

class upset and walked into the hallway where two IA's, [paraeducator 1 and paraeducator 2], were present. The IAs tried to get the [S]tudent to go back to gym to talk it over with the gym teacher, but he refused and got aggressive with the teachers in his proximity. He started hitting and kicking [paraeducator 2], he was warned a hold may happen if he continued. The behavior continued. He was put in a child control hold. The [S]tudent was kicking while he was in the hold. [The Student] was released and asked to show a safe body by sitting on the couch in the hallway. [The Student] was given directions to be safe and he started hitting and kicking [paraeducator 1]. [The Student] was put in another hold after he was warned about being safe. He was transported to Room 2 to by [paraeducator 1] using Child's Control Position where he continued to be aggressive. He was released two times with the only expectation that he be safe, but he kept being aggressive towards adults and had to be put in a child control hold again when he was unsafe. By about 12:30 pm, he was able to calm down and was able to be safe.

The incident report also stated that the Student had been restrained between the time periods of 12:12-12:14 p.m., 12:14-12:16 p.m., 12:20-12:22 p.m., and 12:23-12:28 p.m. using the CPI Children's Control Position.

43. Later on December 1, 2017, the Parent responded to the special education teacher's email and included the school principal and two District special education program specialists. The Parent stated that after reviewing the incident report, it appeared the Student had been placed in multiple holds for one incident that possibility involved three adults. The Parent stated that this would not be the only response that is taken with the Student, especially by an IA who had "pushed" the Student in November. The Parent stated that a meeting would be held immediately and expressed concern that tactics were being used with the Student that were not in his emergency response protocol. The Parent stated that she was very concerned about the staff's inability to work with the Student when he was escalated, and expressed concern that once the Student was put in a hold and escalated, she was called to assist with calming him down. Additionally, the Parent stated that she was concerned about the Student being in the SEL program, because she was aware that no direct services were being offered to assist the Student. The Parent expressed that she wanted to know if once the IA identified that the Student was escalated in the hallway, if the Student was offered a break, and was reminded to breath and that the Parent would be informed about the behavior, which could impact him at home. The Parent stated that there were tactics to make the Student stop and think when he was escalated, and that simply saying if you do not have a safe body, I am going to put my hands on you, told the Student if he did not do what staff needed him to do, they would become physical in order to make the Student do so. The Parent expressed that the Student would continue to act out because this message was being sent to him, and that a better approach was needed. The Parent also stated that she hoped some additional clarification could be provided. The Parent stated that she felt like behaviorally, the Student was declining, and she was very concerned.
44. On December 4, 2017, the elementary school principal responded to the Parent's December 1 email and copied other District staff members. The principal thanked the group for providing information about what occurred on December 1, as well as suggesting that the IEP

team meet to review the Student's May 2017 emergency response protocol. The principal stated that she agreed that a meeting to get more clarity about the staff's response in the moment and to think more about what staff could do proactively to support the Student would be extremely helpful. The principal asked if the Parent could attend a meeting on December 7 or 8. The Parent later agreed to meet on December 8, 2017.

45. On December 5, 2017, the District issued progress reporting towards the Student's IEP goals. The progress reporting stated that the Student had met his social/behavior goals of complying with one-step directions 5/10 times, using calming strategies 5/10 times, and keeping hands, feet, and objects to self 10/10 times. The Student had also met both of his math goals. The progress reporting stated that the Student had made significant progress toward his social/behavior goal of remaining in a scheduled area across 4 activities. Additionally, the progress reporting stated that the Student made some progress toward one of his reading goals and one of his writing goals. The progress reporting noted that the Student had "not yet covered editing of his own writing this marking period" and therefore, the goal was "not applicable this grading period". The progress reporting did not include information about the Student's other reading goals.
46. Based on the documentation in this complaint, the agreed to December 8, 2017 IEP meeting was later rescheduled for December 12, 2017. However, due to staff and the Student being ill, the December 12, 2017 meeting was canceled. A new IEP meeting was later scheduled for January 11, 2018.
47. The District was on break December 18, 2017 through January 1, 2018.
48. On January 7, 2018, the special education teacher emailed the SEL program IAs with instructions and reminders regarding the SEL program. The teacher stated that the Student needed movement breaks while in the general education setting. Additionally, the teacher stated that when students were not doing what they were supposed to do, such as yelling for adult attention or were out of their seats, the teacher asked that the IAs try to silently redirect the students by, for example, using hand signals. The teacher also stated that the IAs should give students clear directions, and avoid giving students who were off task attention. The teacher said if there was blatant defiance, then staff should tell students to take a break, and the time it took the students to make a choice would be minutes subtracted from their recess or free time.
49. On January 10, 2018, the Student was restrained two times for one minute each. The District's January 10 incident report regarding an incident which occurred at beginning of the school day stated:

[The Student] was escalated in the hallway and attempting to throw chairs. [The special education teacher and paraeducator 2] encouraged him to breath and take a walking break. [The Student] yelled. Chairs were removed from the area and [the Student] laid down on the ground. His mother was then called. Other students were walking by and the area was unsafe. CPI Transport Position was used to transport [the Student] into Room 2 for a period of 1 minute. During this time, [the Student] was silent and crying.

