

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-68

PROCEDURAL HISTORY

On October 5, 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 Vancouver School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 6, 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 by October 27, 2017.

On October 12, 2017, OSPI granted the District an extension until November 3, 2017, to submit its response to this complaint.

On November 3, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 6, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 17, 2017, OSPI received the Parent's reply and forwarded that reply to the District on November 20, 2017.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism. The Student's individualized education program (IEP) in place at the beginning of the school year provided for 1:1 adult supervision and participation in general education physical education (PE). In November 2016, the Student's IEP was amended to specify that the Student would receive 1:1 paraeducator support. In December 2016, the Student's IEP team developed a new IEP for the Student, which continued to provide for 1:1 paraeducator support and indicate the Student would participate in general education PE. However, the Student did not have access to general education PE until March 2017. In April 2017, the Student's regularly assigned paraeducator was absent and other classroom staff provided paraeducator support for the Student. Also during the 2016-2017 school year, the Student was restrained and/or isolated on several occasions, but District staff did not always complete reports documenting the restraints and/or isolation, or provide completed reports to the Parent. During the first month of the 2017-2018 school year, the Student did not have access to a general education PE class and his 1:1 assigned paraeducator was absent on three days.

The Parent alleged that the District failed to follow procedures regarding the use and reporting of restraint consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year. The Parent also alleged that the District failed to follow procedures for implementing the Student's IEP in the least restrictive environment. Additionally, the Parent alleged that the District failed to provide the Student with paraeducator support consistent with his IEP from April 25 - September 22, 2017, including informing providers of their responsibilities for implementing the Student's IEP. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 6, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period. Additionally, the issue of whether the District provided paraeducator support consistent with the Student's individualized education program (IEP) in place from August 31, 2016 through December 7, 2016 was already addressed in SECC 16-87, in which OSPI issued a decision on February 3, 2017.

ISSUES

1. Did the District follow procedures regarding the use and reporting of restraint consistent with the requirements of WAC 392-172A-02110 during the 2016-2017 school year?
2. Did the District follow procedures for implementing the Student's individualized education program (IEP) in place for the 2016-2017 and 2017-2018 school years in the least restrictive environment?
3. Did the District provide the Student with paraeducator support consistent with his IEP from April 25, 2017 through September 22, 2017, including informing providers of their responsibilities for implementing the Student's IEP?

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.

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.

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

Restraint 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.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities

must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

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

Least Restrictive Environment: School districts are required to establish and implement procedures that meet least restrictive environment (LRE) requirements. Those procedures must ensure that special education and related services are provided in a student's LRE which, to the maximum extent appropriate, should be in the general education environment with students who are nondisabled. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of her or his disability, the student cannot be satisfactorily educated in general classes with the use of supplementary aids and services. 34 CFR §300.114; WAC 392-172A-02050.

Physical Education: Every pupil attending grades one through eight of the public schools shall receive instruction in physical education as prescribed by rule of the superintendent of public instruction: PROVIDED, That individual pupils or students may be excused on account of physical disability, religious belief, or participation in directed athletics. RCW 28A.230.040. For students in grades 1-8 an average of at least one hundred instructional minutes per week per year in physical education shall be required of all pupils in the common schools in the grade school program (grades 1-8) unless waived pursuant to RCW 28A.230.040.

FINDINGS OF FACT

2016-2017 School Year

Background Facts

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism.
2. The Student's educational placement during the 2016-2017 school year was a special education structured communication center (SCC) program. The SCC program included a special education teacher (special education teacher 1), two classroom paraeducators, and ten (10) students. In addition, six of the ten students, including the Student, had an assigned 1:1 student specific paraeducator. There were nine adults in the classroom of ten students.¹
3. The District's 2016-2017 school year began on August 31, 2016.
4. The Student's individualized education program (IEP) in place at the beginning of the school year was developed on March 3, 2016, and then amended on March 16, 2016. The amended IEP stated that the Student required "a significant amount of adult support (1750 minutes per week) to be successful in the classroom environment...He must be monitored at all times because he does go after peers and will pull their hair (1-2x day) if he gets too close. A paraeducator helps to implement calming techniques...so that he remains calm and able to function in the classroom." The amended IEP included annual goals in the areas of reading, writing, math, social/emotional/behavioral, adaptive skills, and speech. The IEP provided for the following specially designed instruction and related services in a special education setting:
 - Adaptive Skills – 60 minutes 5 times weekly
 - Math – 30 minutes 5 times weekly
 - Reading – 30 minutes 5 times weekly
 - Writing – 15 minutes 5 times weekly (concurrent)
 - Social/emotional/behavioral – 160 minutes 5 times weekly
 - Speech Language Pathology – 30 minutes 1 time weekly
 - Occupational Therapy – 30 minutes 1 time weekly (concurrent)

The amended March 2016 IEP also provided for the following supplementary aids and services:

- Physical Therapy Consultation – 15 minutes 3 times annually
- Occupational Therapy Consultation – 15 minutes 6 times annually
- Additional Adult Support – 1,750 minutes weekly

The amended IEP stated that the Student would spend 16.57 percent of his school week in a general education setting and would participate with non-disabled peers during recess and before and after school. The IEP also included a marked check box indicating the Student

¹ Some of the findings of facts in this complaint are taken from the decision in SECC 16-87, which involved the same parties and was filed by the Parent on December 7, 2016.

would participate in general education physical education (PE). Additionally, the IEP included multiple classroom accommodations, including adult proximity on a daily basis in all school settings. The IEP also included “1:1 adult supervision” as a support for school personnel on a daily basis in all school settings. The March 2016 amended IEP also included a behavioral intervention plan (BIP), dated February 29, 2016, and an emergency response protocol, dated March 3, 2016 and signed by the Parent.

5. The Student’s February 2016 BIP addressed two target behaviors: aggressive behavior and pulling hair. The BIP stated that the Student’s aggressive behavior included hitting, scratching, kicking, pushing, or swiping at staff or peers, and that the Student displayed this behavior 0-40 times per day with varied intensity and duration. In regard to pulling hair, the BIP stated that the Student would pull the hair of a staff member, peer, or family member and when this occurred, he would wrap both his hands/fingers in the person’s hair – “he will intertwine his fingers deeper and deeper and make it very difficult to remove them.” The Student’s intensity during a “hair pull is always very high”. The BIP stated that the Student would be taught to communicate his need for attention through asking for time with a specific staff person to work on a preferred activity, asking for a break, and recognizing his feelings. The BIP said that a separate work area would be created that the Student could utilize whenever he needs to, and that he would be provided visual blocks, a structured schedule, sensory breaks, clear expectations, and positive attention. Staff would ignore negative behavior and follow proactive strategies to prevent escalation: “time to take a break”, time out area (door open), close the door isolate (ignore), and “timer to wait for attention.” The BIP also stated that the Student escalated to extreme behavior within seconds, and when this occurred, staff would prompt him with physical hand over hand support to request a break and take one.
6. The Student’s March 3, 2016 emergency response protocol stated that isolation or restraint could be used when the Student pulled hair and was in imminent danger of harming others, or when the Student became aggressive (hitting, scratching, kicking, pushing, or swiping) and was in imminent danger of harming others. The protocol stated that “CPI [crisis prevention institute] trained staff” could use “applied physical techniques, child’s control position, team control, escort, prone, and the isolation room”. The isolation room would “be used to provide a quiet, dark space for [the Student] to calm down and not reinforce gaining attention from staff through restraint.” The protocol also stated that the maximum duration for the Student to be in the isolation room was 45 minutes or until the Student was safe, and the maximum duration of restraint would be 20 minutes or until the Student was safe.
7. On September 29, 2016, the Student was isolated for seventeen minutes. The District’s “seclusion and restraint report” stated:

[The Student] was getting in the backpacks of the others students in the classroom. He was verbally redirected by staff member []. The lockdown drill began which escalated [the Student]. Student went back to his desk area. He pushed over his desk and went [to] pull over the shelves. Staff asked [the Student] to take a break in the quiet room. [The Student] got up and began reaching for another student’s hair. Tried to scratch the

same student. [The Student] began scratching staff member []. No transport hold was needed to get [the Student] into the resolution room.

The seclusion and restraint report stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on September 29, 2016.

8. On October 4, 2016, the Student was restrained and isolated. The District's "seclusion and restraint report" stated that the total incident lasted fifteen minutes, but did not specify how long the Student was restrained and how long the Student was isolated. The report stated: Student selected a wagon ride in order to help him calm down. Staff member [] set a timer for ten minutes to help with the transition back into the classroom. Upon entering the classroom the Student became aggressive and began scratching and hitting those around him. He also was biting his lip and trying to scratch himself. [The Student's] aggressive behaviors became too intense, so he was transported into the quiet room from the sensory area.

The report stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on October 4, 2016.

Timeline for this Complaint Begins on October 6, 2016

9. On October 11, 2016, the Student's home/school communication log from stated that "after lunch can be difficult and today was. He pulled a staff member's hair and was escorted to the quiet room." The District admitted in its response to this complaint that a "seclusion and restraint report" was not completed regarding this incident.
10. On October 19, 2016, the Student was restrained and isolated for one hour and fifteen minutes. The District's "seclusion and restraint report" does not specify how long the restraint lasted and how long the isolation lasted. The report stated: [The Student] was out at recess. He continued to ask to go to Value Village. Staff member [] told [the Student] that Value Village is for family not for teachers. [The Student] was redirected to drawing with chalk at recess. He got up seemingly unprovoked and ran to another student. He pulled that student's hair. Student was then CPI transported from the playground to the quiet room by [two staff members].

The report stated that the other student was injured. The report also stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on October 19, 2016.

11. On October 25, 2016, the Student was restrained and also isolated on three occasions. The District's "seclusion and restraint report" documented the four incidents as follows:
 - Seclusion (10:05 am – 10:20 am): The Student began scratching and hitting staff members and himself. He then went into the "resolution room" to take a break before work time.
 - Restraint (1:05 pm – 1:06 pm) and Seclusion (1:06 pm – 1:30 pm): The Student began hitting and kicking his 1:1 paraeducator. The 1:1 paraeducator and special education teacher 1 CPI escorted the Student to the "resolution room".

- Seclusion (1:45 pm -2:05 pm): The Student was inside the bathroom when he began throwing toilet water and his own feces. Upon being cleaned up, he was asked to take a break in the “quiet room”.

The report stated that the Parent was contacted about the incidents that same day and that a copy of the report was provided to the Parent on October 25, 2016.

