

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-89

PROCEDURAL HISTORY

On June 13, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 13, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 15, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 30, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to July 7, 2023.

On July 10, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On July 14, 2023, OSPI received additional information from the Parent and forwarded it to the District on July 19, 2023.

On July 19 and 21, 2023, OSPI requested additional information from the District. OSPI received the information on July 21, 2023, and forwarded it to the Parent on the same day.

On July 20, 2023, OSPI interviewed the Parent by telephone.

On July 20, 21, and 22, 2023, OSPI requested additional information from the Parent. OSPI received the information on July 21, 22, and 24, 2023, and forwarded it to the District on July 21 and 24, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 14, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Per WAC 392-172A-03105, has the Student's IEP been implemented properly, including related services, for the 2022–23 school year?

2. During the 2022–23 school year, did the District follow proper restraint and isolation procedures, including using restraint only when there was an imminent likelihood of serious harm, and following all reporting, documentation, and other requirements in WAC 321-172A-02110?
3. Per WAC 392-172A-05190, during the 2022–23 school year, did the District provide the Parent access to the Student’s medical log used by the parties to communicate about the Student’s needs?

LEGAL STANDARDS

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 served through enrollment who is eligible to receive special education services. A school district must develop a student’s IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Each school district must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

“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.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

For a school district to provide FAPE, it is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. V. Rowley*, 458 U.S. 176, 200-01 (1982).

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. WAC 392-172A-01162.

Restraint Conditions: Restraint device shall be used only when a student’s behavior poses an imminent likelihood of serious harm.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student’s voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Records – Parent Access: Each participating agency shall permit parents of students eligible for special education services to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other

public agency under this chapter. The school district shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made. See WAC 392-172A-05190(1).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

FINDINGS OF FACT

Background

1. In April 2022, the Student was re-evaluated and continued to be eligible for special education under the multiple disability category. The evaluation report recommended the Student receive specially designed instruction (SDI) in adaptive skills, social skills, behavior, reading, writing, math, speech and language therapy, physical therapy, and occupational therapy. The evaluation stated, in part, "[The Student] is currently an 18 year-old 12th grader...He receives his special education curriculum in the Transition Program (a self-contained program within the Special Education department). He will attend school until he is 21 to meet his transition goals."
2. On April 11, 2022, the Student's IEP team met. The Student's annual IEP provided SDI, delivered by a 1:1 paraeducator in a special education setting from April 14, 2022–April 10, 2023, in the following areas:
 - Behavior: 50 minutes/5 times weekly
 - Social Skills: 50 minutes/5 times weekly
 - Adaptive Skills: 161 minutes/5 times weekly
 - Functional Academics-Writing: 30 minutes/5 times weekly
 - Functional Academics-Math: 30 minutes/5 times weekly
 - Functional Academics-Reading: 30 minutes/5 times weekly
 - Speech and Language Therapy: 20 minutes/3 times monthly (conducted by a Speech and Language Pathologist (SLP))

The Student received 1,815 minutes per week of building instructional time, with 1,770 minutes served in the special education setting. The percent of time in a general education setting was 2.48%. The Student's LRE was 0–39%.

The Student's IEP also provided supplementary aids and services in a special education setting from April 14, 2022–April 10, 2023, in the following areas:

- 1:1 Paraeducator: 402 minutes/5 times weekly
- 1:1 Nurse Support: 402 minutes/5 times weekly
- Physical Therapy: 30 minutes/1 times weekly (provided by a physical therapist (PT))
- Occupational Therapy: 20 minutes/1 times weekly (provided by an occupational therapist (OT))

2022–23 School Year

3. On January 10, 2023, the Parent emailed the District that the Student no longer needed to use his gait belt at school because of his improved medical condition.¹
4. On January 17, 2023, the District's health services specialist (health specialist) sent an internal email to the PT, teacher 1, and the nurse, "Attached is the discontinue gait belt document from [Student's] neurologist. I hope you can assess [Student] to determine if this is best practice in the school setting."
5. On January 20, 2023, the Parent emailed teacher 1 as follows:

...There have been several conversations lately indicating a lot of confusion about what [the Student] can and cannot participate in. Recent conversations have implied that he sits alone, facing a blank wall for lunch, and aside from walks and bike rides, he sits in a 4x4 space, again alone, and watches his tablet. The entire point of [Student] remaining in the Transition program was socialization and community access. Neither of those goals are being met, if I am understanding correctly what a school day looks like for [the Student].
6. On February 25, 2023, the Student's nurse emailed the health specialist as follows:

I wanted to ask both of your advice about a situation with [Student]. His mom has been bringing up and pushing for discontinuing the gait belt he uses. She no longer wants [Student] to use it at school. [1:1 Paraeducator] ... and I have explained to her that we would like to continue to have it sent to school for safety purposes and redirecting [Student]. He will randomly start running in the hallways, classes, etc. We do talk to him and tell him not to run, but he will still randomly do it throughout the day. Using the belt helps us grab him and slow him to a stop. [Student] will also at times walk or pull away in any which direction when we are walking in the hallway or classrooms and we use the belt to help redirect him. We also hold on the gait belt when we are on the stairs to keep [Student] safe because often he will not pay attention and come close to stepping off too soon, he doesn't always get his foot fully on the steps. Another concern is when we go on outings [Student] will pull into the street the whole time when we are waiting at cross walks. And we have to hold his gait belt to prevent him from walking into oncoming traffic. Sometimes he really tries to fight us and we have to use full strength to keep [Student] from going into the street. It is also nice to have the gait belt on days where he is aggressive so we can still guide him while keeping a distance from his arms. We have discussed with OT [PT] (sic) and he agrees

¹ According to the Parent, the gait belt's purpose is to slow down the Student's velocity when a seizure causes the Student to fall. The Student has broken his jaw three times in the past because of seizure falls. By January 2023, the Student had not suffered a seizure for about eight months (April 4, 2022). The doctor didn't want the Student to become dependent on the gait belt because the belt reduces trunk strength and impacts walking.

with us. He tried pushing for it to stay, but he said that since [Student] has been noted as medically stable that he can no longer fight for the gait belt as it is for a behavioral problem now rather than as 'medical'. I was wondering both your thoughts and advise on this situation. As [1:1 paraeducator] and I are pretty distraught that we will now have to use [Student's] arms and clothing for redirecting. When he starts running off we will have to chase him down and grab his clothes, which I do not want to accidentally injure him. It feels frustrating that his mom is not considering our needs while working with [Student] at school all day. If the gait belt is taken away [1:1 paraeducator] and I will also not be going off campus with him anymore because it is too dangerous. We don't keep the belt on him all day. We give him breaks from it throughout the day while he's in his space, eating his lunch, and also while just walking around our classroom.

7. On February 27, 2023, the parties had a meeting and on February 28, 2023, teacher 1 wrote the following email, documenting the meeting.

The team met to discuss safety concerns around [Student] not having a gate bult (sic) at school. The team agrees that we are wanting to prioritize [Student's] least restrictive environment, (ie. gate belt), along with safety, it is under this umbrella that we are meeting.

[Student] is no longer having drop seizures and should no longer need the gate belt at the school building. Concerns were raised about safety while in the community as well as in gym and when he is showing signs of 'high energy.' It is agreed that while [Student] is in the community, he will wear the gate belt for safety. In addition, while at the school buildings, [Student] will wear the posey gate belt in gym and when his team has observed him in a 'high energy' state to aide in redirecting from danger. The team will be working with [Student] to reduce the need for gate belt while going downstairs.

8. On February 28, 2023, the Parent sent the District the following email, reiterating that she did not want the Student to wear the gait belt unless it was being used to prevent the Student from incurring an injury that may occur when the Student falls because of a seizure, or on the bus. The Parent also stated:

I would like to see the goals for stairs included in the IEP.

I would still like to hear some suggestions for how these same concerns are addressed with other students who do not have a gait belt. It is currently being used as a restraint, it is not the purpose for which the belt is intended, and it is my intention to move away from it entirely when it is safe to do so. If we need to put other plans in place to make that happen, let's discuss that and make those steps part of the IEP.

9. Also, on February 28, 2023, the Parent sent the executive director of special services (executive director) the following email regarding some of the issues and concerns the Parent had:

Current issues include:

...

It took six months of [Student] losing weight (for a variety of reasons) for me to find out they had him sitting, alone, staring at a blank wall during lunch and were not assisting him with eating because he 'said no'.

...

I got called into an 'emergency' meeting yesterday because he was medically cleared to no longer use a gait belt two months ago. I was told he was being weaned off. On Friday, he was cleared by both the teacher and the physical therapist that it was no longer needed.

