

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-05

PROCEDURAL HISTORY

On January 19, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Spokane 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 22, 2019, 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 February 13, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on February 14, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On February 26, 2019, OSPI received the Parent's reply to the District's response. OSPI forwarded that reply to the District on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 20, 2018. 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 period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) and behavioral intervention plan (BIP), including de-escalation techniques, during the 2018-2019 school year?
2. Did the District use isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 during the 2018-2019 school year?
3. Did the District follow procedures to respond to the Parent's request for a one-on-one paraeducator for the Student?
4. Did the District follow procedures for responding to the Parent's request to review the Student's educational records, consistent with the requirements of WAC 392-172A-05190?

LEGAL STANDARDS

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's individualized education program (IEP) if determined necessary by the IEP team for the student to receive FAPE.

The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or

the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, 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 isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

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.

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

FINDINGS OF FACT

Background

1. The Student's most recent reevaluation was completed by the District on October 19, 2016. The evaluation report noted that the Student had transferred to the District in the fall of 2016 and that in his previous district, he had been in a "self-contained program for students with academic and behavioral needs." The report stated that the Student's previous individualized education program (IEP) had contained "reference to a 1 to 1 paraeducator being assigned to him, in addition to his classroom being primarily self-contained." The evaluation report stated that the Student continued to be eligible for special education services under the category autism and recommended that he receive specially designed instruction in the areas of reading, math, written language, and behavior.

2. In the Parent's reply to the District's response to this complaint, the Parent stated that during the 2016-2017 school year, after transferring into the District, the Parent made clear her desire that the Student have a one-on-one paraeducator because the Student had a "full-time paraeducator" in this previous school district.¹
3. On August 23, 2017, the District completed a functional behavioral assessment (FBA) of the Student. The FBA discussed behaviors such as tantrum behavior, verbalizing anger, and eloping. The FBA noted that the Student would become physically aggressive, elope, and engage in unsafe behavior during unstructured settings like recess or transitions.
4. On May 30, 2018, the Student's IEP team met and developed his annual IEP. The IEP included annual goals in the areas of reading, writing, math, and behavior/social. The IEP noted that the Student had a behavioral intervention plan (BIP) and included several accommodations. The IEP provided the Student with the following specially designed instruction:
 - Math: 150 minutes per week (provided by special education staff, special education setting)
 - Behavior/Social: 100 minutes per week (provided by special education staff, special education setting)
 - Behavior/Social: 500 minutes per week (provided by the general education teacher, general education setting)
 - Reading: 100 minutes per week (provided by special education staff, special education setting)
 - Writing: 100 minutes per week (provided by special education staff, special education setting)

The IEP stated that the Student would spend 75% of his time in the general education setting.

5. On May 30, 2018, the Student's IEP team also reviewed his BIP (which was originally developed in August 2017). The BIP included the following antecedent interventions:
 - Twice daily check-ins to talk about his day and set goals based on daily behavior sheet
 - A daily progress report for targeted self-monitoring and opportunity to earn rewards
 - Breaks as requested or offered
 - Lunchroom, recess, and specialist staff should be aware of the plan and can provide rewards for following school expectations
 - Modified classroom routine and expected behaviors
 - Build positive relationships
 - Notification and additional supports when there is a substitute teacher

The BIP stated that the Student often required verbal redirects or consequences, specified that the Student needed to feel heard, and that staff should use a calm tone of voice. The BIP targeted the following behaviors: escape behavior with verbal disruption; and, escape behavior with aggression. The BIP included the following for both target behaviors:

¹ The Student's fall 2016 transfer IEP included paraeducator support as an accommodation. See, special education citizen complaint (SECC) 17-42, filed by the Parent in May 2017. SECC 17-42 investigated whether the District followed procedures for determining if the Student's IEP should include paraeducator support during the 2016-2017 school year. The decision in SECC 17-42, which was issued on July 26, 2017, concluded that "given that the paraeducator support was listed in the Student's transfer IEP as an accommodation, the District was not required to conduct a reevaluation prior to removing the support from the Student's new September 2016 IEP."

- Replacement behaviors: On task work completion or break card use for quiet timed break
- Specially designed instruction: Work board, win-win choices for tasks, “first work, then break”, earned preferred activity, breaks explicitly taught, and social stories with visuals to review expectations for independent work, transitions, and break time
- Reinforcers: Reinforcement system to earn play/reward, ask Student what he wants to work to earn, increase reinforcement during known challenging times of the day
- Consequences: Loss of reinforcers and privileges, communication home, and redirect and distraction
- Responsible person(s): IEP team members
- Consistent Implementation: Cross train staff, plan for substitutes, and data reviewed biweekly

The BIP also included a behavior protocol and strategies for: transitions, reinforcement, and seating. The BIP included a “competing pathways visual” and stated that school wide discipline may apply. The BIP attached an escalation cycle for the Student—which outlined the Student’s behaviors and staff responses—and a protocol for the Student’s breaks and daily progress report.