12. On October 26-28, 2016, the Student was absent due to illness.
13. On Friday, October 28, 2016, the Student’s assigned paraeducator resigned from her position. The District then assigned another SCC program paraeducator to assist the Student.
14. On October 31, 2016, the Student attended school for the first two hours of the school day.
15. On November 1, 2016, special education teacher 1 emailed the Parent, stating that in thinking about the Student’s transition, she wondered how the Parent would feel about the Student attending school for only four hours that day. The teacher stated that staff were more than happy to have the Student attend the full day, but she was nervous about the Student’s transition considering his recent absences. The teacher stated that she wanted to make the Student’s week successful for him, and asked for the Parent’s feedback. Based on the Student’s attendance record, the Student attended school for approximately 4.5 hours on November 1, 2016.
16. According to the Student’s home/school communication log, on November 3, 2016, two SCC program paraeducators were absent. However, according to the District’s employee records, only one paraeducator was absent that day, and the Student’s new assigned 1:1 paraeducator was present on November 3, 2016.
17. On November 3, 2016, the Student was restrained for three minutes and then isolated for seventeen minutes. The District’s “seclusion and restraint report” stated:
[The Student] was out on the playground during afternoon recess. [The Student] went to pull a student’s hair. [The Student] was asked to take a break and sit on the wall for a few minutes. He got up from the wall and tried to pull another student’s hair. He began hitting and kicking staff members []. He was transported to the resolution room.

The report stated that one of the staff members was injured. The report also stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on November 3, 2016.

18. On November 4, 2016, the Parent emailed the District special services manager (District manager), stating that on November 3, 2016, the Student’s classroom was down two staff members. The Parent stated that the Student had 1:1 paraeducator support in his IEP, and that he needed an adult with him at all times to keep him and his peers safe. The Parent stated that it was well documented that when staff’s attention was elsewhere, the Student would pull his peers’ hair, and that the previous day, the Student was able to pull the hair of another student, and was then restrained and isolated. The Parent then asked if substitutes

were available to fill the paraeducator position. The Parent asked what the District's current plan was to address the lack of staff. In response, the District manager stated that there was a district-wide issue with finding substitute paraeducators, and that the principal of the Student's school had discussed this with the District executive director of special services (District executive director 1). The principal and executive director 1 had agreed that if two paraeducators were absent and the school was unable to fill the positions, the school would have another avenue to get some assistance. The District manager also stated that she would make sure the Student's teacher was aware of the plan, as it was just finalized earlier that same week.

19. Also on November 4, 2016, the Student was restrained for four minutes. The District's "seclusion and restraint report" stated the Student was working on typing and then began putting his hands on his 1:1 paraeducator's hair. In response, the paraeducator told him that made her uncomfortable. The Student then pinched the paraeducator. The paraeducator then asked the Student if he needed to take a break, and the Student began yelling, hitting, and kicking. The paraeducator and special education teacher 1 then used the "CPI transport position" to transport the Student to the "book nook" away from other students. The report stated that the Parent was contacted about the incident that same day, but did not indicate when a copy of the report was provided to the Parent.
20. Also on November 4, 2016, the Parent emailed special education teacher 1, requesting an IEP meeting "ASAP" to update the Student's IEP goals and to clarify the IEP. The Parent stated that she had been informed that the term "1:1 adult supervision" in the Student's IEP was not what she had been told that it was. The Parent also stated that the Student's IEP needed to state "1:1 paraeducator support". The Parent said that she did not "understand the difference since [the Student] is a safety net and everyone working with him needs CPI training." The Parent stated that she was upset about this, and expressed concern about the lack of supervision the Student had during the 2015-2016 school year. The Parent asked if the lack of supervision had been due to the IEP not stating "1:1 paraeducator support".
21. On November 5, 2016, special education teacher 1 responded, agreeing to arrange an IEP meeting, and stated that the Student was close to mastering a few of his goals. The teacher also stated that due to the Student being a "safety net" student, she had to have the Student's IEP completed and sent in for review by the District thirty days prior to the date of the IEP meeting. Because of this, in scheduling the IEP meeting, they would need to think at least thirty days into the future. The teacher then proposed meeting at the end of December or the beginning of January. The teacher also stated that in regard to the Parent's concern about the term "1:1 adult supervision", the Parent should contact the District manager. The teacher stated the Student was very safe at school and was always closely surrounded by CPI trained adults. In response, the Parent stated that she wanted to have the IEP meeting as soon as possible, and hoped that it would be before the District's winter break. The Parent stated that she was uncomfortable with the Student attending school if his IEP was incorrect in saying "1:1 adult supervision". The Parent said that if what she was understanding was in fact true, then she had been "lied to" by past teachers, principals, and administration, as she

had been told that “1:1 adult supervision” was a designated paraeducator for the Student with CPI training, and that this was how it had been defined in the Student’s prior IEP. The Parent also stated that she needed to know the answer to her concern as soon as possible, and asked that the District manager, who had been included on the email, respond to her. The Parent re-stated that she wanted to know if “adult supervision” meant a specific paraeducator with CPI training assigned to the Student. The District manager later replied on November 7, 2016, stating that she would be happy to meet with the Student’s IEP team to discuss the Parent’s concerns, and also offered to call the Parent later that day to discuss her concerns.

22. On November 7, 2016, the Parent emailed special education teacher 1, stating that the Student had been sick over the weekend. The Student’s attendance record showed the Student was absent November 7-9, 2016, due to illness.
23. On November 9, 2016, the Student’s IEP team, including the Parent, met to discuss the Parent’s concerns and agreed to amend the Student’s IEP. The IEP team amended the present levels of performance to include additional language, which specified that the Student required “a significant amount of adult support (1750 minutes per week) to be served by a 1:1 paraeducator to be successful in the classroom environment.” Additionally, the amended IEP no longer stated that the Student would receive “1:1 adult supervision” on a daily basis in all school settings as a support for school personnel, but now stated that the Student would have a “1:1 paraeducator” on a daily basis, in all school settings.
24. On November 9, 2016, the Parent emailed special education teacher 1, stating that the Student was feeling better, and that she planned for him to attend school on November 10. The Parent then asked that special education teacher 1 email her in the morning anytime the classroom was down a staff member, so the Parent could keep the Student home. The Parent also asked that the teacher contact her if a staff member left in the middle of the day, so she could come pick up the Student. The Parent stated that the Student’s success depended on appropriate staffing. The Parent also asked if a staff member was assigned solely to the Student during recess, or if the staff member was responsible for multiple students. The Parent stated that a big trigger for the Student was when an adult assigned to supervise him socialized with another student or adult.
25. On November 10, 2016, the Student attended school.
26. Also on November 10, 2016, the Parent and special education teacher 1 discussed the Parent’s concerns about recess. Later that day, the teacher emailed the Parent to “go over” what the teacher had said earlier that morning about the Student’s recess time. The teacher had noticed the issue of the Student’s 1:1 paraeducator not being close enough in proximity to the Student during afternoon recess, and she had problem solved the issue during her last “clinical meeting”. The teacher stated that the recess expectations had now been made clear to the staff.

27. Also on November 10, 2016, the Parent spoke with the OSPI assistant superintendent of special education (OSPI assistant superintendent) regarding her prior special education citizen complaint², the November 9, 2016 amendment to the Student's March 2016 IEP, and the Student's status as a "safety net" student. After her phone conversation, the Parent emailed District executive director 1, stating that she had spoken with the OSPI assistant superintendent, who reportedly stated that the Parent needed to request to have the Student's IEP service matrix state 1:1 paraeducator support, and that the vendor of the District's IEP computer program had the capability to allow for such wording in the IEP service matrix. The Parent then stated to executive director 1 that her concerns were not resolved, and that she needed the Student's IEP corrected. The Parent said that she would like a letter from the District, stating that the District could not change the IEP service matrix. The Parent also stated that she needed the Student to have a 1:1 paraeducator, and for someone to be accountable.
28. On November 12, 2016, the Parent emailed special education teacher 1 and copied the District manager and executive director 1. The Parent stated she had spoken with the OSPI assistant superintendent on November 10, 2016, and he had informed her that based on what she had reported, the service matrix in the IEP needed to reflect 1:1 paraeducator support instead of "additional adult support". The Parent stated that the District manager and executive director 1 had both informed her that this could not be changed, but the OSPI assistant superintendent disagreed and had stated that the vendor of the District's IEP computer program was capable of changing the IEP service matrix to reflect the assignment of a 1:1 paraeducator. The Parent stated that because her prior citizen complaint (SECC 16-64) "was incorrectly investigated" due to this error in the Student's IEP, she could not let the Student attend school until the error was fixed. The Parent also stated that she had sent an email to the District manager, executive director 1, and her attorney, requesting that either the error be fixed, or that the District provide her a letter stating that the error could not be fixed, that the Student did have a 1:1 with him at all times, and that the District was working with its vendor to correct the error.
29. On November 13, 2016, executive director 1 responded to the Parent's email, stating she had not refused to change anything on the Student's IEP, but had asked the Parent to clarify her request, because executive director 1 was confused by what the Parent was asking. Executive director 1 said that the Student's IEP clearly stated that he would receive "adult support" for his entire day, but since the Parent had requested that the District clarify the language, the District had done so in order to make sure that the IEP made sense to the Parent, which was

² On August 25, 2016, the Parent filed SECC 16-64, alleging that the District failed to implement the Student's IEP, including working on the Student's IEP annual goals and providing paraeducator support, during the 2015-2016 school year. The Parent also alleged that the District failed to follow procedures for determining the Student would not participate in extended school year (ESY) services, and procedures regarding the use and reporting of restraint and isolation. OSPI issued a decision in SECC 16-64 on October 24, 2016, finding that the District substantiated that it implemented the Student's IEP and that it followed procedures for determining if the Student would participate in ESY services. OSPI also found that the District failed to follow procedures regarding the use of restraint and isolation.

very important to executive director 1 and the IEP team. Executive director 1 then stated that at the November 9 IEP meeting, the District manager had asked if the modified language in the IEP was what the Parent wanted, and the manager thought the Parent was satisfied. Executive director 1 also stated that she was now unclear what additional changes the Parent wanted. Executive director 1 asked that the Parent let the staff know what she wanted so they could discuss her ongoing concerns. Executive director 1 also stated that the District continued to be ready to serve the Student, per his IEP, which included 1:1 paraeducator support for his entire school day, and that they would “love” to have the Student attend school.

