 school year, the Student attended first grade at a District elementary school (elementary school 1) and was not initially eligible for special education services.
5. The District's 2016-2017 school year started on September 7, 2016.
6. On December 7, 2016, the District again evaluated the Student due to escalating behaviors, and the evaluation group determined that the Student was eligible for special education and related services under the category autism. The evaluation report stated that the Student "demonstrates significant delays and a need for specially designed instruction in the area of behavior/social skills." The report also stated that the Student's behavior adversely affected himself and other students, and that the Student needed specially designed instruction to "increase his ability to follow adult directives, to increase his tolerance for transitions from one activity to another and to decrease off task behaviors."
7. On December 13, 2016, the Student's individualized education program (IEP) team met and developed his IEP. The December 2016 IEP stated that the Student's behavior impacted "his ability to fully access the general education curriculum" and that he was "in need of specially designed instruction to learn strategies for following classroom routines and expectations." The IEP noted that the Student required "a lot of teacher attention" and needed constant reminders. The IEP stated that he would often roll on the floor, blurt out, and yell at students, and that he did better in "small groups or working 1:1 with a teacher." The IEP also stated that the Student had particular difficulty with transitions. The IEP included two annual goals in the area of behavior/social and provided the Student with thirty (30) minutes of specially designed instruction in behavior/social skills each week, with the remainder of the time in general education. The Student's December 2016 IEP did not include a behavioral intervention plan (BIP).

#### **Timeline for This Complaint Begins on January 5, 2017**

8. On March 30, 2017, according to the Parent's complaint and reply to the District's response to this complaint, the Parent and the Student's private autism specialist attended a meeting at the school where the Parent asked the District to conduct a functional behavioral

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<sup>1</sup> RCW 28A.600.485 was amended, effective July 2015, to provide that "restraint or isolation of *any* student is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm" (emphasis added). The amended version of 28A.600.485 further defines isolation, restraint, and restraint device and further defines the required follow-up procedures. Additionally, the state Rules for the Provision of Special Education were amended to reflect the change in RCW 28A.600.485. The amended rules included WAC 392-17A-02110, which placed conditions on the use of restraint and/or isolation with students eligible for special education.

assessment (FBA) of the Student and consider amending the Student's December 2016 IEP. As a result, the District agreed to conduct an FBA and the Parent signed the consent form that same day.

9. Also on March 30, 2017, the Student was restrained from 12:48 to 12:49 p.m. by the assistant principal and the school psychologist at elementary school 1. According to the District's "Physical Restraint and Isolation Incident Report" form (incident report form), the Student was "running in class and tearing paper up. He was asked to walk to office. He refused. He was given choices. He still refused. We carried him to the office for a break to recollect self." The incident report form noted that several prevention/de-escalation strategies were used, including redirect, giving the Student space/time, giving the Student choices, and physical proximity.

The incident report form had check boxes for "Administrator Documentation." The boxes for "Parent called," "Positive behavior instruction," and "Administrator review with teacher" were checked. The boxes for "Student/Teacher conference," "Referred to administrator," "Administrator review with parent," "Written report sent to parent," and "Written report sent to Special Services" were not checked. Finally, the incident report form did not include any recommendations or a section to record recommendations for changing the nature or amount of resources available to the student and staff members to avoid similar incidents in the future.<sup>2</sup>

10. Also on March 30, 2017, according to the District's response, the assistant principal called the Parent to discuss the incident. The Parent does not dispute that the assistant principal called her on March 30. According to the Parent's complaint, the assistant principal stated that she was walking by the Student's classroom and heard the Student blurt out "one day 'till spring break" and then the assistant principal saw the Student rip paper and throw it outside the classroom. The assistant principal told the Parent that she asked the Student to walk with her to the office to decompress. According to the Parent, the assistant principal never mentioned that the Student was restrained.
11. According to the District's response to this complaint, a copy of the incident report form was sent home with the Parent on the March 30, 2017. In the Parent's reply to the District's response to this complaint, the Parent stated that she was not given a copy of the incident report form on March 30, 2017, when she picked the Student up from school.<sup>3</sup>

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<sup>2</sup> The incident report form filled out after the March 30, 2017 incident did not include a section for staff to make any recommendations for changing the nature or amount of resources available to the student and staff members to avoid similar incidents, as required by RCW 28A.600.485. However, in the District's response to this complaint, it provided another version of the incident report form that noted it was updated in December 2015. The December 2015 version of the form included a section for recommendations. The District confirmed that the use of the old form was a mistake and that the school is now using the updated form.

