

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-16**

### **PROCEDURAL HISTORY**

On March 8, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District No. 114 (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 March 8, 2017, 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 March 30 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on April 4, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On April 17, 2017, OSPI received the Parent's reply and forwarded that reply to the District on April 18, 2017.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. However, not all information is included as a finding of fact.

### **OVERVIEW**

During the 2015-2016 school year, the Student attended kindergarten at a District elementary school and was eligible for special education services under the category of developmental delays. In March 2016, the District received the Parent's consent to reevaluate the Student, including conducting a functional behavioral analysis (FBA). The District completed the Student's reevaluation and the Student's FBA in April 2016, and changed the Student's eligibility category to emotional behavioral disability. In June 2016, the District developed the Student's individualized education program (IEP), which included a provision for 1:1 staff assistance from special education staff during the Student's school day. The Student's IEP team also developed an emergency response protocol for the Student.

During the 2016-2017 school year, the Student attended first grade at the same elementary school, and in the same classroom. One special education teacher, two full time paraeducators, and one part time paraeducator staffed the Student's classroom, which served eight students. In September 2016, the Student had many behavioral incidents, requiring isolation, some for prolonged periods. The Student's IEP team met and amended the Student's emergency response protocol to include that the District would contact the Parent if the Student's escalation continued for more than 30 minutes. The Student's IEP team discussed the Student's 1:1 assistance from staff, and determined to conduct another FBA for the Student. However, the Student's IEP team did not have time to discuss occupational therapy services for the Student, which the Parent had included as a topic for discussion at the IEP team meeting. During October

2016, the Student again had many behavioral incidents requiring isolation, some for prolonged periods. In four instances, the District did not contact the Parent until at least 40 or more minutes after the escalation continued. Also in October 2016, the District added additional support staff positions to the Student's classroom, such that one special education teacher and five paraeducators staffed the classroom. The classroom continued to serve eight students. The Student's behavioral incidents decreased markedly, starting in November 2016. The District and the Parent were unable to keep their scheduled meetings in December 2016 to discuss the Student's FBA. In January 2017, when the District and Parent met to review the Student's FBA, the Parent was not satisfied with the FBA, and asked for additions. In February 2017, the Parent requested an occupational therapy assessment for the Student and the District agreed to conduct that assessment. The Parent alleged that the District did not follow procedures for implementing the Student's emergency response protocol, implementing the provision for 1:1 staff assistance, or for responding to her request for an occupational therapy assessment. The District denied the allegations.

### **ISSUES**

1. Did the District follow procedures for implementing the Student's emergency response protocol, incorporated into his individualized education program (IEP)?
2. Did the District follow procedures for implementing paraeducator provisions, if any, included in the Student's IEP?
3. Did the District follow procedures for responding to the Parent's request for an occupational therapy evaluation of the Student?

### **LEGAL STANDARDS**

Emergency Response Protocols: If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's IEP. Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: a) the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted; b) the emergency response protocols specify the emergency conditions under which isolation, restraint, or restraint devices, if any, may be used; the type of isolation, restraint, and/or restraint devices, if any, may be used; and the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint devices for each staff member or contracted position; c) and any other special precautions that must be taken. WAC 392-172A-02105.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction

who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that 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. 34 CFR §300.323; WAC 392-172A-03105.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. WAC 392-172A-03015(3). The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020(2)(a). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304(c); WAC 392-172A-03020(3).

## **FINDINGS OF FACT**

### Background Information

1. During the 2015-2016 school year, the Student attended kindergarten at a District elementary school and was eligible for special education services under the category of developmental delays.
2. The District completed the Student's initial evaluation on March 25, 2014, when the Student was four years old. This was the Student's current evaluation at the beginning of the 2015-2016 school year. The evaluation report stated the Student had significant delays in social skills and emotional development, which impacted his ability to interact with peers, respond to changes of routine, self-regulate, and comply with directions. The evaluation report recommended the Student receive special education services for social skills, social problem-solving, social thinking, coping, flexibility, self-regulation, and self-management.
3. On September 8, 2015, the Student's individualized education program (IEP) team developed a behavioral intervention plan (BIP) for the Student. The Parent did not attend this meeting, but provided permission for the meeting to proceed. The BIP stated the Student enjoyed interacting with adults, thrived on praise, and enjoyed being the teacher's helper. The BIP also stated that during a recent observation, the

Student escalated from calm to “really mad” quickly, and took an average of 10 minutes to calm sufficiently to listen and respond. The target behaviors identified in the BIP were to decrease the Student’s refusing, hitting people, pushing over classroom things, yelling, and leaving the area. The hypothesis was that the Student displayed these behaviors to avoid work, and listed triggers as a non-preferred choice, activities out of his control, too many repetitive directions/demands, and too much noise. The intervention strategies included learning how his behavior affected other people, how to see other people’s perspective, how to gain attention appropriately, and how to wait. The BIP listed the strategies of praise/positive reinforcement, first/then strategies, block the view/access to items, redirect to interact with other students, withdrawal of direct adult attention, removal of other students from the area, and providing calming sensory materials.

