

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-29

PROCEDURAL HISTORY

On April 24, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of a student (Student) attending the Sultan School District (District). The Complainant 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 April 24, 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 May 16, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on May 17, 2017. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On June 8, 2017, OSPI received the Complainant's reply and forwarded that reply to the District on the same day.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education and related services under the category of autism. The Student's educational placement was a self-contained classroom. In November, the individualized education program (IEP) team, including the Parent, met to develop the Student's annual IEP, which included a behavioral intervention plan (BIP), and an emergency response protocol. The BIP identified the Student's problematic behaviors and identified positive behavioral interventions to improve the Student's behavior. The emergency response protocol identified the protocols to observe when the Student's problematic behaviors posed an imminent likelihood of serious harm, including using holds, and isolating the Student in "the quiet room". On several occasions during the course of the school year, staff restrained and isolated the Student. The Complainant alleged that the District did not provide the Student an appropriate placement, and that the District failed to use restraint and isolation with the Student consistent with the requirements in WAC 392-172A-02110. The District denied the allegations.

ISSUE

1. Did the District use restraint and isolation with the Student consistent with the requirements in WAC 392-172A-02110, including documentation and reporting requirements, during the 2016-2017 school year?

2. Did the District follow procedures for determining the Student's placement during the 2016-2017 school year, including considering the Student's least restrictive environment (LRE)?

LEGAL STANDARDS

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial

behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

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.

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 device 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.

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

area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

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: 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.

Placements: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: (a) The student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070 (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060.

Health Plans: A district is not required to include the provisions of a student's health plan into their individualized education program (IEP). However, an IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his/her participation in his/her education and to support his/her teachers. 34 CFR §300.320; WAC 392-172A-03090. The IEP team is also not required to include information under one component of a student's IEP that is already contained under another component of the student's IEP. 34 CFR §300.320(d); WAC 392-172A-03090(2)(b). At the beginning of the school year, each district must have an IEP in effect for each student eligible for special education services. 34 CFR §300.323(a); WAC 392-172A-03105.

FINDINGS OF FACT

Background Facts

1. During the 2015-2016 school year, the Student attended a District elementary school and was eligible to receive special education and related services under the category of autism.

2. In February 2016, the District completed a reevaluation of the Student. The evaluation report stated the Student was diagnosed with autism and “was working at a pre-K to kindergarten work level academically and social/emotionally”. The report stated that the Student was not able to answer or ask questions, and rarely initiated communication, but could respond using gestures, actions, showing an object, and pointing. The report further stated the Student’s fine and gross motor skills were close to the average range, but his sensory processing difficulties impaired his ability to attend to fine motor or tabletop tasks. The report stated the Student “struggles with appropriate behavior and can get aggressive and have meltdowns when he does not get what he wants”, during transition times, and when he was not feeling well. The report further stated the Student was diagnosed with seizures and a possible mood disorder, both of which affected his behaviors, and that he saw a neurologist. The Student’s communication difficulties also affected his behavior. The report identified the following behaviors as problematic for the Student:

- hitting
- kicking
- head-butting
- biting
- spitting
- throwing chairs
- throwing objects
- throwing himself to the ground

The report stated a functional behavioral assessment (FBA) would be completed as part of the evaluation.

3. Also in February 2016, the District completed a FBA. The report stated the Student was an artist, and did well at drawing, and building with blocks. The report identified the Student’s hitting as the central concern, in addition to spitting and throwing himself to the ground. Contributing factors to the Student’s behavior included his “mood, seizures, medication adjustment changes, and his communication issues.” The report stated the Student’s behavior usually occurred during transition times, non-preferred activities, and when the work was difficult for the Student. The report recommended a behavioral intervention plan (BIP).

4. Also in February 2016, the Student’s individualized education program (IEP) team, including the Student’s mother, met to develop his IEP. The February IEP stated the Student was artistic with a very vivid world, and was non-verbal, but communicated through gestures, tantrums on occasion, and with prompting from staff. The IEP further stated the Student had behaviors that impeded his learning, and that the behaviors were apparent when the Student did not want to complete a task, was having increased seizure activity, or was not feeling well. The IEP also stated the Student would not participate in general education settings because the Student would be overwhelmed by the amount of students and rigor, and that the Student would attend assemblies depending on his mood, but that he did not stay at assemblies the entire time. The IEP included annual goals in the areas of academics, adaptive, social/emotional, and communication. The IEP provided for the following specially designed instruction:

- Adaptive: 250 minutes a week – special education
- Social/Emotional: 535 minutes a week – special education
- Language Arts: 400 minutes a week – special education