30. Later on November 13, 2016, the Parent replied, stating that she would also like the Student to attend school, and that she needed a letter from the District, stating that it was unable to change the service matrix to reflect the 1:1 paraeducator in the Student’s IEP. The Parent stated that she thought the changes made at the November 9 meeting would satisfy OSPI’s requirement for a 1:1 paraeducator, but after speaking to the OSPI assistant superintendent on November 10, he had informed her that the service matrix needed to state “1:1 paraeducator” vs. “additional adult support” in order to clarify that the Student was assigned a 1:1 paraeducator. The Parent stated that she needed this fixed in the Student’s IEP before he could go back to school, or a letter stating that the District’s vendor could not fix the box. The Parent stated that in the past, the Student had been without a 1:1 paraeducator on multiple occasions, and that no one was held accountable. The Parent was concerned about the Student’s safety, and stated that the Student did not have paraeducator support on November 3, 2016. The Parent stated that she understood that the Student’s special education teacher had spoken with her staff; however, without a change to the Student’s IEP, OSPI did not read the Student’s IEP as specifically having a 1:1 paraeducator assigned to him. The Parent stated that she was stuck in the middle of the District not meeting OSPI’s requirements for a 1:1 in the IEP, and that the issue was affecting her family. The Parent again asked that the service matrix be fixed, or that she be provided a letter from the District stating the issue could not be fixed.
31. Also on November 13, 2016, executive director 1 responded that she would gather more information in regards to what the Parent was asking, and have the District manager get back to the Parent. Executive director 1 stated that the Student was currently receiving 1:1 paraeducator services and that the District would like him to attend school while staff looked into the Parent’s request. The Parent then responded that she would also like the Student to attend school, but that the incident on November 3, 2016 had occurred. The Parent stated that the Student’s classroom was down two paraeducators that day, and no substitutes were provided. As a result, the Student was restrained and isolated. The Parent again asked that the District change the service matrix in the Student’s IEP, or provide her with a letter.
32. The Student was absent on November 14, 2016.
33. Also on November 14, 2016, the Parent emailed executive director 1 and the District manager, stating that she hoped they had been able to find out information about the service

matrix being changed. In response, executive director 1 stated that she would be going on leave, and that the District manager would work with the Parent to address her concerns.

34. The Student was absent on November 15, 2016.

35. On November 15, 2016, the Parent emailed the District manager, asking for an update about changing the Student's IEP service matrix, or the District providing a letter. The Parent asked if the District assistant director of special services (District assistant director) could assist with addressing the Parent's concerns. In response, the District manager stated that she was attaching the pages of the Student's IEP which had been amended on November 9 and had circled the changes. The manager stated that it was her understanding that the District had solved the issue with the wording in the IEP at that time, as the IEP stated that the Student had 1:1 paraeducator support for his entire school day. The manager also stated that she had included the District assistant director on the email so the assistant director was aware of the Parent's concerns. The Parent replied that her concerns had not been addressed, and that if the District manager had read her last few emails, the emails explained that the OSPI assistant superintendent had stated to her that the Student's IEP service matrix needed to be changed. The Parent stated that she would again forward the District manager and other staff the emails. The Parent again said that the issue was not fixed, and that the Student could not return to school until the District provided a letter explaining why the service matrix could not be changed, or until the service matrix was changed. The Parent stated that she had been "very clear". The Parent then forwarded her prior email exchanges to the District manager, and asked that the District manager address the issue.

36. Later on November 15, 2016, the District manager emailed the Parent and attached an amended page from the Student's IEP, which addressed the section regarding supports for school personnel. The amended page now stated that a "1:1 paraeducator" would be provided "1,750 minutes per week" in all school settings. In response, the Parent thanked the manager and stated that the Student would return to school the following day if he was feeling better.

37. The Student returned to school on November 16, 2016.

38. On November 17, 2016, the Student was restrained for three minutes and then isolated for thirty-two minutes. The District's "seclusion and restraint report" stated:

[The Student] was coming back from recess and was inside the wagon right outside of room 19. [Special education teacher 1] bent down to ask [the Student] what he wanted to work for when they got into the classroom. [The Student] pulled [the teacher's] hair. [The Student] was transported into the resolution room.

The report stated that special education teacher 1 was injured. The report also stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on November 17, 2016.

39. The District was on break November 23-25, 2016.

40. On November 28, 2016, the Parent emailed the District manager, asking if there was any information about the District hiring a replacement for the Student's prior paraeducator.

41. The Student was absent on November 29 and 30, 2016, due to illness.

42. On December 2, 2016, the Student was restrained for three minutes. The District's "seclusion and restraint report" stated:

[The Student] was at the assembly and was sitting with a [staff member]. [The Student] became agitated that another student was sitting with [special education teacher 1]. He began trying to hit and kick those around him. The decision was made that he could no longer be safe in the assembly. [Staff members] had to use CPI restraint to transport him out of the assembly and into the hallway.

The report also stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on December 2, 2016.

43. On December 5, 2016, the Student was isolated for three minutes. The District's "seclusion and restraint report" stated:

[The Student] was walking from the front of the classroom to the back of the classroom. He ran after another student with hands out looking to grab and/or pull them. [Staff] were able to walk [the Student] towards the resolution room. [The Student] dropped to the ground. The door was closed when he started to scratch [staff] and pull their clothing.

The report stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on December 5, 2016.

44. On December 6, 2016, the Parent emailed the District manager, stating that when dropping off the Student that morning, she was informed that special education teacher 1 was out that day, along with another classroom staff member, and that no substitutes were available. The Parent stated that she then took the Student home after staff requested that she do so. The Parent stated that everyone knew that one of the Student's triggers was not having a 1:1 paraeducator with him, and that she had concerns about this. The Parent asked why there were no substitutes in the classroom, and stated that a teacher and a paraeducator should be allowed to be sick, without impacting the Student's education. The Parent said that the Student had now lost more educational hours, and asked what the District was going to do. The Parent asked how the Student could be asked to stay home, when there was a law that required him to be provided an education.

45. Later on December 6, 2016, the District manager stated that she had done some investigating into the Parent's concerns, and thought that a miscommunication had occurred that morning. The manager stated that staff had reported that special education teacher 1 was out, but that a substitute teacher was available, and that the Student's assigned paraeducator was available to meet the Student. Another special education teacher in a neighboring classroom had reached out to the Parent to inform her that there was a substitute teacher and that she (the neighboring teacher) was available to help if needed. The manager stated that the District wanted the Student to be at school and apologized for the miscommunication. The

Parent replied that she appreciated the manager getting back to her, but that there had not been a miscommunication. The Parent had been asked to take the Student home because of a lack of staff. The Parent stated that the Student had multiple paraeducators with him throughout his day, and that one of them was out with no substitute. The Parent stated that the Student had lost six hours of education because of the lack of staff. The Parent asked that the District take responsibility to ensure this did not happen again.

46. Also on December 6, 2016, the neighboring classroom teacher emailed the school principal, describing what occurred that morning. The teacher stated that she met the Parent to inform her that special education teacher 1 was out, and that she (the teacher) would be responsible for anything the Student might need. The teacher also informed the Parent that two substitutes would be coming that day, one for special education teacher 1 and one for the paraeducator. The teacher also informed the Parent that she would fill out the Student's home/school communication log, and would walk out with the Student at the end of the day. In response, the Parent reportedly stated that she would make some phone calls and see what happens. The Parent returned fifteen minutes later and picked up the Student.
47. According to the District's documentation in SECC 16-67, an SCC program paraeducator was absent on December 6, 2016, and a substitute was not available that day. The Student's assigned paraeducator was present on December 6.
48. On December 7, 2016, the Parent filed SECC 16-87, alleging that the District failed to provide the Student with 1:1 paraeducator support consistent with his IEP in place during the 2016-2017 school year.
49. Based on the documentation in this complaint, the District was closed on December 8, 2016 due to snow.
50. On December 9, 2016, the Parent emailed the neighboring classroom teacher, asking for details about what occurred at recess on December 7, 2016. The Parent stated that the Student had a "pretty good sized bruise" on his arm. In response, the teacher stated that the Student had been pulling another smaller student's hair and the paraeducator who was with the Student was able to move the Student from the playground by "body blocking" him near the gate. The Student had then moved to the classroom independently. The teacher stated that she was not sure where the Student's bruise would have come from, unless he bumped into something during the day.
51. On December 11, 2016, the Parent emailed her attorney, expressing concern about the bruising on the Student's arm, which were "clearly fingermarks". The Parent thought this was due to the staff removing the Student from the smaller student. The Parent was concerned that a restraint report had not been provided or that the Student's BIP was not being followed. The Parent stated that she had observed the class' afternoon recess and saw adults talking to each other, with very little interaction with students. The Student had not been at afternoon recess and no explanation was provided. The Parent then expressed concern that on December 8, the Student had a bowel movement in which there was toy car

present. The Parent attributed the car to the Student having digestive issues for the last few weeks. The Parent believe the Student had swallowed the car while at school “without anyone knowing”. The Parent had asked the teacher to remove all small cars from the classroom. The Parent stated that the Student would stay at home until the IEP team had a meeting.

52. According to the Student’s attendance record, he was absent on December 12, 2016, but present on December 13 and 14, 2016. However, the Student left early in the afternoon on December 14, 2016.

53. On December 14, 2016, the Student’s IEP team, including the Parent, met to discuss the Parent’s concerns. According to the meeting notes, the team discussed the Parent’s concern that when staffing numbers were low in the classroom, the Student’s requirement for a 1:1 paraeducator was not met. The teacher responded to this, saying that if staff was low, the Student always had a 1:1. The Parent then expressed concern that other students were then not covered. The District manager then explained that during those times, other building staff covered the needs. The Parent then expressed further concern that there had not been staff on December 9 and there was an incident and the Student came home with bruises. The Parent wanted to be notified when there was no staff so she could keep the Student home. The team then discussed the Parent’s concern about communication from staff about what occurred during the school day. The IEP team agreed to develop a new IEP for the Student. The December 2016 IEP stated:

[The Student] is able to be in general education when a 1:1 adult is with him. He has significant limitations to how he learns and exhibits behaviors that impede his learning and the learning of others...[The Student] is exposed to [] general education students his age when he is at recess, lunch and assemblies. When he is participating in a general education activity it is with constant and close adult supervision so that [the Student] remains safe around his peers.

The IEP also stated that the Student required “a significant amount of adult support (1750 minutes per week) to be served by a 1:1 paraeducator to be successful in the classroom environment.” The IEP included annual goals in the areas of reading, writing, math, social/emotional/behavioral, adaptive skills, and speech. The IEP provided for the following specially designed instruction and related services in a special education setting:

- Adaptive Skills – 60 minutes 5 times weekly
- Math – 30 minutes 5 times weekly
- Reading – 30 minutes 5 times weekly
- Writing – 15 minutes 5 times weekly (concurrent)
- Fine Motor – 15 minutes 1 time weekly
- Social/emotional/behavioral – 160 minutes 5 times weekly
- Speech Language Pathology – 30 minutes 3 times monthly
- Occupational Therapy – 30 minutes 1 time weekly (concurrent)

The December 2016 IEP also provided for the following supplementary aids and services:

- Physical Therapy Consultation – 30 minutes 3 times annually

- Occupational Therapy Consultation – 15 minutes 6 times annually
- Speech Language Pathologist (SLP) Consult – 30 minutes 1 time monthly
- Additional Adult Support – 1,750 minutes weekly

The IEP stated that the Student would spend 17.86 percent of his school week in a general education setting and would participate with non-disabled peers during library, recess, lunch, and before and after school. The IEP also included a marked check box indicating that the Student would participate in general education PE. Additionally, the IEP included multiple classroom accommodations, including access to a keyboard or word processing program and adult proximity on a daily basis in all school settings. The IEP also included a “1:1 paraeducator” and “line of sight with paraeducator within 3 feet” as a support for school personnel in all school settings. The December 2016 IEP also included a BIP and an emergency response protocol signed by the Parent. The new emergency response protocol included the same conditions for the use of restraint and isolation as the Student’s previous March 2016 emergency response protocol and an updated list of staff who were trained to use restraint and/or isolation with the Student.