4. On September 10, 2015, the Student’s IEP team developed the Student’s annual IEP. This was the IEP in place for the Student for most of the 2015-2016 school year. The Student’s IEP team considered that the Student responded to praise from adults, liked to be the teacher’s helper, and benefitted from visual supports. The Student’s IEP team also considered that when the Student did not get his way, he became loud, agitated, and “wiggly,” progressing to throwing/hitting/knocking over furniture, and needed praise, clear expectations, first/then statements, incentive systems, concise directions, and coaching. The Student’s IEP included three annual goals for social emotional skills, including affecting others, gaining attention, and turn taking, with progress reported each trimester.

The Student’s IEP provided the following 1,375 weekly minutes of specially designed instruction, all for social emotional skills, and all in the special education setting:

- 225 minutes per week, from a staff assistant,
- 225 minutes per week, from special education teacher,
- 475 minutes per week, from special education teacher, and
- 450 minutes per week, from staff assistant.

The Student’s IEP also provided for several accommodations/modifications, including:

- Access/use of visual supports, social narratives,
- Positive reinforcement for behavior,
- Noise buffering headphones for behavior.

The Student’s IEP stated the Student benefited from a highly structured classroom with a low pupil/teacher ratio, small group or individual instruction, and opportunities for frequent breaks. The IEP also stated the Student would participate in general education “specials,” such as gym, music, and library, as well as schoolwide assemblies, and otherwise receive his instruction in the special education setting.

5. The Student’s classroom had a “breakroom” within the classroom, about 4 x 5 feet in dimension, with colorful carpet, a pillow, and a closing door. Students use the room for voluntary breaks and can take work into the room with them. However, staff also

use this room as an isolation room when students become unsafe to themselves or others.

Timeline for Investigation Begins March 9, 2016

6. On March 10, 2016, the District received the Parent’s consent for a reevaluation of the Student. The consent form stated the Parent had requested an early reevaluation and the District agreed, proposing to assess the Student for medical-physical, social/emotional, behavior, academics, review of existing data, general education cognitive, student observation, and a functional behavioral assessment (FBA). On the Parent’s consent form, she suggested the District assess the Student in the area of “how he interacts socially with peers.” Later that day, the Parent emailed the Student’s special education teacher, stating she was wondering if the District should add an assessment for adaptive skills to the Student’s reevaluation. The Parent also stated she had not heard anything about an occupational therapist developing a sensory diet for the Student.
  
7. On March 11, 2016, the school psychologist emailed the Parent, stating that given how well the Student functioned adaptively, she had not included adaptive skills in the Student’s upcoming reevaluation, but she would be happy to reprint a consent form and add an assessment for adaptive skills. The school psychologist asked for a good telephone number and time to call the Parent, stating, “Let me know what works so we can chat.”
  
8. During March 2016, the District restrained or isolated the Student on seven occasions:

Date	Duration of Restraint	Duration of Isolation	Parent notified that day	Date Report Mailed Home
March 11, 2016	7 minutes	50 minutes	Yes (telephone)	March 14, 2016
March 15, 2016	N/A	22 minutes	Yes (telephone)	March 16, 2016
March 15, 2016	N/A	10 minutes	Yes (telephone)	March 16, 2016
March 18, 2016	N/A	10 minutes	Yes (email)	March 18, 2016
March 18, 2016	N/A	21 minutes	Yes (in person)	March 18, 2016
March 22, 2016	N/A	40 minutes	Yes (telephone)	March 22, 2016
March 23, 2016	3 minutes	N/A	Yes (telephone)	March 23, 2016

9. On April 28, 2016, the District completed the Student’s reevaluation, determining that the Student was eligible for special education services under the category of an emotional behavioral disability. The evaluation report stated the Student had diagnoses of attention deficit hyperactive disorder (ADHD), general anxiety disorder, sensory processing disorder, and behavioral concerns. The evaluation report also stated the Student’s subtests for full scale IQ, verbal comprehension, visual/spatial, fluid reasoning, and working memory were all in the average range. Additionally, the

report stated the Student's mathematic skills were at grade level, but his reading and writing skills were not at grade level. Further, the report stated the Student often internalized situations, misperceiving situations as someone targeting him, and when he felt socially wronged, he struggled to let go of it. The evaluation report recommended the Student receive services for reading, written language, social/behavioral skills, and social emotional skills.