- Math: 400 minutes a week – special education
- Written Expression: 150 minutes a week – special education

Additionally, the Student’s IEP provided for the following related services:

- Speech Language Therapy : 20 minutes a day for 3 days a week – special education
- Occupational Therapy (OT): 30 minutes a month for consultation – special education

The IEP also provided for the following accommodations/modifications:

- Presentation: modify the format of the materials (spacing, highlighting, color-coding), rephrasing a test question and/or directions, shorten assignments,
- Response: hands-on assignments
- Setting: modify/repeat/model directions, provide individualized or small group instruction, read class materials aloud
- Timing/Scheduling: allow breaks (during work, between tasks, during testing, etc), allow extra time to complete assignments, modify students schedule
- Testing: as follows -
 - presentation: assist the student in tracking questions, redirect the students attention to the test, use a human reader or word-to-word translation devices
 - response: use trained staff member to write responses as directed by student, allow approved tools to help student think but does not give the student answers
 - setting: individual or small group testing location
 - timing/scheduling: allow student breaks

The Student’s IEP also provided for “Right Response Training” as support for school personnel, and extended school year (ESY) services for the Student. Additionally, the IEP included a BIP.

5. The Student’s BIP was aimed at reducing the Student’s behaviors of hitting, spitting, and throwing himself to the ground. The BIP identified the Student’s extreme behavior as “goes after students or staff”. The BIP included functional alternatives, event/antecedent strategies to prevent the behaviors, and teaching strategies for responding to the behavior. The positive behavioral interventions and supports included giving the Student warnings about upcoming transition times, using a timer, using a token board, and using consequence responses, including tokens, verbal praise, and “high-fives” when the target behavior occurred. The BIP also included a plan to give the Student space and time to calm down without giving him the opportunity to hit others, and included a de-escalation plan, asking the Student to go to “the quiet room” to use the space and time to calm down.
6. On June 26, 2016, the District’s executive director of special education¹ presented a “Right Response” advanced recertification workshop. The Student’s special education teacher and two District paraeducators (paraeducator 1 and paraeducator

¹ The District provided a Right Response Instructor Certification, establishing the District’s executive director of special education as a Right Response advanced instructor. The certificate stated the executive director of special education was authorized to conduct Right Response Workshops only for the Sultan School District in accordance with the license agreement for Right Response Workshops and the certificate expires on January 26, 2018.

2) attended the workshop and received certificates of completion for the 7-hour course, which expires on June 27, 2017.

Timeline for this Complaint begins on September 7, 2016

7. The District's 2016-2017 school year began on September 7, 2016.
8. At the beginning of the 2016-2017 school year, the Student continued to attend the District elementary school, and his February 2016 IEP and BIP continued to be in place. The Student's educational placement was a self-contained classroom for students with autism.
9. The Student's health care plan was also in place at the beginning of the 2016-2017 school year, and was last updated on September 3, 2015 by a District registered nurse. The health care plan described the Student's health concerns and medication. The plan also identified three types of seizures the Student could experience, and included common signs and symptoms and the procedures to follow for each type of seizure. The health plan stated that the Student "must NEVER be unattended, and should always be supervised by an adult".
10. A building support plan was also in place during the 2016-2017 school year. The plan stated the objective was to create a "calm down space" where the Student can "cause no harm [to] himself or others". The support plan also required a weekly review of the daily behavior data sheets to evaluate the effects of any isolation and restraint. The support plan identified the following circumstances under which isolation and restraint may be used:
 - harming self or others
 - hitting
 - kicking
 - head-butting
 - biting
 - throwing objects

The support plan specified the following type of restraint or isolation that may be used:

- "the quiet room"
- holds if absolutely necessary when "the quiet room" is not working

The support plan described the following positive interventions to use with the Student:

- give the Student space
- timers
- schedules
- token board
- 1:1 to maintain the student and staff safety

The support plan identified the following special instructions to use in connection with the Student:

- the Student will often go to the "the quiet room" without an escort
- give the Student as much space as possible but do not give him the opportunity to harm others

The plan identified the following qualified persons permitted to restrain or isolate the Student:

- Right Response trained staff

11. The District's documentation in this complaint includes daily data sheets for the Student regarding his behavior and seizure activity from September 7, 2016 through April 27, 2017.
12. On September 21, 2016, paraeducator 2 held the Student's arms across his chest in the technology classroom. The data sheet stated the Student pounded the computer mouse on the table and hit the staff. The District's documentation provided in response to this complaint did not contain a corresponding written report documenting the restraint.
13. Also on September 21, 2016, the Student's special education teacher emailed the Student's mother, stating that the Student had "a really rough day" and that he had "a lot of physical behaviors towards adults and students", and that they "followed the normal protocol and he spent some time in the quiet room".
14. On October 3, 2016, the Student's special education teacher used a cross arms hold on the Student for one minute. The written report stated the Student "got mad and started to hit the computer and slam the mouse down". When the special education teacher directed the Student to "the quiet room" and attempted to shut the door, the Student pulled her hair and threw a shoe at her back. Prior to the incident, staff reminded the Student to "be safe". The report stated that the special education teacher sustained a headache and a "sore back from the shoe". The report notes that the special education teacher contacted the Student's parents regarding the incident that same day, but the report does not indicate if written notification was sent to the parents.
15. On October 7, 2016, the special education teacher emailed the Student's mother regarding the Student's behaviors. The special education teacher stated that the Student spit on the staff and on the floor, took off his shoe, looked for the special education teacher, and threw the shoe at her face, and "went after" the substitute physical education teacher with the intent of running her over with his scooter while laughing. The special education teacher also stated she contacted the District's behavior specialist who was a board certified behavior analyst to come and observe the Student.
16. On October 8, 2016, the Student's mother responded to the special education teacher, stating that she makes the Student clean up his spit and go to the bathroom. The Student's mother further stated that the Student throws shoes even when he knows they will be taken away, and the Student and his sister play "weird" games and that the Student probably thought the scooter incident was funny even if it was not appropriate. The Student's mother further stated that the Student has started making noises like an alarm.

17. On October 8, 2016, the special education teacher replied to the Student's mother, stating it is likely the Student was mimicking the alarm that notifies staff if a student is trying to elope from the classroom. She also stated that the current plan and strategies to manage the Student's behavior were not working, and she was hoping to get new ideas from the behavioral specialist who was coming to the classroom on October 10. The Student's mother responded, stating the Student is "more intense and impulsive" recently.
18. In October 2016, the District behavior specialist completed a report, summarizing her recommendations for a highly structured program for the Student. The report stated the structure of the new program would result in a different schedule for the Student compared to the classroom schedule, but the purpose of the alternative schedule was to ensure each intervention and support would be implemented with a high rate of fidelity. The report also included recommendations regarding adult support and interactions with the Student, work/break schedule, token board and reinforcement, and reactive strategies to comply with District guidelines for safety.
19. On October 12, 2016, the special education teacher held the Student's "hands and feet for safety" for 30 seconds. The written report stated that the Student continually kicked and hit the staff. Prior to the incident, staff offered "the quiet room" as a cool down space, used the token board, and gave the Student space. The report stated the special education teacher contacted the Student's parents that same day, but the report did not indicate if written notification was sent to the parents.
20. On October 13, 2016, the District executive director of special education conducted a "Right Response" advanced recertification workshop. Two District paraeducators (paraeducator 3 and paraeducator 4) attended the workshop and received certificates of completion for the 14-hour course that will expire on October 13, 2017.
21. On October 17, 2016, the special education teacher held the Student's forearms and legs for 30 seconds, and then the Student spent two minutes in "the quiet room". The written report stated the Student "got mad" while working at the computer with the special education teacher, and punched her in the face when she was retreating from the Student. Prior to the incident, staff offered "the quiet room" as a cool down space, used the token board, the picture exchange communication system (PECS) board, and gave the Student space. The report also stated the special education teacher sustained injury. Additionally, the report stated the special education teacher reviewed the incident with the Student's parents that same day, but the report does not indicate if written notification was sent to the parents.
22. On October 24, 2016, the Student spent ten minutes in "the quiet room". The written report stated the Student was directed to "the quiet room" because he was kicking things and then "came after staff". Paraeducator 1 escorted the Student to "the quiet room" and then paraeducator 1 and paraeducator 2 shut the door when the Student "started coming at them". Prior to the incident, staff reminded the Student to use "quiet voices", gave him reminders to "be safe", and gave the Student space. The report stated on October 24, 2016, the special education teacher reviewed the

incident with the staff members responsible for administering the isolation, and contacted the Student's parents, but the report does not indicate if written notification was sent to the parents.