54. The December 2016 BIP stated that the Student would hit, scratch, kick, push, or swipe at staff or peers, and that he would display the behavior 0-40 times per day with varied intensity and duration. The BIP stated that during October and November 2016, the Student engaged in aggressive behaviors an average of five times a day. “During the 26 days [the Student] attended school during those two months he had 14 days where no behavior was recorded. [The Student’s] aggressive behaviors have decreased dramatically, especially considering he is attending school for a full day.” The December 2016 BIP focused on continuing to reduce the Student’s aggressive behaviors, and hair pulling contained the same behavioral strategies as described in the Student’s prior March 2016 BIP.
55. The District was on break December 19, 2016 through January 2, 2017.
56. On January 3, 2017, the Student was restrained for one minute and then isolated for three minutes. The District’s “seclusion and restraint report” stated that the Student was sitting at the morning meeting and staff members were sitting next to the Student. The Student then hit one of the staff members, and special education teacher 1 and the Student’s 1:1 paraeducator then moved the Student in his chair closer to the sensory area and asked him to take a break. The Student then got up from the chair and tried to climb onto the cabinet. Staff then blocked the cabinet and the Student began pulling and scratching. The teacher then told the Student if he did not have safe hands, he would need to take a break in the “quiet room”. The Student continued to be unsafe, so he was moved to the “quiet room”. The door was secured when the Student continued to try and pull the teacher. The report also stated that the Parent was contacted about the incident that same day and a copy of the report was provided to the Parent on January 3, 2017.
57. On January 4, 2017, the Student was restrained for two minutes. The District’s “seclusion and restraint report” stated the Student found the key to the classroom toy cabinet. A staff member then asked for the key. The Student gave back the key, but then became upset

because he wanted it back. The Student began to cry intensely, hit his head on the cabinet, and cry that he wanted to go home. Staff then used “CPI techniques” to move the Student to the “quiet room”. Once in the “quiet room”, the door was not secured, and special education teacher 1 offered the Student pillows and stuffed animals, and sat with the Student while he calmed down. The report also stated that the Parent was contacted about the incident that same day and a copy of the report was provided to the Parent on January 4, 2017.

58. On January 18, 2017, the Student was restrained for six minutes. The District’s “seclusion and restraint report” stated:

[The Student] wanted to play with a particular box of toys that another student was playing with. [His 1:1 paraeducator] got half of the box of toys for the [the Student] and left the rest for the other students. [The Student] became aggressive while trying to get the rest of the toys from the other students. He began climbing on shelves to try and get to the students. This is when staff had to go hands on to keep him safe and get him off the shelf.

The report also stated that the Parent was contacted about the incident that same day and a copy of the report was provided to the Parent on January 18, 2017.

59. According to the documentation in this complaint, both the Student and his 1:1 paraeducator were absent on January 19, 2017.

60. The Student’s home/school communication log from January 20, 2017 stated:

[The Student] asked for some toys, he became upset when he couldn’t have all the toys. So he came back upset, was unsafe and needed help moving to a safer area. He was trying to climb on the shelves and that is when we had to put our hands on him to get down and stay safe.

The District admitted in its response to this complaint that no “seclusion and restraint report” was completed regarding this incident.

61. The Student’s 1:1 paraeducator was absent on January 23, 2017 and a substitute was present. However, the Student was also absent on January 23, 2017 due to illness.

62. On January 27, 2017, the Student was restrained for two minutes and isolated for ten minutes. The District’s “seclusion and restraint report” stated that the Student became upset when his request to go home was denied. He then pulled his 1:1 paraeducator’s hair with both hands. When two other staff members were “finally able to get his hands out of her hair he did not stop being aggressive.” The Student continued to hit and scratch. The paraeducator and special education teacher 1 then used the “CPI transport position” to escort the Student to the “quiet room”. The report stated that the paraeducator was injured. The report also stated that the Parent was contacted about the incident that same day and a copy of the report was provided to the Parent on January 27, 2017.

63. The Student’s home/school communication log from January 30, 2017 stated:

[The Student] went to pull hair on the walk to lunch. We had to transport him back inside the classroom. He was very upset and kept asking to go home and try again tomorrow.

The District admitted in its response to this complaint that no “seclusion and restraint report” was completed regarding this incident.

64. On February 3, 2017, OSPI issued a decision SECC 16-87. OSPI found that the District’s documentation substantiated that the Student was provided 1:1 paraeducator support from the beginning of the 2016-2017 school year until December 7, 2016, when the Parent filed SECC 16-87. It was noted that the 1:1 support was not always provided by the same person throughout the day, but by multiple individuals on some days.
65. Also on February 3, 2017, special education teacher 1 emailed the Parent regarding a behavior incident that day. The teacher stated that the Student was still slightly escalated, and that she was attaching a copy of the “resolution room” report. The teacher relayed that the Student had started to get “very handsy and silly again” but that this time turned aggressive. “He tore his shirt (we changed the shirt), and was pulling/biting staff. He was trying to climb objects to pull the blinds and was being very unsafe. Staff were able to get him to go into the quiet room. They closed the door when he continued to reach for and try to scratch/pinch staff.” The teacher stated that the Student had a scratch on his face, because during his escalation, he scratched his face before staff were able to protect him from himself. The teacher thanked the Parent for her understanding and stated that she was very proud of the Student for staying at school and having such a good morning.
66. The District’s February 3, 2017 “seclusion and restraint report” stated that the Student was secluded for eighteen minutes and that the Student’s 1:1 paraeducator had been injured. The report also stated that the Parent was contacted about the incident that same day and a copy of the report was provided to the Parent on February 3, 2017.
67. Also on February 3, 2017, the Parent emailed the District manager, expressing concern that the Student’s classroom was down two staff members that day with no substitutes. The Parent stated that the Student had spent the last twenty minutes isolated and injured himself. The Parent said that when the classroom was staffed appropriately, this did not happen. The Parent asked what the status was for hiring a replacement for one of the classroom paraeducators and the status of hiring substitutes.
68. On February 6, 2017, the District manager responded that a replacement paraeducator had been hired and stated the Student had a 1:1 paraeducator with him all day. The manager stated that the District had previously informed the Parent that a specific staff person was the Student’s dedicated 1:1 paraeducator, and that the specific staff person was with the Student all day on February 3, 2017. The manager also stated that special education teacher 1 had provided the Parent with a description of the Student’s day on February 3, along with a copy of the isolation report. The Parent replied, asking why there were only six staff members present on February 3 if a replacement had been hired and also asked if the Student’s 1:1 paraeducator was with him at recess. The manager then replied that the

additional staff had arrived later that day to ensure coverage on February 3. The manager also stated that as special education teacher 1 had informed the Parent at the December 2016 IEP meeting, special education teacher 1 worked with the Student when his 1:1 paraeducator was at lunch or on break. If the Student's 1:1 paraeducator was absent, staff shuffled around so that another classroom staff member worked with the Student. The Parent responded, again asking about recess time.

69. According to the District's response to this complaint, the Student was restrained or isolated on February 6, 2017 as indicated in his home/school communication log. However, the Student's home/school communication log from February 6, 2017 does not include information about the Student being restrained or isolated or indicate that the Student's behavior was escalated during the school day.
70. On February 16, 2017, the Parent emailed the District manager to "sum up" what they had discussed in an earlier conversation. The Parent stated that during the conversation, she had expressed her concern about staffing in the Student's classroom, and the manager had stated that the classroom was fully staffed and had been fully staffed that school year. The Parent and the manager had also discussed staffing on December 6, 2016 and OSPI's finding in SECC 16-87. Additionally, the Parent had expressed concern that on February 3, the Student had cut his finger at school and she was only told he cut it on a toilet paper roll. The Parent had questioned why she did not receive an incident report about this. The Parent had also asked about PE being added to the Student's schedule. The Parent stated that this had been discussed at the December 14 IEP meeting and she had asked when PE would be implemented. The Parent asked that the manager let her know if she was incorrect in her summary of the conversation.
71. In response, the District manager stated that there was a certificated substitute for special education 1 on December 6, but there was no substitute for one of the classroom paraeducators. The manager also stated that she had spoken with special education teacher 1 about providing more detail in regards to incidents that happened while the Student was at school. The manager said that in regard to PE, the Student had the opportunity to participate in two movement groups that took place with the SCC classroom, and that some mornings, the Student refused to participate and staff honored that request. Later that day, the Parent responded that she continued to have concerns about the information she was given on December 6. The Parent also stated that the Student's IEP listed PE as general education PE, and that when the IEP team had discussed this, everyone seemed to understand that the students in the SCC program needed access to PE during the time movement group was on the schedule. The Parent asked that the manager clarify what met the requirement for PE. Additionally, the Parent stated that she was concerned that she had not been given more details about the Student cutting his finger, and as a result, had not changed the bandage because she thought it was a minor cut. However, the next day, the Student's finger was bruised and swollen and she saw it was large cut. The Parent asked if she should only expect to receive an incident report if the Student had a head injury, and stated that in the past, she had received detailed notes anytime the Student was injured.