10. Also on April 28, 2016, the District completed the Student's FBA. The FBA stated the Student exhibited a significant amount of body movement; had invaded the personal space of peers; had at times left his classroom without communicating to staff; and often required an adult to be very near in proximity. The FBA also stated the Student's behaviors were not associated with any specific individual, but occurred when the Student was over stimulated; perceived disapproval; or was transitioning, particularly away from screen time. The FBA recommended social skills for engaging peers, and sensory equipment (fidgets, exercises, moving away from over-stimulation, wiggle seats etc.), with a goal that the Student request sensory equipment when he started to escalate. The FBA also stated the Student benefited from noise muffling/cancelling headphones, structure, consistency, scheduled breaks, and scheduled snacks.

11. During April, 2016, the District restrained or isolated the Student on four occasions:

Date	Duration of Restraint	Duration of Isolation	Parent notified that day	Date Report Mailed Home
April 22, 2016	N/A	11 minutes	Yes (telephone)	April 22, 2016
April 25, 2016	N/A	6 minutes	Yes (telephone)	April 25, 2016
April 28, 2016	N/A	30 minutes	Yes (IEP meeting)	May 4, 2016
April 29, 2016	N/A	12 minutes	Yes (telephone)	May 4, 2016

12. On May 20, 2016, the Parent emailed the school occupational therapist, attaching two documents. The attachments included a private 2013 fine motor skills assessment and a private 2015 occupational therapy discharge report. The November 14, 2013 fine motor skills assessment recommended the Student receive occupational therapy twice monthly based on behaviors of concern, despite demonstrating fine motor skills within typical limits. The September 30, 2015 occupational therapy discharge report exited the Student from occupational therapy services, noting that occupational therapy services were not recommended at this time, due to the Student's appropriate fine motor development.

13. On June 1, 2016, the Student's IEP team, including the Parent, developed a new IEP for the Student to reflect the Student's recent reevaluation. The Student's IEP team considered the Parent's concern that the Student needed his sensory needs met, including needing to release energy at recess, and needed a movement plan if he lost recess time due to his behavior. The Parent's concerns also included that the Student needed more support for developing self-awareness, including preferential seating away from peers who triggered him, or served as negative

behavior models. The Parent's concerns further included that staff ensure the Student's environment supported him before using restraint or isolation. The Student's IEP included annual goals for social emotional skills, reading, and written language, with progress reported each trimester.

The Student's IEP provided the following 1,495 weekly minutes of specially designed instruction, all in the special education setting:

- Social/behavioral skills: 225 minutes per week, from a staff assistant,
- Reading: 225 minutes per week, from a special education teacher,
- Social/behavioral skills: 475 minutes per week, from a special education teacher,
- Social/behavioral skills: 450 minutes per week, from a staff assistant,
- Written language: 120 minutes per week, from a staff assistant.

Additionally, the Student's IEP provided the following concurrent supplementary aids and services:

- "1:1 staff assistance from special education staff," for 1,560 per week, and
- "1:1 staff assistance from special education staff," for 240 per week.

The Student's IEP also provided for several accommodations/modifications, including:

- Access/use of visual supports, schedules, feelings chart, and social narratives,
- Positive reinforcement for behavior,
- Access/use of timer for task completion,
- Adult proximity,
- Preferential seating,
- Concise directions,
- Repeated directions, as needed,
- Scheduled breaks,
- Cued to begin and stay on task, for assessments,
- Noise buffering headphones for behavior,
- Training and support for staff on behavioral support plan.

The IEP also included a behavioral support plan<sup>1</sup> to address the target behaviors of the Student refusing, leaving the learning area, yelling, running around the room, poking/agitating/squeezing peers, touching peers on their bottoms, hitting/kicking adults, and throwing desks/chairs. The behavioral support plan included the following antecedent intervention strategies:

- Validate the Student's feelings,
- Positive encouragement,
- Offer coping techniques,
- Choice to take a break with a timer or go to quiet calm down spot, and come out when ready,
- Offer heavy work activity,
- Distraction (iPad, fidgets, etc.)
- Give (or create) a meaningful job,

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<sup>1</sup> The documentation does not explain if/how a behavioral support plan differs from a BIP and presumably, the District uses the term as a synonym for a BIP.