His team, however, insists that he does so they can keep him safe as he runs off. He has 2:1 staffing, so I'm not sure how this is happening. I honestly don't know if this is an issue with the staff, or they are not getting appropriate supports, but using the gait belt this way is a restraint system. I agreed to the occasional use, such as on outings and in his PE class because everyone (5 people at the meeting) seemed to think PE was a problem. But shouldn't there be other options presented besides restraint?

...

It has been mentioned to me multiple times that he doesn't want to interact so they keep him in his designated space and let him watch his tablet.

This again sounds like restraint.

I was also told that they take him to class but have not been able to get him to sit in a chair for the last 18 months, so they walk into class and right back out. No one told me this was even an issue, so here I am thinking he's actually doing something at school.

There is no behavior plan for any of these issues, and when I asked yesterday what were options, it was requested that I tell them what I do at home to solve these problems. Last year he was ill and we saw multiple behaviors at home. However this year he is well and we have only minor issues now. I have typed up schedules, written notes, taped instructions to the inside of his lunch box, sent a whole [Student] instruction kit. What I did hear was that his team complained to the teacher about how difficult my son is, but asked the teacher not to tell me. Apparently, they didn't want to change what they are doing and improve everyone's experience. But the teacher did tell me and now it's all meetings all the time and everyone is upset.

10. On March 2, 2023, the Student's IEP team met and developed the Student's annual IEP. the Student's annual IEP provided SDI, delivered by a 1:1 agency aide, paid by the District, in a special education setting from March 13, 2023–March 1, 2024, in the following areas:

- Behavior: 45 minutes/5 times weekly
- Social Skills: 45 minutes/5 times weekly
- Adaptive Skills: 45 minutes/5 times weekly
- Functional Academics-Writing: 30 minutes/5 times weekly
- Functional Academics-Math: 45 minutes/5 times weekly
- Functional Academics-Reading: 30 minutes/5 times weekly
- Speech and Language Therapy: 60 minutes/1 times monthly (provided by an SLP)

The Student received 1,815 minutes per week of building instructional time, with 1,215 minutes served in the special education setting. The percent of time in a general education setting was 33.06%. The Student's LRE was 0–39%.

The Student's IEP provided supplementary aids and services in a special education setting from March 13, 2023–March 1, 2024, in the following areas:

- 1:1 Agency Aide (behavior technician): 1,215 minutes/1 times weekly
- 1:1 Nurse Support: 1,215 minutes/1 times weekly
- Physical Therapy: 30 minutes/1 times monthly (provided by a PT)
- Occupational Therapy: 20 minutes/1 times monthly (provided by an OT)
- 1:1 Agency Aide (behavior technician): 30 minutes/5 times weekly
- 1:1 Nurse Support: 30 minutes/5 times weekly
- 1:1 Agency Aide (behavior technician): 900 minutes/1 times weekly

- 1:1 Nurse Support: 900 minutes/1 times weekly
- 1:1 BCBA: 2 hours/1 times weekly

Due to health and safety issues, the Student had a 1:1 nurse and 1:1 behavior tech (with BCBA oversight) at school, during lunch, and on the bus, paid for by the District.

11. A PWN, dated March 2, 2023, stated:

The annual IEP meeting was moved up per parent request to address their concerns...and to determine if [school] is the most appropriate for [Student] to receive his services.

...

*The IEP team determined that [the Student] would be better served by a 1:1 Behavior Tech (with BCBA oversight) than a Para-educator. The 1:1 nurse support will remain on this IEP. This IEP has been amended to reflect the support of a 1:1 Nurse and a 1:1 Behavior Tech (with BCBA oversight).

...

* The allotted time for the IEP meeting was reached. A second meeting will be held to continue conversation...(To remain in compliance, this IEP will be locked, and the IEP will be amended as needed after the next meeting).

12. On March 7, 2023, the Parent sent the following email to the District:

At home we now only have minor behaviors. I am hearing that at school he is virtually out of control, aggressive, won't sit down, and attempts to elope. What I don't hear is that there is any kind of behavior plan in place to help [the Student] improve. It is now March, and there is still no plan.