23. Also on October 24, 2016, the Student spent another five minutes in "the quiet room". The written report stated the Student "started getting upset during 1:1 worktime and went to the quiet room on his own, but kept coming at staff then started throwing shoes". Prior to the incident, staff reminded the Student to use "low voices", gave reminders to "be safe", gave the Student space and offered a break. The report stated on October 24, 2016, the special education teacher reviewed the incident with the staff member responsible for administering the isolation, and contacted the Student's parents, but the report does not indicate if written notification was sent to the parents.
24. Also on October 24, 2016, the District sent the Student's parents a "meeting notice" regarding a meeting to develop an emergency response protocol for the Student scheduled for November 29, 2016.
25. On October 25, 2016, the District also sent the Student's parents a "meeting notice" regarding a meeting to develop a BIP for the Student scheduled for November 29, 2016.
26. Later on October 25, 2016, the special education teacher emailed the Student's mother with a report on the Student's progress in behavior. The special education teacher stated the Student had a meltdown when it was time to clean up his trains. As a result, the Student went to "the quiet room" and shut the door that the teacher had left open. The special education teacher also stated that at the advice of the behavior specialist, she was working with the Student to transition from a preferred activity without having a "melt down" and that she tried a new calming technique using the weighted ball with the Student to address "some sensory needs".
27. According to the daily data sheets, on October 28, 2016, paraeducator 2 held the door to "the quiet room" shut when the Student came out to kick paraeducator 2 and the substitute teacher. The District's documentation provided in response to this complaint did not contain a corresponding written report of the isolation.
28. On November 1, 2016, the District sent an invitation to the Student's parents, inviting them to participate in a meeting to update the Student's IEP and BIP scheduled for November 29, 2016. On the same day, the District also issued a "meeting notice" to the Student's parents to discuss ESY services for the Student at the meeting.
29. On November 17, 2016, paraeducator 2 held the Student's arms crisscross and told him "no hitting" while in the library. The daily data sheet stated the Student was hitting the staff. The District's documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
30. On November 29, 2016, the Student's IEP team, including the Student's mother, met to develop a new IEP for the Student. The November 2016 IEP stated the Student

is intelligent, artistic, and loves to draw and making things out of paper. The IEP stated that the Student's parents stated the Student "cannot spend time not being directly supervised" while at home. The IEP also stated the Student is interacting with peers more, knows the classroom routines "inside and out" although he struggles during transition times, is performing at kindergarten levels for math and reading, and has great fine motor skills. The report further stated the Student's problematic behaviors have slowly improved, and that his "behaviors appear related to engaging in non-preferred tasks and not rooted in the sensory system." The IEP additionally stated the Student's parents take the Student to a children's hospital every three months to see a neurologist to work towards getting the Student's seizures under control. The IEP also stated the Student would be getting a 1:1 aide to help "manage behaviors, sensory needs, and seizures". The IEP stated the Student would not participate in general education settings because he would be frustrated, and the setting would not provide for his high sensory needs. The Student would attend assemblies if he could handle the amount of people in the gym. The Student's IEP included annual goals in the areas of academics, adaptive, social/emotional, and communication, and provided for the following specially designed instruction:

- Adaptive: 350 minutes a week – special education
- Social/Emotional: 350 minutes a week – special education
- Language Arts: 450 minutes a week – special education
- Math: 450 minutes a week – special education
- Written Expression: 150 minutes a week – special education

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

- SLP: 20 minutes a day for 3 days a week – special education
- OT: 30 minutes a month for consultation – special education
- 1:1 para support: 6 hours daily – special education

The November 2016 IEP also provided for the following accommodations/modifications:

- Presentation: read class materials orally, rephrase a test question and/or directions, shorten assignments, and simplify testing words
- Response: hands-on assignments, accept oral responses to assignments and tests
- Setting: modify/repeat/model directions, provide individualized or small group instruction, read class materials aloud
- Timing/Scheduling: allow breaks (during work, between tasks, during testing, etc.), allow extra time to complete assignments, allow extra time on tests and quizzes
- Testing: as follows -
 - presentation: assist the student in tracking questions, redirect the students attention to the test, reread directions verbatim, use a human reader;
 - response: use trained staff member to write responses as directed by student, allow approved tools to help student think but does not give the student answers
 - setting: individual or small group testing location
 - timing/scheduling: allow student additional time, allow student breaks, provide multiple days to complete a single testing session

The November IEP also provided for “Right Response Training” as support for school personnel and ESY services for the Student. The IEP also included a BIP.