- Let's go move – walk in hall, jumping rope, a,b,c's in the hall, run laps,
- Talk about identifying within himself what is going on (escalation cues),
- Choice to take the lead or be a leader,
- Noise cancelling headphones that he likes and feel right on his ears.

Additionally, the Student's IEP included an emergency response protocol, which stated that if the Student intended to harm others or himself, staff would use crisis prevention intervention techniques to ensure the Student's and other's safety. The emergency response protocol also stated that once the Student could demonstrate a calm body for five minutes, and was responding to verbal intervention again, staff would return to implementing the BIP. The emergency response protocol stated that only staff members with crisis intervention training (updated annually) would isolate or restrain the Student, and would use only the types of isolation/restraint identified/trained upon in the crisis intervention training. The emergency response protocol further included the following special precautions:

- Staff would monitor and take data on time, duration, and intensity of the Student's behaviors during the de-escalation process,
- Once the Student could demonstrate calm body for five minutes, and was responding to verbal intervention again, staff would return to implementing the BIP,
- If the Student was unable to de-escalate, staff would call the Parent, who would pick him up,
- If the Student ran off campus, staff would notify school administration, who might call 911, if warranted.

14. In June 2016, the Student's special education classroom served ten students. The District staffed the Student's classroom with one special education teacher, three full time paraeducators, and one part time (four-hour) paraeducator. The District's staffing sheets identify two of the paraeducators as assigned to the classroom, and one of the full time paraeducators as assigned to the Student. However, according to the District, it uses the staffing sheets to calculate the number and level of support positions necessary to assign to classrooms, but does not guarantee to parents that a single staff member will work with any student. According to the District, it employed a strategy of using multiple adults to work with students at different times during the day, and the Student's special education teacher devised a schedule, specifying when each of the five staff members assisted the Student.

15. On June 10, 2016, the District revised the Student's reevaluation report to include an autism spectrum assessment completed by the Parent. The revision stated the District had previously asked the Parent to complete an autism assessment of the Student, as part of the Student's April 28, 2016 reevaluation, and the Parent had now provided that completed assessment to the District. The revision stated the Parent asked the District to summarize the information in her assessment, and include it into the Student's reevaluation as a revision. The autism assessment completed by the Parent indicated that the Student displayed behaviors highly reflective of the autism spectrum disorder. However, the revision stated the additional information did not change the recommendations of the Student's evaluation report, which continued to recommend targeting social/behavioral skills.



16. June 15, 2016 was the last day of the 2015-2016 school year.
17. August 31, 2016 was the first day of the 2016-2017 school year and the Student began attending first grade at the same District elementary school, in the same self-contained classroom. At the beginning of the 2016-2017 school year, the Student's special education classroom served eight students. The District staffed the Student's classroom with one special education teacher, two full time paraeducators, and one part time (three-hour) paraeducator. The District's staffing sheets do not identify any of the paraeducators assigned to the classroom as assigned to the Student. According to the District, all four staff members were tasked with providing the Student's 1:1 assistance, and the Student's special education teacher devised a schedule specifying who assisted the Student.
18. According to the District, the Student's family received wraparound intensive services from a community mental health agency that also had a cooperative agreement with the District to provide mental health services. Also according to the District, the counselor that the agency assigned to the District's elementary school also supported the Student's family.
19. On September 1, 2016, the Parent emailed the Student's special education teacher, stating that if the Student missed recess, he needed to have his movement needs met another way. The Parent also stated this was a reason the Student needed a 1:1 assistant and the occupational therapist needed to design a plan for his needs.
20. On September 14, 2016, the Student's special education teacher emailed the school principal, attaching a draft email addressed to the Parent, and asking the school principal to review it before she sent the email.<sup>2</sup> The draft email to the Parent stated the Student had an incident at 10:00AM that morning, throwing chairs, desks, and books, and as requested by the agency counselor who was assigned to the school (and separately assigned to the Student's family), school staff did "a room clear," directing all other students to play outside. The draft email stated the Student's special education teacher then summoned the agency counselor to the classroom to help calm the student.<sup>3</sup> Additionally, the draft email stated the other students returned to the classroom at 11:00AM and the Student was calm and able to listen by 11:15AM. The draft email further stated that the special education teacher had concerns about this approach, including the significant loss to instruction time for the whole class, and the damage to the classroom.

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<sup>2</sup> The documentation does not clarify whether this draft email was sent to the Parent or whether school staff contacted the Parent another way.