72. On February 17, 2017, the Student was restrained for three minutes. The District's "seclusion and restraint report" stated the Student wanted a toy that another student was holding and that on the walk to lunch, the Student went after the other student to get the toy. Staff then used "CPI techniques" to bring the Student to "a safe place within the classroom". The report stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on February 17, 2017.
73. On February 23, 2017, the Student was restrained for two minutes and isolated for thirteen minutes. The District's "seclusion and restraint report" stated that the Student was at calendar time and asked to go for a walk. His request for a walk by denied, because he had "not earned it yet". In response, he pulled his 1:1 paraeducator's hair. The paraeducator and special education teacher 1 then transported him to the quiet room. The report stated that the paraeducator was injured. The report also stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on February 23, 2017.
74. On March 15, 2017, the Parent emailed special education teacher 1, asking what occurred the previous day during art class.³ The Parent asked what was happening with the afternoon paraeducator⁴ and if the Student was trying to avoid art, which he usually liked. In response, special education teacher 1 stated that she had been teaching the art lesson, so she did not see exactly what happened leading to the Student pulling hair. However, the afternoon paraeducator had relayed that the Student had crumpled up his paper and stated "no art" and that in response, the paraeducator had told the Student that he needed to stay at the art table with his friends. The teacher stated that she believed that the Student trying to escape the activity was the reason behind the Student pulling hair, and that when the Student pulled hair, he then went to the sensory area and knew this routine. The teacher said she wanted to work with the Student on ways to appropriately asked for time in the sensory area. Additionally, the teacher stated that the Student's regularly assigned 1:1 paraeducator would be absent on March 15. The Parent replied, thanking the teacher for the information and asked that the afternoon paraeducator be reminded that "first and then" language was the key to working with the Student, and that the Student felt internal emotions, so if the paraeducator became upset or annoyed, the Student knew this and would "use it". The Parent also stated that she had informed the Student of the 1:1 paraeducator's absence. In response, the teacher agreed to debrief with the afternoon paraeducator that morning.
75. On March 30, 2017, special education teacher 1 emailed the Parent, stating that the Student had "definitely been a bit more impulsive" than he had been in a while. The teacher stated that the Student was doing a lot of testing the teacher and other staff to see what he could do that would illicit a negative reaction, such as being "grabby" and ripping up papers. The

³ The Student's home/school communication log from March 14, 2017 does not include information about the Student having an issue during art time. The log only stated that the Student had a "great day".

⁴ Based on the documentation in this complaint, another SCC program paraeducator was assigned to supervise the Student during part of the afternoon.

teacher said that during story time, the Student got out of his seat and “went for another student”. In response, the teacher and the Student’s 1:1 paraeducator were able to intercept and prevent anything from happening. The teacher also stated that the Student was currently in the sensory area, and that she would keep the Parent updated about the rest of the day.

76. The District was on break April 3-7, 2017.

77. On April 13, 2017, special education teacher 1 emailed the Parent, stating that staff just had a “very intense incident” with the Student. The teacher stated that the Student’s afternoon paraeducator was on lunch, but the Student really wanted to work with her. The Student ran over to the afternoon paraeducator, but the Student’s 1:1 paraeducator told him he needed to wait. The Student then grabbed his 1:1 paraeducator’s hair and it took three adults to get his hands out of her hair. Once the Student’s hands were removed the paraeducator’s hair, special education teacher 1 told the Student that he had really hurt the paraeducator and that he needed to take a break in the quiet room. The Student then became upset and began grabbing whatever he could around him, including people. As a result, the staff cleared out the sensory space and the Student then began hurting himself. In response, staff did their “best to contain the behavior” and prevent the Student from hurting himself, but it “was very intense.” The teacher stated that emotions were still high right then, but the Student was calm in the sensory area. The teacher said the Student had tried to scratch his face, so he had scratch marks on his face and hands. In response, the Parent thanked the teacher for the update. The Parent stated that there would be days like these, and the fact that the Student had not had one this bad in a while was “great”.

78. According to the Student’s home/school communication log for April 20, 2017, after lunch, the Student “really wanted to go home” and had “an emotional breakdown”. Special education teacher 1 and the Student’s 1:1 paraeducator then held the Student’s hands for about ten minutes “to keep him from scratching himself.”

79. On April 25, 2017, the Student’s regularly assigned 1:1 paraeducator was absent. According to the Student’s April 25, 2017 home/school communication log, at recess, the Student ran toward another student with his arms out, but was redirected.

80. The Student’s regularly assigned 1:1 paraeducator was absent on April 26, 2017. According to the Student’s attendance record, he was also absent on April 26, 2017.

81. According to the Student’s home/school communication log for April 27, 2017, while at school, the Student began scratching his arms and hands. As a result, special education teacher 1 and the afternoon paraeducator held the Student’s hands. The Student then began trying to bang his head, so special education teacher 1 sat behind the Student and gave him “squeezes while protecting his head.”

82. On May 2, 2017, the Student’s IEP team, including the Parent, met to discuss the Parent’s concerns. According to the meeting notes, the Parent expressed concern that the District was not properly documenting and reporting the use of restraint with the Student, as the

Student had marks on him from April 27, 2017 that could not be explained to the Student's father. The team also discussed that the Student had been less aggressive that school year, but staff were starting to see an increase of self-injurious behaviors at school and the Parent was seeing an increase in emotional dysregulation at home and anxiety among peers. The team agreed to update the Student's home/school communication log so that it was more clear, and agreed to amend the Student's December 2016 IEP. The amended IEP included the following Parent concerns:

- Staffing – “when staff is low [the Student] does not receive 1:1 support as indicated in the IEP. This lack off staff impacts [h]is safety, education, and potentially the education of others. I'm concerned about the lack of substitute staff...[the Student] loses educational hours when staffing is not adequate.”
- Incidents of restraint and isolation not being consistently reported.
- Paraeducators will not or are not allowed to communicate directly with the Parent, as they are usually the ones who knew and experienced what happened daily.
- Participation in PE – the IEP team had agreed at the December 2016 IEP meeting that the Student should have access to general education PE. However, the Student was instead participating in a movement group twice a week, which did not give the Student an opportunity to engage in the general education setting.
- Academics – the Student had never accessed general education academics with general education peers.
- The Parent's concerns had not been attached to the Student's December 2016 IEP.

The amended IEP also modified the Student's adaptive skills goal regarding eating safely. The goal stated: “when given the opportunity to eat lunch [the Student] will eat one piece at a time, chew and swallow with adult supervision improving independence from 20 verbal cues to eat safely to needing 5 verbal cues to eat safely.” The amended IEP also included an accommodation for using strategies to redirect the Student, which stated “first/then language, body blocking possible distracting objects, and purposefully dropping an item in order to make him laugh when he is becoming upset.” The amended IEP also clarified the extended school year (ESY) services the Student would receive during the summer of 2017.

83. On May 22, 2017, the Student was restrained for three minutes. The District's “seclusion and restraint report” stated:

[The Student] had a difficult transition in from recess. When [he] sat down to work with [special education teacher 1] he went to pull her hair. When [she] moved away he began pulling down this table and the organized structure in his work area. When he pulled down the structure the corner of the structure scratched his arm. [The teacher] was worried that [the Student] would get injured again if [he] continued to pull at his table and work area. [Staff] removed [the Student] from his area and into sensory.

The report stated that the Parent was contacted about the incident that same day and that a copy of the report was provided to the Parent on May 22, 2017.

84. On June 7, 2017, the Parent emailed the District manager in regard to their conversation earlier that day. The Parent stated that there were now ten days left of school and the Student's assigned afternoon paraeducator was not able to keep him safe or use the “proper

verbiage” the Parent had been asking that school staff use all year long, and was now included in the Student’s IEP. The Parent said that the Student had stayed home that day, because of this issue. The Parent also stated that there was no discussion of compensatory service hours as discussed after the last IEP on May 2, 2017, and asked how the District planned to make up the lost hours of education. The Parent stated, “if I need to call my attorney again I will, but as discussed that is not free an appropriate public education if this requires me to use a lawyer.”

85. On June 8, 2017, the District manager responded that her investigation of the Parent’s concerns found that the afternoon paraeducator was using the required language, but was also using additional language. This had now been brought to her attention after meeting with the elementary school principal. The manager stated that the afternoon paraeducator had a history of keeping the Student safe and that with the additional clarification regarding the calming language, the District was encouraging the Parent to send the Student to school for the remainder of the school year. The manager said that the school team was prepared and ready to meet the Student’s educational needs while he attended school. In response, the Parent stated that she was confused, and asked if she needed to contact her attorney in order for the Student to receive compensatory service hours when his paraeducator or special education teacher 1 was absent. The Parent stated this is what the Parent and the District had agreed on.
86. Later on June 8, 2017, the Parent sent a second email, stating that just that week she had witnessed the Student’s afternoon paraeducator unable to get the Student to go into the building on two occasions in order to get his backpack and things to go home, and that both times the afternoon paraeducator needed help from other staff members. The Parent stated that this was not a new issue, and that she had talked with special education teacher 1 about it. The Parent stated that the Student was in charge when working with the afternoon paraeducator and that the Student was able to hurt others when he was in her care, which was reflected in the data. The Parent said that the Student became escalated while in the afternoon paraeducator’s care, which caused him to be harmed. The Parent stated that she could send the manager all of the images she had of “bruises of fingerprint marks and other injuries” the Student had received that year. The Parent said that she would advocate for the Student, and was concerned that she was dismissed when her attorney was not involved. Additionally, the Parent stated that she did not feel safe sending the Student to school while his teacher or his regular paraeducator was out. The Parent then expressed additional concerns about the afternoon paraeducator and asked that the manager go observe the afternoon paraeducator. The Parent stated that she would contact her attorney once she received the District’s response.
87. According to the Student’s attendance record, he attended school on June 9, 12, 14-16, and 19-21. The Student was absent on June 13, and left school early on June 19, 2017.
88. The District’s 2016-2017 school year ended on June 21, 2017.

Summer 2017

89. The Student was scheduled to receive ESY services July 17-August 3, 2017.
90. On August 10, 2017, the Parent emailed the Student's special education teacher for the upcoming 2017-2018 school year (special education teacher 2), stating that the Student was anxious about the changes in the classroom staff and that the Parent wanted to support the teacher with the transition. The Parent asked if one of the paraeducators who had previously worked in the classroom was returning. The Parent stated that she was going to work on a short write up so that it would be easier for the teacher to get to know the Student.
91. On August 11, 2017, special education teacher 2 responded that she looked forward to the beginning of the school year and getting to know all the students and families. The teacher thanked the Parent for her support, and stated that she knew transitions could be challenging for everyone involved. The teacher stated that she had a meeting with the principal on August 14 about paraeducators and offered to call the Parent later that same day.
92. On August 12, 2017, the Parent emailed special education teacher 2, asking to have an IEP meeting as soon as possible, and stated that the District manager was aware of this request. The Parent stated that she wanted to review the Student's IEP with the teacher and discuss the reasons behind not pushing potty training, following the Student's BIP, and the Parent's expectations of when the District's isolation and restraint form was used. The Parent stated that during the May 2, 2017 IEP meeting, the parties' attorneys had discussed when restraint and isolation forms were used, and that the District's attorney had stated that the forms were only used when a "CPI" hold is used. However, the Parent stated, per OSPI and RCW 28A.600.485, the Parent should be informed every single time the Student was restrained. The Parent stated that she did not want to ask why the Student had "bruise marks in the shape of adults' hands" again that school year. The Parent said that she knew the Student was a "tough strong willed child", but that she was able to restrain him without leaving marks, even around peers. The Parent said that the family really needed this school year to be a positive experience for the Student, and that she would do anything to support this happening.
93. On August 13, 2017, the Parent emailed the District manager, stating that on the last day of the 2016-2017 school year, she had been given all of the home/school communication logs for that school year. The Parent stated that she wanted to return the communication logs so that they would be part of the Student's educational record. The Parent then asked that the communication logs for the 2017-2018 school year include the date each day.
94. On August 14, 2017, special education teacher 2 responded to the Parent's August 12 email, stating that instead of a phone conversation, she wanted to schedule a meeting to discuss the Parent's concerns. The teacher then suggested meeting on August 22 and stated that because she was new, the school principal and the District manager would attend to make sure all of the Parent's questions were answered. The teacher stated that at the end of the

meeting, they would schedule an IEP meeting. In response, the Parent agreed to attend the meeting.