Instead, on Monday there was a meeting about discontinuing [Student]'s gait belt, which was medically cleared by his doctor two months ago. It was stated that his TEAM needs the gait belt, not [Student]. They wanted the belt in order to turn him, when he wanted to go in a contrary direction, and they wished to use it to pull him along when he walked too slowly for their preference. This is restraint, and it is illegal. I felt very unsupported in the meeting. Everyone else was school staff and surely understood that this was an inappropriate use of a gait belt. And when I asked what behavior modifications are used for other students with similar issues, no suggestions were offered. I agreed to allow the staff limited use of the gait belt, not because I think [Student] needs it, but because I left that meeting feeling like [Student] was not safe with his staff.

...

Instead, some things said to me by his team have been:

[Student] was too grumpy to do anything today, so he sat in his space and watched Caillou.

He doesn't want to interact with us, so we just let him sit in his space...

13. On March 17, 2023, the Student's IEP team met and amended the Student's IEP. The Student's amended IEP provided SDI, delivered by a 1:1 agency aide, paid by the District, in a special education setting from March 24, 2023–March 1, 2024, in the following areas:

- Behavior: 30 minutes/5 times weekly
- Social Skills: 30 minutes/5 times weekly
- Adaptive Skills: 30 minutes/5 times weekly

The Student's amended IEP also provided SDI, delivered by a special education teacher in a special education setting, from March 24, 2023–March 1, 2024, in the following areas:

- Functional Academics-Writing: 15 minutes/5 times weekly
- Functional Academics-Math: 30 minutes/5 times weekly
- Functional Academics-Reading: 15 minutes/5 times weekly

The Student's amended IEP provided SDI, delivered by a 1:1 agency aide, paid by the District in a general education setting from March 24, 2023–March 1, 2024, in the following areas:

- Adaptive Skills: 25 minutes/3 times weekly
- Behavior: 25 minutes/3 times weekly
- Social Skills: 25 minutes/3 times weekly
- Functional Academics-Writing: 25 minutes/3 times weekly
- Functional Academics-Math: 25 minutes/3 times weekly
- Functional Academics-Reading: 25 minutes/3 times weekly
- Speech and Language Therapy: 60 minutes/1 times monthly (provided by an SLP)

The Student received 1,815 minutes per week of building instructional time, with 765 minutes served in the special education setting. The percent of time in a general education setting was 57.85%. The Student's LRE was 40–79%.

The Student's IEP also provided supplementary aids and services in a special education setting, paid by the District, from March 24, 2023–March 1, 2024, in the following areas:

- 1:1 Agency Aide (behavior technician): 765 minutes/1 times weekly
- 1:1 Nurse Support: 765 minutes/1 times weekly
- Physical Therapy: 30 minutes/1 times monthly (provided by a physical therapist (PT))
- Occupational Therapy: 40 minutes/1 times monthly (provided by an occupational therapist (OT))
- 1:1 Agency Aide (behavior technician): 30 minutes/5 times weekly
- 1:1 Nurse Support: 30 minutes/5 times weekly
- 1:1 Agency Aide (behavior technician): 1350 minutes/1 times weekly
- 1:1 Nurse Support: 1350 minutes/1 times weekly
- 1:1 BCBA: 2 hours/1 times weekly

The IEP stated that, "Due to health and safety issues, [Student] has a 1:1 Nurse and 1:1 Behavior Teach (with BCBA oversight) at school, during lunch, and on the bus, paid by the [the District]."

14. In late March 2023, the Student's 1:1 nurse quit.

15. The Student's attendance records² show the Student was absent for approximately 20 days from late March through early May 2023. The designation for those absences was "P" (Principal/Admin Approved) and corresponded with the time the nurse quit and before a new nurse could be hired. There was also at least three other days during the 2022–23 school year in which there was an absence that was also "P".

² Attendance records show that the Student was absent about 90 times for the first and second periods. The Parent informed OSPI that "since [Student's] seizures happened predominantly in the AM, he had a late start at school. He arrived at 9 AM, which I believe is 3rd period."

The Student's attendance records also show that the Student had three unexcused absences during fourth period between January 30 and February 14, 2023, when he was not marked absent during the third period.

16. On March 28, 2023, the Parent emailed the District, asking for the return of the Student's medical log. The District's director of special services (director) responded that the District would work to find the log.

17. On March 30, 2023, the Parent emailed the District, asking for a "copy of all nursing notes of any kind, and any notes written by [1:1 nurse] regarding [the Student]."

Teacher 1 emailed the Parent that he would provide what he had and would ask the 1:1 nurse if there are other notes.

The health services manager (health manager) emailed the Parent that the nurse who quit was not sure where the log was located.