2018-2019 School Year

6. During the 2018-2019 school year, the Student attended a District elementary school and continued to be eligible for special education services under the category of autism. The Student’s May 2018 IEP remained in place.
7. The District’s 2018-2019 school year began on August 30, 2018.
8. On September 18, 2018, the Student was suspended for a half day after the following occurred: [The Student] was brought in to [classroom] to spend the rest of day. He immediately started being rude and disrespectful. He was throwing pencils and balls at students and was making them feel unsafe. Admin notes: [the Student] was removed from his gen ed class in the morning for throwing things in the room...[He] continued aggressive, defiant behaviors so was escorted to [classroom] where he continued unsafe behaviors. Parent was called.
9. On September 20, 2018, the Student received a “behavior/office referral” for being “rude and disrespectful” and continuing to be “disruptive.” The Student was “asked to take a break...when he refused I touched his arm and he took a swing at me. He was escorted to the quiet room.”² The District’s response did not contain a restraint/isolation report related to this incident.
10. On September 24, 2018, the Student received a behavior/office referral after elbowing another student, calling the student names, swearing at staff, and knocking a ball out of the staff member’s hands. The Student’s discipline record stated that, following this incident, the Student “was moved back in to the behavior intervention classroom for 5 days.”

² Based on the documentation provided in this complaint, it appears that the District uses quiet room, isolation room, and safety room to refer to a room in which students are isolated. This complaint decision will use the District’s terms to refer to the room.

11. On September 25, 2018, the Student received a behavior/office referral for disrespectful, disruptive, and defiant behavior, leaving class, and going to class without a pass. The administrative note on the referral form read, in part, "with today's incident, along with other recent behavioral challenges, [the Student] will move back in to the behavior intervention classroom for the remainder of the week with the opportunity to earn his way back on Monday."
12. Also, on September 25, 2018, the principal emailed the Student's former case manager/multi-tiered system of supports (MTSS) specialist (MTSS specialist) and the special education teacher behavior intervention/case manager (special education teacher). The principal stated "[MTSS specialist] you are being included because [the Student's] significant daily struggles over the past week are necessitating his move back to you, in hope that it is only for a few days."
13. On September 26, 2018, the staff used a two-person escort and the Student was placed in the isolation room with the door closed for six minutes. According to the restraint/isolation report, the Student was "jumping across cafeteria tables during band, refused redirection, and was unsafe." The report stated that the Parent was notified by the principal in person and that written notification was sent that same day. The report did not include any "recommendation[s] to change resources."
14. Also on September 26, 2018, the Parent emailed the principal and stated that she agreed with the decision to keep the Student in the MTSS specialist's classroom. The principal responded and stated that the new teacher in the MTSS specialist's classroom was the special education teacher.
15. On September 29, 2018, the principal emailed staff working with the Student regarding several disciplinary referrals for behavior, including: "cursing and refusing to leave" and "posturing/intimidation."
16. On October 1, 2018, according to the Student's discipline record, the Student was being disruptive and was required to spend the remainder of the day in the MTSS specialist's classroom.
17. On October 2, 2018, staff used a "2 person rear escort" restraint and placed the Student in the isolation room for fifty-five minutes. According to the restraint/isolation report, the Student eloped and was "running on tables in cafeteria [and] swinging patrol flags at staff." According to the report, the special education teacher attempted to contact the Parent that same day and the written report was sent the next day, October 3, 2018. The report did not include any "recommendation[s] to change resources."
18. On October 3, 2018, staff restrained the Student and placed the Student in the isolation room for forty-five minutes and then later for twenty minutes. According to the restraint/isolation report, the Student was "running in halls, hitting and kicking teachers, instigating others to run from room, [and was] attempting to start [a] fight with other students." According to the report, the special education teacher notified the Parent in person that same day and the

written report was sent the following day. The report did not include any "recommendation[s] to change resources."

19. On October 4, 2018, the staff used a "1 person rear hold" restraint and placed the Student in the isolation room for twenty minutes for "throwing plastic tubs and cones at students, attempted to charge a student." According to the report, the special education teacher attempted to notify the Parent that same day and written notification was sent the following day. The report did not include any "recommendation[s] to change resources."
20. On October 15, 2018, the Student received a behavior/office referral for "disrespectful, argumentative, [and] disruptive behavior." The report stated that the Student "refused to take a break or go to a buddy room when asked. Admin. had to be called to remove...[him] from class." The administrative note on the report read: "Due to a pattern of struggles in science, [the Student] will be pulled back into the behavior intervention program during this time for the foreseeable future."
21. On November 1, 2018, the Student was isolated for eighteen minutes after he "walked self to safety room" because he was "standing on desks, throwing items in the direction of others, kicking walls and throwing books, [and] attempting to elope from class." Later in the day, staff used a "2 person 2 arm escort" restraint and placed the Student in the isolation room for fifteen minutes after the Student "threw book in the direction of another student, tipped multiple desks, attempted to start fight with student" after being "flipped off by a peer." According to the report, the special education teacher contacted the Parent via telephone the same day and mailed the written report the following day. The report did not include any "recommendation[s] to change resources."
22. On November 5, 2018, the Student was isolated for twenty minutes after the following occurred:
 - "Lost earned time for computers due to eloping from class twice";
 - "Antagonizing others, cursing at others, lunging at peers and staff, kicking teacher, [and] throwing pencils at others"; and,
 - "Safety room for peer and staff safety."

The special education teacher contacted the Parent that day and written notification was sent the following day. The report did not include any "recommendation[s] to change resources."