He sat on a bean bag and was immediately released from the hold. He was able to talk about why he was upset and talk to his mother on the phone.

The District's January 10 incident report from later that day stated:

At 10:20 am during a reading period in his Gen Ed classroom, [the Student] left his assigned classroom (room 7) without permission. He was upset when he was assigned to a group which he did not prefer. He entered room 2 without permission. He began to throw books and chairs around the room. [A substitute IA (paraeducator 3)] attempted to verbally de-escalate. [The Student] entered the teacher's desk area and began to throw books and other items off the desk. [Paraeducator 3] got closer to [the Student] to direct him verbally to another area. [The Student] began to punch [paraeducator 3]. [Paraeducator 3] backed away and [the Student] continued to swing at him with his fists. At this point [paraeducator 3] attempted Children's Control Position in the Calm Zone, and attempted to have [the Student] sit on a bean bag. [The Student] was released and continued to punch and kick at [paraeducator 3]. [Paraeducator 3] continued to evade. [The Student] began to calm down and was able to apologize about five minutes later.

50. Later on January 10, 2018, the special education teacher emailed the Parent, informing her that the Student was placed in a hold two times that day due to unsafe behavior, and the teacher attached a copy of the January 10 incident reports. The teacher stated that prior to the events, the teacher knew the Student was tired and not in a good mood, which he had been of late, and that being said, staff had tried to support the Student with breaks. The teacher also stated that she knew it took the Student time to warm up to people, but that she had seen him working "very well" with paraeducator 3, and that paraeducator 3 followed the plans the staff had discussed and provided the Student with ample opportunities for break and lots of encouragement. The teacher said that after the events that day, the Student had stated that he still liked paraeducator 3 and like working with him. The teacher stated that paraeducator 3 had a lot of experience working in an SEL program as an IA and was interested in working with the Student. The teacher stated that the Student had seemed to be in a bad mood that day, and his decision making was not the best. The teacher had spoken with the Student about taking more breaks on days when he was tired. Additionally, the teacher stated that she thought the Student was afraid to be with paraeducator 3 when the Student escalated, because the Student was still not familiar with paraeducator 3, and this may be why the Student acted out physically in paraeducator 3's presence. The teacher stated that the Student had made "huge strides" since the beginning of the year and she admired how much hard work the Parent put into the Student.
51. According to the Parent's reply to the District's response to this complaint, the Student alleged that paraeducator 3 choked him on January 10, 2018.
52. On January 11, 2018, the Student's IEP team, including the Parent, held a meeting. The District's documentation in this complaint does not include meeting notes or a prior written notice associated with this meeting, so it is unclear exactly what decisions the IEP team reached at the meeting. However, based on a January 10, 2018 email, the IEP team planned to discuss the following: reasons for holding the meeting, the Parent's thoughts/concerns regarding the Student's current services, behavioral data, input from the general education

teacher, the Student's emergency response protocol and whether it was being followed and was appropriate to address the behaviors the team was seeing, de-escalation strategies currently used with the Student, changes that could be made to the Student's supports, increasing the Student's time in the general education setting, and next steps. Also based on the documentation in this complaint, the general education teacher was unable to attend the meeting, but provided written input regarding the Student's progress in the first grade class and increasing the Student's time in the first grade class. The general education teacher recommended increasing the Student's time in the general education setting incrementally, so the Student could experience success in the general education setting.

53. On January 12, 2018, the Parent signed consent for the District to conduct a functional behavioral assessment (FBA).

54. Also on January 12, 2018, the special education teacher emailed the District behavioral specialist and attached a completed referral for the District's "Behavior and Autism Intervention Team" (BAIT) to work with the Student and school staff. The special education teacher then sent a follow-up email on January 21, 2018, and later spoke with the behavioral specialist about the referral on January 22, 2018.

55. On January 21 and 22, 2018, the special education teacher exchanged emails with the Student's general education first grade teacher regarding changing the Student's schedule so that he would attend the first grade class from 11:40-11:55 a.m. each day, which would allow the Student to attend both recess and lunch with the first grade class. The first grade teacher agreed that this would be a good time to try with the Student. Based on the documentation in this complaint and information in this response, on approximately January 23, 2018, the special education teacher changed the Student's schedule so that he would spend approximately 1,145 minutes per week in a general education setting versus the 1,025 minutes stated on his IEP. The new schedule was as follows:

- 7:55 – 8:25 a.m. (30 minutes): Activity – General Education
- 8:25 – 8:45 a.m. (20 minutes): Social Skills – SEL Program
- 8:45 – 9:30 a.m. (45 minutes): Math – SEL Program
- 9:30 – 9:50 a.m. (20 minutes): Recess – General Education
- 9:50 – 11:00 a.m. (70 minutes): Reading/Writing – General Education
- 11:00 – 11:40 a.m. (40 minutes): Lunch/Recess – General Education
- 11:40 – 11:55 a.m. (15 minutes): Reading – General Education
- 11:55 a.m. – 12:25 p.m. (30 minutes): Specials: PE, Music, Art – General Education
- 12:25 – 1:30 p.m. (65 minutes): Reading – Special Education
- 1:30 – 2:25 p.m. (55 minutes): Community Circle, End of Day, End of Day Recess – General Education

56. On January 22, 2018, the special education teacher emailed the Parent regarding the Student's school day. The teacher also stated that she had spoken with the District behavioral specialist, who relayed that the District had thirty-five school days to conduct the FBA, and that the behavioral specialist and the school psychologist would assist the teacher in observing the Student. The behavioral specialist would come to observe the Student the

following week. The teacher explained that the IEP team could meet again in early March to review the results of the FBA and develop a plan and supports with the data. The teacher also discussed that she had spoken with the District behavioral specialist and the referral for BAIT may not be necessary, but if the IEP team decided that an FBA and IEP were not enough, then they would proceed with the BAIT referral process. In response, the Parent stated that she did not know the difference between the FBA and the BAIT. The Parent asked to get a meeting in March put on the calendar.

57. On January 26, 2018, the District behavioral specialist emailed the Parent to set up a phone call to discuss the FBA process due to the Parent's questions and concerns about the process. In response, the Parent restated her concerns about the process and stated that there was a "big" difference between the environment at school and the home. The Parent stated that she was concerned that assessments and evaluations were being completed but the services were not correcting the Student's behavioral deficiencies at school. The Parent stated that she understood that every day would not be perfect, but she wanted the Student's extreme behaviors to diminish in frequency and in magnitude. The Parent stated that she did not feel the SEL program was helping the Student and that she felt his escalations had been worse since he had been in the program. The Parent said the behavioral specialist's team had come last school year to observe the Student and plans were put together that were not really executed. The Parent stated that she thought the Student struggled with impulse control and his anger at school, but at home when there was a change or transition, the Student did not go through any of the behaviors he displayed at home. The Parent provided times she was available to speak with the behavioral specialist, and they later agreed to speak on January 30, 2018.
58. Based on the documentation in this complaint, the Parent and the special education teacher met on January 30, 2018, to discuss the Student's behavior and the Parent's concern that the Student was manipulating the staff when he did not get his way.
59. On February 1, 2018, the District behavioral specialist emailed the Parent, stating that she had observed in the Student's classroom that day, and wanted to get in one to two more observations before she and the Parent connected again. The behavioral specialist planned to observe the Student again early the next week, and was aiming to observe at different times of the day. The behavioral specialist asked the Parent for her perspective on the home-school communication process, and also for information about the strategies that were effective with supporting the Student at home.
60. In response, the Parent indicated that she did not fully understand the question regarding home-school communication, but provided information about the point sheet used to track the Student's behavior. The Parent stated that she thought staff should pick one goal behaviorally and one goal academically to work on and take it one day at a time. The Parent thought the Student became really frustrated when he did not understand something or when there were new concepts, and that the Student lacked confidence due to his experience in kindergarten. The Parent stated that there had not been a ton of collaborative planning

between herself and the school staff, but they were initially meeting with the Student twice a month, so he was aware they were all on the same page. The Parent thought this was somewhat effective. The Parent stated that she had explained to staff that if they started appearing to be “tired” of the Student and his behavior, then the behavior would escalate and potentially become harder to deal with. Additionally, the Parent stated that the Student thrived on trust, and if he knew whoever was working with him had a strong connection with the Parent, his respect and ability to follow directions fell into play. The Parent thought that there was tension between her and certain staff and that the Student was aware of this. The Parent thought more check-ins as a team would be beneficial, and stated that during the prior school year, the team met monthly. The Parent also thought meetings with the Student were effective, as the Parent was able to communicate the message from the school directly to the Student so there was no room for miscommunication. Further, the Parent stated that she felt like the Student’s behaviors were about power and control, as the Student was aware that the staff could not handle him most of the time and wanted them to call home so that he could get out of whatever work he was doing. The Parent stated that she did not have any behavioral issues at home with the Student, other than sibling spats, and that when she told the Student he had to do something, that was the end of the story, and he did it. The Parent stated that she had clear expectations and the Student knew he could not take any shortcuts. The Parent thought that the staff were becoming tired of the Student, and that she could sense this with one of the IAs who worked with the Student. The Parent stated that she hoped that the information helped and to let her know if additional information was needed. The behavioral specialist replied, thanking the Parent for the information.