31. The Student’s November 2016 BIP was aimed at reducing the Student’s behavior of hitting, kicking, throwing classroom materials, and “push[ing] over anything that is in his path of frustration”. The BIP included functional alternatives, event/antecedent strategies to prevent the behavior, and teaching strategies for responding to the behavior. The positive behavioral interventions and supports for the Student was similar to his previous February 2016 BIP, and included giving the Student putty to manipulate to further calm down, and to not require the Student “break down anything he builds”. The consequence responses and de-escalation plan remained the same as the previous BIP; give the Student space and time to calm down without giving him the opportunity to hit others, and included a de-escalation plan, asking the Student to go to “the quiet room” to use the space and time to calm down.
32. On November 29, 2016, the District issued prior written notice, proposing to initiate ESY services for the Student on July 17, 2017. The notice stated the Student needed ESY services to maintain the skills developed during the school year.
33. The District’s documentation in this complaint also includes three other prior written notices addressing the November 29, 2016 meeting. The notices are dated November 1, 2016, and it is assumed the dates are incorrect and should reflect a date of November 29 or later. The first prior written notice stated the District was going to update the Student’s interventions based on the behavioral specialist’s recommendations. The second prior written notice stated the Student had mastered his academic goals, and that it was appropriate to review the annual measurable goals provided in the Student’s February 2016 IEP. The District proposed to initiate both actions on November 29, 2016. The third prior written notice proposed to initiate an emergency response protocol for the Student, beginning on November 30, 2016. The notice stated the Student had a history of behavioral concerns and had shown aggressive behaviors at school. The notice further stated it was appropriate to have the emergency response protocol in place to ensure the safety of the student and others.
34. Based on the District’s response to this complaint, on December 1, 2016, the special education teacher telephoned the Student’s mother to discuss the Student’s emergency response protocol because time ran out at the IEP meeting. On this same day, the special education teacher sent the Student’s mother a copy of the emergency response protocol to review and sign.
35. On December 14, 2016, the Student’s mother signed the emergency response protocol, giving the District consent to use isolation, restraint, and restraint devices as outlined in the Student’s emergency response protocol. The protocol stated isolation, restraint, or restraint devices may be used when the Student was a harm to himself and others and addressed behaviors such as hitting, kicking, head-butting, biting, and throwing objects. The protocol identified Right Response trained staff as the qualified persons permitted to restrain or isolate the Student. The protocol also

stated “the quiet room” was to be used first, and if the Student continued to try to harm others, then it could be used as an isolation room. The protocol further stated holds were to be used if “absolutely necessary when the quiet room isn’t working”. Additionally, the protocol stated the Student would often go to the quiet room on his own, and to give the Student space to make good choices, but not to allow him to harm himself or others.

36. On December 15, 2016, the special education teacher emailed the District behavior specialist, requesting a meeting to discuss the Student. The special education teacher stated the Student was sent home because of seizure activity, but also for throwing chairs, one that almost hit another student, and one that he aimed at paraeducator 3 that hit her in the back. The special education teacher also stated paraeducator 3 went to the doctor because she was in pain. The teacher later sent a second email to the behavior specialist with information the Student’s mother had provided from the Student’s neurologist.
37. The District was on break December 19, 2016 through January 2, 2017.
38. On January 11, 2017, paraeducator 2 held the Student’s arms crisscross while in the library’s computer lab. The daily data sheet stated the Student was hitting staff. The District’s documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
39. On January 12, 2017, paraeducator 2 held the Student’s arms crisscross while in the library watching a video. The daily data sheet stated the Student was hitting and kicking staff. The District’s documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
40. On January 12, 2017, the special education teacher emailed the Student’s mother, stating the Student was no longer allowed to use the school computers or iPad because the Student has thrown them to the ground every day that week. The special education teacher further stated she did sit with the Student at the computer so that he could complete his I-ready assessment for math.
41. On January 23, 2017, the special education teacher held the Student’s hands on the floor for 30 seconds. The written report stated the Student continuously hit staff, and even after given space to calm down, the Student “came after” the special education teacher. Prior to the incident, staff reminded the Student to keep “hands to self” and directed him to “the quiet room”. The report also stated the special education teacher telephoned the Student’s mother that same day, and the principal’s administrative assistant sent a written report to the Student’s parents.
42. On January 30, 2017, the special education teacher emailed the Student’s mother, stating the Student had bitten a staff member when the special education teacher was absent from school. In response, the Student’s mother stated he had not bitten anyone in a while.