23. On November 7, 2018, staff used a "3 person rear escort" restraint and placed the Student in the isolation room for thirty minutes after the following occurred:
 - "A peer slapped a ball out of his hands";
 - "Threw basketball at another student, hitting him in the face. Moved toward the other student aggressively. While doing the escort, [the Student] purposely pulled the fire alarm"; and,
 - "Safety room for peer and staff safety."

Later, staff used a "2 person rear escort" restraint and placed the Student in the isolation room for twenty-five minutes after he "stabbed staff in neck with pen, threw items out desk at teachers, [and] kicked and punched teachers." The special education teacher contacted the

Parent that day and written notification was sent the following day, November 8, 2018. The report did not include any "recommendation[s] to change resources."

A behavior/official referral form was also filled out related to this incident, and the form noted that the Student would receive a short-term suspension. The notice of disciplinary action form stated the Student would be suspended, "starting on 11/7/2018, and ending on 11/9/2018" for "verbal or physical aggression" and "pulling false alarms or engaging in other similar conduct."

24. On November 13, 2018, the Student received a behavior/office referral after he came to "group about 20 minutes late" and was disruptive, "started to say random swear words...over and over," was walked out of class, then started to "tear up the bulletin board outside" the classroom. The administrative note on the referral form stated that the Student "has been pulled from working in [classroom] during his resource time until further notice. He will also meet with [teacher] to repair [a restorative conference]."
25. On November 13, 2018, the Student and the Parent signed a "readmission plan", following the November 13 incident described above.
26. On November 14, 2018, the Student was restrained and isolated for thirty-three minutes after he lost recess due to behaviors, pushed a student at the previous recess, "threw multiple items in the direction of others, hit student with his jacket, [and] kicked teacher multiple times." The special education teacher attempted to contact the Parent that day and sent written notification that same day. The report did not include any "recommendation[s] to change resources."
27. On November 27, 2018, the Student was isolated for nine minutes when the Student "threw multiple items at others, [was] swearing and threatening to beat up others" after he "lost a quarter [and] thought it was stolen by another student." The Student walked by himself to the "safety room." The special education teacher attempted to contact the Parent that day and sent written notification that same day. The report did not include any "recommendation[s] to change resources."
28. On December 3, 2018, staff used a "2 person rear escort" restraint and isolated the Student for twenty minutes after "instigating others [and] stomping on teacher's feet." The isolation/restraint report stated that the Student "walked self to safety room." The special education teacher attempted to contact the Parent that day via telephone and sent written notification that same day. The report did not include any "recommendation[s] to change resources."
29. On December 17, 2018, the Student received a behavior/office referral and a short-term suspension after the following incident occurred:
[The Student] and two classmates found a skateboard outside. [The Student] started riding it the two students all started running after him to get the skateboard. When he got off, they all put their hands on it and were trying to pull it from one another. I walked over and

told them all to let go, which they did. Then [the Student] started yelling and cussing at one of the boys and he started yelling back. They were threatening to beat each other up. I got in the middle and told them to both walk away and take a break. [The Student] started throwing hands at me and made contact. I placed him in a one-person hold. I was trying to de-escalate him. By the time [staff person] got there I thought I could let go and have him sit down at the bench that was about a foot in front of us. When I let go he hit [staff person] then ran away which is when we called for principal.

The notice of disciplinary action for the suspension stated that the Student would be suspended for three days, "starting on 12/17/2018, and ending on 12/19/2018."

30. On December 20, 2018, the Parent sent the principal a letter, requesting an IEP meeting to discuss "concerns and advocate for [the Student] to have a one-on-one Para educator." She stated that she felt there were "components on his IEP that are not being followed and we would like to address these." The Parent also stated, "I would also like to discuss the protocols for when and how [the Student] is being touched by teachers as he has had permanent bruises on his arms from the beginning of this year from where he is being held by teachers when escorted."
31. Also on December 20, 2018, the Student's attorney requested a copy of "all records and documents that [the school] has with respect to [the Student]." The Student's attorney specifically mentioned that he wanted a copy of special education records and disciplinary records.
32. The District was on break December 24, 2018 through January 4, 2019.
33. On January 8, 2019, the District attempted to schedule an IEP meeting with the Parent to address her concerns regarding the Student's behavioral needs.
34. On January 9, 2019, the principal emailed the District's special education director regarding scheduling the IEP meeting and noted that the Parent had stated that "when they receive the documents requested, they will then connect with us to find a date that works."³ The District also noted that the dates originally proposed for the meeting had been rejected by the Parent because there were scheduling conflicts.
35. According to the District, on January 11, 2019, the District sent the responsive educational records that the Student's attorney had requested.
36. On January 14, 2019, the Student was isolated for twenty minutes after he was not able "to go to specials" due to "behaviors in the morning" and then he "threw multiple items in the classroom, refused to take a break, [and was] antagonizing others." The special education teacher contacted the Parent, in person, the same day and sent written notification on January

³ The District's response stated that a meeting was not yet scheduled because the District was still "waiting for a response from the Parent as to the Parent's availability for a meeting."

15, 2019. The notification form stated under "recommendation to change resources": "no changes are needed."