61. On February 2, 2018, the special education teacher emailed the Parent and the first grade teacher, asking to schedule a quick check in with the Student and his teachers and to set clear expectations for him at school.
62. The District was on break February 19-23, 2018.
63. On March 3, 2018, the Parent emailed a District special education program specialist, the behavioral specialist, the school principal, and the special education teacher. The Parent stated that the Student’s annual IEP review needed to be scheduled in April 2018, and asked if the FBA results could also be presented at this meeting. The Parent suggested this combined meeting could take place prior to April 2018, and also stated a preferred day of the week to meet. The Parent also asked when the FBA would be completed and presented along with recommendations. The Parent stated that she would like a copy of the FBA prior to the scheduled meeting. Additionally, the Parent expressed concern about the level of scrutiny that was being utilized with the Student, especially in general education settings. The Parent stated that at every upcoming meeting, she would ask what the plan for the Student was to exit special education and have more time in general education. The Parent said that more of the Student’s behavioral incidents had occurred in the SEL program classroom than in his general education classes. The Parent expressed concern that the Student was singled out at times regarding his voice level and felt that there was a need for clarification and leniency around this. The Parent stated that the Student had been working very hard at being safe,

following directions, and focusing and completing work, often with little sleep due to the Parent's work schedule and the Student's early morning medical appointments. The Parent also expressed concern about some of the reactions and responses to the Student's behaviors, which she felt could be triggering at times. The Parent stated that she understood that safety was a priority, but also felt that a lot of the time, the Student had attention seeking behavior, looking for a reaction, which in turn reinforced the behavior they were trying to prevent. The Parent said that an example of this was evacuating the entire class, when the Student was scooting in his chair and kicking the air. The Parent said she could understand if the Student was throwing a chair, but scooting across the room was just attention seeking behavior. The Parent also stated that she felt that a lot of times, things could be prevented if the staff were aware of the triggers, such as the Student being tired. The Parent said that on March 2, the Student had informed the teacher he was really tired, and that staff could have offered the Student a rest instead of pushing him to complete work. The Parent stated that she was working diligently to get a new work shift that would allow her to be home a night to provide more consistency and stability for the Student, and expressed that she felt the Student's medical issues were impacting the Student's behaviors, which she thought was reflected in his daily point sheets. The Parent said that she planned to advocate at the next IEP meeting for the Student to have more time in the general education setting. The Parent stated that the general education teacher had requested that the increase occur in increments, which the Parent was okay with, but she wanted the Student to have more general education time. The Parent wanted to see the Student attend more academic time in the first grade class. Further, the Parent stated that the Student needed to feel and know that he had a good team working with him, who would not turn their back on him regardless of the behaviors he displayed. The Parent said that the Student had made tremendous jumps in the past six months when compared to his kindergarten year.

64. In response, the special education teacher thanked the Parent for her input, stating that it was helpful to the team as they planned for the Student. The teacher stated that they could hold the annual IEP meeting early, and asked the behavioral specialist when she thought the FBA would be completed. Later, the principal responded, thanking the Parent for sharing her feedback and concerns, and that they would discuss these issues at the upcoming IEP meeting. The principal also stated that the issue could be discussed sooner if the Parent wanted.
65. The District's documentation in this complaint included a prior written notice, dated January 11, 2018, which stated that the IEP team agreed that the Student's FBA would be "postponed" and the team wanted to schedule the completion of the Student's FBA "with his IEP annual review meeting which [] must take place before April 26." It is assumed that the date of the prior written notice is in error. The January 11 notice also stated that the reason the team rejected the option of not postponing the FBA, was that the "team would not have adequate time to collect data from [the Student's] Special Education and General Education teachers, as well as data from his parent." The notice stated that the action would be initiated on March 8, 2018.

66. On March 12, 2018, the Student was restrained three times during a twenty-minute time period by the special education teacher and/or paraeducator 2. The District's March 12 incident report stated:

During the escalation cycle, [the Student] was restrained 3 times during a period of 20 minutes. [The Student] had been redirected by his General Education teacher and IA [paraeducator 4] during a writing period in his General Education classroom...for rolling on the carpet and yelling. [The Student] had kicked a desk in his General Education classroom and was asked to leave to a "buddy classroom". At this time, he left the room yelling loudly, tore posters down outside of his classroom, and began to push the IA [paraeducator 2] attempting to help him de-escalate. [The Student] continued to push [paraeducator 2]; he was given 1 minute of warnings to show a safe body and stop pushing or he would be placed in a hold. [The Student] continued. Two staff then restrained [the Student] using CPI transport position and released him in Room 2, his Special Education classroom in the break area void of furniture. He began to hit a wall with his fist and hurt himself. Staff gave him one minute of warnings to show a safe body – [the Student] was restrained when he continued to hit. After several minutes [the Student] was released in the break area and asked to sit on a bean bag. Again, [the Student] began to pound his fist into the wall with force. Staff gave one minute warnings to have a safe body or be restrained. Again [the Student] was restrained when he failed to respond. By 10:40, [the Student] was calm enough to sit down in the break area and talk to staff about what happened.