<sup>3</sup> In a phone conversation with OSPI on February 7, 2018, the District clarified that it believed that the form might have been placed in the Student's backpack when the Parent picked the Student up from school and that the form might have been subsequently lost or overlooked.

12. Also on March 30, 2017, the Parent emailed the Student's private autism specialist regarding the call the Parent received earlier that same day from the assistant principal. In the email, the Parent stated that she documented the phone call but also wanted to let the autism specialist know what had happened, especially since they had just met with the District that morning. In the email, the Parent stated that the assistant principal had said on the phone that she "removed [the Student] from the classroom and took [the Student] to her office to discuss his actions."
13. The District was on break April 3-7, 2017.
14. On April 10, 2017, the Student's autism specialist responded to the Parent's March 30 email and encouraged the Parent to keep her posted on any interactions with the District.
15. On April 13, 2017, according to the Parent's reply to the District's response, the Parent received a copy of the March 30 incident report form in the mail. The Parent stated that this was the first time she and her husband had seen the incident report form and learned that the Student had been restrained on March 30, 2017. The Parent stated that she was so surprised that she immediately emailed the Student's private autism specialist and OSPI's parent liaison. In the Parent's email to the autism specialist, the Parent stated:

Remember my last email I wrote you regarding what the assistant principle [sic] called and told me? Well today they sent home a paper regarding the incident and it states they physically restrained him and carried him to the office. I am very very upset, she made NO MENTION of this during her phone call...What am I missing and why am I just now being informed? Had she told me about it over the phone I would've handled that conversation a lot differently. I'm sorry to bother you but this paper has my husband and I completely shocked and extremely upset.

In the email to OSPI's parent liaison, the Parent also stated that this was the first time the Parent saw the incident report form and learned of the restraint.
16. On April 14, 2017, according to the Parent's reply to the District's response in this complaint, the Parent called the District assistant superintendent regarding her concerns.
17. Also on April 14, 2017, the District's autism and behavior facilitator (autism facilitator) emailed the Parent and stated that he looked forward to meeting with the Parent to discuss the Student's FBA. The autism facilitator stated that he spoke with the director of special services (director) and that the director indicated that he would be following up with the Parent early the following week to discuss the concerns raised by the Parent. The autism facilitator also encouraged the Parent to share information with him as part of the FBA and BIP process.
18. According to the District's response to this complaint, after the Parent raised concerns about the March 30 restraint, the director discussed the incident with the principal and assistant principal. The assistant principal told the director that she was unaware of the recent legal

changes regarding isolation and restraint and requested additional training.<sup>4</sup> According to the District's response, neither the assistant principal nor the school psychologist who restrained the Student on March 30 were certified in the use of restraint.

19. On April 17, 2017, the assistant principal emailed a staff person and asked the following:  
Do you remember the restraint form I left to go home with [the Student] and then a copy to be faxed to district on or around March 31? Did that get sent to district? I just saw [the assistant superintendent] and she asked about it. She advised that she doesn't believe she received it.

The staff person responded that she handed it off to another staff person, but that she believed the second individual took care of it. The staff person also stated that she believed a copy of the form went home with the Student on the day of the incident.

20. On April 18, 2017, the Parent met with the autism facilitator. Later that day, the autism facilitator emailed the Parent, stating that he believed that the director had left the Parent a voicemail and that the assistant superintendent would follow up with the Parent the next day as well. The autism facilitator also attached a copy of the District's policy on the use of isolation and restraint to the email.
21. On April 19, 2017, the Parent emailed the autism facilitator, and asked if the March 30, 2017 incident was being documented. The Parent also asked that the autism facilitator forward the email to the director because the Parent wanted documentation regarding whether the incident was "investigated as well as what the end result is." The autism facilitator responded and copied the director on the email. The autism facilitator also stated that he was continuing to schedule observations and gather data to inform the FBA/BIP process.
22. The assistant principal participated in a four-day "Right Response" training, which took place on April 21, April 24, May 1, and May 5, 2017, and received her advanced training certification. According to the District's response to this complaint, the school psychologist, who had also assisted in restraining the Student on March 30, 2017, did not participate in the training. The District stated that because "Right Response" training is highly specialized, only certain staff receive this training. The District did not anticipate that the psychologist would be working with students again who may exhibit behaviors that could require restraint.
23. On May 15, 2017, the District completed a reevaluation of the Student in order to evaluate "pragmatic communication" and conduct a FBA.<sup>5</sup> The reevaluation report stated that the

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<sup>4</sup> The documentation provided in this complaint does not specify when this discussion occurred. It most likely occurred around or after April 14, 2017, because based on the documentation, that was the first time the director learned of the incident. Further, it does not appear that the director reviewed the incident with the school psychologist.