<sup>3</sup> OSPI clarified with the District that the agency counselor was already at the elementary school. Additionally, the District also clarified that the Parent had requested the agency service providers have access to the Student's classroom, and the District wanted students to have access to the mental health services via the District's cooperative agreement with the agency, but that the agency's mental health services are not in lieu of IEP services. However, the District further reported that the District later adjusted the support from the agency to ensure providers did not have dual role conflicts.

21. On September 15, 2016, the Parent requested an “emergency IEP team meeting” to discuss the lack of a 1:1 assistant and discuss that the Student’s April reevaluation did not assess the Student for occupational therapy services.
22. On September 27, 2016, the Student’s IEP team, including the Parent, met to discuss the Parent’s concerns. The District’s meeting notes listed several items discussed, including:<sup>4</sup>
- The emergency response protocol,
  - Isolation/restraint were occurring regularly,
  - The agency counselor assigned to the elementary school (and separately assigned to the Student’s family) wanted to be in the Student’s classroom twice a week,
  - The District would schedule a wraparound meeting with the Student’s community providers,
  - The Student’s main trigger was work avoidance, “I don’t know the answer,”
  - The Student was starting to use the “help” sign,
  - It was helpful to pat or rub the Student’s back.
  - Possibility of a speech evaluation?
  - Give the Student two options, especially when he was de-escalating,
  - District behavioral specialist for new FBA?
  - The Student’s behavior had become less intense at home,
  - The Student started new medication in May 2016 and had just started a new night time medication,
  - Schedule time for skill building with counselor?
  - The Student was very visual,
  - When he was anxious or bored, the Student would say he was hungry,
  - Staff would notify Parent when Student was “in break room” for longer than 30 minutes,
  - Parent interested in talking about occupational therapy,
  - Team update meeting in three weeks,

The District’s meeting notes also listed the following IEP team decisions:

- No speech testing at this time,
- New FBA
- School staff would call home after the Student was in break room for 30 minutes,
- Call home after 30 minutes in “break room,” have Parent present at school, but not in the classroom
- Parent would come (when the Student was escalated), and “we will determine if he needs to go home, let front office know if he is de-escalated to let parents know.”

23. The Parent’s documentation also included meeting notes for the same September 27, 2016 IEP team meeting, taken by two parent advocates. One of the Parent’s advocate’s meeting notes included the following:
- Two levels of escalation: short 15-30 minutes and long 30-45 minutes,
  - School will call the Parent after 30 minutes,
  - Parent will come to school, decide outcome, count as suspension,
  - School will call “crisis team” as well, especially if crisis is intense,

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<sup>4</sup> The meeting notes are dated September 23, 2016, but refer to the September 27, 2016 meeting.

- Speech/ language assessment on hold,
- 1:1 – crisis prevention intervention/ de-escalation training,
- Occupational therapy evaluation,
- Talk in 3 weeks.

The other parent advocate’s meeting notes included the following:

- (Parent): What about his 1:1 assistance listed in his IEP?
- (Student’s special education teacher): We have classroom assistants, but he needs an assistant only in general education setting, which he is not able to access right now because of his behavior.
- (District special education assistant director): We have 1:1 assistance for him while he is in the self-contained classroom and his needs are met while in this classroom.
- (Advocate): What is your student to staff ratio?
- (Student’s special education teacher): 8 students, 3 staff assistants.
- (District special education assistant director): Meet up to talk in 2-3 weeks. Let us have wraparound meetings and school meeting be separate.

24. The District issued a prior written notice, associated with the Student’s September 27 IEP amendment.<sup>5</sup> The notice stated the Student’s IEP team met and reviewed the Student’s current IEP, BIP, and emergency response protocol to develop more specific procedures. The notice also stated the Student’s IEP team discussed the language around the Student’s 1:1 assistance in the classroom, determined not to reevaluate the Student at that time, and instead re-open the Students FBA, and find the function of his behaviors. Additionally, the notice stated the Student’s IEP team updated the Student’s emergency response protocol to include an established period; specifically, staff would notify the Parent if the Student had been in the break room for more than 30 minutes.

