

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-61**

### **PROCEDURAL HISTORY**

On August 26, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an attorney on behalf of the legal guardian (Complainant) of a student (Student) attending the Sumner-Bonney Lake School District (District). The Complainant alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On August 27, 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 September 9, 2019, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District on the same day.

On September 16, 2019, the District requested an extension of time to respond to the complaint. OSPI granted the extension and informed the District that its response was due no later than September 25, 2019.

On September 25, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on September 26, 2019. OSPI invited the Complainant to reply.

On October 4, 2019, the Complainant requested an extension of time to reply to the District's response. OSPI granted the extension and requested the Complainant submit her reply by October 16, 2019.

On October 14, 2019, OSPI requested clarifying information from the Complainant and on October 15, 2019, OSPI received the requested information from the Complainant. On October 16, 2019, OSPI provided the requested information to the District.

On October 15, 2019, OSPI requested clarifying information from the District and interviewed the District on October 17, 2019. On October 17, 2019, OSPI received the requested information from the District and on October 18, 2019, OSPI provided the requested information to the Complainant.

On October 17, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on October 19, 2019.

On October 18, 2019 and October 21, 2019, OSPI requested clarifying information from the Complainant, and received the requested information on October 23, 2019. OSPI forwarded the information to the District on the same day.

On October 22, 2019, OSPI requested clarifying information from the District. OSPI received the requested information from the District on October 23, 2019 and forwarded it to the Complainant on the same day.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation. It also considered the information received by the complaint investigator during interviews.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on August 27, 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.<sup>1</sup>

### **ISSUE**

1. Did the District use restraint and isolation with the Student consistent with the requirements in WAC 392-172A-02110 during the 2018-2019 school year?

### **LEGAL STANDARDS**

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

---

<sup>1</sup> In her reply, the Complainant provided documentation of several incidents of restraint and isolation of the Student during the 2018-2019 school year, which occurred prior to the Student becoming eligible for special education services. The Complainant requested OSPI consider these incidents as part of its investigation. OSPI informed the Complainant's attorney the allegation of inappropriate use of restraint and isolation by the District of a student not yet eligible for special education (i.e., a general education student)—absent any other allegations in addition to the allegation that the use of restraint and isolation was inconsistent with the special education regulations—did not raise a potential violation of the IDEA. OSPI does not have the authority through the special education citizen complaint process to investigate allegations of restraint and isolation of general education students. Incidents of restraint and isolation which occurred prior to the Student becoming eligible for special education during the 2018-2019 school year are therefore not addressed in this decision. In addition, the Complainant alleged in her reply that the Student was inappropriately suspended for school or removed for behaviors related to the Student's disability throughout the 2018-2019 school year. These issues were not raised in the original complaint and accordingly were not investigated in this complaint.

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.

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.

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.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. 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 or 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 a 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 in order 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**

1. The District's 2018-2019 school year began on September 10, 2018.
2. During the 2018-2019 school year, the Student attended a District kindergarten. At the start of the school year, the Student was not yet eligible for special education services.
3. During September and October 2018, the Student had multiple behavior incidents at school, including three incidents where the Student received out-of-school suspensions and one incident which resulted in a restraint.
4. On October 11, 2018, the Student was referred for a special education evaluation due to significant behavioral concerns.
5. On November 2, 2018, the Complainant signed consent for an initial evaluation in the areas of medical-physical, adaptive, communication, behavior, general education, cognitive, fine motor, observation, social/emotional, and academic.
6. During November and December 1-20, 2018, the Student was not yet eligible for special education services. During this time, the Student had multiple behavior incidents at school, which resulted in one in-school-suspension, two out-of-school suspensions, and one emergency expulsion, which was converted to an out-of-school suspension from November 15-28, 2018. The Student also experienced fourteen incidents of restraint and isolation.

7. On December 20, 2018, the Student's evaluation group—including the Complainant—met to discuss the Student's initial evaluation. The evaluation report noted the Student had recently been diagnosed with anxiety, oppositional defiant disorder (ODD), and attention deficit hyperactivity disorder (ADHD). The evaluation report qualified the Student for special education under the category developmental delay, identified the Student's least restrictive environment (LRE), and recommended accommodations and specially designed instruction in the following areas: basic reading skills, written language skills, social skills, behavior, and adaptive behavior.

Regarding behavior, the evaluation report stated the Student had "difficulty with peer social skills interactions, positive adult social interactions, and [did not] comply with completing his work in the classroom setting." It further stated the Student was "physically and verbal [sic] aggressive" and noted the Student so far had "38 major behavior incidents," "9 minor incidents," and had been suspended 9 full or half days of school for behaviors, including "defiance/insubordination/non-compliance."

8. On December 20, 2018,<sup>2</sup> according to an incident report completed and signed by the Student's principal, the Student was restrained from 9:55-9:56 am and then isolated from 9:56-10:05 am in the quiet room.<sup>3</sup> According to the incident report, prior to the incident, the Student was hitting, kicking, pushing, spitting, yelling/calling out, throwing furniture, shutting down/refusing to complete a task, and out of his seat/wandering. The following strategies were used in an attempt to de-escalate the Student prior to using restraint and isolation: verbal/visual redirection, reinforcement of appropriate behaviors, reminder of reward system, proximity/body positioning, and planned ignoring. A 1-person seated hold was used following the right-response method.<sup>4</sup> The Student was documented as being calm during the restraint and "yelling and spitting after the restraint." The assistant principal and paraeducator 1 performed the restraint and isolation. The incident report indicated both were certified according to the right response<sup>5</sup> method and both had received training prior to the restraint and isolation. According to the incident report, paraeducator 2 was also present. No injuries

---

<sup>2</sup> This incident report was not included with the District's response, but was provided with the Complainant's reply.

<sup>3</sup> The quiet room was also sometimes referred to as the "calm room."

<sup>4</sup> Right Response is one certified method of training a school district may offer to staff on de-escalation, intervention, restraint, prevention, and positive behavior support.

<sup>5</sup> The District provided right response training certification documents with its response. Right response training certifications are active for one year from the date they are issued. The assistant principal was certified in August 2018 and accordingly, the assistant principal's certification was active throughout the duration of the time period under investigation for this complaint. Paraeducator 1 was certified in October 2018, and also had active certification throughout the time period under investigation for this complaint. Both certifications included training in the use of a 1, 2-arm, 1-person chair hold.

were reported. The incident report stated the principal was notified at 1:30 pm the day of the incident, and that the principal notified the Complainant verbally and in writing the same day.

A debriefing meeting was held the day of the incident and attended by the principal, assistant principal, and paraeducator 1. A debriefing report was prepared and signed by the principal. According to the debriefing report, the Student was "being asked to do something he didn't want to do" and began "yelling, throwing objects, spitting," and became "physically aggress[ive] towards staff so staff left room for him to de-escalate." The debriefing report stated "restraint [was] needed for him to de-escalate" and "isolation [was] needed to protect staff from aggression." On the debriefing report, it was recommended the Student receive "more intensive adult support and alternative learning space." The debriefing report noted that a behavior intervention plan (BIP) was "in process."