18. On April 27, 2023, the Student had his first seizure in over one year.

19. In early May 2023, the Student returned to school fulltime. For two of those days each week, the Student attended the District's transition academy.

20. On May 19, 2023, the Parent emailed the health specialist, asking for a copy of notes she may have.

21. On May 20, 2023, the health specialist emailed the Parent the notes she possessed from the nurse. The email's attachment was entitled, "BW 1.1 RN notes 9-6-22 thru 2-22-23 (1).pdf."

22. The Parent filed this complaint on June 13, 2023, alleging, in part, that the District:

- Failed and/or refused to work on IEP goals.
- Isolated and/or refused to take the Student to class and/or lunch.
- Used a gait belt as a restraint despite parental instructions not to.
- Stole and/or lost the Student's medical records.

23. On July 10, 2023, OSPI received the District's response to the Parent's complaint allegations. Regarding the first issue related to IEP implementation, the District responded, in part:

The District provided Student with the SDI set forth in his IEP, which was designed to enable him to make progress on his IEP goals...And, Student consistently made progress on his IEP goals during the 2022-2023 school year...The District also implemented the speech and language therapy, occupational therapy, and physical therapy in Student's IEP.

...The District acknowledges that there were times that Student refused to participate in certain activities or was unable to participate safely. However, the District did not refuse to take him to class. And although Student did refuse to eat lunch at times, he always received support during lunch.

The District acknowledges that there were certain dates that Student did not attend school due to staffing shortages or staff absences. The District has agreed to provide compensatory services to address the services that Student missed. The District will work with Parent to ensure that the compensatory services are made available to Student.

Regarding the second issue related to isolation and restraint, the District responded, in part:

During the 2022-2023 school year, as described in his IEP, Student had a designated portion of the classroom that had padded walls and a foam floor to help protect him from injury in the event that he experienced a drop seizure...The space was intended to help ensure Student's safety due to his medical needs. The designated space had a chair and desk with a padded surface...It also contained a trampoline and music...Student enjoyed having a quiet and peaceful space to return to after interacting with peers...The District denies that Student was restricted alone in the designated space and prohibited from leaving. The District further denies that use of the designated space constituted "isolation" under WAC 392-172A-02110. The District likewise denies that it was required to follow reporting, documentation, and other requirements in WAC 392-172A-02110 when Student accessed his designated space in the classroom.

...

At the beginning of the 2022-2023 school year, Student was required for medical and safety reasons to wear a gait belt at all times at school...On January 17, 2023, Parent provided a letter from Student's neurologist, which stated that it was no longer necessary for Student to use a gait belt 'at all times.'...In response, the District discontinued having Student wear the gait belt 'at all times.' The District did use the gait belt when needed to ensure Student's safety. The gait belt was also used to assist Student with going down stairs.

On February 28, 2023, Student's IEP team, including Parent, met to discuss safety concerns related to Student not wearing the gait belt at school...The team agreed that when Student went into the community, he would wear the gait belt to ensure his safety...The team also agreed that Student would wear the gait belt in gym and when he was 'high energy' to aide with redirecting him from danger...The team agreed that they would work with Student to reduce the need for the gait belt going down stairs.

Following the meeting, Parent informed the team that she did not want Student to wear the gait belt unless it was actually in use, and she did not want him wearing it on the bus. ...She claimed that the gait belt was being used as a restraint...Student's IEP team discussed Parent's concerns during his March 17, 2023 IEP team meeting. Based on input from the team members, the IEP team agreed to discontinue use of the gait belt.

The District denies that use of the gait belt constituted 'restraint' under WAC 392-172A-02110. The District also denies that it was required to follow reporting, documentation, and other requirements in WAC 392-172A-02110 when the gait belt was used to help ensure Student's safety. The belt is a medical device that permitted Student to safely participate in activities. And although Student's neurologist stated that Student did not need to wear the gait belt 'at all times,' he did not state that Student should never wear it, or that it was never necessary to ensure his safety. Nonetheless, given Parent's concerns, the District did agree to discontinue use of the gait belt.

Overall, the District denies that it violated the restraint and isolation procedures in WAC 392-172A-02110 during the 2022-2023 school year.