37. On January 16, 2019, the Student was restrained or isolated for twenty minutes after he "threw multiple books and items in the direction of others, [and was] threatening staff." The special education teacher attempted to contact the Parent that same day and sent written notification the following day, January 17. The notification form stated under "recommendation to change resources": "no changes are needed."
38. On January 17, 2019, the Student was restrained and isolated for thirty minutes in the morning and isolated for ten minutes in the afternoon. The notification form stated that the Student "eloped from classroom, kicked teacher" and later was swearing, "did not give teacher chance to respond," and "tipped chair and garbage, yelling and posturing toward student, [and] kicked teacher." The special education teacher attempted to contact the Parent that day and sent written notification the following day. The notification form stated under "recommendation to change resources": "no changes are needed."
39. On January 18, 2019, the Student was restrained and isolated for thirty minutes. The notification form stated that the Student was "unable to do store due to behaviors at the end of day" and was "hitting and pushing staff, throwing chair and objects attempting to elope from classroom." The special education teacher contacted the Parent and sent written notification that day. The notification form stated under "recommendation to change resources": "no changes are needed."
40. Also on January 18, 2019, the Parent emailed the principal and stated that the Student's attorney had received the requested educational records from the District, but that "none of the documents that he received today had to do with this school year. Specifically, the written notifications of the use of isolation and restraints as well as [the Student's] suspensions."⁴ The Parent asked that these documents be sent as soon as possible so that they could discuss at a future IEP meeting.

The Parent also stated that she wanted to "discuss the incident that happened today." The Parent stated that she came to school to pick the Student up after he was "withheld from getting on the special education bus after school by his special education teacher." The Parent stated she witnessed the following:

Upon my arrival...I noticed that there were several teachers (at least 5-6) sitting around the table having a meeting and when I asked where [the Student] was [the special education teacher] got up and took a book out from the isolation door that wedged it shut...The isolation room was hot, and he was in the isolation room with his...coat on. I don't know how long he was unattended, but I was made aware from his old teacher last year that when he was going to be put in the isolation room that he would not be left unattended.

⁴ The District stated that it provided the Student's attorney with the requested records on January 11, 2019, and then sent additional records on January 18, 2019. The District stated that it believed the Parent sent this email before she realized that the District had provided the additional records to the attorney. The District stated that it has provided all records responsive to the request for records.

[The Student] was forced to be in there for at least 45 minutes, because I was not able to come to the school until 2:30 to pick him up as I did not hear my phone ring.

I asked [the Student] if anyone tried to help calm him down and he did tell me that [the other special education teacher]...told [the Student] to breathe, then she asked him if he was sorry for what happened and he stated yes, then she told him that she still didn't trust him. I do not think that it is okay for the teachers to tell [the Student] and the other kids that they do not trust them for their behaviors like this. It is not good for relationship building. [The Student] comes home a few times a week and tells me that he is not able to go upstairs to his general education class because [special education teacher] told him that she doesn't trust him because of whatever behavior that [the Student] engaged in...I thought that his IEP was supposed to give him several chances to go upstairs to his general education class.

The Parent stated that she felt the incident that day could have been deescalated if the teacher had followed the Student's IEP, specifically "the section on the escalation cycle and the staff response section." The Parent stated that this is a "great example of where a one-on-one would be beneficial." The Parent also stated that she could not remember if she had previously signed a document that gave teachers permission to restrain the Student, but that if she did, she "would like to rescind it now." The Parent stated that "restraining and isolating [the Student] is getting used way too much because staff are not adhering to his IEP de-escalation steps that would more than likely result in him not having a full-blown meltdown like today."⁵

The Parent stated that she looked forward to having an IEP meeting soon to discuss.

41. In the District's response, the District admitted that on January 18, 2019, the "District did not use isolation and restraint consistent with the requirements of WAC 392-172A-02110." The District stated that, based on interviews of staff, "the isolation and restraint conducted by special education staff did not meet the conditions of an imminent likelihood of serious harm and, specific to the isolation, the discontinuance as soon as the likelihood of serious harm has dissipated."

The District further stated that there has been a "pattern of use of isolation in this classroom and with the Student that is not consistent with the requirements" of the regulations—specifically, "review indicates the use of isolation and restraint in the absence of an imminent likelihood of serious harm" and that it was "unclear from the documentation if de-escalation strategies were implemented, as directed in the BIP, prior to the use of restraint and/or isolation as an intervention when the Student is escalating or already escalated."

⁵ The Parent also described this incident in her complaint and stated that the Student's special education teacher "did not allow him to get on his special education bus, because a kid that rides the same bus pushed [the Student] and this caused [the Student] to have a meltdown." The Parent stated that when the Student tried to leave the classroom to "deescalate (part of his flight or fight – from Autism disorder) he was not directed to a safe location, a teacher stepped in front of him blocking him, and he ended up pushing her, which resulted in staff grabbing his arms and escorting him to the isolation room."