9. The District was on winter break from December 24, 2018 through January 4, 2019.
10. On January 8, 2019, according to an incident report completed and signed by paraeducator 1 and the principal, the Student was restrained by paraeducator 1 and the learning specialist<sup>6</sup> from 12:07-12:11 pm in the resource room<sup>7</sup> using the 2-person chair hold following the right response method. According to the incident report, prior to the restraint, the Student was hitting, biting, kicking, pushing, pinching, throwing objects, and yelling/calling out. Prior to the restraint, the following de-escalation strategies were attempted: verbal/visual redirection, offering choices, reminder of a reward system, and using proximity/body positioning to block the Student. During the restraint, the Student was documented as "still trying to hit, pinch and kick." The report indicated the learning specialist and paraeducator 1 both were certified and had received training in restraint prior to restraining the Student.<sup>8</sup> The incident report stated the principal was notified of the incident at 12:30 pm the same day. It also said the Complainant was notified by the principal verbally at 2:15 pm and in writing the same day.<sup>9</sup>

---

<sup>6</sup> In the District's response, the District provided a staff list where it referred to the learning specialist as the Student's "special education teacher." However, throughout the documentation, this staff member signed all documents, including all restraint and isolation reports, as the learning specialist. Accordingly, throughout this decision, this staff member is referred to as the "learning specialist." It is unclear if the Student's learning specialist was also providing the Student specially designed instruction, or was also a certified special education teacher.

<sup>7</sup> The resource room is also referred to as "Room 40" or the Student's "classroom."

<sup>8</sup> The learning specialist was certified accordingly in right response (advance level) in September 2018. The learning specialist and paraeducator 1's certification included training in "2-person chair holds."

<sup>9</sup> During an interview by phone with the District on October 17, 2019, the executive director stated the written reports are either shared with families via mail, or in person, and that the Complainant had expressed to the District she preferred to pick up the written reports in person. The executive director told the OSPI complaint investigator the school maintained a file folder both secretaries could access, which contained documents for the Complainant, including written reports for restraint and isolation. The same day, the

A debriefing meeting was held the day of the incident. The learning specialist, paraeducator 1, and principal attended. "Packing up, and direction" were identified as triggers. The debriefing report noted the Student said, "I am going to hit you, I hate you, shut up," and then "lunged at staff, pinching, hitting, [and] kicking." The report indicated that "verbal/visual redirecting, reminder of rewards, offer[ing] choices, and proximity/ignoring" were attempted to de-escalate the Student but "nothing worked;" "restraint [was] needed to keep [Student] from hurting staff." The debriefing report recommended "1:1 support" and a "constant adult to manage behavior." The report noted an FBA was in process.

11. On January 8, 2019, the principal emailed the Complainant regarding the incident at school that day. In the email, the principal mentioned the Student had been restrained following a "significant amount of physical aggression towards all adults." In her email, the principal additionally confirmed all incidents of restraint and isolation, which had occurred in "room 40" had been documented. In her email, the principal wrote:

In regards to your question in the previous email about whether or not all isolations that took place in the calm room were documented, yes they were and you would have been notified by phone and should have received paperwork as well. Because room 40 is not an isolation room and should be a safe place for all students needing a small group resource room setting, there may be times moving forward that a calm room might still be used for isolation if [Student] continues to be aggressive towards staff and/or students, I hope this helps clarify. [Executive director of Special Services (executive director)] will be in touch by the end of this week about some of the other questions you asked about the IEP, FBA, etc.

12. In the Complainant's reply, the Complainant's attorney alleged the Complainant was not notified verbally or in writing of the restraint on January 8, 2019. On October 23, 2019, the Complainant's attorney clarified that on January 8, 2019, the Complainant received an email from the principal, notifying the Complainant of restraint on January 8, 2019, but the email did not provide additional details.

---

executive director emailed OSPI additional information regarding how it provided the Complainant written reports it produced. In its email, the executive director wrote, "My admin secretary began maintaining a digital log on 10/21 of all school-wide isolation/restraint forms that were mailed 10/21/18-6/25/19. [Complainant] is not listed as having these documents mailed which indicates that they were placed in the file for 'pick-up' at our front desk per her directive." The principal stated in an email to the executive director, which was then provided to the complaint investigator, that the option to have written reports mailed was "always made available." On October 23, 2019, the Complainant's attorney emailed the OSPI complaint investigator in response to the District's statements. Regarding the general practice of picking up written reports at school, the Complainant's attorney stated, "In the beginning of the school year, [school] staff would mail [Complainant] restraint and isolation reports. They came certified mail and required a signature. Since both [Complainant] and [Student's grandfather] work, the letters would be returned to the post office for pick up. After quite a few being returned to the post office, [Complainant] asked if there was another way that they could receive their reports. Paperwork would be picked up by the [Complainant] when [Student] was being picked up from school prior to 12/18. In December 2018, [Student] started riding a small bus to and from daycare. [Complainant] only dropped [Student] off on Friday's and would often be handed documents. Unless they were handed to her, [Complainant] did not know that there were documents in her file. Guardian does not recall signing for the reports when they were handed to her."

13. On January 10, 2019, two incident reports were filled out and signed the same day by the learning specialist and principal.

According to the first incident report, the Student was placed in isolation in the "classroom" by the learning specialist and school counselor from 9:15-9:20 am. Prior to the incident, the Student was kicking and throwing plastic shapes at staff, yelling/calling out, and was out of his seat/wandering. The following interventions were used in effort to de-escalate the Student's behavior prior to the use of isolation: verbal/visual redirection, offering choices, proximity/body positioning, planned ignoring of the behavior, and "de-railing with offer of pillows to throw." The incident report stated both the learning specialist and counselor were certified and had received training prior to the isolation.<sup>10</sup> No injuries were reported. A debriefing meeting was held at 3:00 pm to review the incident. The meeting was attended by the principal and learning specialist. It was noted that the incident occurred in the "classroom, (resource room, room 40)." "Escalating behavior," was listed as the trigger. The report stated the Student was "yelling, kicking adults, throwing plastic shapes and other objects at adults," and that "visual redirection, choices, proximity, ignoring, and de-railing," were used to de-escalate the Student prior to using isolation. It was noted that "nothing worked but the isolation," and recommended that the "trained, intensive 1:1 adult support" be provided to the Student to avoid similar incidents."