Regarding the third issue, with respect to the medical log, the District responded, in part:

On March 28, 2023, Parent contacted the District regarding her concern that a communication notebook related to Student's medical needs was missing...Parent believed that...Student's former 1:1 nurse, had taken the notebook with her when she left the District...In response to Parent's concern, the District contacted [nurse] about the communication notebook. [The nurse] explained that she did not have the notebook and was unsure where it was located.

On May 19, 2023, Parent contacted [the health specialist] about Student's nursing notebook, which traveled between home and school....Parent explained that Student's 1:1 nurse had shown Parent the documentation she was keeping at that time....Parent requested copies of notes from ... Student's 1:1 nurse...The following day, [the health specialist] sent Parent a copy of the nursing notebook or notes from [the nurse].

Therefore, during the 2022-2023 school year, the District provided Parent with access to the medical log used to communicate about Student's needs. The District is not aware of any additional records that Parent is currently seeking. However, to the extent there are additional records that Parent is requesting, the District is happy to work with Parent to ensure she receives access to those records.

24. On July 20, 2023, the OSPI investigator interviewed the Parent by telephone for 60 minutes. The Parent provided the following information and expressed the following concerns:

Lunch

- Student had an operation during the 2021–22 school year. The operation damaged the Student's vocal cords and impacted his eating ability and resulted in weight loss. The Student was on a liquid diet for a long time. The Parent provided the staff instruction on how to perform the Student's eating.
- The Student gained 11 pounds during the summer of 2022.
- In fall 2022, the Student had significant weight loss again. The Parent went back in and provided instructions on how to feed the child, and sent it to multiple people at the District.
- During a January 10, 2023 conversation, teacher 1 admitted that the staff was not getting the Student to eat.
- In February 2023, the Parent met with teacher 1 and the principal. The Parent asked about eating and teacher 1 said that the paraeducators were not successful and that they weren't taking the Student to the cafeteria and the Student eats lunch in the classroom.
- On July 22, 2023, OSPI sent the Parent a follow up question regarding lunch and the Parent responded, "[Teacher 1] never said the words 'against his will'. I believe it was mentioned that [Student] was not given the option to go to the cafeteria. I confirmed that [Student] was served lunch, alone, in the classroom facing a blank wall. [Teacher 1] agreed that was the case."
- Within the first two weeks of the Student starting at the Transition Academy, the Student gained four pounds and his teacher at the Transition Academy did not understand why there had been previous concerns about the Student's eating.

Student Absences

- The Parent received many absence notices that the Student was not attending physical education.
- On January 10, 2023, the Parent was informed by teacher 1 that since the beginning of the school year, the staff had not been able to get the Student to sit down for more than few seconds at a time in class.

- According to teacher 1, the Student was spending a lot of time in his designated space (8 feet by 8 feet) with padded walls and built inside the classroom. This was a safe spot for when the Student experienced seizures.
- When the Parent picked up the Student for appointments, the Parent noticed two chairs in front of the space's entry point.
- In February 2023, the Parent met with teacher 1 and the principal. The Parent asked about class again, and teacher 1 responded that the Student and his support staff would walk into class, check in, and leave the classroom.

Staffing Shortages & Concerns

- The Student's 1:1 nurse missed a lot of work because of illness during the 2022–23 school year. Anytime the nurse missed a day of work, the Parent was asked to keep the Student home from school.
- On or about March 20, 2023, the nurse quit without notice. Beginning in late March and through April 2023, the Student missed school because the District did not have a 1:1 nurse for the Student.
- In or about March 2023, the Parent was informed by teacher 1 in a conversation that the Student's 1:1 paraeducator was refusing to work on the Student's IEP goals.
- According to the Parent, the Student's skills regressed.

Gait Belt

- The Student lived very close to school, and the Parent walked the Student to school in the morning and the Student took the bus home in the afternoon.
- The Parent stopped using the gait belt during the morning walks, beginning in mid-January 2023.
- When the Parent arrived at school in the morning, the Student's 1:1 nurse would always ask for gait belt. After the Parent asked the staff to stop using the gait belt, the Student would still get off the bus with the gait belt on. After the Parent expressed again that she did not want the gait belt used, the Student stopped coming home with the gait belt on.
- On February 27, 2023, the PT sent an email to the Parent that the belt was no longer needed. The Parent asked if she could drop the Student off without the belt. 30 minutes later, the Parent received an email from teacher 1, requesting a meeting the same day. In that meeting, the nurse said, "We need the belt in case Student runs off. We need the belt in case he walks too slow. We need the belt in case in turns in a direction we don't want him to go."
- The PT re-stated that the Student did not need the belt and that he would work with the Student on walking on stairs.
- On March 2, 2023, the PT said that he worked with the Student regarding the stairs and that the Student was good.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged that the District failed and/or refused to work on IEP goals. The District responded, "The District provided Student with the SDI set forth in his IEP...The District acknowledges that there were certain dates that Student did not attend school due to staffing shortages or staff absences. The District has agreed to provide compensatory services to address the services that Student missed."