42. The District's response also included declarations from staff involved in the January 18, 2019 isolation incident. The declarations included the following information, in part:

- **Special education teacher:** The Student "wasn't following directions...[and] started wandering around the room and began escalating." The Student "started throwing items and another student confronted him about his behavior." The Student then "tried to leave the classroom [and the] [paraeducator]...blocked the door...[the paraeducator] was pushed by [the Student]." The special education teacher stated, "I know his BIP says he can take walks but it was the last 5 minutes of the day, and there was no staff at that time to take him for a walk." The Student "pushed [the paraeducator] twice so we two person escorted him to [another special education teacher's] safe room." The teacher stated that during the isolation another paraeducator had eyes on the Student as she stood at the door. The teacher stated that she did not follow the Student's BIP because it was "bussing time."
- **Paraeducator 1:** Stated that she was "guarding the door...[another student] and [the Student] liked to run around the school and make their own plan at bussing time." The Student "was already escalated...he was pushing chairs, calling the teacher names...[and] pushed the garbage can towards me and then pushed me in the back, trying to get through." The paraeducator stated that she "I stayed in the doorway to keep him safe and contain him. He picked up a chair and went to throw it." The special education teacher then "helped me escort him." The paraeducator stated that another paraeducator "was at the door watching through his window the whole time. [The Student] stayed escalated the entire time he was in the isolation room." The paraeducator stated that she had "never seen [the Student's] BIP."
- **Paraeducator 2:** The paraeducator stated, "we tried to deescalate verbally. 'Hey [Student], wait here. We haven't forgotten you.'" The Student was "reminded to follow directions...[started] just escalating further...started throwing things in the room, tipping chairs. Walked over to the cubbies and started breaking the shelving and throwing things." Staff told the Student, "If you can't control your body, we will have to escort you, you are not bus ready." While the Student was isolated the paraeducator "stood at the door the entire time." The Student "deescalated after about 15 minutes. He had just sat on the back wall when mom showed up. He was really angry and upset." The paraeducator stated that she had not seen the Student's BIP.
- **Paraeducator 3:** The paraeducator confirmed the above accounts and stated that she had never seen the Student's BIP. The paraeducator stated that the other special education teacher attempted to help the Student deescalate and that the Student "deescalated seconds before [the Parent] walked in."
- **Other special education teacher:** The other special education teacher stated that "it took multiple people to escort and they were out of breath. People had been pushed and he looks big." In the isolation room, the Student "was kicking walls, and the door" and the paraeducator stayed at the door while "the rest of us sat at the teacher table." The teacher stated that "there is a mirror that allows people to see into the isolation room but he was so escalated we kept [paraeducator] at the door...We turned on music to drown out the adult talk that was going to take place." The Student "kept kicking, and was escalated for at least 30 minutes. When mom showed up he had been quiet for maybe 2 minutes. Mom seemed escalated herself." The teacher told the Student "to breath, to slow down, and everything was going to be ok. He was not excepting [sic] support." The other special education teacher had not seen the Student's BIP, but stated "I wouldn't expect to. He is not my student."

43. In her reply, the Parent stated that "if the paraeducators in [the Student's] class were aware of his BIP then they would know that standing in front of him blocking him...with the triggers that are causing his behaviors will only result in an increase in his behaviors" because "when [the student] is having a meltdown he is unable to regulate himself."
44. On January 20, 2019, the principal responded to the Parent's January 18 email and stated that he would look into the incident that occurred on January 18. The principal also stated that he would reach out to ensure that all of the Student's current educational records were sent.
45. According to the District's response, "neither the District, the school, nor the case manager, had received any request from the Parent for a one-on-one paraeducator for the [Student] prior to the receipt of this citizen complaint on January 18, 2019." In the staff interviews included with the District's response, the Student's special education teacher (current case manager) and the MTSS specialist (former case manager) stated that the Parent has never talked to them about a one-on-one paraeducator for the Student nor requested a one-on-one paraeducator.
46. According to the Parent, there were several occasions this school year that the Parent suggested to the principal that the Student needed a one-on-one paraeducator. In her reply, the Parent stated "on several of the occasions when [the Student] was in the process of getting suspended...I had mentioned to...[the principal]...that this was a good example of why [the Student] needs a paraeducator. I had verbally stated that I wanted an IEP meeting on several incidents." The Parent stated, in her reply, that she believed that if the Student "had a paraeducator, it would be someone in his court, rooting for his success by encouraging positive behavior, knowing his triggers, and making him feel supported so that he would excel once again."
47. In its response, the District admitted that "there have been times when the [Student's] BIP has not been implemented." The District stated that "the BIP was not implemented as a result of the time of day and activities associated with bussing and dismissal at the end of the school day" and that the Student's teacher "had not provided the IEP or BIP to, or allowed a review of the said documents by, staff working with the Student in her classroom."
48. In her reply, the Parent noted that despite the District's suggestion that the majority of the Student's behavior incidents occurred at the end of the day, the discipline report indicated that "the majority of the incidents on the report show that behavioral interventions have taken place during special activities (like physical education or science) and at recesses."
49. The District's documentation included behavior tracking sheets that noted how many "redirects" the Student needed in the following areas: "staying on task; following directions promptly; appropriate language, volume, gestures; using materials appropriately; showing respect; [and] personal bubble." The form also included a section for "turn around point/bonus awesome point." The form noted the number of redirects needed in each of the above categories for morning meeting, reading, recess, social studies, lunch, recess, math, social skills, recess, and end of day.

The District's response included behavior tracking sheets for:

- November 19-20, 2018;
- December 4-7 and 10-12, 2018;
- January 8-11, 14, 16-18⁶, 22-2019; and,
- Several undated forms.

In December 2018, the forms began noting that the Student's goal was to get 90% or better of the points available throughout the day.