The incident report specified that the restraints occurred from 10:20-10:22 a.m., 10:27-10:35 a.m., and 10:36-10:40 a.m.

67. Later on March 12, 2018, the special education teacher emailed the Parent and attached a copy of the March 12 incident report. The teacher stated that she had spoken with the IA, paraeducator 4, who was with the Student at the time the incident began, and paraeducator 4 stated that when the Student went into the general education classroom, he immediately saw all the students were writing. As a result, the Student started to act out – throwing his point sheet and rolling on the carpet. The teacher stated that it seemed the Student knew there would be writing and that he needed a break more immediately, before he got to the point he got to that day. The teacher stated that this was something that could be talked about with the IAs and the first grade teacher. The teacher also stated that she was going to email the District behavioral specialist and the first grade teacher about meeting all together.

68. On March 14, 2018, the District issued progress reporting towards the Student's IEP goals. The progress reporting stated that the Student had met all of his social/behavior goals and math goals. The progress reporting stated that the Student made significant progress toward one of his reading goals and some progress toward the other reading goal and one of his writing goals. The progress reporting noted that the Student had "not yet covered editing of his own writing this marking period" and therefore, the goal was "not applicable this grading period".

69. On March 15, 2018, the Parent came to pick up the Student early from school, around 1:30 p.m., and found that the Student was not with his first grade class, per his schedule, but was instead with the SEL program class in the school garden.
70. Later on March 15, 2018, the Parent emailed the special education teacher, the school principal, and a District special education program specialist, expressing that the Student was entitled to be in the general education setting as allotted in his IEP. The Parent stated that the Student's schedule had been provided to her to assist with the management of when the Student was in the special education setting and the general education setting. The Parent also stated that when she arrived at the school that day around 1:30 p.m., the Student was with his special education class and remained with them until the Parent asked the Student what time he was supposed to go to the general education class and he stated 1:30 p.m. The Parent said the Student then approached paraeducator 2 and said that he was supposed to go to the first grade class, and paraeducator 2 stated "oh well, then go". The Parent expressed concern that paraeducator 2's tone was unprofessional and nonchalant, as if paraeducator 2 did not care that the Student was not on his schedule. The Parent stated that regardless if the teacher was there or not, by law, the Student was supposed to be in the general education setting for a specific amount of minutes, and that besides not following the IEP, the Parent had made it known that the Student thrived off of a routine and consistency. The Parent stated that if adults could not execute or be accountable for their part in the plan or their behaviors, the Parent would not hold the Student accountable.
71. On March 16, 2018, the school principal responded to the Parent's March 16 email, stating that she had spoken with the first grade teacher and paraeducator 2 about what happened from their perspective. The principal relayed that due to a variance in the first grade class's schedule, they had gone to recess early, and therefore, were not in the first grade classroom during the Student's usual transition time. Also, the SEL program had multiple substitutes that day, and paraeducator 2 decided to keep the Student with the other SEL program students in the school garden, because it was not immediately clear to him where the first grade class was. The principal stated that she agreed with the Parent that consistency was a very important part of the Student's educational experience, and that even when there were variances in schedules, staff needed to stay in close communication to maintain as much consistency as possible. The principal had communicated this to the first grade teacher and paraeducator 2, and they had agreed to tighten communication in order to ensure consistency. The principal stated that it was the school's responsibility to make sure that the Student's schedule was followed, and that staff would continue to work hard to make that happened. The principal asked that the Parent let her know if she had questions.
72. Later on March 16, 2018, the Parent replied to the principal, stating that she felt that her point had not come across as clear as needed. The Parent expressed that there had been two issues on March 15 – the Student's schedule/IEP had not been followed and paraeducator 2's interaction with the Student. The Parent expressed that paraeducator 2 had acted unprofessionally. The Parent stated that she would be following up with this matter, as she was concerned about paraeducator 2's interaction with the Student, and stated that there

had been several incidents including last year when he triggered the Student with regards to his schedule not being followed, and shortly after followed an escalation.