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.

The Student's attendance record shows that the Student missed over 20 days of school because of staff shortages. The Parent has also alleged that there were many days in which District staff checked the Student into a class and left immediately without participating in the class. OSPI attempted to interview District staff regarding this allegation, but the staff was not available because they were on summer break. Despite this, the Parent's testimony on other matters has been credible, and is considered credible as to this allegation. Further, as noted above, the District acknowledged there were days the Student did not receive services because of staff shortages. Based on these facts, the District materially failed to implement the Student's IEP, and thus, a violation is established for the first issue, and the Student will be awarded compensatory education.

Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed.

In the present case, there is no way to tell how many SDI minutes were missed on the days in which the Student checked into class and immediately left. Despite this, OSPI will grant the Student 25 days of compensatory education based on the Student's March 17, 2023 IEP. This compensatory education is equal to over 6,000 minutes (100 hours) of SDI and should be sufficient to put the Student in the same position he would have been, but for the District's violations of the IDEA.

Issue Two: Restraint – The Parent alleged the District used the Student's gait belt as a restraint.

Restraint 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. Restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm.

On January 10, 2023, the Parent emailed the District that the Student no longer needed to use his gait belt at school because of his improved medical condition. The doctor didn't want the Student to become dependent on the belt. The Parent had stopped using the gait belt during the morning walks to school, beginning in about mid-January 2023. After the Parent asked District staff to stop using the gait belt, the Student would still get off the bus with the gait belt on.

On January 17, 2023, the District's health specialist sent an internal email to teacher 1, the nurse, and PT that stated, "Attached is the discontinue gait belt document from [Student's] neurologist. I hope you can assess [the Student] to determine if this is best practice in the school setting." Five weeks later, on February 25, 2023, the Student's 1:1 nurse sent an email to the health specialist that she would like to continue using the gait belt. On February 28, 2023, the Parent once again

emailed the District that she did not want the gait belt used, unless it is in actual use. On that day, teacher 1 called a meeting of the parties regarding the use of the gait belt. According to the Parent, at this meeting, the Student's nurse said, "We need the belt in case Student runs off. We need the belt in case he walks too slow. We need the belt in case in turns in a direction we don't want him to go." Further description from staff emails indicated that some staff used the gait belt to restraint the Student's freedom of movement—thus restraining him—for example, staff stated that, "Using the belt helps us grab him and slow him to a stop. [Student] will also at times walk or pull away in any which direction when we are walking in the hallway or classrooms and we use the belt to help redirect him."

While at times a gait belt, if properly used, is not a restraint but rather an "ambulatory or therapeutic devices when used for the purpose intended for the safety of a student." Based on the facts just above, it appears that after mid-January 2023, the District continued using the gait belt on the Student as a restraint and against the Parent's request and doctor's orders when there was not an imminent risk of serious harm involving the Student, staff, or peers. This is a violation of the applicable regulations, and thus, OSPI finds a violation regarding the present case's second issue. OSPI will order training concerning the use of restraint and the reporting requirements when restraint does occur.

The Parent has also alleged that the Student was being kept in his designated space instead of going to the cafeteria during lunch, and thus, the District was isolating the Student. The Parent has additionally alleged that the Student was not being assisted in eating according to the instructions the Parent had provided and demonstrated to District staff and this resulted in the Student losing significant weight.³ The District denied that the use of the designated space constituted "isolation" under WAC 392-172A-02110. and denied that it was required to follow reporting, documentation, and other requirements in WAC 392-172A-02110, when the Student accessed his designated space in the classroom.

Isolation means restricting a student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan.