<sup>5</sup> According to the May 2017 evaluation report, after the December 2016 evaluation, the evaluation group realized that a regional Children's Hospital had recommended, in a February 2015 report, that an assessment of pragmatic communication be conducted. Communication was also marked as an area of assessment for the May 2016

Student continued to meet the eligibility criteria for special education under the category of autism and that the Student continued to need specially designed instruction in the area of behavior/social skills. The report did not recommend that the Student receive communication services. The report further stated that the Student demonstrated “a number of significant maladaptive behaviors which adversely impact his ability to participate in cooperative classroom activities, build and maintain friendships and maintain emotional control.”

24. Also on May 15, 2017, the Student’s IEP team developed a BIP. The BIP listed target behaviors and agitation predictors, and stated:

Overall, it was determined that the current BIP will target the cluster of behaviors [the Student] exhibits during incidents of emotion dysregulation, which include loud yelling, crying, arguing, hiding under tables/desks, throwing/tearing papers, and running around the classroom. These target behaviors were selected given that they typically occur concurrently, are relatively frequent (daily), significantly disrupt the learning environment, and significantly impact [the Student’s] ability to maintain positive relationships with peers and staff.

The BIP also referenced the Student’s history of trauma and his sensory sensitivities and stated that “staff responses should be consistent and focused on practices that are likely to be more successful. In addition, staff should avoid touching [the Student] when he is agitated unless an imminent threat to his safety or the safety of others occurs.”

25. On June 8, 2017, the Student’s IEP team met, including the Parent, and agreed to amend the Student’s IEP to reduce the Student’s time at school from 1,700 minutes per week to 1,075 minutes per week. The prior written notice, dated the same day, stated that:

Based upon a continued and consistent pattern of behavioral escalations, which have occurred on a near-daily basis within the last several weeks, the team determined that a temporary shortened schedule for the rest of the school year is warranted. Starting 6/12/17 [the Student’s] school day will end at 12:45 each day. Transportation services have been arranged to begin on this date.

The prior written notice also stated that the Student’s IEP team discussed transferring the Student to a new elementary school for the 2017-2018 school year. The District indicated that it would follow up with the team at the new elementary school to arrange a meeting to coordinate supports and plans.

26. The District’s 2016-2017 school year ended on June 22, 2017.

27. On June 26, 2017, in response to the Parent’s concerns regarding the March 30 restraint incident, the director sent the Parent a letter regarding the steps the District took to investigate the incident and the additional training it provided to staff. In the letter, the director stated that on March 30, 2017, he received the Parent’s request for additional

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reevaluation, but no communication assessment was completed at that time. Thus, in May 2017, the District decided to initiate a reevaluation to evaluate the Student’s communication, in addition to the FBA.



support for the Student due to the restraint incident.<sup>6</sup> The director stated that after receiving the Parent's request for additional support for the Student and a copy of the incident report form, he reviewed the incident with the assistant principal and principal. According to the letter, the assistant principal stated that the Student required a physical escort out of the classroom because he was "demonstrating highly disruptive behaviors, including running, crawling under tables, shouting, and misusing classroom materials (i.e. ripping papers, throwing small items)." The letter further stated that the assistant principal determined that the Student needed to be escorted from the classroom due to concerns that the Student's behavior "prevented the teacher from continuing instruction, was beginning to trigger emotional responses from his classmates, and resulted in classroom property being destroyed." Additionally, the letter noted that the principal and assistant principal requested additional training on de-escalation and behavior support practices. The letter confirmed that the assistant principal participated in the District's "Right Response" de-escalation training and that the autism facilitator had been coordinating with the school team to complete an FBA and provide individualized staff training and support.<sup>7</sup>