According to the second incident report, the Student was restrained from 10:14-10:18 am (incident A), isolated from 10:19-10:21 am (incident B), restrained from 10:18-10:19 am (incident C) and isolated from 10:40-10:41 am (incident D) by the learning specialist and paraeducator 2. The incidents occurred in "Room 40 and the calm room" and in the hall. According to the incident report, prior to the incident, the Student was hitting, kicking, pushing, biting, yelling/calling out, throwing chairs, desks, and "any item he could grab," and was out of his seat. The incident report noted that verbal and visual redirection, offering choices, and using proximity/body positioning were unsuccessful at de-escalating the Student's behaviors, as was offering words to use and other items (pillow, bean bag) to throw. It was noted that during the restraint the Student was kicking, biting, and "twisting," and that after the restraint the Student was tearing up books and throwing items. The incident report indicated that first a "1, 2-arm, 1-person chair hold" was used, followed by a "2-person chair hold," followed by a "rear 2-person escort (transport)," all according to the right response method. According to the incident report, both staff members who were involved were certified and had received training prior to using restraint and isolation on the Student.<sup>11</sup> The director of special services (director) was present during the restraint and a staff member was injured.

---

<sup>10</sup> According to documentation provided by the District, the school counselor was certified in June 2018.

<sup>11</sup> According to documentation provided by the District, paraeducator 2 was certified in right response in June 2018 and accordingly was certified throughout the duration of the time period under investigation for this complaint. Both the learning specialist and paraeducator 2 received training in how to perform a 1, 2-arm, 1-person chair hold, a 2-person chair hold, and a rear 2-person escort.



A debriefing meeting was held at 3:00 pm the day of the incident and attended by the principal, learning specialist, and paraeducator 2. The debriefing report indicated the triggers for the restraint were not known and the Student was "yelling, throwing objects at staff, throwing chairs, tipping desks." Triggers for the isolation were listed as "escalating physical aggression." Regarding the isolation, the Student was "biting staff, continuing escalation, so 2 staff members escorted [Student] to isolation room." The following de-escalation techniques were used for both restraint and isolation: "verbal/visual redirect, offered choices, proximity, offered words to use, pillows, kicking, biting." On the debriefing notes for restraint, it was noted the "[Student] never de-escalated w/restraint but ended up biting a staff member and then tore up books." Regarding isolation, it was noted the following actions occurred, "Restraint, transport to calm room so staff could be safe and physical aggression could be isolated." For both the restraint and isolation which occurred, the following was recommended: "Trained and intensive adult 1:1 support needed to implement plans." The Student's lack of a BIP was documented.

Both incident report 1 and incident report 2 stated the principal was notified on January 10, 2019 at 11:00 am. Both stated the Complainant was verbally notified by the learning specialist on January 10, 2019 at 1:30 pm, and by the principal in writing on January 11, 2019.

14. On January 14, 2019, the Complainant signed consent for the provision of initial special education services. The same day, the Student's individualized education program (IEP) team met to develop the Student's initial IEP. The IEP team determined the Student's behavior impeded his learning or the learning of others. The team then discussed the Complainant's concerns related to the Student's behavior and noted that the District was currently conducting an FBA, which it indicated would be used to determine if a BIP needed to be developed.<sup>12</sup> The IEP developed at the January 2019 meeting listed previous strategies that had been used to address the Student's behaviors, including "re-direction, re-teaching of expected behaviors, visual schedules, positive reinforcement, right response de-escalation, verbal prompts, honoring choices, [and] functional communication." The IEP included annual goals and specially designed instruction in reading, writing, social/emotional, adaptive, and behavior, as well as several accommodations and supports for school personnel (de-escalation training).

The IEP stated the Student would spend 30.77% of his time in the general education setting and would attend school "1/2 day AM only schedule."

The IEP stated the Student did not have an emergency response protocol (ERP).

The prior written notice, dated January 14, 2019, indicated another meeting would be held to review the results of the FBA, and that if a BIP was developed, the IEP would be amended at the time of the BIP meeting.

---

<sup>12</sup> The District is reminded that there is no requirement an FBA be completed prior to developing a BIP.

15. Also on January 14, 2019,<sup>13</sup> according to an incident report completed by the principal, the Student was restrained on the bus after hitting, kicking, biting, pushing, running, and being out of his seat. The incident report did not include a time. The report indicated the Student was restrained by paraeducator 1 and the learning specialist using a transport position following the right response method and by "putting [Student] into bus seat for ride home and seatbelt put on by driver." According to the incident report, the Student was "fighting, hitting, yelling, and biting" during the restraint, and "screaming, crying" after the restraint. The incident report stated both staff involved in performing the restraint were certified in right response and had received training prior to the incident. The director, the assistant principal, and paraeducator 2 witnessed the restraint. No injuries were reported. The incident report stated the principal was notified the same day at 12:30 pm, and the Complainant was notified verbally and in writing the next day at 5:45 pm by the principal.

A debriefing meeting was attended by paraeducator 1, learning specialist, and principal. A debriefing report was prepared by the principal. According to the debriefing report, the Student was "given the direction to get into his seat and buckle up" when he "refused [. . .] [and] jumped around bus and tried to open the emergency exit [. . .] kicking, biting, pushing, running, hitting staff, eventually had to restrain and move him to his seat and the driver buckled him in." The debriefing report indicated paraeducator 1 and the learning specialist were involved in the incident. It was recommended that intensive 1:1 behavior support and a BIP be provided.

16. On January 15, 2019, the District's behavior specialist emailed the principal, director, learning specialist, and paraeducator 1, regarding the plan for responding to the Student's behaviors when escalated. The email noted staff should "avoid putting our hands on him (escort/restraint), and that staff would stay in Room 40 and work through his escalation by using de-escalation strategies. If other students are in that room, we will do a room clear keeping [Student] in the room. We will have staff remove any items that can be thrown or dangerous."

17. On January 16, 2019, according to an incident report completed by paraeducator 2 and signed by the principal on January 17, 2019, the Student was isolated from 12:37-12:58 pm in his classroom (Room 40) after hitting and kicking staff. The Student was also reportedly yelling/calling out and throwing objects. The incident report stated during the incident, the Student was yelling "shut your mouth, I'm going to chop your head off," and was throwing chairs at the door building a barricade of multiple desks and chairs. After the incident, the Student reportedly got on the school bus to go to daycare. According to the incident report, paraeducators 1 and 2, the learning specialist, and the counselor were involved in the isolation. The incident report stated all involved staff were certified and had received training prior to the isolation. No injuries were reported. The incident report stated the principal was notified

---

<sup>13</sup> This incident report was not included in the District's response but was included with the Complainant's reply.

at 12:37 pm the day of the incident and the Complainant was notified at 6:15 pm<sup>14</sup> the following day via voicemail, and in writing.

A debriefing meeting was held the day of the incident and attended by paraeducators 1 and 2, and the learning specialist. According to the report, the Student "refused to turn off Chromebook, [was] offered a superman token, didn't want it. Only wanted Chromebook [sic]." The District stated the following de-escalation techniques were used: "rule of 5, time space, derail, redirect choices, and problem solve." "Technology on the Chromebook time over [sic]" was identified as a trigger. The form noted that the de-escalation techniques did not work, which is why they had to isolate, that the Student "played tricks, trying to get us in the room, only to hit and kick." It was recommended that technology time be removed and noted that the Student's FBA was in process but that the Student did not yet have a BIP.

