

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-159

PROCEDURAL HISTORY

The Special Education Division of the Office of Superintendent of Public Instruction (OSPI) received a special education community complaint from the parent (Parent) on November 8, 2023. The Parent alleged the Washington School for the Deaf (WSD) violated the Individuals with Disabilities Education Act (IDEA), in its education of the student (Student).¹

On November 8, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to WSD's superintendent on November 14, 2023. OSPI asked WSD to respond to the allegations made in the complaint.

On December 6, 2023, OSPI sent WSD a clarification letter. In said letter, OSPI clarified the time period for investigation to be the period the Student attended WSD.

On December 13, 2023, OSPI received WSD's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On December 18, 2023, OSPI requested that WSD provide additional information, and WSD provided the requested information on December 18, 19, and 20, 2023. OSPI forwarded the information to the Parent on December 20, 2023.

On December 26, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to WSD on December 27, 2023.

On December 26, 2023, OSPI's investigator conducted a joint phone interview of the Parent and the Student's State of Alabama social worker.²

On January 1, 2023, WSD provided OSPI with additional information. OSPI forwarded the additional information to the Parent on January 8, 2024.

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

ISSUES

1. Between August 2023 and October 2023, did WSD follow proper evaluation procedures during its "45-day diagnostic trial period", including considering Parent input?

¹ Based on documentation provided to OSPI on December 6, 2023, the Student attended WSD from approximately August 18 through October 17, 2023. As it relates to the foregoing time period, the Comprehensive Education Data and Research System (CEDARS) listed the "Washington Center for Deaf and Hard of Hearing Youth" as the Student's "Home District." Upon knowledge and belief, the Student was not enrolled in any other Washington state school district from August through October 2023.

² The Parent was the Student's Washington state foster parent. According to both the Parent and the State of Alabama, the State of Alabama has legal custody of the Student.

2. Between August 2023 and October 2023, did WSD follow proper procedures for ensuring the Parent's participation in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the Student during the Student's "evaluative placement" at the WSD?
3. Between August 2023 and October 2023, did WSD follow proper IEP development procedures in relation to the following:
 - a. Whether the Student required access to a "quiet space" when at the Cottage?
4. Between August 2023 and October 2023, did WSD follow proper notice procedures regarding restraints applied to Student?

LEGAL STANDARDS

Diagnostic Placement: The U.S. Education Department explained in Appendix A to the IDEA Part B regulations, Question 14 (1999), that an IEP must precede placement; however, "This requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process -- before the IEP is finalized -- to assist a public agency in determining the appropriate placement for the child. However, it is essential that the temporary placement not become the final placement before the IEP is finalized." Appendix A to the IDEA Part B regulations, Question 14 (1999).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student. WAC 392-172A-01162.

Follow-up and Reporting Requirements: Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. RCW 28A.600.485.

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. RCW 28A.600.485.

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. RCW 28A.600.485.

FINDINGS OF FACT

1. At the beginning of the Student's time with the Washington State School for the Deaf (WSD), the Student was eligible for special education services and was in the fifth grade.

2. The Parent participated in an “intake interview” with WSD staff on August 9, 2023. According to WSD:

In that interview, the principal reviewed the skills that are required for students to be successful in the residential program. The Parent received an Admissions Procedures brochure in the New Student Application Packet and the Safety Risk Factors are listed as well as the relevant WACs and RCWs.

According to the Parent and the State of Alabama social worker, during the August 9, 2023 meeting: the State of Alabama social worker offered to pay for a 1:1 paraeducator during the Student’s time in the Cottage (where the Student would live at WSD); WSD expressed interest in this offer; but there was no follow-up, in the sense that WSD and the State of Alabama did not exchange further communications in regard to the State of Alabama paying for a 1:1 paraeducator for the Student while the Student was in the Cottage.