43. On January 31, 2017, paraeducator 2 held the Student's hands and feet for one minute. The written report stated that the Student continuously kicked and hit staff and purposefully pulled off paraeducator 2's glasses. Prior to the incident, staff reminded the Student to have a "safe body" and gave him time to calm down. The report stated that on January 31, 2017, the special education teacher reviewed the incident with the staff member responsible for administering the hold and telephoned the Student's mother. On February 1, 2017, the principal's administrative assistant sent a written report to the Student's parents.
44. Also on January 31, 2017, paraeducator 2 and paraeducator 3 held the Student's hands across his chest and held his feet for five minutes. The written report stated the Student purposefully pulled off people's glasses, head-butted paraeducator 2, and kicked her in the face. Prior to the incident, staff reminded the Student to have a "safe body". The report stated on January 31, 2017, the special education teacher reviewed the incident with the staff members responsible for administering the hold and telephoned the Student's mother. On February 1, 2017, the principal's administrative assistant sent a written report to the Student's parents.
45. Additionally, on January 31, 2017, the Student spent five minutes in "the quiet room". The written report stated that the Student went to "the quiet room" after his speech therapy session ended early. When the Student kept coming out of "the quiet room" angry, the special education teacher shut the door. Prior to the incident, staff reminded the Student to have a "safe body" and gave him multiple opportunities to return to "the quiet room" to calm down. The report stated the special education teacher telephoned the Student's mother that same day, and that the principal's administrative assistant sent a written report to the parents.
46. In February 2017, the District behavior specialist completed a report regarding her program recommendations for the Student. The report stated the special education teacher requested assistance due to recent increases in frequency and intensity of the Student's aggressive behaviors. Some of the behavioral specialist's recommendations included increasing the proximity of staff to the Student to help maintain the safety for others and property, changing the amount and type of work during the non-preferred activity when the Student showed signs of agitation, and a reminder for the staff to remain calm and ensure the Student's program remained highly structured.
47. On February 1, 2017, the Student spent four minutes in "the quiet room". The written report stated that the Student threw the computer mouse, refused to go to "the quiet room", and was "coming after staff". Prior to the incident, staff gave the Student reminders and space. The report also stated on February 1, 2017, the special education teacher reviewed the incident with the staff members responsible for administering the isolation, and contacted the Student's parents. On that same day, the principal's administrative assistant sent a written report to the Student's parents.

48. Also on February 1, 2017, the special education teacher emailed the Student's mother, stating that she shut "the quiet room" door on the Student for four minutes. Prior to the incident, the Student threw down the computer mouse and then went to "the quiet room" to calm down, but kept coming out of "the quiet room" angry. The special education teacher stated she left the mother a voice message regarding the incident, and stated that the District sent a notice to the Student's mother regarding the incident. The Student's mother responded that she had received the voicemail message.
49. On February 8, 2017, the special education teacher emailed the Student's mother, stating the Student had bitten a paraeducator four times the day before, and twice that day. The special education teacher also stated the Student ran up to her from across the room to spit in her face. The Student's mother responded, stating the Student recently bit her, the Student's father, a friend of the Student's sister, and the Student had spit on his father. The special education teacher replied, stating the Student had not had biting incidences since kindergarten, and the Student usually spit on the ground or in the toilet.
50. On February 22, 2017, the District registered nurse updated the Student's "Health Care Plan". The health care plan described the Student's health concerns, medication, and identified three types of seizures the Student could experience, including common signs and symptoms and the procedure to follow for each type of seizure. The health plan stated that the Student "must NEVER be unattended, and should always be supervised by an adult".
51. On February 28, 2017, the Student spent five minutes in "the quiet room". The written report stated that the Student kept coming out of "the quiet room with aggressive behaviors with intent to harm staff". Prior to the incident, staff gave the Student reminders to have a safe body and to stay in "the quiet room" until the Student was calm. The report stated on February 28, 2017, the special education teacher contacted the Student's parents and on March 2, 2017, the principal's administrative assistant sent them a written report.
52. On February 28, 2017, the special education teacher held the Student's hands and feet for one minute. The written report stated that while on the swing, the Student attempted to hit staff, and then did hit staff when they stopped the swing. Prior to the incident, staff gave the Student reminders and space to calm down. The report stated on February 28, 2017, the special education teacher contacted the Student's parents and on March 2, 2017, the principal's administrative assistant sent them a written report.
53. In March 2017, the District behavior specialist completed a report regarding her program recommendations for the Student in response to the reported increase in the Student's aggression and impulsivity. Some of the behavioral specialist's recommendations included amending the Student's work expectations when staff observed the Student's pattern of agitation, adding in sensory activities and movement activities to the Student's work/break schedule, and supporting

communication by prompting the Student to use the “communication book” system as much as possible. The report also stated that these recommendations and the Student’s schedule might change once baseline data regarding the changes to the Student’s program had been gathered and reviewed.