25. During September 2016, the District restrained or isolated the Student on 15 occasions:

Date of incident	Duration of Restraint	Duration of Isolation	Time incident began	Time incident ended	Time Parent was verbally notified	Date Report Mailed Home
Sept 1, 2016	N/A	28 minutes	12:52PM	1:20PM	N/A	Sept 14, 2016
Sept 6, 2016	N/A	30 minutes	1:50PM	2:20PM	3:30PM	Sept 16, 2016
Sept 8, 2016	N/A	10 minutes	9:25AM	9:35AM	3:45PM	Sept 16, 2016
Sept 16, 2016	N/A	14	11:41AM	11:55AM	1:15PM	Sept 18, 2016

<sup>5</sup> Although the prior written notice is dated September 26, 2016, the date of the meeting was September 27, 2016.

		minutes				
Sept 19, 2016	N/A	15 minutes	12:05PM	12:25PM	12:45PM	Sept 18, 2016
Sept 20, 2016	N/A	25 minutes	2:10PM	2:35PM	N/A	Sept 22, 2016
Sept 21, 2016	N/A	7 minutes	8:47AM	8:54AM	9:15AM	Sept 22, 2016
Sept 22, 2016	N/A	5 minutes <sup>6</sup>	10:55AM	11:00AM	N/A	Sept 22, 2016
Sept 23, 2016	N/A	25 minutes	12:15PM	12:50PM	1:15PM	Sept 23, 2016
Sept 26, 2016	N/A	15 minutes	11:55AM	12:05PM	12:53PM	Sept 26, 2016
Sept 26, 2016	N/A	14 minutes	2:20PM	2:34PM	2:45PM	Sept 26, 2016
Sept 27, 2016	N/A	11 minutes	9:06AM	9:17AM	11:15AM	Sept 27, 2016
Sept 27, 2016	N/A	29 minutes <sup>7</sup>	1:51PM	2:20PM	3:45PM	Sept 27, 2016
Sept 29, 2016	N/A	80 minutes	11:20AM	12:45PM	12:00PM	Sept 29, 2016
Sept 29, 2016	N/A	105 minutes	12:45PM	2:30PM	12:45PM	Sept 29, 2016

26. On October 4, 2016, the District received the Parent's written consent to conduct a new FBA for the Student. On the form, the Parent stated she wanted a District behaviorist to complete the FBA.

27. On October 17, 2016, the school principal emailed several members of school staff, including the Student's special education teacher, stating the District had granted the school three new open positions available for hiring. The District's staffing sheets indicated that in October 2016, the District opened a position to hire a paraeducator specifically for the Student. According to the District, as soon as an open position

<sup>6</sup> The District included a summary document that listed this isolation as 63 minutes.

<sup>7</sup> According to the Parent, she reviewed a different document that listed the isolation from 1:45PM to 2:15PM, which is 30 minutes, but the school did not immediately notify her.

exists, the District provides substitutes for that position until it completes the hiring process.<sup>8</sup>

28. On or around October 25, 2016, the Student's special education teacher emailed a District behavioral analyst to schedule observations of the Student. The Student's special education teacher also noted that the District had approved two additional paraeducator positions in her classroom.

29. During October 2016, the District restrained or isolated the Student on 9 occasions:

Date of incident	Duration of Restraint	Duration of Isolation	Time incident began	Time incident ended	Time Parent was verbally notified	Date Report Mailed Home
Oct 3, 2016	N/A	60 minutes	11:30AM	12:30PM	12:00PM <sup>9</sup>	Oct 3, 2016
Oct 3, 2016	N/A	6 minutes	12:53PM	12:59PM	12:59PM	Oct 3, 2016
Oct 3, 2016	N/A	76 minutes	1:58PM	3:18PM	2:28PM <sup>10</sup>	Oct 3, 2016
Oct 5, 2016	N/A	32 minutes	10:55AM	11:27AM	12:15PM <sup>11</sup>	Oct 5, 2016
Oct 17, 2016	N/A	27 minutes	10:20AM	10:47AM	3:30PM	Oct 17, 2016
Oct 17, 2016	N/A	6 minutes	2:120PM	2:18PM	3:30PM	Oct 17, 2016
Oct 18, 2016	N/A	10 minutes	9:35AM	9:45AM	12:45PM	Oct 18, 2016
Oct 18, 2016	N/A	15 minutes	11:20AM	11:35AM	12:45PM	Oct 18, 2016
Oct 21, 2016	N/A	40	10:38AM	11:18AM	1:15PM <sup>12</sup>	Sept 23, 2016

<sup>8</sup> According to the District, the District added three positions to the classroom at the end of September 2016, and there has been a specific person allotted for the Student each month since October 1, 2016. However, based on this email, it seems the staff additions took effect on October 17, 2016.

<sup>9</sup> The Parent provided her cell phone records, which indicated that she received the telephone call from the school at 12:11PM rather than 12:00 PM, indicating the District contacted her after 41 minutes.

<sup>10</sup> The Parent provided her cell phone records, which indicated that she received the telephone call from the school at 2:42PM rather than 2:28PM, indicating the District contacted her after 44 minutes.