18. On the morning of January 17, 2019, the Complainant emailed the executive director and the principal. While she did not mention the isolation on January 16, 2019, she stated in the email she would be coming into school the next morning (January 18, 2019) to drop off the Student instead of him riding the bus. During an interview with OSPI on October 17, 2019, the executive director sent the email to OSPI and told OSPI the incidents of isolation which occurred on January 16 and 17, 2019 were discussed and reviewed with the Complainant when she came to school on January 18, 2019.<sup>15</sup> The executive director further stated that in the voicemail left for the Complainant by the principal on January 16, 2019, the Complainant was told she could follow up in person with the principal regarding the incident on January 16, 2019 at that time if she would like.

---

<sup>14</sup> In the Complainant's reply, the Complainant's attorney stated the Complainant did not receive a voicemail at 6:15 pm on January 17, 2019, and that the Complainant was never notified of the incident on January 16, 2019. In its response and during a phone interview with the complaint investigator on October 17, 2019, the District acknowledged the verbal notification to the Complainant occurred more than 24 hours after the incident but stated the Complainant was made verbally aware of the incident on January 17, 2019. In an email to OSPI on October 17, 2019, the principal provided her schedule from the day of the incident and during the following day to the executive director. In the email to the executive director, the principal explained how on the day of the incident, she had been in trainings and meetings and was not available until 5:45 pm. The following morning she had a leadership meeting, followed by teacher observations and an instructional meeting with staff. In her email, the principal stated she had planned to call the Complainant but was then notified another isolation had occurred and the Complainant had emailed the District to say she would be picking up the Student to take him to an appointment. The principal said she attempted to call the Complainant after the Student's appointment but was unable to reach her and left a message. The principal noted in her email that it is her practice to call parents and guardians within 24 hours. In an email from the Complainant's attorney, dated October 23, 2019, the Complainant's attorney again asserted the Complainant did not receive a voicemail.

<sup>15</sup> The Complainant's attorney communicated with OSPI that while the Complainant visited school on October 18, 2019, she picked up the Student's IEP and did not receive notification of the January 16, 2019 incident. The Complainant asserted the first time she became aware of the incident was when she received the District's response to the complaint.

19. On January 17, 2019, according to an incident report completed by paraeducator 2 and signed by the principal the same day, the Student was isolated in his classroom (Room 40) from 10:44-10:50 am after hitting, kicking staff, and throwing objects. The following de-escalation techniques were offered prior to the use of isolation: offered a break, verbal/visual redirection, reinforcement of appropriate behaviors, reminder of reward system, offered choices, proximity/body system. The incident report noted that during the isolation, the Student crawled under the table, rocking back and forth, and that after the isolation, the Student asked for a nap. The incident report indicated paraeducator 2 and behavior specialist performed the isolation and that both were certified according to the right response method and had received training prior to the incident.<sup>16</sup> No injuries were reported. According to the incident report, the principal was notified at 12:15 pm the day of the incident. The incident report additionally indicated the Complainant was notified the same day at 6:15 pm in a voice message and in writing.<sup>17</sup>

A debriefing meeting was held the same day. According to the debriefing report, the Student was "on a break, made balls from twisty ties, throwing them [sic]." The debriefing report noted "de-escalation techniques did not work which is why isolation was used." No recommendations were provided because Student was "on preferred activity when incident occurred," and an FBA was in process.

20. On January 24, 2019, the principal emailed the Complainant to say there had been "a lot of paperwork floating around,"<sup>18</sup> and that there was a folder which should have "paperwork for the following incidents:"

- 1/14 – Restraint
- 1/16 – Isolation
- 1/17 – Isolation
- 1/23 – Student Incident Report

The Complainant was told in the email that she was free to communicate with the school head secretary regarding how she would like to receive the listed documents.

21. On January 24-25, 2019, the Complainant and principal exchanged the following emails in response to the principal's email about picking up paperwork:

---

<sup>16</sup> According to documentation provided by the District, the behavior specialist was certified to be a right response trainer on May 2018. The behavior specialist was certified again to be a trainer in May 2019.

<sup>17</sup> The Complainant alleged she never received a voicemail from the principal.

<sup>18</sup> The Complainant's attorney alleged the Complainant never received incident reports for the isolations on January 16 and 17, 2019. According to a phone interview with the District on October 17, 2019, because it was the preference of the Complainant to pick up paperwork from the office when she would visit, and because the Complainant had her own folder with the secretaries in the school office, the District asserted the Complainant picked up the paperwork when she visited. The Complainant's attorney alleged when the Complainant came to school on January 18, 2019, she received the Student's IEP but not the incident report.

- a. The Complainant responded to the principal's email: "When I was in last Friday, I was handed [Student's] IEP and I thought the restraint paperwork was with it."
  - b. The principal responded: "We can provide you with a copy of the incident report which includes the information relayed to you yesterday by [behavior specialist]. I can send it home in his backpack or put it with the other isolation/restraint paperwork that is also here in a file for you to pick up the next time you are in our building."
  - c. The Complainant responded: "Thank you, I will see you Monday [January 28, 2019]."
22. On February 25, 2019, the Student's IEP team met to discuss and develop the Student's BIP. According to the prior written notice, dated February 25, 2019, the Complainant "requested removing verbiage in the present levels, under social/emotional, within IEP [. . .] [because she] wanted the IEP to reflect the team decision of the eligibility category of Developmental Delay only. She requested that the [emotional behavioral disability] category discussion be removed."
23. From March 14-26, 2019, the Student was out of school on an out-of-school suspension. According to the notification of short term suspension, the Student "arrived on the bus and refused to get off the bus. Once he did get off the bus, he stood in front of the bus hitting and kicking two staff members. [He] threw rocks at two staff members. He also threw rocks at the doors and broke both windows in the doors. He also threw recess crates and other items at two staff members."
24. On April 2, 2019, according to an incident report filled out by paraeducator 2 and signed by the principal on April 3, 2019, the Student was placed in isolation from 10:15-10:30 am after hitting, kicking, pushing, and spitting on staff. The Student was also documented yelling/calling out, shutting down/refusing to complete tasks, wandering/out of his seat, and throwing objects. The following interventions were attempted in effort to de-escalate the Student: verbal/visual redirection, reinforcement of appropriate behaviors, reminder of reward system, offered a break (calming menu and movement menu and break area), offered choices, proximity/body positioning, and planned ignoring. The incident report indicted paraeducator 2 performed the isolation and that she was certified and had been trained prior to isolating the Student. The director was present during the isolation and a staff member was injured. The principal was called over the radio and notified of the isolation at 10:15 am. According to the report, the Complainant was verbally contacted in person by the principal at 12:45 pm on April 2, 2019, and notified in writing on April 3, 2019.<sup>19</sup>

---

<sup>19</sup> The Complainant's attorney indicated in the reply to the District's response that the Complainant did not receive verbal or written notification of the isolation of the Student on April 2, 2019. On October 17, 2019, OSPI interviewed the executive director regarding the Complainant's allegations. The executive director provided the complaint investigator with emails, documenting the District and Complainant discussing the isolation the day it occurred. Regarding providing the Complainant the written report, the executive director explained that when the Complainant came to the school to pick up the Student the day of the event, the report was not yet ready. Because the incident report form was not ready the day the Complainant picked up the Student, the executive director said the Complainant was told it would be in the folder and ready for the Complainant to pick up the next day. The District did not keep written documentation regarding when parents and guardians picked up paperwork in person.