54. On March 2, 2017, the special education teacher administered a floor hold for one minute. The written report stated the Student was “coming at staff” to spit on them. Prior to the incident, staff redirected the Student to the bathroom and when he refused to go, the staff tried to keep the Student in one area of the classroom. The report stated that on March 2, 2017, the special education teacher telephoned the Student’s mother, and on March 3, 2017, the principal’s administrative assistant sent a written report to the parents.
55. On March 3, 2017, the Student spent 25 minutes in “the quiet room”. The written report stated the Student was “spitting at [the] teacher purposefully”. Prior to the incident, the special education teacher redirected the Student, and gave him space to calm down. The report stated the Student’s mother was contacted that same day, and that the principal’s administrative assistant sent a written report to the Student’s parents.
56. On March 8, 2017, the special education teacher administered a floor hold on the Student’s hands and feet for 10 seconds. The written report stated the Student refused to work, and that the Student’s schedule and workload had recently been modified. The daily data sheet stated the Student threw materials, stood on the table, spit six times, and scratched the teacher three times. Prior to the incident, the special education teacher reminded the Student to “be safe”, gave him space to calm down, and reminded him where he could spit. On March 8, 2017, the special education teacher telephoned the Student’s mother, and on March 10, 2017, the principal’s administrative assistant sent a written report to the parents.
57. Also on March 8, 2017, paraeducator 2 and paraeducator 3 administered a crossed arm hold on the Student twice, each for 15 seconds. The written report stated the Student continued to be aggressive, “come at staff”, and spit. Prior to the incident, staff gave the Student a movement break, reminders to “be safe”, and prompts about the Student’s schedule “first ____, then ____” statements. The report also stated that on March 8, 2017, the special education teacher reviewed the incident with the staff member responsible for administering the hold, and telephoned the Student’s mother. On that same day, the principal’s administrative assistant sent a written report to the Student’s parents.
58. On March 20, 2017, paraeducator 2 held the Student in a hug and had him count to 10 while in the resource room. The daily data sheet stated the Student hit and kicked paraeducator 2 several times, and “tossed Legos”. The District’s documentation provided in response to this complaint did not contain a corresponding written report to the parents regarding the restraint.

59. On March 24, 2017, paraeducator 2 held the Student in a hug and counted to 10 when she took the Student outside to the “little kid’s playground” to run. The daily data sheet stated the Student hit paraeducator 2. The District’s documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
60. Also on March 24, 2017, the Student’s mother emailed the special education teacher, asking whether the Student’s behavior had improved since they had made changes to the Student’s program. In response, the special education teacher stated she would need to take more data before making a determination about whether the changes were effective since it had only been one week.
61. On March 29, 2017, the special education teacher held the Student’s hands and feet for 30 seconds, and then the Student spent 10 minutes in “the quiet room”. The written report stated the Student hit staff and kept “coming after staff”. Prior to the incident, the special education teacher gave the Student space to calm down, used “timer warnings” to ease the transition time, and asked the Student to go to “the quiet room” to calm down on his own. The report stated on March 29, 2017, the special education teacher telephoned the Student’s mother, and on March 31, 2017, the principal’s administrative assistant sent a written report to the Student’s parents.
62. On April 10, 2017, the Student spent 10 minutes in “the quiet room”. The written report stated the Student was kicking the teacher and came out of “the quiet room spitting at [the] staff”. Prior to the incident, the special education teacher set timers, reminded the Student to be safe, and to sit at the back of “the quiet room”. The report also stated on April 10, 2017, the special education teacher reviewed the incident with the staff members responsible for administering the isolation, and telephoned the Student’s mother. Also that day, the principal’s administrative assistant sent a written report to the Student’s parents.
63. On April 10, 2017, the special education teacher emailed the Student’s mother regarding the Student’s progress. The special education teacher stated that she directed the Student to “the quiet room” when he refused to work, but when he came out to spit and kick the staff, she shut the door for a few minutes. The special education teacher also stated she left a voicemail for the Student’s mother, notifying her the written report for the incident was completed. The Student’s mother responded to the email, “He has been really keyed up at home too.”
64. On April 11, 2017, paraeducator 2 held the Student’s arms and legs while in the resource room. The daily data sheet stated the Student hit and kicked. The District’s documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
65. On April 17, 2017, the special education teacher administered a floor hold on the Student for 30 seconds. The written report stated the Student threw the computer mouse when the special education teacher would not let him watch a video on the computer. Prior to the incident, the special education teacher gave the Student

space to calm down, reminders, and options for other quiet activities. The report also stated on April 17, 2017, the special education teacher telephoned the Student's mother and on April 18, 2017, the principal's administrative assistant sent a written report to the Student's parents.