CONCLUSIONS

Issue 1 – Implementation of IEP and BIP: The Parent alleged that the District failed to implement the Student's individualized education program (IEP), specifically the District failed to follow the Student's behavioral intervention plan (BIP). A district must, at the beginning of each school year, have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services, and the district must provide all services consistent with the IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. A BIP is considered part of a student's IEP and at minimum describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; conditions or circumstances that contribute to the pattern of behavior(s); positive behavioral interventions and supports to reduce the pattern of behavior(s) and increase the desired prosocial behaviors; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. The plan helps ensure consistency of implementation across the student's school-sponsored instruction or activities.

BIP Implementation

Here, the Student had a detailed BIP, which was last updated in May 2018. The District admitted that it did not follow procedures for implementing the Student's BIP. The District stated specifically that after investigating, the BIP was not implemented as a result of the time of day and activities associated with bussing and dismissal. Further, the Student's teacher failed to provide the IEP or BIP to staff, or allow review of documents by staff working with the Student in her classroom. The Parent further pointed out in her reply that the majority of the incidents noted in the Student's behavior and discipline records occurred during special activities like physical education (P.E.) and recess.

OSPI notes that the District did include documentation that indicated school staff were tracking the Student's behavior; however, there is limited evidence that staff otherwise implemented the Student's BIP. On a few of the behavior reports, there are references to staff attempting to redirect or de-escalate the Student, but in a majority of the behavior incidents, there is no indication that the strategies in the Student's BIP were being implemented. Further, it would be impossible for

⁶ On January 17, 2019 the format and design of the form changed to focus on making "red choices or green choices" and included different categories that the Student received points in. The chart also included a spot to set a goal for the day, such as "stay in class" or "follow gen ed schedule."

staff—such as the paraeducators working with the Student and in his classroom—to implement the BIP when they have never seen the document. OSPI finds that the District failed to implement the Student’s IEP, specifically his BIP, and failed to ensure that the Student’s IEP and BIP were accessible to the teachers and providers responsible for implementation. The District proposed training and proposed having staff who work with the Student review his IEP/BIP as corrective actions, which OSPI accepts with additions described further in this decision.

Other IEP Implementation

The Student’s May 2018 IEP stated that the Student would spend 75% of his time in the general education setting and would receive 500 minutes per week of behavior/social instruction in the general education setting. However, the District’s documentation indicates that the Student was removed from or was not allowed to access the general education setting on many occasions. The Student’s discipline records and emails from the school staff indicate that in September 2018, the Student was moved back into the behavior intervention classroom, with an opportunity to “earn” his way back to his other classroom. Later in October 2018, it appears that moving the Student back into the behavior intervention classroom was permanent. In her reply, the Parent stated that the Student stated that “he is not able to go upstairs to his general education class because [special education teacher] told him that she doesn’t trust him because of whatever behavior that [the Student] engaged in...I thought that his IEP was supposed to give him several chances to go upstairs to his general education class.”

While is not clear whether the Student’s placement was changed through disciplinary means, the documentation does indicate that the Student’s IEP was not being implemented in the setting outlined in his IEP. If the Student was frequently not able to attend class in the general education setting, he would not have received the required specially designed instruction in behavior/social in the general education setting, as stated in his IEP. While emails indicate that the Parent agreed with this decision, if a change in placement occurred through disciplinary means, the District should have considered whether a manifestation determination was necessary. Further, if the Student’s placement was changed, this may have necessitated a reevaluation, but at minimum should have been an IEP team discussion.

OSPI finds that the District failed to implement the Student’s IEP as written, when the Student was either removed from or prevented from attending class in the general education setting. Further, the District may have changed the Student’s placement without following proper procedures. The District will be required to hold an IEP meeting to discuss the Student’s services, setting of services, and placement. If the IEP team determines that the Student’s placement was changed, the District will consider whether it needs to hold a manifestation determination or conduct a reevaluation.

Issue 2 – Isolation and Restraint: The Parent alleged that the District improperly used restraint and isolation instead of implementing the de-escalation provisions in the Student’s BIP.

Conditions for the Use of Restraint & Isolation: 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. Isolation, as defined in WAC

392-172A-01107 and RCW 28A.600.485, means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. Isolation does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. A district may only use restraint or isolation 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.

During the 2018-2019 school year, the Student was restrained and/or isolated on the follow dates: September 20 and 26, 2018; October 2, 3 (twice), and 4, 2018; November 1 (twice), 5, 7 (twice), 14, and 27, 2018; December 3 and 17, 2018; January 14, 16, 17 (twice), and 18, 2019. The Student was restrained or isolated for a variety of behaviors that ranged from: refusing redirection/breaks, to swearing at or antagonizing other students, and attempting to start fights; to swinging or throwing various objects (from pencils to basketballs); to running or jumping across tables; and hitting/kicking/stabbing staff and other "general unsafe behavior." The isolations lasted from six (6) to fifty-five (55) minutes.

In response to the Parent's allegation regarding the January 18, 2019 restraint and isolation, the District admitted that it did not use isolation and restraint consistent with the requirements of the regulations—specifically, that the Student's behaviors did not meet the conditions of an imminent likelihood of series harm, and regarding the isolation, isolation was not discontinued as soon as the likelihood of serious harm had dissipated. While staff accounts vary slightly in the detail, the documentation confirms that the District, in this instance, improperly isolated the Student.