3. According to WSD’s admission process document³, enrollment at WSD is a two-step process, including application for acceptance into a 45-day diagnostic placement and determination of acceptance for ongoing placement. The process included steps as part of the diagnostic placement, records that would be review, and noted, “Students who have just moved to Washington must register with their local school district. The district is responsible for establishing the student’s eligibility for special education and creating an initial Washington IEP. WSD cannot accept a new Washington student for diagnostic placement until this has been completed.”

4. According to WSD:

[WSD] would have [received the Student’s October 2021 reevaluation and June 2023 IEP] before the [Admissions Team] retreat on August 16th. Both were reviewed before the onboarding process by multiple members of Admissions Team: elementary principal, school psychologist, interim executive director, residential director, SLP and elementary counselor—this is what determined his placement in our special needs elementary class (STRIVE).

In subsequent information provided to OSPI, WSD clarified it received the October 2021 reevaluation and the June 2023 IEP on August 9, 2023.

5. The Student’s June 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Written Language: 20 minutes 1 time a day
- Mathematics: 60 minutes 1 time a day
- Communication: 115 minutes 1 time a day
- Adaptive Behavior: 60 minutes 1 time a day
- Reading: 70 minutes 1 time a day

Of the foregoing services, adaptive behavior was concurrent, but all other services were non-concurrent. The Student’s June 2023 IEP also provided the Student with the following related services:

³ See, [WSD Admission Process](#).

- Interpreter: 30 minutes 1 time a day (general education setting)
- Transportation: 60 minutes 1 time a day (special education setting)
- Communication: 30 minutes 6 times a month (special education setting)
- 1:1 Paraeducator: 360 minutes 1 time a day (special education setting)

The Student's June 2023 IEP provided the Student with the following supplementary aids and services:

- Audiology: 10 minutes 1 time a month (special education setting)
- Physical Therapy: 15 minutes 1 time a month (general education setting)

6. An August 9, 2023 intake form completed by the Parent read, in part:
He needs visual schedule and prompting from adults to follow. He is compliant...Takes meds for ADHD and has Institutional Autism. Autism stemming from being isolated in an orphanage with no language...He can't sleep without medication...[He has] sensorineural hearing loss...He uses story boarding along with signing for communication...He relies on vision rather than hearing as primary avenue for communication...Foster parent signs fluently. ASL in the home...[Student] knows about 50 signs...Student was kept locked up in a bedroom in previous foster placement. Suffered severe isolation in young life.⁴
7. WSD's school year began on August 28, 2023, but the Student began his instructional time at WSD on September 5, 2023.⁵

In its response, WSD acknowledged, "The school did not send Parent a prior written notice [to] accompany the diagnostic acceptance letter."

8. According to emails, in late August 2023, the Parent collaborated with WSD staff in relation to "visual schedules."
9. According to WSD:
Regarding the school district responsible for Student's IEP, WSD admitted Student for a 45-day diagnostic placement on August 17, 2023 (at an Admissions Retreat) with the understanding that he would be enrolled with Tacoma Public Schools. However, in an email dated August 29, 2023, the Parent indicated that Student was still enrolled in Federal Way Public Schools.

On October 13, 2023, WSD learned that Parent had not enrolled Student in Tacoma Public Schools. Based on current available information, Parent did not consult nor notify WSD of the decision to not enroll Student with Tacoma Public Schools. Nor was WSD aware that Student was not a student at Federal Way Public Schools.

⁴ The Parent explained the Student's communication deficits were directly related to the abuse the Student suffered earlier in life.

⁵ According to WSD, "On or about August 17, 2023, the elementary principal called the Parent, and informed Parent that Student was invited to participate in a 45-day diagnostic placement. At that point, Parent realized that he did not have permission from the State of Alabama for Student to attend WSD on a trial basis. By the time Parent and the State of Alabama worked through the approval process, WSD's academic year had already started. [A WSD administrator] suggested a start date of September 5, 2023 for Student. The later start date shifted the 45-day diagnostic evaluation for Student by one week."