A debriefing meeting was held on April 2, 2019 with the principal, director and paraeducator 2. At the meeting, it was confirmed that the director and paraeducator 2 were involved in the incident. According to the debriefing report, the "[Student] escalated after being prompted [with] the social story. He threw objects at adults, hit/kicked/pushed/spit at adults, etc. [Paraeducator 2] and [director] stepped out of room and held the door." The debriefing report noted that "nothing worked," and that the "isolation finally ended after 15 min. when [Student] [laid] on floor and started sucking his fingers." The debriefing report recommended a "more intensive behavior program and supports."

25. On April 2, 2019, the principal emailed the Complainant to inform her she left her a voicemail at 4:05 pm, notifying her the Student had been isolated, and to explain the circumstances surrounding the isolation. At the end of her email, she wrote, "Please let me know if you will be available to talk in the morning with me and [behavior specialist] at 8:00 am. I will also have 'isolation' paperwork for you that can be mailed home or picked up at school. Thank you for your support today."
26. On April 2, 2019, the Complainant responded to the principal, apologizing for not being able to answer the phone when the principal called. She noted what was transpiring at school was very upsetting for her. She said she could be available the next day at 8:00 am to talk.
27. On May 7, 2019, according to a prior written notice, dated the same day, the Student's IEP team met to discuss "next steps in [Student's] schedule and transition plan." The prior written notice stated the "team would like to increase his time spent within the general education setting, as data shows 80% success rate in following his schedule."
28. On June 13, 2019, the Student's IEP team met and amended the Student's January 2019 IEP. The June 2019 IEP amendment noted the Student "has been in a 1:1 educational setting, with a BIP in place. [Student] accesses (as he is willing) lunch with peers, recess with peers, and is working toward general education classroom time with peers." The amendment also added 1:1 paraeducator support for 675 minutes weekly as a related services and 1105 minutes weekly as a supplementary aid and service, and stated, "[Student] will continue on a half day until the end of the 2018-2019 school year. He will begin a full day of school for the 2019-2020 school year."

The IEP team also determined the Student required extended school year (ESY) services. The Student was scheduled to receive 540 minutes (total) of specially designed instruction in basic reading skills, written language skills, adaptive behavior, behavior, and social skills during ESY.

29. On June 14, 2019, according to an incident report prepared and signed by the learning specialist and principal the same day, the Student was restrained in the hallway by paraeducator 2 beginning at 11:48 am for less than one minute using a "1, 2-arm, 1 person escort" using the right response method. According to the incident report, prior to the incident, the Student was hitting, kicking, biting, grabbing/pinching, and yelling/calling out. The following interventions were attempted in an effort to de-escalate the Student prior to

using physical restraint: verbal/visual redirection, reminder of reward system, offering a walk/break, offering choices, and proximity/body positioning. During the restraint, the Student was "yelling, crying" and afterward, the Student was "lying down." The incident report indicated paraeducator 2 was certified and had received training prior to restraining the Student. The learning specialist and director were present during the restraint. No injuries were reported. According to the written report, the principal was notified of the incident at 12:20 pm, the Complainant was notified by the principal verbally at 2:27 pm, and in writing the same day.

A debriefing meeting was held the same day and attended by the principal, learning specialist, and paraeducator 2. According to the debriefing notes, the Student "was told that he needed to have a safe body to leave hallway/the room [and] attend recess." The "Student yelled, threw a chair [and] began hitting staff members in hallway." The debriefing report noted "moving [the Student] back into the room" where the Student could "lay down" helped to "immediately deescalate" the Student. It was recommended the Student receive "ongoing 1:1 support."

30. On June 16, 2019, the Complainant emailed the District regarding her concerns about the restraint that occurred on June 14, 2019, stating what occurred on June 14, 2019 did not rise to the level of "imminent likelihood of serious bodily injury to self or others" and the restraints experienced by the Student during the school year were resulting in increased anxiety and stress due to repeat trauma at school.

31. On June 24, 2019, the District emailed the Complainant's attorney with additional information regarding the incident on June 14, 2019. The attorney provided the email to OSPI with the Complainant's reply. The email contained the following additional details regarding the incident on June 14, 2019:

- "In room 40, [Student] sat to eat his snack. [Student] and staff did some relationship building. He took his shoes off (while continuing to eat) and was swinging them back and forth (they were hitting his body)."
- "[Student] was engaged in ELA and STEM activities most of the morning on Friday after he came in and ate his snack."
- "[Student] went to [general education teacher's] classroom and he went right to his break area. He was in the classroom for about fifteen minutes. While there, he climbed onto the toy box, laid down, and put his fingers in his mouth like he wanted to nap. When asked if he would like to lie down elsewhere, he popped up and began moving around. He picked out a book and then went into the hallway to read. When he got in the hallway, he indicated that he wanted to be in the [multipurpose room (MPR)]. [ . . . ]. He went to the MPR and he was moving around but listening to the story."
- "After his daily visit to the nurse at 11:00 a.m., he started to play a board game with one of the staff members in room 40 as he did not want to go to lunch with his peers. While setting up the game, he began throwing pieces at two staff members, who were in the room. Staff used verbal redirects, choices, as well as visual choice cards."
- "He then ran outside of room 40. Staff followed and asked him to return to room 40. He yelled 'no,' and ran at one of our staff members and hit them several times in the stomach and arms. Staff continued to try and de-escalate [Student]. He continued to yell at and hit staff. He was in danger of injuring himself or others."

- “One staff member then opened the door to room 40 and the other staff member escorted [Student] back into room 40. This hands-on act meets the District’s definition of restraint and so this 20 second hands-on escort was appropriately documented as a restraint. When [Student] was back in the room, staff immediately moved their hands away from him. He then voluntarily went to his break area and laid down.”

32. On October 17, 2019, OSPI interviewed the executive director regarding the District’s practices for notifying parents and guardians of incidents of restraint and isolation. The executive director explained to the complaint investigator the District’s practice is to either mail the restraint and isolation reports to parents and guardians or to make reports available for pick up at the student’s school office. She further explained the administrative secretaries at the Student’s school keep a record of all the restraint and isolation written reports that have been mailed to parents and guardians and there is no record of a report ever being mailed to the Complainant, despite the Complainant having received reports, which the executive director asserted was support to the District’s statement that it had an agreement with the Complainant to pick forms up at school. The District indicated it would be happy to mail forms home if the Complainant would like. The District further explained its practice is to send home only pages one and two of the current restraint and isolation reports, but not the third page, which includes that debriefing report. The debriefing report is the only page on the current report to document any recommendations for changing the nature or amount of resources available to the student and staff member in order to avoid similar incidents. The District stated it sends all three pages to the central office.