### **2017-2018 School Year**

28. At the beginning of the 2017-2018 school year, the Student attended second grade at a different District elementary school (elementary school 2) and continued to be eligible for special education services.
29. On September 5, 2017, the principal at the Student's new school emailed all staff who would be working with the Student or come into contact with the Student regarding his BIP, which administrators would respond if the Student needed more intensive behavior support, and areas in which the Student needed support. The principal also stated, "Please avoid touching [the Student] for any reason, whether he is escalated or not." A copy of the Student's BIP was attached to the email.
30. The District's 2017-2018 school year started on September 6, 2017.
31. On September 12, 2017, the principal forwarded the September 5 email to the paraeducators who would be working with the Student. The principal reiterated that the Student should not be touched, stating, "Please do not ever physically block or touch [the Student.]"
32. On November 17, 2017, the Student's IEP team developed his annual IEP. The November 2017 IEP stated that the Student continued to demonstrate significant behaviors that adversely impact his involvement and progress in the classroom. The IEP included goals in self-management, self-efficacy, and social management. The IEP stated that the Student

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<sup>6</sup> The Parent stated in her complaint that she did not contact the District on March 30, 2017, because she did not yet know a restraint had occurred. The Parent stated that she did not get the director's contact information until April 14, 2017, when the Parent emailed the autism facilitator.

<sup>7</sup> Neither the letter, nor the District's other documentation, indicated which staff members were being provided with individualized training and support or what that training and support consisted of.

would receive 1,500 minutes per week of specially designed instruction in behavior/social skills in a special education setting. And, the IEP required that the staff working with the Student be trained in “Right Response” and “Safe Schools.”

33. The prior written notice, dated November 17, 2017, stated that as soon as the team sees an increase in the Student’s “Self Management, Social Management, and Self Efficacy skills they need to reconvene to increase the number of minutes that [the Student] is in the general education setting.”

34. In January 2018, the Student transferred to a third elementary school (elementary school 3) in the District. According to the documentation provided by the District, the Student’s special education teacher at elementary school 3 participated in “Right Response” training on January 31, February 2, February 7, and February 9, 2018 and received her advanced level certification.

## CONCLUSIONS

**Issue 1: Restraint and/or Isolation** – The Parent alleged that the District failed to use restraint consistent with the requirements of WAC 392-172A-02110 on March 30, 2017.

**Conditions for the Use of Restraint:** Restraint, as defined in WAC 392-172A-01162 and RCW 28A.600.485, means physical intervention or force used to control a student, including the use of a restraint device, to restrict a student’s freedom of movement. A district may only use restraint when a student’s behavior poses an imminent likelihood of serious harm. Likelihood of serious harm, as defined in WAC 392-172A-01109, means that there is substantial risk that the person will inflict physical harm upon him or herself, another person, or the property of others. Once the likelihood of serious harm has dissipated, any use of restraint or isolation must be discontinued. Any staff member or other adult using a restraint must be trained and certified by a qualified provider in the use of such restraints.

On March 30, 2017, the Student was restrained for one minute by the assistant principal and the school psychologist for shouting, running in class, and tearing up paper. The District admitted that its restraint of the Student on March 30, 2017 was not appropriate. OSPI agrees that the District’s restraint of the Student was inappropriate because the Student’s behavior of shouting, running in class, and tearing up paper did not pose an imminent likelihood of serious harm and therefore, did not meet conditions under which a district is permitted to restrain a student. The District also admitted that at the time of the March 30 incident, neither the assistant principal nor the school psychologist were trained in the proper use of restraint, and the assistant principal admitted that she was unaware of the then recent legal changes regarding isolation and restraint. After the March 30 incident, the assistant principal requested additional training and subsequently participated in a four-day “Right Response” training at the end of April and beginning of May 2017. It is unclear if the assistant principal ever received training regarding the legal requirements for the use of isolation and restraint. Additionally, the District’s response to this complaint states the school psychologist was not later trained in the proper use of restraint because the District did not anticipate that the psychologist would be involved in a situation

requiring restraint in the future. This is concerning given that the school psychologist had already participated in an improper restraint of the Student, and it is noted that had the psychologist been properly trained, she likely would have recognized that the use of restraint is not an appropriate response to a student running around a classroom and tearing up paper. Finally, the District stated it provided individualized staff training and support to unspecified staff members.

After the restraint incident, the District provided training in the use of restraint to one of the involved administrators and provided unspecified staff training to unnamed individual staff members. However, the District's use of restraint was inappropriate, there is no documentation of training regarding the legal requirements for the use of restraint, and the second involved administrator received no training following the incident. The District will provide written guidance for the staff at elementary school 1, and it is strongly recommended that the school psychologist complete "Right Response" or a similar type of training.