<sup>11</sup> In her reply, the Parent stated that she received an email regarding this isolation at 12:09PM rather than 12:15PM, as listed on the report sent home by the District, indicating imprecision in the report.

		minutes				
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30. By the end of October 2016, the Student’s special education classroom continued to serve eight students, and the District staffed the classroom with one special education teacher and five full time paraeducators. According to the District, all six staff members provided the Student’s 1:1 assistance with the Student’s special education teacher devising a schedule for who was to provide the Student’s assistance.
31. On November 15, 2016, the Student’s special education teacher emailed the general education teacher in whose class the Student sometimes participated, noting the Student was eager to spend more time in the general education classroom. The Student’s special education teacher also stated they had just hired a new paraeducator who would work with the Student and other students, noting the new paraeducator was great with the Student, and skilled at supporting students in the general education setting.
32. According to the District’s staffing sheets, by the end of November 2016, the Student’s special education classroom served eight students, and the District had hired a paraeducator specifically for the Student.
33. On December 2, 2016, the Student’s special education teacher emailed the Student’s general education teacher, asking that another student return to his former schedule for visiting the general education classroom. The Student’s special education teacher noted she would have two new students starting in her program on Monday, and staffing would be an issue.
34. The District and the Parent scheduled a meeting for December 5, 2016, to review the Student’s FBA. However, the District later scheduled the meeting to December 14, 2016.
35. On December 14, 2016, the District and Parent canceled the meeting to review the Student’s FBA based on winter weather. The Parent asked to reschedule the meeting to January 2017, and the District and Parent rescheduled the meeting for January 23, 2017.
36. The District’s winter vacation was from December 19, 2016 to January 2, 2017.
37. On January 23, 2017, the Parent canceled the meeting to review the Student’s FBA and the District rescheduled the meeting for January 26, 2017.
38. On January 26, 2017, the Student’s IEP team, including the Parent, met to discuss the Student’s FBA. Later that day, the Parent sent a letter to the Student’s IEP team, stating she wanted additions and changes to the Student’s FBA, including a “motivational assessment” for the Student.

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<sup>12</sup> In her reply, the Parent stated that she received an email regarding this isolation at 1:22PM rather than 1:15PM, as listed on the report, indicating imprecision in the report.

39. Also on January 26, 2017, the District issued a prior written notice, stating the Student's IEP team had met to discuss the Student's FBA and BIP, and per the Parent's request, would update information in the FBA. The notice also stated that at the Parent's request, the next meeting was scheduled for February 22, 2017.

40. During January 2017, the District restrained or isolated the Student twice:

Date of incident	Duration of Restraint	Duration of Isolation	Time incident began	Time incident ended	Time Parent was verbally notified	Date Report Mailed Home
Jan 25, 2017	N/A	14 minutes	9:18AM	9:32AM	10:25AM	Jan 25, 2017
Jan 31, 2017	N/A	13 minutes	9:38AM	9:51AM	1:00PM	Jan 31, 2016

41. On February 14, 2017, the school psychologist emailed the Parent, attaching a form she had also sent to the Student's special education and general education teachers. The school psychologist stated the District did not use a motivation assessment scale, but the attached form was similar, as it assessed the function of behavior. The school psychologist asked the Parent to complete and return the form, stating the Student's teachers were also completing the form, and the information would be included in the Student's FBA.

42. On February 15, 2017, the Parent emailed the Student's special education teacher, stating she wanted an occupational therapist to assess the Student to support him with a sensory diet. The Parent also stated that if the Student's environment better met his sensory needs, she thought the Student would be able to self-regulate and less prone to aggression. The Parent noted she had been requesting a sensory diet since the beginning of the 2016-2017 school year, and she did not want to delay the assessment.

43. On February 17, 2017, the school psychologist emailed the Parent, stating she would accept the Parent's February 15, 2017 email as a written consent to initiate an assessment of the Student's sensory processing. The school psychologist further stated that she would ask the Parent for her signature when they met on February 22, 2017 to review the Student's FBA.

44. On February 22, 2017, the Parent canceled the meeting to discuss the Student's FBA. The District rescheduled the meeting for March 22, 2017.

45. On March 8, 2017, the Parent filed this complaint.

46. On March 22, 2017, the District and the Parent met and discussed the Student's FBA, but also scheduled a follow up meeting, and the FBA was labeled "in

progress.” According to the District, the District scheduled a meeting with the Parent to discuss the Student’s occupational therapy assessment on March 27, 2017.

47. According to the Parent’s reply, the District completed the Student’s occupational therapy assessment on April 13, 2017.