## **CONCLUSIONS**

The Complainant alleged the District inappropriately restrained and isolated the Student during the 2018-2019 school year.

### **Use of Restraint and Isolation**

Restraint means physical intervention or force used to control a student or to restrict a student’s freedom of movement. Restraint shall be used only when a student’s behavior poses an imminent likelihood of serious harm and must be discontinued as soon as the likelihood of serious harm has dissipated. Any staff member or other adults using restraint must be trained and certified by a qualified provider in the use of restraint.

**Restraint:** From December 20, 2018, when the Student first became eligible for special education, through the end of the 2018-2019 school year, the Student was restrained on the following dates:

- December 20, 2018
- January 8, 2019
- January 10, 2019 (two incidents)
- June 14, 2019

In each of the above incidents, the Student was documented as hitting and kicking staff after attempts at de-escalation failed. On December 20, 2018, January 8, 2019, January 10, 2019, and June 14, 2019, in addition to hitting and kicking staff, the Student additionally threw furniture at



staff, including desks and chairs. On January 8, 2019, January 14, 2019, and June 14, 2019, the Student was also biting and pinching staff prior to physical restraint. All restraints were used in response to an imminent likelihood of serious harm.

On December 20, 2018, a 1-person seated hold was used and the restraint ended within one minute when the Student became calm. Accordingly, the restraint ended when the imminent likelihood of serious harm dissipated. On January 8, 2019, the Student was restrained using a 2-person chair hold for four minutes in Room 40, during which time the Student continued to "hit, punch, and kick staff." While the Student did not fully de-escalate during the restraint and continued to lunge at staff and kick after the restraint, the Student was no longer biting and was in Room 40, which often did not contain other students. Thus, the restraint ended when the imminent likelihood of serious harm ended. On January 10, 2019, a 1, 2-arm, 1-person escort, 1-person chair hold, 2-person chair hold, and rear 2-person escort were used on the Student. According to the debriefing report, the Student "never de-escalated [with] restraint but ended up biting a staff member and tore up books," which resulted in the Student being isolated. The debriefing report stated "restraint, transport to calm room" was successful, "so staff could be safe and physical aggression could be isolated." While the incident report was confusing because one report was used for two incidents, both involving both restraint and isolation, it appears both incidents involved similar behaviors. The Student continued to bite and engage in property destruction at the end of each restraint, which prompted the use of isolation. Accordingly, the presence of imminent likelihood of serious harm persisted at the end of each restraint and the duration of time for each restraint was not inconsistent with the regulations. On January 14, 2019, a transport restraint was used while the Student was on the bus. The Student continued to "bite," during the restraint and the restraint ended when the Student was in his seat and the seatbelt was fastened. The imminent likelihood of serious harm ended once the Student was safely in his seat, which coincided with the end of the restraint. On June 14, 2019, the restraint lasted less than a minute and ended when the Student "immediately began to de-escalate" upon entering the classroom. Thus, the restraint ended as soon as the imminent likelihood of serious harm dissipated.

All of the restraints occurred in response to an imminent likelihood of serious harm and ended either when the imminent threat of serious harm dissipated, or when the imminent threat of serious harm converted to isolation.

Regulations require the use of restraint must not interfere with the Student's breathing and that any staff member or adult using restraint must be trained by a certified provider in the use of restraint. The Complainant did not allege interference with the Student's breathing and there was no evidence of interference with the Student's breathing in the documentation provided by the District or Complainant. The District provided documentation to confirm each of the individuals who used restraint on the Student were certified in restraint by a certified and qualified provider at the time of the restraint, that the certification was up to date, and that they were trained in using the specific type of restraint used.

OSPI finds no violation.

**Isolation:** Isolation means restricting a student alone within a room or any other form of enclosure, from which the student may not leave. Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. Isolation must be discontinued as soon as the likelihood of serious harm has dissipated. Any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation. The enclosure used for isolation must meet certain requirements, including that the enclosure shall permit continuous visual monitoring of the student from outside the enclosure and permit continuous visual monitoring of the student from outside the enclosure and an adult responsible for supervising the student shall remain within visual or auditory range of the student at all times.

The Student became eligible for special education on December 20, 2018. From December 20, 2018 through the end of the 2018-2019 school year, the Student was placed in isolation on the following dates:

- December 20, 2018
- January 10, 2019 (three incidents)
- January 16, 2019
- January 17, 2019
- April 2, 2019

On December 20, 2018, the District placed the Student in isolation in the calm room for nine minutes (9:56-10:05 am) following the use of restraint. According to the incident report, the Student calmed down during the restraint and upon release began "yelling [and] spitting." The debriefing report added the Student was also "throwing objects." The incident report, including notes from the debriefing meeting, did not indicate what objects were thrown. Yelling and spitting alone are not indicative of an imminent likelihood of serious harm. It is therefore unclear whether there was an imminent likelihood of serious harm. If the only behaviors exhibited by the Student in the calm room were yelling and spitting, the Student did not pose an imminent likelihood of serious harm once in the calm room and the isolation should have ended. Instead, the incident report indicated the isolation lasted nine minutes. Accordingly, even if there was an imminent likelihood of serious harm at the onset of the isolation, the isolation did not end when the imminent likelihood of serious harm ceased. OSPI finds the District in violation related to the December 20, 2018 use of isolation.

On January 10, 2019, the District reported three incidents of isolation. The first isolation occurred for five minutes (9:15-9:20 am) in the classroom (Room 40). According to the incident report, the Student was kicking and throwing plastic shapes at staff and exhibiting escalating behaviors even after de-escalation strategies were attempted. The documentation showed there was an imminent likelihood of serious harm at the onset of the isolation (physical aggression towards staff—kicking). However, the incident report did not indicate what occurred during the isolation other than the throwing of plastic shapes—which alone does not rise to the level of imminent likelihood of serious harm (staff could have removed the plastic shapes from the room prior to the isolation)—or what occurred during the isolation which indicated the imminent likelihood of serious harm had passed. The isolation report is therefore unclear regarding why the isolation lasted for the duration documented as it is not clear when the imminent likelihood of harm had dissipated. The District is in violation for the duration of time the isolation occurred.

Incidents two and three, on January 10, 2019, were reported together in one incident report. The first isolation occurred for two minutes (10:19-10:21 am) and the second for one minute (10:40-10:41 am). Both occurred following the use of restraint, which included an escort of the Student to the calm room. According to the incident report, in both incidents, once the Student was escorted to the calm room, the Student continued "tearing up books [and] throwing items." While it is unclear why there were books or other items, which could be thrown, in the calm room, the debriefing report noted the Student was also "biting staff [and] continuing [to become] escalat[ed]." There was an imminent likelihood of serious harm (biting of staff and destruction of school property). The debriefing notes indicated the isolation in the calm room was effective to keep staff safe during the Student's physical aggression. The isolation ended when the Student de-escalated to the point where it was believed staff could be safe from behaviors, which were occurring prior to the escort to the calm room (throwing tables and chairs at staff, tipping desks, tearing up books, hitting, kicking, biting). The isolation ended when the imminent likelihood of serious harm to staff and property dissipated. OSPI finds no violation.