95. Based on the documentation in this complaint, on August 22, 2017, the Parent met with District staff to discuss her concerns.
96. On August 24, 2017, the Parent emailed the Student's District SLP, stating that she had signed a release so the Student's private SLP could speak with the District SLP about what the Student was working on in his private sessions. The Parent stated that the Student met with the private SLP once a week. The District SLP responded on August 28, thanking the Parent for the information.
97. Also on August 24, 2017, special education teacher 2 emailed the Parent pictures of the classroom to share with the Student in order to help ease his anxiety about the new school year. The Parent and the teacher then exchanged additional emails about what the Student needed for classroom supplies and the Parent informed the teacher that the Student would leave school early on Fridays for his private occupational therapy appointment.
98. On August 28, 2017, the Parent, special education teacher 2, and the District manager exchanged emails about the SCC classroom not having a separate sensory room for the 2017-2018 school year. Later that same day, the Parent and the Student visited the SCC classroom. The Parent then emailed special education teacher 2, the school principal, and the District manager, thanking them for allowing the visit. The Parent stated that the Student was now talking positively about returning to school.

2017-2018 School Year

99. The District's 2017-2018 school year began on August 30, 2017. The Student continued to attend the SCC program at the same elementary school and his amended December 2016 IEP was in place. The Student also continued to have the same assigned 1:1 paraeducator.
100. On August 30, 2017, special education teacher 2 emailed the Parent, apologizing for forgetting to send home the Student's home/school communication log. The teacher stated that she had filled it out, but forgotten to put it in the Student's backpack. The teacher said that she had noticed the Student doing a great job that day, and that he was safe, played well with the afternoon paraeducator at recess while his 1:1 paraeducator was on break, and did a "fabulous" job in PE and the cafeteria. Also that day, the Parent emailed the teacher a list of days and times the Student was scheduled to attend medical appointments.
101. On August 31, 2017, the Student's regularly assigned 1:1 paraeducator was absent for four hours.
102. Also on August 31, 2017, the Student pulled another student's hair. His home/school communication log for August 31 stated, "grabbed student's hair as we walked by." The communication log also stated that the Student was given "small bites" during lunch time.

103. Later on August 31, 2017, the Parent emailed special education teacher 2, the school principal, and the District manager, asking for details regarding the incident. The Parent asked if the Student was restrained as a result of the hair pulling, how the incident happened, and who was with the Student. The Parent also stated that the Student's lunch (adaptive skills) goal was to eat independently and not be given small bites. The Parent said this had been talked about last year, and she had tried to be very direct about what was written in his IEP. The Parent asked if all staff were aware of the Student's IEP goals. Additionally, the Parent stated that she understood that the Student's 1:1 paraeducator had gone home sick that day, and stated that the Student was someone who needed consistency. The Parent said that last school year, the Student had struggled when the 1:1 paraeducator was out, and there was an agreement that the Parent would be made aware if the 1:1 paraeducator was out. The Parent stated that she would like this agreement to continue. The Parent then asked for the times and days the Student would attend Library and PE with his general education peers, as she wanted to make sure the Student's private appointments worked around those times.
104. On September 1, 2017, special education teacher 2 emailed the Parent, stating that the Student's 1:1 paraeducator would be out sick that day. In response, the Parent stated that the Student would attend school for two hours that day and asked if there was a substitute for the 1:1 paraeducator. The school principal who was included on the email then replied that the substitute position had not yet been filled, but that the afternoon paraeducator was available to work with the Student as well as special education teacher 2.
105. According to the Student's attendance report, the Student attended school until 10:30 a.m. on September 1, 2017.
106. Later on September 1, 2017, special education teacher 2 emailed the Parent, stating that the Student had a great morning, as he completed all his academic work with a safe body, and completed his calendar work with the afternoon paraeducator using a safe body. The teacher then provided other details about the Student's day.
107. The District was on break on Monday, September 4, 2017.
108. On September 5, 2017, prior to the school day beginning, the Parent emailed special education teacher 2, stating that she planned to shorten the Student's school day. The Parent was concerned about the Student's exposure to smoke in the air due to forest fires. The Parent stated that she planned to pick up the Student around noon, and asked that the teacher notify her if the Student started coughing or complaining about the air quality.
109. Later on September 5, 2017, the Student was restrained for one minute and isolated for five minutes. The District's "seclusion and restraint report" stated that another student was being loud in the classroom and the Student began running at the other student. "Staff stood in front and tried blocking [the Student], he began scratching, pulling hair & clothes, biting para, scratching self, pulling own hair, [and] biting self." The report stated that staff were injured from the scratching. The report also stated that the Parent was contacted about the

incident that same day, but did not indicate that a copy of the report was provided to the Parent.

110. The Student was absent on September 6, 2017, due to illness. The Parent picked the Student up early on September 7 due to the air quality.
111. On September 6, 2017, the District sent the Parent an invitation to attend an IEP meeting on September 13, 2017.
112. On September 8, 2017, the District manager emailed the Parent, asking if the Parent was “ok” with the District behavior specialist attending the September 13 IEP meeting. In response, the Parent agreed to have the behavior specialist attend the meeting.
113. Also on September 8, 2017, the Parent emailed the District manager, expressing concern about staffing in the SCC classrooms. The Parent stated that while dropping the Student off that day, she had witnessed some very unsafe situations in the SCC area. A student had come running out of the classroom without a staff member, and was then stopped by the Student’s 1:1 paraeducator. The Parent stated that she was sure the 1:1 paraeducator left the Student because the Parent was there. However, the Parent should not have been there. The Parent stated that when either of the SCC classrooms were understaffed, it created an unsafe environment for the Student, and also violated his IEP when staff left his side to keep another child safe. The Parent asked what actions were being taken to have the Student’s IEP followed and to have appropriate staffing. The Parent stated that this was an ongoing issue, which had been discussed many times. Additionally, the Parent stated that the Student’s desk had been moved to the corner and he was completely cut off from peers. The Parent was concerned that the Student was regressing in the current classroom, which had happened three years prior. The Parent also stated that the Student would not even enter the classroom that day because it was so loud. The Parent said she wanted to discuss these things at the IEP meeting along with the days and times the Student received speech and occupational therapy.
114. On September 11, 2017, the District manager responded, thanking the Parent for sharing her concerns. The manager stated that the District was opening another SCC program due to the high number of kindergarten-second grade students in the program, which was where the student the Parent had seen was coming from. The manager stated that the SCC classroom was not understaffed, but just had a lot of students. The manager stated that she had asked about the Student’s desk being moved and was told it was because the Student liked to sit near the window. The manager also stated that the Student’s SLP and occupational therapist (OT) would be at the September 13 IEP meeting and they could tell the Parent when they saw the Student.
115. In response, the Parent asked that the manager help her understand how overcrowding or understaffing were different for the Student in this situation, as the Student’s 1:1 paraeducator had walked away from him to keep another child safe. The Parent stated that had she not been there, both of the children’s safety would have been in jeopardy.

Additionally, the Parent stated that the Student had been at school one hour that day and during that time, his IEP was not followed. The Student had been given small bites to eat instead of verbal cues to eat on his own, per his IEP. The Parent also stated that she was concerned that no one could give her the times of the Student's therapies and general education requirements and it was the third week of school. The Parent asked when the Student received his speech, occupational, and physical therapy services, and when he participated in general education PE and library. The Parent stated that she did not want to receive the answers at the IEP meeting, but wanted the answers in writing. Further, the Parent asked why the Student was in charge of where his desk went and asked what happened to the sensory area which used to be where his desk now was. The Parent stated that the Student had previously sat in the same place for a year and asked why it should now be changed. The Parent stated that the Student was isolated in the current setup and was not part of the classroom. The Parent did not think this was best for the Student. The Parent then asked how the SCC classroom could be made less chaotic, and why this had not been "addressed before making such a big move."

116. On September 12, 2017, the Parent emailed special education teacher 2, asking what had occurred at school that day. The Parent stated that she had the home/school communication log, but was wondering how the Student was able to get a student in his area, as the Student was "boxed in". The Parent stated that a body block should have stopped the Student from hurting another student. The Parent also asked who the Student was with at recess, and if the staff person was talking to someone while with the Student. The Parent then forwarded the email to the District manager.

117. On September 13, 2017, the Student's IEP team met to discuss the Parent's concerns about restraint holds, team communication, peer interactions, the Student's learning space, and the Student's access to general education PE. According to the meeting notes, the team discussed the Parent's concern about the Student being secluded in his current desk setting. The Parent stated that the Student had been in "dog run before" and it had made him more aggressive. The Parent said that if someone had eyes on the Student and was within three feet of him, then there was no reason why the person could not body block interactions between students. The behavior specialist shared that she had seen the Student in the classroom and saw that he needed his own space. The specialist stated that the Student liked the area he was sitting in and felt "comfortable with it". The specialist stated that the Student liked to play, and asked the Parent if she thought the Student needed two spaces, one for calming. The specialist stated that the Student needed to see what his peers were doing, but did not always like when other peers came into his space. The principal stated that the Student preferred the area where his desk was because he could see outside, and special education teacher 1 was trying to accommodate what the Student wanted. The principal also stated that she had seen the Student move freely in and out of the space, as opposed to the dog run the Parent had described. The meeting notes also showed that the IEP team discussed that the Parent did not want the Student to play or jump in water puddles, and that she did not want prone restraint used with the Student. The District manager agreed that prone restraint should not be used and the behavior specialist suggested that isolation also

not be used, but that instead a calming space be provided. The IEP team then agreed to update the Student's emergency response protocol to clarify staff for the 2017-2018 school year and so that the protocol no longer included the use of isolation or prone restraint. The IEP team also agreed to conduct an evaluation in the area of physical therapy, based on the Parent's request.