Further, the District admitted that upon review, there has been a pattern of improperly isolating the Student (isolation inconsistent with the requirements of WAC 392-172A-02110). OSPI finds this to be true as the documentation indicates that the Student was restrained or isolated on many occasions for behaviors that did not indicate a likelihood of serious harm, such as refusing to take a break, swearing at others, and even throwing small objects or hitting adults. While some of the incidents did involve potential harm (e.g., throwing a basketball at another student's face)—that was limited in duration—OSPI finds that there was a pattern of improper restraint and isolation. OSPI finds the District in violation and OSPI accepts the District's proposed corrective action of training on isolation and restraint regulations, requirements, and District procedures. Further, given the failure to implement the BIP (discussed above) and the pattern of restraint and isolation, the Student's IEP team will meet to discuss whether any changes or additional supports are needed for the Student.

Follow-up Procedures: Following the release of a student from restraint or isolation, 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 or isolation and the appropriateness of the response. The school must also review 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.

In its response, the District admitted that restraint and isolation were used when there was no imminent likelihood of serious harm and that isolations were not discontinued once the harm had dissipated. The District stated that all other conditions were met by staff.

However, the documentation in this complaint indicates that the school staff were not completing all of the required follow-up procedures. While the Parent was contacted by the principal or the special education teacher and notified after each incident, there is no indication in the District's response or on the restraint/isolation reports that the District reviewed the incident with the Student and the Parent. There is no documentation that a discussion took place regarding the behavior that precipitated the restraint or isolation or the appropriateness of the response. Further, there is no indication that the school reviewed the incident with the staff involved in each incident to discuss whether procedures were followed and what training/support the staff needed to help the student avoid similar incidents. Especially given the number of incidents of restraint and isolation and the potential pattern of behavior that was emerging (*see also*, the other incidents which resulted in behavior/office referrals, but not necessarily restraint or isolation), these discussions would have been important to determine whether the Student needed more or different support. OSPI finds that the District failed to follow the required follow-up procedures and is in violation. The District will conduct training.

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.

Following most of the incidents, the required written report was created. Although OSPI notes that on September 20 and December 17, 2018, the discipline/office referral forms indicate the Student may have been restrained or isolation; however, no restraint/isolation report was written for these incidents. Further, the District's restraint/isolation reports do not consistently include all of the required elements listed above. Many of the reports list the staff person's name, but not their title; a few reports state the Student was restrained but do not include the type of restraint; and many of the reports do not include either recommendations for changing the nature/amount of resources, or whether this was considered and it was determined no changes were necessary. OSPI finds that the District's written report, while provided within the required timeline, does not meet the requirements of the applicable regulations.

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. Here, the District met this requirement. The restraint/isolation reports for each incident state that either the principal or the special education teacher contacted or attempted to contact the Parent to notify her of the incident the same day each incident occurred.

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. In this case, the Parent was provided with copies of the written report either the same day as the incident or the following day. However, as discussed above, the written report does not contain all of the required elements.

OSPI finds that the District failed to follow the required reporting procedures and is in violation. The District will conduct training and review its restraint/isolation reporting form to determine if revisions are necessary.

Issue 3 – Request for a Paraeducator: The Parent alleged that she has been requesting a one-on-one paraeducator for the Student all year, and that the District has not responded. When a parent or district believes that a required component of a student's IEP should be changed—such as the request to add paraeducator support to a student's program—and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting.

The District stated that neither the District, the school, nor the Student's case manager, received a request from the Parent for a one-on-one paraeducator for the Student during the 2018-2019 school year, prior to the receipt of the complaint on January 18, 2019.

The Parent stated in her reply that the Student's 2016 transfer IEP included paraeducator support and that the Student had a full-time paraeducator in his previous district. The Parent stated that she had made her desire that the Student have a one-on-one paraeducator clear. This original request for a paraeducator cannot be considered because a special education citizen complaint can only look at potential violations of the IDEA within the calendar year preceding OSPI's receipt of the complaint—making a 2016 request for a paraeducator outside the timeline. Also, this issue was investigated, in part, in citizen complaint 17-42, which found that because paraeducator support was listed as an accommodation, the District did not improperly remove the support from the Student's September 2016 IEP. OSPI finds that the Parent's request for a paraeducator in 2016 does not carry forward into the 2018-2019 school year and did not trigger an obligation for the District to respond.

The Parent also stated that there were several occasions throughout the 2018-2019 school year when she suggested to the principal that the Student needed a one-on-one paraeducator. Unfortunately, there is no written documentation or other confirmation of when these requests were made. However, the Parent did send the principal a letter, dated December 20, 2018, requesting an IEP meeting and stating that she would advocate for a one-on-one paraeducator.

On January 8, 2019, in response to the Parent's request for an IEP meeting, the District attempted to schedule a meeting to address the concerns regarding the Student's behavioral needs. The Parent indicated that the dates proposed did not work for her and the Student's attorney. And, the District indicated that the Parent wanted to meet once the District had provided the requested education records (discussed below) and would provide the District with dates they were available to meet. To date, the Parent has not provided the District with her availability and a meeting has not yet been scheduled.

The District was incorrect in its belief that the first time the Parent requested a paraeducator this school year was on January 18, 2019. The Parent made a request for an IEP meeting and consideration of a paraeducator on December 20, 2018. Regardless, the District responded properly to this request by attempting to schedule an IEP meeting with the Parent in early January 2019. OSPI finds that the District has followed procedures, so far, to respond to the Parent's request. The District does still need to meet with the Parent and respond to her request; and, given that an IEP meeting has been ordered (see above), the request for a paraeducator will be discussed at this meeting. However, OSPI finds that the District followed procedures for responding to the Parent's request by attempting to schedule a meeting and is not in violation.