**Follow-up Procedures:** Following the release of a student from restraint, a school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent to address the behavior that precipitated the restraint and the appropriateness of the response. The school must also review the incident with the staff member who administered the restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

After the March 30 incident, the assistant principal called the Parent that same day, and the Parent stated that the assistant principal did not mention restraint and characterized what happened as a walk to the office. Additionally, on the incident report form, the box for "Administrator review with parent" was not checked. Based on the documentation provided, there is no indication that the District reviewed the restraint incident with the Parent. Further, there is no record that the incident was reviewed with the Student. In the District's letter to the Parent on June 26, 2017 and the District's response to this complaint, the District stated that the director reviewed the incident with the involved administrator. However, the documentation provided does not show that the director also reviewed the incident with the school psychologist. The District did not follow the procedures outlined in RCW 28A.600.485 that require a district to follow up with the student, parent, and staff member or members who administered the restraint.

**Reporting Procedures:** Any school employee who uses restraint on a student must inform the building administrator as soon as possible, and submit a written report of the incident to the district office within two business days. The written report must include, at minimum, the following information:

- The date and time of the incident;
- The name and job title of the individual who administered the restraint;
- A description of the activity that led to the restraint or isolation;
- The type of restraint or isolation used on the student, including the duration;
- Whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and,

- Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

On March 30, 2017, after the restraint, the assistant principal filled out a written incident report form that included the majority of the required elements, except it lacked a section regarding recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The District has confirmed that it now uses an updated version of the incident report form that includes a space for recommendations and contains all the elements required by RCW 28A.600.485. However, despite the assistant principal completing the required report form, the District's documentation in this complaint indicates that on April 17, 2017, over two weeks after the March 30 incident, the completed form had not been received by the district office. The documentation provided in response to this complaint does not confirm that the written report form was sent to the District office within the required two business days.

Additionally, RCW 28A.600.485 requires that a school principal or principal's designee make a reasonable effort to verbally inform the student's parents within twenty-four hours of the incident. As discussed above, the assistant principal called the Parent on March 30, 2017, the same day the incident occurred. However, based on the documentation in this complaint, the assistant principal did not tell the Parent that the Student had been restrained. This is confirmed by the Parent's email to the Student's private autism specialist, sent after the Parent's phone call with the assistant principal, and the Parent's later emails to the private autism specialist.

Further, RCW 28A.600.485 requires that a school district must send a parent written notification, written notification being the same as the written report, as soon as is practical, but postmarked no later than five business days after the restraint or isolation occurred. The District stated in its response to this complaint that a copy of the incident report form was sent home with the Parent on March 30, the day of the incident, when the Parent picked the Student up from school. However, the documentation in this complaint does not support the District's assertion, as the Parent stated that she was not given a copy of the incident report form on March 30, and did not know the Student had been restrained until she received the incident report form in the mail on April 13, 2017, ten business days after the incident. The Parent's statement is supported by the fact that on April 13, 2017, after receiving a copy of the March 30 incident report form, the Parent emailed the Student's private autism specialist and OSPI's parent liaison, stating that she was surprised and upset that she was just learning that the Student had been restrained in March. The District failed to provide the Parent a copy of the incident report form within five business days of the March 30 restraint. The District did not follow the reporting procedures required in RCW 28A.600.485.

### **CORRECTIVE ACTIONS**

By or before **April 13, 2018** and **May 18, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

By **April 6, 2018**, the District will develop written guidance regarding the conditions for the use of restraint under WAC 392-172A-02110, including, but not limited to, the definition of “imminent likelihood of serious harm” and the required follow-up and reporting procedures under RCW 28A.600.485. The guidance will include specific examples. The guidance will be provided to the school principal and assistant principal, certificated special education staff, including educational staff associates (ESAs), certificated teachers, paraeducators, and school security or resource officers assigned to work at elementary school 1. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

By **April 13, 2018**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by April 27, 2018, and provide additional dates for review if needed.

By **May 11, 2018**, the District will ensure that the principal, assistant principal, and required staff at elementary school 1 receive and review the written guidance on restraint and isolation. By **May 18, 2018**, the District will provide OSPI with documentation showing that it provided all required individuals with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

**RECOMMENDATION**

OSPI strongly recommends that the school psychologist complete “Right Response” or a similar type of training.

Dated this \_\_\_\_ day of March, 2018

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)