On January 16, 2019, the Student was isolated for 21 minutes (12:37-12:58 pm) in Room 40 after hitting and kicking staff, throwing chairs at the door, and building a "barricade of multiple desks and chairs." The District placed the Student in isolation in response to an imminent likelihood of serious harm (physical aggression). According to the debriefing report, when staff would try to enter the room, the Student would "hit and kick more." It was noted "nothing worked, that's why we had to isolate." Thus, the documentation showed the imminent likelihood of serious harm did not dissipate despite staff's efforts to intervene to end the isolation and de-escalate. OSPI finds no violation.

On January 17, 2019, the Student was placed in isolation for 6 minutes (10:44-10:50 am) in his classroom (Room 40) after hitting and kicking staff. Interventions to de-escalate the Student were attempted prior to using isolation. The Student was placed in isolation in response to an imminent likelihood of serious harm (physical aggression toward staff). During the isolation, the Student "crawled under table rocking back and forth" and after the isolation "wanted a nap." The behavior exhibited by the Student while in isolation did not demonstrate an imminent likelihood of serious harm. It is unclear at what point during the six minutes of isolation the Student crawled under the table; however, at the point the Student got under the table and was rocking back and forth, the imminent likelihood of serious harm had ended. The continued use of isolation after the imminent likelihood of serious harm had ended was inappropriate. OSPI finds the District in violation.

On April 2, 2019, the Student was isolated for fifteen minutes (10:15-10:30 am) in his classroom (Room 40) in response to hitting, kicking, pushing, and spitting on staff. The incident report additionally noted the Student was throwing objects at staff, although it did not indicate what the objects were. Efforts to de-escalate the Student prior to the use of isolation were attempted unsuccessfully. The isolation occurred in response to an imminent likelihood of serious harm (physical aggression toward staff). The isolation report noted the Student remained escalated (throwing objects at staff, hitting, kicking, pushing, spitting) for fifteen minutes, until the Student "finally" "[laid] on floor and started sucking his fingers." The debriefing point noted "nothing

worked” until the isolation. The imminent likelihood of serious harm appropriately ended when the Student’s aggressive behaviors towards staff ended. OSPI finds no violation.

In sum, of the isolations that occurred on December 20, 2018, January 10, 16, 17, 2019, and April 2, 2019, the District used isolation in response to an imminent likelihood of serious harm on the following dates: January 10 (incident one), 16, and 17, 2019, and April 2, 2019. The District discontinued the use of isolation appropriately when the imminent likelihood of harm dissipated on the following dates: January 10, (incidents two and three) 16, 2019, and April 2, 2019.

The District inappropriately used isolation when there was not an imminent likelihood of serious harm on December 20, 2018. Additionally, the District inappropriately continued isolation absent the presence of an imminent likelihood of serious harm—or the documentation provided did not clearly show whether the District ended isolation when the imminent likelihood of serious harm dissipated—on the following dates: December 20, 2018, January 10, and 17, 2019. The District is in violation related to these incidents and will be required to complete training on ending isolation when the imminent likelihood of serious harm has dissipated and documenting this on written reports.

All staff members who used isolation on the Student were trained and certified by a qualified provider in the use of isolation. In its response, the District asserted the rooms used for isolation met the requirements for an isolation enclosure. The Complainant did not disagree with this statement in her reply to the District’s response and no documentation indicated a concern with the isolation rooms themselves. OSPI finds no violations on these elements of the isolation requirements.

### **Follow-up & Reporting Procedures**

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 or 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 who uses isolation or restraint on a student must inform the building administrator or building administrator's designee as soon as possible, and within two business days, submit a written report with all of the required elements of the incident to the district office.

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.

**Review of Incident with Student and Guardian:** The documentation showed all incidents of restraint and isolation were reviewed with the Complainant (guardian). The documentation provided with the District’s response and interview with the District showed the review usually

occurred when the Complainant picked the Student up from school, or in phone calls and/or emails the day of the incident. The Complainant alleged the District did not review with her the incidents that occurred on January 16 and 17, 2019. OSPI acknowledges there may have been a delay regarding communicating with the Complainant about the January 16 and 17, 2019 incidents, but the documentation showed the Complainant visited school to pick up paperwork on January 18, 2019, and that the Complainant communicated with the District about the incidents by January 24, 2019. The Complainant additionally alleged she was not aware of and did not discuss the incident on April 2, 2019. The District provided emails between the Complainant and principal, dated April 2, 2019, in which the Complainant and principal discussed the April 2, 2019 isolation. Although it is not entirely clear if the District reviewed the incidents that occurred on January 16 and 17, 2019 with the Complainant on January 18, 2019, or waited until January 24, 2019, the documentation showed the District routinely reviewed incidents of restraint and isolation with the Complainant in a timely fashion and was substantially in compliance with its obligation to review incidents of restraint and isolation with the guardian.

However, while the documentation shows the District reviewed the incident with the Complainant, it is less clear whether the District ever reviewed the incident with the Student to help determine the appropriateness of the response. OSPI finds the District is in violation and will be required to provide training on the requirement of reviewing incidents of restraint and isolation with the student.

**Review of Incident with Staff:** The District held debriefing meetings following each incident of restraint or isolation. During the debriefing meetings, the incident was reviewed with the staff members involved in the restraint or isolation. The following issues were reviewed: a) who was involved, b) where the incident happened, c) what were the identified triggers, d) what happened, e) what de-escalation techniques were used, f) what worked and what did not work, and g) what recommendations staff had for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. OSPI finds no violation.

**Informing of Building Administrator of Restraint/Isolation:** In each incident of restraint and isolation reviewed during this complaint, the school principal was notified as soon as possible (always within 24 hours). OSPI finds no violation.

**Written Report (Required Elements):** The District uses the physical restraint/isolation incident report it completes as its written report. Written reports must include the following elements:

- 1) **Date and time of the incident** – Each incident report included the date of the incident. All incident reports, with the exception of the January 14, 2019 report, also included a time of the incident.
- 2) **Name and job title of the individual who administered the restraint or isolation** – Each incident report contained the name and job title of the person who administered the restraint or isolation.
- 3) **Description of the activity that led to the restraint or isolation** – Each incident report contained a description of the activity that led to the restraint or isolation. The District’s incident reports additionally included information on what behaviors the Student exhibited prior to the incident, who the behaviors were directed at, what aggressive behaviors the student exhibited prior to the incident, and what interventions/efforts were attempted to de-escalate the student prior to physical restraint/isolation.