118. Also on September 13, 2017, the District issued two prior written notices. One stated that the District was proposing to continue the Student's IEP and open an "assessment revision" to look at the Student's needs in the area of physical therapy. The other notice stated that the District was proposing to change the Student's emergency response protocol.
119. On September 14, 2017, special education teacher 2 emailed the Parent, stating that the Student had asked the teacher to send the Parent a picture so the Parent would know the Student was having a good morning.
120. The Student was absent on September 15, 2017, due to illness.
121. On September 15, 2017, the Parent emailed the District manager and included the District director and executive director 2. The Parent asked for a copy of the IEP and meeting notes from September 13, 2017. The Parent also asked for the times the Student was scheduled to receive occupational, physical, and speech therapy, and his time in general education PE and library. Additionally, the Parent stated that the Student had refused to let the Parent drop him off on September 14, 2017, and that after what the Parent had seen, she understood why. The Parent stated that when the Student arrived in the mornings, he walked into "complete chaos". The Parent stated that after breakfast, the first thing on the schedule was free choice. The Parent said that this had been tried in the past at the Student's former elementary school and it was "very unsuccessful". The Parent stated that this type of classroom needed structure. The Parent said that everyone was very loud in the classroom, and that when the Student entered his space, even after his desk was moved, he was completely surrounded by furniture. The Parent believed this explained why the Student had pulled another student's hair and his 1:1 paraeducator's hair. The Parent stated that the Student's behaviors were communications. The Parent also stated that it was clear at the IEP meeting that this was a known trigger for the Student and that current and past staff members had stated this. The Parent said that this environment would not work for the Student and that there was "plenty of data" to show this. The Parent further stated that the Student had a successful recess time on September 13 because he had two paraeducators paying full attention to him and that it was "hard to make this work when consistency does not occur." The Parent stated that she was not aware of the two paraeducators being with the Student until September 14, and that the Student had expressed how upset he was because he did not have both paraeducators with him the next day. The Parent stated that she had repeatedly said consistency was the key. The Parent then expressed that the Student's classroom area smelled like urine, and thought that some large stuffed animals in the classroom could be the cause. The Parent stated that the Student had allergies, and that she had been told that it was against the fire code to have large stuffed animals. In addition,

the Parent expressed concern that the school OT did not understand that the Student needed a keyboard attached to a word processor as had been discussed in past IEP meetings regarding his writing goals. The Parent stated that she was concerned that the Student's teacher and therapist were not reviewing goals prior to three weeks into the school year. Additionally, the Parent stated that she was concerned that three days into the school year, staffing was again an issue. The Parent asked what the plan was when the Student's 1:1 paraeducator was out and there was no substitute. The Parent stated that she wanted to support the Student's environment and that the current setup would not work. The Parent asked how she and the District could make it work, and asked that she receive a response.

122. On September 18, 2017, the Parent emailed special education teacher 2 and the District manager, stating that the Student had a private appointment at 11 a.m. that day, and that she planned to keep him home prior to the appointment. The Parent stated that the Student's behavior the night before was "awful" as he was worried about school. The Parent stated that she had seen this before and could not force the Student to go again. The Parent stated that the Student's behaviors of going after his para, other peers, and herself made it clear to her that the Student could not be successful in his environment, as he was not safe and his peers were not safe in that situation. The Parent also stated that now it was raining and the Student would not be able to work outside. Additionally, the Parent stated that if the Student's classroom was chaotic every day like it was on September 14, then the Student would need another placement in a more structured environment. The Parent stated that she wanted to hear a plan for the Student returning to school, and how the Student could be supported in a learning environment in which he could be successful. The Parent stated that in the current environment, the Student would not be able to focus on academics at all, and staff would be addressing behaviors all day.

123. Later on September 18, 2017, the District manager emailed the Parent and attached the notes from the September 13, 2017 IEP meeting and prior written notice. The manager stated that since no changes were made to the IEP, a prior written notice had been completed to "capture our conversation."⁵ The manager stated that she had also included the Student's updated emergency response protocol, and that she would double check with the Student's SLP and OT regarding the times he received services. The manager also stated that the District director was working on scheduling a meeting.

124. The Student had unexcused absences September 19-21, 2017.

125. On September 20, 2017, the District manager emailed the Parent, stating that the Student was scheduled to receive his occupational therapy services on Mondays at 9 a.m. and his speech services on Mondays at 11 a.m.

⁵ It is noted that an emergency response protocol is part of an IEP as defined in WAC 392-172A-03090. Therefore, any changes made to an emergency response protocol are considered changes made to an IEP. However, given that the Student's emergency response protocol was amended by the Student's IEP at an IEP meeting and the District provided the Parent with a prior written notice documenting this action, despite mischaracterizing the actions taken, the District followed procedures for amending the Student's IEP.

126. Also on September 20, 2017, the Parent met with the District manager, the behavior specialist, the District director of special education (District director), and the new District executive director of special services (executive director 2). Prior to the meeting, the Parent emailed the group a list of her concerns and corresponding documentation.
127. On September 21, 2017, the Parent emailed the District manager and behavior specialist and copied special education teacher 2. The Parent thanked the staff for meeting with her on September 20 and stated that they had not discussed when the Student would return to school. The Parent stated that because they had discussed changes to the Student's "entry", the Parent wanted to have the Student return to school on September 22, which would give the team time to plan and was a half-day for the Student. The Parent stated that it would be a positive reentry back to school with a positive focus on the end of the day.
128. Later on September 21, 2017, the District manager emailed the Parent and attached notes from the September 20 meeting and a prior written notice from September 13, 2017, outlining their agreements. The manager asked if October 18th worked to hold the next meeting.
129. Also on September 21, 2017, special education teacher 2 emailed the Parent and copied other District staff members. The teacher stated that she had reviewed the Student's IEP with his 1:1 paraeducator and would review it again at the next "clinical". The teacher stated that they were thinking that for the Student's entrance into school (depending on weather), they would give the Student a choice of going to the gazebo or to the library for 15-20 minutes for a talk time with the 1:1 paraeducator. The teacher also attached the new communication log the behavior specialist had developed.
130. On Friday, September 22, 2017, the Student's 1:1 paraeducator was absent due to illness. As a result, the Parent emailed the District director, executive director 2, and the District manager, stating that during their September 20 meeting, they had discussed having a trained backup for situations when the 1:1 paraeducator was absent, and the Parent had agreed to this. The Parent stated that she realized the meeting had just occurred; however, when it was communicated that the District was prepared to serve the Student, this was an untrue statement, as the District was down a staff member, and there was no substitute or staff person to assist the Student who had gone over the plan or his IEP. The Parent stated that the Student had been at home since September 15 because the District had failed to implement his IEP, failed to provide an individualized plan for the Student to be successful in the classroom, and failed to report restraints as required by the law. The Parent asked what the District's plan was to address situations like this in the future. The Parent stated that this was not the hoped for reentry into the school system and that the Student was anxious about the day. The family had spent time the prior day prepping the Student for the return, but now it had all changed. The Parent stated that the Student needed consistency to be successful, and that he was now escalated because of the change.
131. In response, the District director spoke with the Parent and then sent a follow-up email, thanking the Parent for speaking with her and stating that the District was going "to walk

through this” with the Parent. The director stated that as they had discussed, the District manager was going to be working with the special education teacher and the staff to again make sure that every paraeducator in the classroom would be able to support the Student throughout his school day. The director also stated that on September 25, the District behavior specialist would be in the Student’s classroom to help him transition to school and walk him through the new entry routine that had been developed. The director also would be in the school building on September 25, and she and executive director 2 would stop by on September 28 to see how things were going. The director asked that the Parent let her know if she had other concerns.

132. Also on September 22, 2017, the District manager emailed the elementary school principal and special education teacher 2, stating that the teacher and the Student’s 1:1 paraeducator had been trained on the Student’s IEP, BIP, and emergency response protocol on September 21, 2017, and that five other paraeducators had been trained on September 22, 2017. The manager stated that additional training would be provided on October 2.
133. The Student was absent due to illness on September 25 and 26, 2017.
134. Based on the Student’s attendance record, the Student returned to school on September 27, 2017.
135. On September 28, 2017, the Student was restrained for five minutes. According to the District’s “seclusion and restraint report”, the Student desired a toy from another class and as a result, exhibited “harm to self – scratch, bite, hair pull on self”. The report stated that the Student injured himself and staff washed the Student’s bite marks. The report stated that the Parent was contacted about the incident that same day, but did not indicate that a copy of the report was provided to the Parent.
136. Also on September 28, 2017, the Parent emailed special education teacher 2 regarding the Student’s toileting at school and also asked when the Student was scheduled to attend general education PE and library. The teacher responded that the Student was scheduled to attend PE on Fridays at 9:20 a.m. and that they were still waiting on the library schedule to be finalized.
137. On September 29, 2017, the Parent emailed special education teacher 2, asking if the Student attended general education PE that day. The Parent also expressed concern about the Student playing in water puddles as this caused his orthotics and specialized shoes, which cost \$3,500, to become wet and unwearable until they dried out. The Parent was concerned that allowing the Student to play in puddles would cause him to assume that he was allowed to play in puddles when it was rainy at school. The Parent then forwarded her email to the District manager.
138. Later on September 29, 2017, the Parent emailed District executive director 2, the District director, and the District manager, stating that she did not wish to continue the Student’s placement at the elementary school, and wanted the Student removed from the elementary

school as soon as possible. The Parent stated that she had said this first thing at the meeting on September 20 and was told it could not be discussed. After the meeting, the Parent had given the District one day to get a plan in place for the Student to return to school on September 22, but there was no plan in place on September 22 when the Student's 1:1 paraeducator was ill. The Parent said that the Student came home on September 28 with bruises and had been restrained. Additionally, at the September 20 meeting, the Parent had asked that the Student not be allowed to play in puddles when it rained, but today the Student had come home with his shoes and orthotics covered in mud. The Parent stated that things were not going well, and that there was no report of the Student attending general education PE that day as planned. The Parent stated that the family was not happy and the plan for the District regaining their trust was not going well. The family did not feel the Student was safe at school, let alone being educated.

139. On Saturday, September 30, 2017, the District director emailed the Parent, stating that the District would schedule a meeting to discuss the Parent's concerns outlined in her last two emails.
140. On October 2, 2017, the Parent responded that she had not heard from the District about scheduling a meeting. The Parent stated that she wanted the Student placed out of the District as stated in her emails and from her attorney to the District's attorney. The Parent stated that the Student was losing educational hours and therapies until he was placed in a placement that could comply with his IEP.
141. On October 3, 2017, the District director replied that the District had received the Parent's request for the District to consider changing the Student's placement and that the District wanted to schedule a meeting to review the Parent's request. The director stated that the meeting would be scheduled through the Parent's attorney and the District's legal counsel, but that some possible days to meet would be October 16 or 26, or November 3, 2017. The director asked that the Parent let her know if any of the days worked for the Parent. The director also stated that there was an open physical therapy evaluation, per the Parent's request, and that in order to complete the evaluation, the physical therapist would need to meet with the Student. The director asked how the Parent wanted to proceed. Additionally, the director stated that if the Parent provided the District with the Student's orthotics, the District would have them cleaned.
142. According to the Student's attendance record, the Student was absent on October 2-4, 2017.
143. On October 4, 2017, the District manager sent the Parent a letter, stating that the District had received the Parent's October 2, 2017 email regarding the Parent's decision to withhold the Student from school. The letter stated that the District believed that the Student should continue to attend school in order to benefit from the services the District provided as part of the Student's IEP and that the District stood ready to serve all the components in the IEP. The letter also stated that the District special education representative had emailed the

Parent with three possible meeting dates to review the Parent's concerns, and asked that the Parent let the District know when she was available to meet.