73. In response, the behavioral specialist asked if the Parent wanted to address this at an upcoming March 20, 2018 meeting, which was scheduled to discuss a “response plan”. The behavioral specialist asked if the Parent wanted to prioritize addressing schedule and fidelity to the schedule. The Parent replied, stating that they could speak on March 19, if the behavioral specialist wanted, and expressed concern that the issues had occurred multiple times, no matter how much the IEP team had talked and created plans or agendas. The Parent stated that the Student’s schedule being followed was a priority with an emphasis on the minutes in general education, as well as respect and treating the Student with kindness. The Parent was unsure how the March 20 meeting would assist in this matter.
74. Also on March 16, 2018, the Parent emailed the special education teacher, asking for a copy of the isolation and restraint incident report from November 16, 2017.
75. On March 17, 2018, the Parent filed this citizen complaint.
76. On March 19, 2018, the school principal responded to the Parent’s March 16, 2018 email. The principal stated that she heard and understood the Parent’s concerns about paraeducator 2’s interactions with the Student and the Student’s schedule. The principal assured the Parent that she would follow up on both issues, and would continue to work to make sure the schedule was followed appropriately and that all interactions with students and families were professional and supportive. The principal asked that the Parent let her know if she wanted to discuss this or any ongoing concerns more in person or by phone, and thanked the Parent for her partnership in making sure the Student was getting everything he needed at school.
77. Also on March 19, 2018, the special education teacher responded to the Parent’s March 16 email regarding the November 16 restraint incident report. The teacher stated that there were only four incident reports for the Student – September 11, 2017, December 1, 2017, January 10, 2018, and March 12, 2018. The teacher asked if the Parent was referring to the December 1 incident report. The Parent replied that she was referring to the November 16 report. The teacher later stated that there was no November 2017 incident noted in the District’s computer system, and attached a copy of the December 1, 2017 report.
78. On March 21, 2018, the special education teacher and a District behavioral specialist intern exchanged emails about break cards for the Student to use when he needed to request a break.
79. On April 17, 2018, the District provided the Parent with a copy of an April 17, 2018 incident report regarding paraeducator 2 restraining the Student on November 17, 2017. The April 17 incident report stated:

Parent was notified by phone call 11/17 and email sent with Special Education teacher’s report of incident on Saturday 11/18/17. [The Student] was restrained and brought to his

Special education classroom to de-escalate following an incident that occurred in the hallway with an IA [paraeducator 2]. [The Student] had become frustrated when he learned that his 1st grade class was going outside to recess and he was directed to his special education class for (his schedule calls for this transition at 10:30). [The Student] began to walk into the hallway at 10:50 am and slammed a table into the wall outside of general education class. At 10:51 [the Student] and [paraeducator 2] were in the hallway; [the Student] was yelling and [paraeducator 2] directed him to “go see [the special education teacher]”, in his Special Education classroom. At this point, [the Student] forcefully slammed another table in the hallway into the wall. [Paraeducator 2] verbally directed [the Student] to go to his Special Education classroom. [The Student] became further frustrated and repeatedly slammed into the hallway (other students were walking by at this point) for about 1 minute. [Paraeducator 2] verbally directed [the Student] to go to [the] Special Education classroom and held the table to prevent [the Student] from slamming it. Special education teacher attempted to direct [the Student] into [the] special education classroom verbally to calm him down. At 10:52 am [the Student] started to hit [paraeducator 2] with his hands and grabbed [paraeducator 2's] tie. [Paraeducator 2] turned [the Student] around by the shoulders, blocking his hands from hitting, and pushed [the Student] from his back towards his Special Education classroom about 15 feet away. At 10:54 am, [the Student's] special education teacher held the door open and asked him to come inside to calm down, while [paraeducator 2] followed behind [the Student]. While entering the door, [the Student] then turned and kicked [paraeducator 2] in the knee. Staff used verbiage to allow [the Student] to de-escalate in his Special Education classroom until he was calm by 11:15 am.

80. On April 18, 2018, the Student's IEP team met to review the FBA and develop the Student's annual IEP, which included a BIP. The IEP team later met on May 9, 2018, to further discuss the annual IEP. The Student's new IEP stated that the Student would spend 70.14% of his school week in a general education setting. The IEP team agreed to hold another meeting to develop a new emergency response protocol for the Student.

CONCLUSIONS

Issue 1: IEP Implementation in the Least Restrictive Environment (LRE) – The Parent alleged that the District failed to implement the Student's October 5, 2017 IEP in the least restrictive environment. 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. Additionally, special education and related services must be provided in a student's LRE, which to the maximum extent appropriate, should be in the general education environment with students who are nondisabled.

Here, the Student's October 5, 2017 IEP stated that the Student would spend 42.25% of his school week in a general education setting. While the Parent was concerned that the District did not implement the Student's IEP and schedule with fidelity in regard to the Student's access to the general education setting, the document in this complaint shows that for much of the school year, the Student actually spent far more time in a general education setting than provided for in his IEP. The District admitted in its response to this complaint, that in January 2018, the District unilaterally changed the Student's schedule to increase his time in the general education setting

by approximately 20%, and that it did not follow procedures for amending the Student's IEP before doing so. The District has proposed to provide staff at the elementary school with training around these issues. The change to the Student's schedule, while providing more access to the general education setting, resulted in the Student not receiving the specially designed instruction called for in his IEP. The impact on the Student's access to IEP services in a special education due to the change in schedule was as follows:

- Social Skills – IEP: 175 minutes per week vs. Schedule: 100 minutes per week
- Math – IEP: 375 minutes per week vs. Schedule: 225 minutes per week
- Reading – IEP: 475 minutes per week vs. Schedule: 305 minutes per week
- Writing – IEP: 250 minutes per week (concurrent) vs. Schedule: 0 minutes per week

However, it is also noted that despite the discrepancy between the IEP and schedule, the Student also received eighty-five (85) additional minutes of reading/writing instruction in a general education setting per week and received social/behavior instruction from an IA who was with the Student the majority of his time in a general education setting. Further, the Student met or made progress toward his IEP goals, with the exception of one of his writing goals, for which he received no instruction. The District will provide the Student with compensatory services in the area of writing.