## **CONCLUSIONS**

1. Implementation of Emergency Response Protocol: The Parent has identified instances when the Student remained escalated for more than 30 minutes and the District did not contact her as prescribed in the amendment to the Student’s emergency response protocol. In one instance, the District contacted the Parent after 41 minutes, in another instance, the District contacted her after 44 minutes, and in a third instance, the Student remained escalated for 40 minutes and the District did not notify her until later that day. However, given the nature and extent of the Student’s escalations during October 2016, these discrepancies do not substantiate a material failure to implement the Student’s emergency response protocol with fidelity, especially as the District’s documentation is otherwise compliant and detailed. However, OSPI reminds the District that it must not substitute an emergency response protocol for the systematic use of a BIP. The governing regulations specify that isolation/restraint must stop as soon as an imminent likelihood of harm has passed, not after several minutes of calmness.
  
2. Implementation of Paraeducator Provisions: The documentation does not substantiate that the District fully implemented the Student’s IEP provision for 1:1 staff assistance during the 2016-2017 school year until October 17, 2016, when the District opened additional positions for staff support in the Student’s classroom and for the Student specifically. OSPI notes that the assistance provision in the Student’s IEP calls for “1:1 staff assistance from special education staff,” which does not specify that a single person would be assigned exclusively to the Student during the school day. Thus, the issue here is not that all staff members assigned to the Student’s special education classroom provided the Student’s 1:1 assistance, based on a schedule devised by the Student’s special education teacher. Instead, the issue here is whether the District adequately staffed the Student’s classroom to account for 1:1 staff assistance for the Student. The District’s staffing sheets indicate that the Student’s classroom served eight students with three less paraeducators in September than it did starting October 17, 2016, without offering an explanation for the increase. Additionally, the staffing sheet for September 2016 does not identify, and thereby does not account for, the one staff member assigned to the Student. The Student’s behavioral struggles in September and October 2016, which sharply decreased after additional staffing, also support a conclusion that the staffing levels were inadequate to support the Student’s 1:1 staff assistance prior to the additional staffing. Compensatory services are an equitable remedy with the aim of placing the student in the same position he or she would have been, but for the district’s violations of the IDEA, and are appropriate here. The position the Student would have been in with full time 1:1 staff assistance from the beginning of the school year is not easily quantifiable, but the nature and extent of the Student’s time



in isolation is noteworthy and instructive. From the beginning of the 2016-2017 school year through October 17 2016, the Student spent 620 minutes or 10.3 hours in isolation. As an equitable remedy, the District will provide the Student with 5 hours of compensatory services to address the Student's IEP services. These services will occur 1:1, outside of the Student's school day.

3. Occupational Therapy Assessment: Although the District should have issued a prior written notice, describing the fine motor assessment it agreed to conduct, the District otherwise followed procedures for responding to the Parent's request for an occupational therapy evaluation of the Student. On February 15, 2017, the Parent made a clear written request for the District to assess the Student's sensory needs. The District then promptly responded and completed the additional assessment within the 35-school day timeline from receiving the Parent's written consent. Although the Parent identifies various references she has made to a sensory diet for the Student, or for a desire to discuss occupational therapy, the Parent's February 15, 2017 request was the only clear request she made for an assessment.

### **CORRECTIVE ACTIONS**

By or before **May 31, 2017** and **September 8, 2017**, the District will provide OSPI with documentation showing the District has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **May 31, 2017**, the District will meet with the Parent to develop a schedule for 5 hours of compensatory services to address the Student's IEP services. Services may occur after school, or over vacations, and must occur outside of the Student's school day. These services will be provided 1:1. The District will provide OSPI with documentation of the schedule for services by or before **May 31, 2017**, and complete compensatory services by or before **September 8, 2017**.

The District must either provide transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. By or before **September 8, 2017**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation will include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. Additionally, this documentation will include payments, if any, made to the Parent for travel reimbursement.

#### **DISTRICT SPECIFIC:**

None.

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

## RECOMMENDATION

OSPI reminds the District that unless a parent agrees to a different time, districts have 35 school days from the date of receiving parental consent to complete evaluations. This timeline for completing an evaluation also applies to completing an FBA. Although parental input is an essential component of an evaluation, including an FBA, parental agreement is not required before completing an evaluation, including an FBA. When parents are unsatisfied with the results of an assessment that is due, districts can either obtain an extension, or finalize the assessment and consider the parent's request to conduct another/additional assessments.

Dated this \_\_\_\_ day of May, 2017

Douglas H. Gill, Ed. D.  
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.)