144. Also on October 4, 2017, the District issued a prior written notice, proposing to continue the Student's educational placement and IEP in the SCC program at the Student's current elementary school, and stated that the District stood ready to serve the Student in all aspects of his IEP. The notice stated the reason the District was taking the action was the Parent had informed the District on October 4 that she was withdrawing the Student from school and had informed the District on September 29 that she did not wish to continue the Student's placement at the elementary school. The notice also stated that the other factors relevant to the action were: "based upon data regarding his performance, [the Student] has been successful in the SECC classroom at [] elementary school."

145. On October 5, 2017, the Parent filed this citizen complaint. Based on the Student's attendance record, the Student did not return to school in October 2017.

CONCLUSIONS

Issue 1: Restraint Procedures – The Parent alleged that there was no signed emergency response protocol in place for the Student during the 2016-2017 school year. The documentation in this complaint shows that the Student's March 3, 2016 IEP, which included an emergency response protocol signed by the Parent, was in place at the beginning of the 2016-2017 school year. On December 14, 2016, the Student's IEP team developed a new IEP for the Student, which included a new emergency response protocol that was signed by the Parent. The documentation in this complaint substantiates that there was a signed emergency response protocol in place for the Student during the entire 2016-2017 school year.

The Parent also alleged that the District failed to inform her when the Student was restrained. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. The follow up procedures include the principal or designee making a reasonable effort to verbally inform parents within twenty-four hours of the incident, and sending written notification no later than five business days after the restraint or isolation occurred. The District admitted in its response to this complaint that it failed to provide the Parent with written reports on October 11, 2016, January 20, 2017, January 30, 2017, and February 6, 2017. As discussed in the facts above, there is no documentation to show the Student was restrained or isolated on February 6, 2017. However, the documentation in this complaint indicates that the District's November 4, 2016, September 5, 2017, and September 28, 2017 seclusion and restraint reports were not provided to the Parent. The documentation also indicates that the Student may have been restrained on other occasions in which the District did not provide the Parent with restraint reports, as it is unlikely, given the past history of the Student's hair pulling episodes, that the Student would release his hold on someone's hair without physical intervention by staff. In addition, the documentation indicates that District staff may be misinterpreting the definition of a restraint, which has possibly led to the District not reporting incidents of restraint. A restraint is defined by WAC 392-172A-02110 as a physical intervention or force used to control a student, including the use of a restraint device to restrict

a student's freedom of movement. School districts are required to report all occasions in which staff use actions which meet this definition. Additionally, the District is reminded that any use of restraint or isolation must be discontinued as soon as the likelihood of serious harm has dissipated. Some of the District's "seclusion and restraint" reports provided as documentation in this complaint show the Student remained in isolation for several minutes, but do not clearly identify that the Student's behavior while in the seclusion room continued to be escalated and therefore required continued isolation. The District will provide district-wide training for staff regarding the conditions under which restraint and isolation can be used and the follow-up procedures which must be followed.

Issue 2: IEP Implementation in the Least Restrictive Environment – The Parent alleged that the District failed to provide the Student access to general education PE as stated in his IEPs in place during the 2016-2017 and 2017-2018 school years. School districts must ensure that special education and related services are provided in a student's LRE, which to the maximum extent appropriate, should be in the general education environment with students who are nondisabled. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of her or his disability, the student cannot be satisfactorily educated in general classes with the use of supplementary aids and services.

The Student's March 2016 IEP and December 2016 IEP, which were both in place during the 2016-2017 school year, provided for general education PE. However, the District's documentation in this complaint does not substantiate that the Student regularly participated in general education PE, as this is not reflected in the Student's class schedule, and other documentation shows the Student was instead scheduled to participate in "movement breaks" with his SCC program peers as a form of physical education. According to the Parent's complaint, it was not until March 2017 that the Student was allowed access to a general education PE class. The District's documentation also fails to substantiate that the Student was allowed access to a general education PE class or a general education library class as stated in his IEP during the time he attended school in the fall of 2017. This is a failure to implement the Student's IEP in the least restrictive environment. From October 6, 2016, when the timeline for this complaint began until March 2017, there were approximately nineteen weeks of school. During that time, the Student did not receive access to general education PE. Additionally, the Student was not provided access on September 29, 2017. The District will provide the Student with twenty (20) hours of compensatory services to allow the Student to participate in afterschool athletics with his non-disabled peers.

The Parent also alleged that during the 2017-2018 school year, the Student was secluded from his SCC classroom peers when his desk was moved to a "boxed in" area. The documentation in this complaint shows that the Student's IEP team discussed the Parent's concern that the Student's desk was moved to a new location during the 2017-2018 school year, and that the decision to move the Student's desk was based on his preference to sit near a window and his need to have individual space from his classmates. Additionally, the IEP team discussed that the Student had the freedom to enter and exit his desk area. The documentation in this complaint

does not support that staff purposely secluded the Student from his classroom peers when it moved the location of his desk.

Issue 3: Paraeducator Support from April 25 – September 22, 2017 – 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 and 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. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

2016-2017 School Year – The Parent alleged that the District failed to provide the Student with 1:1 paraeducator support on April 25 and 26, 2017. The Student’s December 2016 IEP, which was in place in April 2017, provided for 1:1 paraeducator support on a daily basis in all school settings. The District’s documentation shows that on April 25, 2017, the Student’s regularly assigned 1:1 paraeducator was absent. Based on other documentation in this complaint, when the Student’s 1:1 assigned paraeducator was absent, the District then assigned another classroom paraeducator to work with the Student or the Student’s special education teacher provided support. Although the District did not provide information in its response to this complaint, stating the specific staff people assigned to work with Student on April 25, the District’s other documentation supports that the Student was monitored by staff on that day. The Student’s home/school communication log for April 25 shows that the Student had compliant and safe behavior the majority of his day, and that when the Student attempted to run towards another student, he was redirected by staff. While the Student’s 1:1 paraeducator’s was absent on April 25, 2017, the Student was still provided support from the existing SCC classroom staff and had access to his educational services. The District has substantiated that it provided the Student with paraeducator support on April 25, 2017. The documentation in this complaint shows that the Student was absent on April 26, 2017, and therefore, did not require paraeducator support.

2017-2018 School Year – The Parent also alleged that the District failed to provide the Student with 1:1 paraeducator support on August 31, 2017, September 1, 2017, and September 22, 2017, and that even if other SCC program staff provided him support, the staff were not trained in implementing the Student’s IEP. The District’s documentation in this complaint shows that the Student’s 1:1 paraeducator was absent for part of the day on August 31, 2017 and that the Student attended school the whole day. The District’s documentation also indicates that other SCC program staff provided support for the Student on August 31. However, the Student’s August 31 home/school communication report shows that the Student pulled another student’s hair that day and was not properly supported regarding his adaptive skills goal for eating. This indicates that the staff person providing the paraeducator support was not fully aware of the Student’s adaptive skills goal and that a lack of close supervision allowed a situation in which the Student was close enough to have access to another student. The District needs to ensure any staff member working with a student is aware of his or her responsibilities for implementing the

student's IEP. Given the foreseeable possibility that the Student's 1:1 paraeducator could be absent, the District should have provided training regarding the Student's IEP to any SCC program staff who could be expected to provide the Student support.

On September 1, 2017, a classroom paraeducator (afternoon paraeducator) was assigned to act as a substitute 1:1 paraeducator for the Student, and the Student only attended school for 2.5 hours that day. Based on the documentation in this complaint, the afternoon paraeducator was familiar with the Student's IEP, as she had previously provided support for the Student during the 2016-2017 school year and the school principal had reviewed IEP expectations with the afternoon paraeducator in June 2017. While the Parent expressed concern that the afternoon paraeducator had not properly implemented the Student's IEP in the past, the District had since taken steps to address the Parent's concerns by providing training and there is nothing to substantiate that the afternoon paraeducator was unable to provide appropriate support on September 1, 2017.

On September 22, 2017, the Student's 1:1 regularly assigned paraeducator was absent and the Parent elected to keep the Student home from school due to her concerns about staff not being properly trained regarding the Student's new entry plan and his IEP. The District's documentation shows that while the District had trained the Student's regularly assigned 1:1 paraeducator regarding the entry plan and his IEP, the District did not train other classroom paraeducators until September 22, 2017. Again, given the foreseeable nature that the Student's 1:1 paraeducator could be absent, the District should have increased the number of people trained. While the District failed to provide appropriate training, which hindered the Student from attending school on September 22, 2017, this did not amount to a material failure to implement the Student's IEP, and the District's documentation substantiates that six SCC program paraeducators are now trained to support the Student when he attends school.

CORRECTIVE ACTIONS

By or before **January 3, 2018, January 22, 2018, March 13, 2018, and June 15, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **January 12, 2018**, the District will meet with the Parent to develop a schedule to provide the Student with a total of twenty (20) hours of compensatory services through participation in after-school athletics at his currently assigned elementary school. The compensatory services will include twenty (20) hours of 1:1 paraeducator support. If a 1:1 paraeducator is unable to attend a scheduled activity session, the session must be rescheduled. If the Student is absent, or otherwise does not attend an activity session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than June 8, 2018. The District will provide OSPI with documentation of the schedule by **January 22, 2018**.

The District must provide OSPI with documentation by **March 13, 2018** of the compensatory services provided to the Student. This documentation must 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. No later than **June 15, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent, the District must reimburse the parents for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **June 15, 2018**.

DISTRICT SPECIFIC:

By **March 9, 2018**, the District will ensure all District administrators, certificated staff, including educational staff associates (ESAs), paraeducators, and school resource officers receive training regarding the requirements of WAC 392-172A-02110, which includes the reporting requirements in RCW 28A.600.485. The trainer will not be an employee of the District. The training will include examples, and will reference the District's "seclusion and restraint" reporting form.

- By **January 3, 2018**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **January 22, 2018**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by February 2, 2018 and additional dates for review, if needed.
- By **March 13, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. *If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.*

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

Dated this 4th day of December, 2017

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

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

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