Based on the October 5, 2017 amendment to the Student's IEP, the Student was to receive 250 minutes of writing services per week, which equates to 50 minutes per school day. From January 23, 2018, when the Student's schedule was changed, through March 17, 2018, the date the Parent filed this complaint, there were thirty-four (34) school days, and the Student was absent four (4) school days. Therefore, from January 23 through March 17, the Student should have received 1,500 minutes (25 hours) of writing instruction. Given the more intensive instruction that can be provided through 1:1 instruction, the District will provide the Student with one-half the amount of time, which is 12.5 hours of writing instruction.

Issue 2: Isolation and Restraint – The documentation in this complaint does not show that isolation was used with the Student.

Restraint is defined as physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. Restraint shall only be used when a student's behavior poses an imminent likelihood of serious harm. The use of restraint 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.

The documentation in this complaint shows that the Student was restrained on five days from September 2017 through April 2018. Based on the District's January 10, 2018 incident report from the early morning, staff used a transport hold with the Student, even though the Student was laying down on the floor. While there may have been other students in the area, the

District's documentation does not show that there was imminent likelihood of the other students, or the Student being harmed, and therefore, the staff should not have restrained the Student. Additionally, the District admits in its response to this complaint that paraeducator 3 was not trained and certified in the use of restraints, when he restrained the Student in the late morning on January 10, 2018. While non-trained staff are permitted to use restraint in an emergency situation when no trained staff are available, the documentation in this complaint does not support that this was the case on January 10, 2018. The district will develop procedures to ensure that either all substitute instructional assistants/paraeducators who work with students with advanced behavioral needs are trained and certified in the use of restraint and isolation, or that a regular staff member who is trained and certified in the use of restraint and isolation is present at all times when a non-trained substitute is present.

Additionally, school districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. Following the release of a student from the use of restraint, the school must review the incident with the student and the parent to address the behavior that precipitated the restraint and the appropriateness of the response, and review the incident with the staff member who administered the restraint to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Here, the District's documentation shows that the District appropriately contacted the Parent after each use of restraint and that meetings were also held to discuss some of the restraints. However, it is unclear from the District's documentation whether the incidents were reviewed with all staff members involved to discuss whether procedures were followed and what training and support the staff members might need to help the Student avoid similar situations, although it is noted that the District stated in its response to this complaint that this occurred.

RCW 28A.600.485 also requires that any school employee who uses restraint on a student must inform the building administrator or building administrator's designee as soon as possible, and within two business days, submit a written report 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; a description of the activity that led to the restraint; the type of restraint used on the student, including the duration; whether the student or staff was physically injured during the restraint 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. Here, the District did not submit a report regarding the November 17, 2017 incident to the District office in two business days. Additionally, the District's documentation does not include written reports from all staff involved in the restraint, but rather one summative report, which is inconsistent with RCW 28A.600.485 and WAC 392-172A-02110. Further, the District's reporting form does not include a section for staff to make recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. It is noted, however, that staff had ongoing discussions with the Parent throughout the school year regarding the Student's behavior and ways to support him.

Additionally, RCW 28A.600.485 requires that the principal or principal's designee must make a reasonable effort to verbally inform the parent 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. Here, the documentation substantiates that the Parent was notified of the restraint incidents within twenty-four hours. However, the documentation is not clear as to when the Parent was provided a copy of the September 11, 2017 incident report. It is recommended that the District include a section in its incident report form to allow staff to document that a parent was contacted within twenty-four hours and when a parent was sent a copy of the incident report. The District admits that the Parent was not provided with a copy of the incident report regarding the November 17 restraint within five business days. The Parent did receive an email on November 18, with a detailed description of what occurred, and the District has since provided a copy of an incident report on April 17, 2018. However, it is noted that there is a discrepancy between the November 18 email and the April 17 report. The District needs to ensure that parents are provided with accurate information within required timelines. The District will review and revise its follow-up procedures for the use of restraint and isolation, including its incident report form, to ensure the procedures and the form align with the requirements in RCW 28A.600.485.

Issue 3: Implementation of the Student's Emergency Response Protocol – The Parent alleged that the District failed to implement the Student's emergency response protocol during the 2017-2018 school year. An emergency response protocol is part of an IEP, and therefore, school districts must ensure that an emergency response protocol is implemented as written. The Student's May 2017 emergency response protocol stated:

Restraint or isolation is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, as defined by RCW 70.96B.010. If [the Student] engages in unsafe or physically aggressive behaviors (hitting, biting, punching, throwing objects) toward a peer or adults isolation may be used if the behavior is at and intensity (in duration and of great magnitude) that the team is unable to redirect or deescalate. Additionally, restraint (CPI children's control position) may be used if [the Student] is in imminent danger (climbing out of windows or running into the street) of harming himself or others.