- 4) **Type of restraint or isolation used on the Student, including duration** – Each incident report for restraint included information on the type of restraint used on the Student. Each incident report for isolation indicated isolation (seclusion) was used. All but one incident form noted the duration of the restraint or isolation. The January 14, 2019 incident form did not include the duration of the restraint.
- 5) **Whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided** – Each of the District’s restraint and isolation incident reports included information on whether there were any injuries to the Student or staff. However, when there were injuries to staff documented, the medical care provided was not documented on the written report. Instead, the form directs staff to fill in a district incident report.
- 6) **Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents** – Each incident report contained recommendations as part of the debriefing report. In its current format, the debriefing report is on page 3 of the physical restraint/isolation incident report, section “G,” and therefore was part of the written report.

The District’s written report is substantially compliant with the regulations. While one report was missing the duration of the incident, OSPI finds the District to be in compliance and finds no violation. OSPI does remind the District that it should be filing out all reports as accurately and completely as possible.

**Written Report (Submission to Central Office):** The executive director stated it is District policy for principals to submit a written report to the administrative director and/or the executive director at the District office, special services, within two days. The reports are sent via email (scan and email), and are then printed and filed in the office. The executive director said some paper copies are sent by in-district mail as well. According to the executive director, the principal has submitted all written reports to the District office, as required. There is no documentation that indicates the written reports were not submitted to the District office. OSPI finds no violation.

**Verbal and Written Notification of Guardian:** With the exception of the isolation on January 16, 2019, the principal stated she contacted the Complainant verbally to notify her of each incident of restraint and isolation within twenty-four hours. On January 16, 2019, while the principal did not notify the Complainant until the next day, the District provided documentation that the principal’s efforts were reasonable (principal was in meetings day of the incident and following a second incident of isolation the next day, called the Complainant the following evening within 48 hours of the first incident). OSPI finds no violation regarding the District’s obligation to make reasonable efforts for the principal to contact the parent or guardian within 24 hours.

The District is required to postmark the written guidance to the parent or guardian within five business days. Here, the District made clear to the Complainant it was willing to mail the written report to her, but documentation showed the Complainant had indicated a preference to pick up the written report at school. The District maintained a file folder at school where it placed documents for the Student, including all written reports. While the District was substantially in compliance and OSPI finds no violation, it recommends the District review its process for how it documents the provision of written reports to parents and guardians (see recommendations).

The written notification provided to the parent or guardian must contain all of the required elements of the written report. The District's practice has been to only send the first two pages of the incident report. The question, "are there any recommendations for changing the nature or amount of resources available to the student and staff member in order to avoid similar incidents" is a required part of the written report (see above). Currently, the District has not been sending this element to the Complainant because the District has not been sending page three (the "debriefing report") to parents and guardians. The District is in violation by not sending the Complainant written notification containing all of the required elements of the written report.

Further, the RCW 28A.600.485 requires districts provide the entire written report to parents and guardians as part of providing written notification (OSPI interprets written notification of the parent to mean the same written notification/report that is sent to a district's central office). If the District is going to include the debriefing report as page three of its written report, it needs to provide the entire report (all three pages) to parents. If the District chooses not to provide the debriefing report to parents and guardians, it is not required to do so; but, in such cases, OSPI recommends the District make the debriefing report a separate report from the restraint/isolation report. However, if the District chooses to separate the reports, the District will need to revise the restraint and isolation report to contain all the required elements of the written report, including a section for recommendations.

The District is in violation and will be required to revise its written report form to meet the requirements.

### **CORRECTIVE ACTIONS**

By or before **November 8, 2019, November 27, 2019, December 13, 2019, and December 20, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

**Training:** By or before **December 6, 2019**, the special education staff at the elementary school involved in this complaint will complete training on the following:

- a) Using isolation consistent with WAC 392-172A-02110, including ending the isolation when the imminent likelihood of serious harm has dissipated, and documenting isolation on the written report; and,
- b) The requirement that incidents of restraint and isolation be reviewed with student to address the behavior that precipitated the restraint or isolation and the appropriateness of the response.

The training will be provided by a trainer who is not an employee of the District. OSPI recommends that the District contact the local Educational Service District to discuss training needs, or work with Lee Collyer, who is overseeing technical assistance for restraint and isolation at OSPI.

By **November 8, 2019**, the District will provide OSPI with the name of a trainer and an agenda for the training. By November 15, 2019, OSPI will provide feedback and comments, if necessary.

By **December 13, 2019**, the District will submit documentation that all special education staff at the elementary school at issue in this complaint participated in the training. Documentation will include 1) a sign-in sheet from the training, and 2) 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.

**Revise Written Report Form:** By or before **December 13, 2019**, the District will be required to revise its physical restraint/isolation incident report form so that the written notification being sent to the parent and guardian contains all of the minimum required elements of the written report. By **November 27, 2019**, the District will submit a draft of the revised written report to OSPI to review. OSPI will review the draft and make any necessary comments or revisions by December 6, 2019. The District will submit a final draft by or before **December 20, 2019**.

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.

## **RECOMMENDATIONS**

**Use of Room 40:** While not an issue raised in the original complaint, documents reviewed as part of this complaint show the Student often received instruction in Room 40 away from his peers due to his behaviors. Regular removal of the Student to receive individualized instruction in Room 40 due to behaviors may have resulted in a change of placement. OSPI encourages the District to review its policies to and practices to ensure it is compliant with all change in placement procedures. OSPI further encourages the District to consider reviewing how it utilizes Room 40 to make sure it is not utilizing Room 40 in lieu of timely conducting functional behavioral assessments (FBAs) and developing behavioral intervention plans (BIPs) for students with disabilities, which include the use of positive behavioral interventions and supports. The District is additionally encouraged to think about what it is doing to encourage inclusive practices for students with disabilities.

**Timely Development of BIPs:** The District is additionally reminded that while an FBA is helpful, it is not required prior to developing a BIP. It is noted that for several weeks, the Student continued to exhibit behaviors which resulted in restraint and isolation prior to having a BIP. Emails exchanged between the District and Complainant mentioned a BIP would likely be developed once an FBA recommended the Student had a need for one. Because the Student had behaviors which interfered with his learning, the IEP team should have developed a BIP for the Student even if an FBA was still in process. If a BIP is developed prior to an FBA being completed, the BIP can later be revised based on the recommendations of the FBA.

**Provision of the Written Notification:** OSPI recommends the District review how it documents the provision of the written notification to parents and guardians in situations where parents and



guardians opt to pick up the written notification in person, or in situations where it may be difficult for parents and guardians to receive written notification by mail. For example, the District may want to consider developing a consent form where the parent or guardian indicates their preference in writing to have the written report provided in an alternative method to mail, which can be maintained in the student's file. Further, the District may want to consider having the parent or guardian sign when he or she has received the written report to show it was received. The District may further want to consider mailing written reports even if a copy is made available to the parent or guardian to pick up at school.

Dated this \_\_\_\_ day of October, 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.)