Issue 4 – Request for Records: The Parent alleged that, on behalf of the Parent, the Student's attorney (also the Student's grandfather) requested the Student's educational records and that as of the date the complaint was filed (January 18, 2019), the records had not been received. District's must permit the parents of students eligible for special education to inspect and review any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request for educational records promptly and must respond in no more than 45 calendar days from when the request was made. This right to inspect and review educational records includes the right to have a representative of the parent inspect and review records.

On December 20, 2018, the Student's attorney requested all educational records related to the Student, specifically the special education and disciplinary records. According to the District, it provided the responsive records on January 11 and 18, 2019, within the required 45 calendar days. Also, on January 18, 2019, the Parent emailed the principal and stated that the Student's attorney received the records, but that none of the documents were from this school year. Specifically, the attorney did not receive the written notifications of the use of isolation and restraints or records of the Student's suspensions. On January 20, 2019, the principal responded and stated that he would reach out to ensure that all of the Student's current educational records were sent. The Parent asked that the remaining documents be sent as soon as possible. The District stated that it has provided all of the responsive records, and that it believes the Parent sent the January 18 email prior to realizing that the District had provided the remaining records that same day.

Here, the District followed procedures for responding to the request for records and provided records within the 45-calendar-day requirement. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **April 5, 2019, April 22, 2019, and May 24, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **April 15, 2019**, the Student's IEP team will meet to address concerns regarding the Student's behaviors and the issues raised in this complaint. The IEP will discuss and documentation discussion of, at minimum, the following topics:

- The Student's behaviors and the pattern of restraint and isolation;
- Services to be provided and location of the services;
- Whether the Student's placement was changed via disciplinary removal or by not allowing him access to the general education setting;
- Whether a manifestation determination or reevaluation are necessary;
- Whether additional or different supports are needed;
- Whether the Student's IEP and/or BIP need to be amended; and,
- The Parent's request for a 1:1 paraeducator.

By **April 22, 2019**, the District will submit to OSPI: 1) a copy of the meeting invitation; 2) a copy of any prior written notices; 3) a copy of the agenda or topics discussed at the meeting; 4) a copy of the IEP and BIP if amended; and, 5) any other related documents.

By **April 22, 2019**, along with the documentation from the IEP meeting, the District will notify OSPI if there are any next steps the District needs to take, including holding a manifestation determination or conducting a reevaluation. Based on the next steps, OSPI will provide further dates for documentation and review.

The District will also meet with the staff identified in this complaint (staff who work with the Student) to review this complaint decision, the Student's IEP, and the Student's BIP. If the Student's IEP and BIP are amended at the IEP meeting, staff review should occur after the IEP meeting. However, this staff review may occur in conjunction with the IEP meeting. The District may choose whether to have the Parent attend this meeting or whether to have a separate staffing meeting. By **April 22, 2019**, the District will provide documentation (e.g., a sign in sheet) that show all staff who work with the Student reviewed his IEP and BIP.

DISTRICT SPECIFIC:

Isolation & Restraint Form

By **March 29, 2019**, the District will review its "Isolation and Restraint Report" to ensure that it aligns with the requirements of RCW 28A.600.485. OSPI strongly recommends that the District's report include spaces for the required follow-up procedures—i.e., a place to note that the discussions with the student, parent, and involved staff have occurred. By **April 5, 2019**, the District will provide OSPI with documentation that the District reviewed the report, including who was involved in that review. The District will also provide the updated version of the report if it

has been changed. OSPI will approve the updated report or provide comments by April 12, 2019, and provide additional dates for review if need.

Training for Identified School

By **May 17, 2019**, the District will provide training on the issues identified in this complaint for all special education teaching and ESA staff, general education instructional staff, and administrative staff at the school identified in the complaint. The training should include, at minimum:

- The requirements set out in WAC 392-172A-02110 and the incorporated RCWs;
- Imminent likelihood of serious harm;
- Reporting and follow-up procedures;
- District restraint and isolation policies; and,
- Procedures for implementing student IEPs and BIPs, including that all responsible staff must have access to the documents.

The training may be provided by District special education administrative staff working with Educational Service District (ESD) 101 staff.

By or before **April 5, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **April 22, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by April 29, 2019 and additional dates for review, if needed.

By **May 17, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 24, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

District Wide Training

The District will also consider training needs for the entire District related to restraint and isolation requirements and procedures, and determine whether additional training beyond the school identified in this complaint is needed to ensure all staff are aware of the changes to the report and the requirements.

By **April 12, 2019**, District special education leadership will meet and discuss the need for broader training in the District. This should include a consideration of all the schools in the District and the level of training need. Further training could include in-person training and/or written training (guidance).

By **April 22, 2019**, the District will provide OSPI with a list of District schools, what level training each school requires, and the proposed plan for training. The plan should include an explanation of how and why each determination was made for each school. The plan should include a proposed timeline for the training. OSPI will approve the training plan and provide comments by April 29, 2019, and additional dates for review, if needed.

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.

Dated this ____ day of March, 2019

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.)