66. On April 20, 2017, the special education teacher held the Student's hands during independent work time in class. The daily data sheet stated the Student was hitting, kicking, and spitting on several occasions, and was standing on a chair. The District's documentation provided in response to this complaint did not contain a corresponding written report regarding the restraint.
67. On April 24, 2017, paraeducator 2 held the Student's hands and feet for 45 seconds. The written report stated the Student was screaming, hitting, biting, kicking, and head-butting with the intent to hurt the staff. Prior to the incident, the staff gave the Student space and time to calm down, used calm voices, and gave the Student choices. The report stated staff followed transition protocols and de-escalation techniques, but the Student needed an escort to class because he "was out of control." The report also stated on April 24, 2017, the special education teacher reviewed the incident with the staff members responsible for administering the hold, and telephoned the Student's mother. On that same day, the principal's administrative assistant sent the written report to the parents.
68. On April 26, 2017, paraeducator 2 administered a floor hold on the Student's arms and legs for 30 seconds. The written report stated the Student kicked paraeducator 2 in the leg because he was angry, and could not take school materials home. Prior to the incident, the staff gave the Student space to calm down, reminded him to "be safe", and tried to soothe him by telling him "it is okay". The report also stated on April 26, 2017, the special education teacher reviewed the incident with the staff member responsible for administering the hold, and emailed the Student's mother.
69. Also on April 26, 2017, the special education teacher emailed the Student's mother, stating a paraeducator administered a hold on the Student when the Student kicked the paraeducator "pretty hard twice". The special education teacher also stated she would complete the written report in the morning regarding the incident. The principal's administrative assistant sent the written report to the Student's parents the next day.
70. In May 2017, the District behavior specialist completed a data report, noting the frequency of the Student's behaviors per week over the course of the 2016-2017 school year. The data report graph indicated the Student's weekly behaviors steadily declined during the school year from approximately 35 incidents per week to approximately five weekly incidents in April 2017.
71. On May 12, 2017, the special education teacher, paraeducator 1, paraeducator 2, paraeducator 3, paraeducator 4, and another District paraeducator (paraeducator 5) completed the Safe Schools training for health emergencies, specifically seizures, and received certificates of completion.

CONCLUSIONS

Isolation and Restraint: Districts are permitted to use isolation or restraint with a student only when the student's behavior poses an imminent likelihood of serious harm to self or others, or poses an imminent likelihood of substantial loss of or damage to property. Any use of isolation must be discontinued as soon as the risk of harm to self, others, or property has dissipated. Here, the District used isolation and restraint with the Student on multiple occasions when the Student's behavior posed an imminent likelihood of serious harm to himself, others, or property. However, the District did not consistently implement reporting requirements regarding the use of isolation and/or restraint. Following the release of a student from the use of restraint, a school employee or resource officer who used the restraint must submit a written report to the building administrator or administrator's designee within two business days, and the principal or principal's designee must send written notification as soon as practical, but postmarked no later than five business days after the restraint or isolation occurred. Here, on at least seven occasions, the Student's daily data sheets stated the District restrained or isolated the Student, but there was no indication the District completed a written report for these incidents.

Placement: The Complainant alleged that the District did not provide an appropriate placement for the Student. The District has substantiated it followed the proper procedures to determine the Student's placement, including holding an IEP meeting with the Student's mother. Additionally, the District substantiated it has taken steps to address the unique needs of the Student, such as modifying, when necessary, the Student's program consistent with the recommendations of the District's behavior specialist, which included using positive behavioral interventions to improve the Student's behavior. The behavior data taken by staff also indicates that the Student's problematic behaviors were significantly reduced from the beginning of the school year to April 2017. Additionally, when the Student mastered his annual measurable goals three months prior to the annual IEP review, the District promptly held an IEP meeting to develop new goals to address the Student's progress, and at the same time, reviewed the Student's behavioral intervention plan (BIP) to make modifications. The Complainant also alleged that the staff was not trained to respond to the Student's seizures. The District's response to this complaint stated the District's registered nurse provided two trainings regarding the Student's specific seizure protocol during the school year and additionally, the appropriate staff had participated in more than one online training during the school year specific to the types of seizures the Student experiences, with the most recent training in May 2017. The District provided documentation for the training in May. The Complainant did not substantiate her allegation that the District failed to provide staff with training regarding the Student's seizures.

CORRECTIVE ACTIONS

By or before **July 21, 2017** and **September 29, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District certificated staff, including educational staff associates (ESAs), principals and assistant principals, which will address the follow-up procedures and reporting requirements following the use of restraint or isolation on a student. The guidance will include examples.

By **July 21, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by August 11, 2017, and provide additional dates for review, if needed. By **September 22, 2017**, the District will provide all District certificated staff, including ESAs, principals and assistant principals with the written guidance. By **September 29, 2017**, the District will provide OSPI with documentation showing all required staff received the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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

RECOMMENDATION

OSPI recommends that the District develop a procedure to document any trainings it provides to staff, faculty, and administrators, including dates, times, topics, attendees, and keep a copy of the training materials.

Dated this ____ day of June, 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.)