In the present case, despite the fact that the Student may not have been given the option of going to the cafeteria, which is very unfortunate, the facts do not establish that the Student was subjected to isolation. There have been no facts provided that District staff forced the Student into the designated space against the Student's will, nor that the Student was in the space alone and not allowed to leave. In the present case, it appears the situation is one in which the Student's staff led him to his designated space for lunch each day and stayed with him in the space while

³ In support of this allegation, the Parent stated that in the summer of 2022, the Student gained over ten pounds, but during the 2022–23 school year, the Student lost significant weight until he began attending the Transition Academy in May 2023 when the Student began to gain weight again. Additionally, the Parent stated in her interview that the teacher at the Transition Academy did not understand why there was concern about the Student's eating because he was eating fine at the academy.

he ate. As unfortunate as it is that the Student did not interact with peers during lunch, based on the definition of isolation per WAC 392-172A-01107, isolation did not occur in the present case and OSPI does not find an isolation violation in the present case.

Issue Three: Student Records – Regarding the present case’s third issue, the Parent alleged the District stole and/or lost the Student’s medical records.

Each participating agency shall permit parents of students eligible for special education services to inspect and review, during school business hours, any educational records relating to the student which are collected, maintained, or used by the district or other public agency under this chapter. The school district shall comply with a request promptly and the district shall respond, in no case, more than 45 calendar days after the request has been made.

The District’s position is that it provided the Parent with access to the medical log and that it was not aware of further records the Parent was requesting.

In the present case, during the 2022–23 school year, parties used a medical log to communicate about the Student’s daily needs. On March 28, 2023, the Parent emailed the District, asking for the return of the Student’s medical log, and on the same day, the District’s director responded that the District would work to find the log. On March 30, 2023, the Parent emailed the District and asked for a “copy of all nursing notes of any kind, and any notes written by [the nurse] regarding [the Student].” On the same day, teacher 1 emailed the Parent that he would provide what he has and ask [the nurse] if there were other notes, and the District’s health services manager emailed the Parent that the nurse who quit was not sure where the log was located.

On May 19, 2023, the Parent emailed the District’s health specialist and asked for a copy of notes she may have. On May 20, 2023, the health specialist sent the Parent the notes she possessed from the nurse. The attachment was entitled, “BW 1.1 RN notes 9-6-22 thru 2-22-23 (1).pdf”, and it contains daily entries from September 6, 2022 thru February 22, 2023. The District claims that it does not have any additional notes from the nurse.

Based on the present case’s facts, the Parent made several requests for the Student’s medical log, and in each case, the District responded immediately that they would try to locate the log. Additionally, the Parent was provided the nurse’s notes from six months of the school year. These notes ended about one month before the nurse quit. Finally, the District has informed the Parent that these are all the notes from the log that they currently possess. Based on the present case’s facts, the District has tried to comply with the Parent’s request and has provided the Parent with all the relevant information from the medical log it possesses. Thus, OSPI does not find a violation for the third issue.

CORRECTIVE ACTIONS

By or before **September 15, 2023, September 29, 2023, October 16, 2023, December 15, 2023, and June 17, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **October 2, 2023**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- Behavior: 1,125 minutes
- Social Skills: 1,125 minutes
- Adaptive Skills: 1,125 minutes
- Functional Academics-Writing: 750 minutes
- Functional Academics-Math: 1,125 minutes
- Functional Academics-Reading: 750 minutes
- Speech and Language Therapy: 75 minutes/1 times monthly (conducted by an SLP)
- Physical Therapy: 40 minutes (conducted by a PT)
- Occupational Therapy: 50 minutes (conducted by an OT)

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services must be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. By or before **October 16, 2023**, the District will provide OSPI with documentation of the schedule for services.

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 or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled.

By or before **December 15, 2023**, the District must provide OSPI with documentation that provides an update of the compensatory education provided to the Student up to December 1, 2023. By or before **June 3, 2024**, the compensatory education must be completed. By or before **June 17, 2024**, the District will provide documentation to OSPI that it has completed the compensatory education.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **June 17, 2024**.

DISTRICT SPECIFIC:

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or Lee Collyer, OSPI's director of school health and student safety, or other pre-approved trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-89. The training will be provided to all special education staff. The training will include the following topics:

- Training on WAC 392-172A-02110

- Training on WAC 392-172A-02076

By or before **September 15, 2023**, the District will notify OSPI of the name of the trainers and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By or before **September 29, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by October 13, 2023.

By or before **November 30, 2023**, the District will conduct the trainings regarding the topics raised in this complaint decision.

By or before **December 15, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 10th day of August, 2023

Dr. Tania May
Assistant Superintendent of 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.)