

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-123

PROCEDURAL HISTORY

On September 12, 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 North Kitsap 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 September 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on September 15, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 2, 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 October 14, 2023, OSPI received Parent's reply to the District's response and forwarded it to the District on the same day.

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

ISSUE

1. Whether the District followed restraint and/or isolation reporting and follow up procedures referenced in WAC 392-172A-02110(4) after September 13, 2022, following an incident that occurred on September 12, 2022?

LEGAL STANDARDS

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

The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation

used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

FINDINGS OF FACT

1. On August 31, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a third grader at a District elementary school. The Student's January 25, 2022 IEP was in effect.
2. On September 13, 2022, the one-year complaint investigation period began (based on the Parent's complaint, which was received by OSPI on September 12, 2023).
3. On September 13, 2022, a District "Isolation/Restraint Report" drafted by the Student's teacher provided, in part:

[Student] was in the music room behind the big curtain and was going back and forth behind the piano and when the adult was sitting on the risers, [Student] was crawling on the adult, and then running up and down the risers. Due to her joint issue, and she was being unsafe, she was moved to the quiet room. She continued to escalate and the principal came down to chat with her. She later fell asleep.
4. On September 16, 2022, the Student's IEP team held a meeting. Both the Student's Parents, the principal, and teacher were present. A prior written notice (PWN), dated September 16, 2022, stated in part, "[Student] has eloped twice in the last week and needed to be isolated to remain safe. A FBA and BIP needs to be completed. Consent was sent home on 9/15/2022."
5. On September 12, 2023, the Parent filed a complaint with OSPI that stated, in part:

On 09/12/2022 my daughter, [the Student], was placed into a padded room. [The Student] spoke about it at dinner that evening. I inquired at the school the next day about the incident. The school did not attempt to contact myself or [Student's] mother before taking this disciplinary action. No incident report was provided.

...

[T]his incident was not disclosed to me by [T]he school. They confirmed it happened verbally.
6. On October 2, 2023, the District submitted its response that stated, in part:

The evidence and summary demonstrates that the District did follow reporting and follow up procedures but did not provide a written copy of the report within five days to both parents.

In an effort to eliminate confusion regarding the reporting and follow up procedures, the District updated the Report of Isolation and Restraint form to provide greater clarity.

To ensure all staff were aware of the updates to the report form, information was provided to all special education staff district wide in the September Newsletter... The District has also implemented a training series for all building administrators. This training has been provided to 7/10 buildings to date...

The District has also registered an elementary and secondary principal, a variety of certificated staff at various grade levels, both district Board Certified Behavior Analyst's (BCBA), and special education administrators to attend the October 19, 2023 training at the Olympic Educational Service District on Student Discipline Laws and Student Isolation and Restraint Laws with the plan to bring information back and share with colleagues and staff district wide.

7. On October 14, 2023, the Parent submitted a reply that in part, reiterated what was alleged in the complaint that the District had not properly informed him of the Student's isolation incident.

CONCLUSIONS

Issue 1: Isolation Reporting Requirements – In the present case, the Parent alleged that the Student was isolated, and no incident report was provided to the Parent.

The Parent alleged the isolation occurred on September 12, 2022, but the District's incident report provides that the isolation occurred on September 13, 2023. For the purposes of deciding the issue upon which this case was opened, it is not necessary to establish which day the incident occurred.

The applicable regulations require the following steps after a student is restrained or isolated.

Staff Responsibilities – A district employee who restrains or isolates a student must:

1. Inform the building administrator as soon as possible.
2. Submit a written report of the incident to the district office within two business days.

According to the incident report, the teacher isolated the Student on September 13, 2022. On the same day, the teacher informed the principal, and the teacher submitted a written report of the incident. These two actions satisfy the teacher's responsibilities following the incident.

Reporting Requirements – The written report must include:

1. The date and time of the incident.
2. The name and job title of the individual who administered the restraint or isolation.
3. A description of the activity that led to the restraint or isolation.
4. The type of restraint or isolation used on the student including the duration.
5. Whether the student or staff was physically injured during the restraint or isolation and any medical care provided.

6. Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

The submitted report satisfies four of the six report requirements listed in the regulations. Although the District's report provided a section that asks whether staff or the student was injured, that section was not filled out. Additionally, the report did not provide a section that asked for recommendations for avoiding similar incidents. OSPI notes that this is a key element of the report as it can help facilitate discussions related to avoiding similar incidents and reducing the overall use of isolation. Based on these facts, OSPI finds a violation.

Principal's Responsibilities – The principal must make a reasonable effort to:

1. Verbally inform the student's parent within twenty-four hours of the incident.
2. Send the parent written notice within five business days of the incident.

After the incident, the submitted report provides that the principal contacted the Parents on the same day (September 13, 2023). The father alleged that the first time he learned of the incident was when the Student mentioned it to him on September 12, 2022, and that the school confirmed the incident to him verbally on September 13, 2022, after he mentioned the incident to the school. Whether the present incident occurred on September 12 or 13, 2022, these facts satisfy a principal's first reporting responsibility when an isolation incident occurs.

In its response, the District acknowledged that neither the Parent received a written report within five business days. OSPI finds this is a violation.

Post-Incident Meetings – Following a student's release from restraint or isolation, the school must review the incident with:

1. The student and the parent to address the behavior that precipitated the restraint or isolation and the appropriateness of the response.
2. The staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

On September 16, 2022, three days after the incident, there was a meeting that involved the Parents, principal, and teacher, but not the Student. While the Student was only eight years old at this time, the regulations state that the District must review the incident with the student, although OSPI acknowledges that this review may look different depending on the age, disability, and particular needs of a student. The District has not provided any information that establishes that such a review occurred. Thus, OSPI finds that the District's failure to review the incident with the Student is a violation.

Based on the record, OSPI finds a violation has been established as to the present case's issue. The District acknowledged the violation, and has taken or suggested the following corrective actions:

- "Update[d] Report of Isolation and Restraint form to provide greater clarity."¹
- "[I]mplemented a training series for all building administrators. This training has been provided to 7/10 buildings to date..."
- "[R]egistered an elementary and secondary principal, a variety of certificated staff at various grade levels, both district Board Certified Behavior Analyst's (BCBA), and special education administrators to attend the October 19, 2023 training at the Olympic Educational Service District on Student Discipline Laws and Student Isolation and Restraint Laws."

OSPI accepts the District's suggestions and will require one additional corrective action regarding incident reports.

CORRECTIVE ACTIONS

By or before **November 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By or before **November 15, 2023**, the District will:

- Update and submit a new isolation/restraint reporting form to OSPI that provides a section that will allow for recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. OSPI will review the form and approve it or provide suggestions.
- By or before **November 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 23rd day of October, 2023

Dr. Tania May
 Assistant Superintendent of Special Education
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¹ The new report form does not provide a section that will allow for recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

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.)