The emergency response protocol also stated that only staff who were "CPI trained" could use restraint with the Student and that only "children's control position" or "CPI transport position" could be used with the Student. The District admitted in its complaint that on November 17, a staff member used an unauthorized restraint with the Student, by grabbing and pushing the Student. And, as discussed in issue no. 2, paraeducator 3 was not CPI trained when he used restraint with the Student. Also as discussed in issue no. 2, staff restrained the Student on January 10 when the Student's behavior did not pose an imminent likelihood of serious harm, which was in violation of state regulations, and was also contrary to what is stated in the Student's emergency response protocol.

It is also noted, that when an IEP team has determined that a student is in need of an emergency response protocol in order to receive a free appropriate public education (FAPE), the IEP team, with very few exceptions, should have first determined that the student was in need of a

behavioral intervention plan (BIP) in order to proactively address the types of serious behavioral outbursts that would lead to needing an emergency response protocol. Here, the District's documentation shows that District staff believed the Student needed a BIP, as evidenced by the request on the first day of school, and in the weeks that followed, for the Parent to provide consent for an FBA, and evidenced by the decision to start implementing the Student's February 2017 PBIP, which was created to address the Student's behavioral needs prior to the Student even being found eligible for special education, during the 2017-2018 school year. However, despite the awareness that the Student was in need of a BIP, the District, for reasons unclear, did not include a BIP in the Student's April 2017 IEP or the October 5, 2017 amendment to the IEP. This appears to be due in part to the mistaken belief that an FBA must be done prior to the creation of BIP. There is no requirement that an FBA be completed prior to developing a BIP. But, there is a requirement that an IEP include a BIP when an IEP team has determined that one is needed to address a student's behavior which impacts his ability to access learning. Additionally, if the District believed that an FBA needed to be completed prior to developing a BIP, it should have completed the FBA as part of the Student's March 2017 initial evaluation.

CORRECTIVE ACTIONS

By or before **June 8, 2018, June 18, 2018, September 14, 2018, October 31, 2018, and December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **June 8, 2018**, the District will provide a copy of: 1) the Student's BIP; 2) the new emergency response protocol; 3) the Student's class schedule which aligns with his April 2018 IEP; and, 4) any related meeting invitations, prior written notices, and other documentation. The District will also provide documentation that all school staff (teachers, IAs, etc.) who work with the Student have been provided a copy of, and reviewed, his BIP and emergency response protocol.
2. By **June 18, 2018**, the District will work with the Parent to develop a schedule to provide the Student with a total of 12.5 hours of compensatory services in the area of writing. The services will be provided outside of the District's regular school day. The services may be provided over the summer of 2018. The services must be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a 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 December 14, 2018. The District will provide OSPI with documentation of the schedule by **June 18, 2018**.

The District must provide OSPI with documentation by **September 14, 2018 and October 31, 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 **December 21, 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 for transportation, the District must reimburse the parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **December 21, 2018**.

DISTRICT SPECIFIC:

1. The District will review and revise its follow-up procedures for the use of restraint and isolation, including its incident report form, to ensure the procedures and the form align with the requirements in RCW 28A.600.485. It is recommended that the District include a section in its incident report form to allow staff to document that a parent was contacted within twenty-four hours and when a parent was sent a copy of the incident report.

By **June 8, 2018**, the District will submit a draft of the procedures and the updated incident report form. OSPI will okay the procedures or provide comments by June 18, 2018 and provide additional dates for review, if needed. By **September 14, 2018**, the District will provide OSPI with documentation showing that all District school principals have reviewed and discuss the procedures and the updated incident report form with all certificated staff and instructional assistants assigned to work in their buildings. The documentation will include a roster of all principals.

2. The District will develop procedures to ensure that either all substitute instructional assistants/paraeducators who work with students with advanced behavioral needs are trained and certified in the use of restraint and isolation or that a regular staff member who is trained and certified in the use of restraint and isolation is present at all times when a non-trained substitute is present. The District will provide OSPI with a copy of the procedures by **June 8, 2018**.
3. OSPI accepts the District's proposal to provide all special education certificated staff, including educational staff associates (ESAs), and school administrators at the Student's elementary school training regarding: 1) placement decisions; 2) LRE; and, 3) IEP implementation. The training will also address: 4) IEP development in regard to addressing student behavior, including BIPs. The training will include examples.

By **June 8, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by June 18, 2018 and additional dates for review, if needed.

By **September 14, 2018**, the District will submit documentation that all required staff participate in the training. This will include a 1) sign-in sheet from the training and 2) a roster of all District special education certificated staff, educational staff associates (ESAs), and school administrators who work at the Student's elementary school, so OSPI can verify that

all required staff participated in the training. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. *If any of the staff are unable to participate, the District will hold 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 ____ day of May, 2018

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.)