10. In its response to this complaint, WSD provided the following description of its “academic and residential program” and “45-day diagnostic placement”:

The residential program involves students living in cottages with Student Life Counselors (SLCs) providing support and supervision. In the residential program, students leave campus on Friday afternoons to return to their families and then return to WSD on Sunday evening. Before a student is admitted to WSD’s academic and residential program, the student must participate in a 45-day diagnostic placement.

...

WSD’s 45-day diagnostic evaluation procedure is not the same as an IEP team meeting to develop an IEP. An IEP team generates individualized education programs with full participation of parents as team members. In general, the 45-day diagnostic evaluation procedure does not involve the same level of communication and collaboration with parents or guardians as an IEP team meeting, because the diagnostic evaluation does not involve developing a program or plan. Instead, the purpose of the diagnostic placement is to assess whether the student’s needs can be addressed at WSD while at the same time keeping the student and others around them safe. WSD personnel are responsible for providing this assessment through observation and data.

11. Regarding the Student’s schedule, WSD noted:

He was receiving SDI in all areas identified on the IEP [during the school day schedule]. We knew Student would need a 1:1 during the school day and those services were set up before he arrived. During the 45 day diagnostic evaluation period, WSD provides 1:1 aides in the classroom if they are on the student’s IEP.

[Regarding] the residential schedule...that time is still somewhat structured, but there is a lot more unstructured time there than in the school day.

...

In general, the IEP [for any particular student] applies to a WSD student in the academic setting, not the residential setting. In theory, there could be independent living skills goals on IEPs that could be monitored by the residential staff; however, since most students are coming in to WSD with IEPs from other schools that do not have residential services, typically the IEP is applied only to the school setting. WSD maintains that students must be able to live in the residential setting on an independent basis with the general supervision provided by our Student Life Counselors to access those services.

12. According to the Parent’s community complaint request:

- The Parent made “many attempts to offer support and ideas for Student’s success that have worked for [our family] at home and that may have allowed him more opportunities for growth in the Residential Program.”
- “I tried to let staff know Student would not have success in a ‘quiet space’ because he wants to be around people, and Student did not understand what the ‘quiet space’ was for.”
- “Student was exited from the WSD at the last minute, which caused Student to miss instruction for a week while plans were made to re-integrate him into Tacoma Public Schools.”
- “No evaluation report was generated or shared [with Parent, related to Student’s stay at WSD. There were] no attempts made by the IEP team to mitigate concerns [via an FBA] or behavior plan.”
- WSD did not give “24 hour notices [related] to restraints [applied to] Student.”
- “The State of Alabama was willing to provide a 1:1 for his stay [but WSD did not propose a] discussion [with the family regarding whether the Student required a 1:1].”

- WSD did not collect sufficient, relevant information on the Student's needs resulting from the Student's disability. And, furthermore, to the extent any such information was gathered, it was not shared with the Parent. In particular, the Parent stated he was never informed of Student having demonstrated "so-called aggressive behaviors."
- The Parent was not informed of an appropriate contact person with which to communicate regarding any concerns or input the Parent might have had regarding the Student's stay at WSD.

13. Regarding the "quiet space" at the Cottage, WSD's response read:

[The] 'quiet space' in the cottage [was] a room that was located off the family room that was previously used as a video phone room. The room was cleared out and pillows/bean bags were set up for Student to use at his choosing to be able to self-regulate/calm down. Student chose to never use the room and instead used the chairs in the living room or his bedroom. Student was not required to use the quiet space, nor was he ever forced to.

14. According to WSD, throughout the Student's "diagnostic placement," "data was gathered from [both] residential [and] academic staff with mid-dx [mid-diagnostic] review forms."

15. WSD's response included a communication log with entries between September 5 and October 8, 2023, and "Pupil Information Forms". In part, the communication log and forms noted various behaviors the Student demonstrated, as well as how many times—between the two foregoing dates—the Student demonstrated those behaviors:

- Humping – either people or objects, such as the floor or a bench: 4 incidences.
- Grabbing a different student's service dog: 2 incidences.
- Not respecting the personal space of another person: 4 incidences.
- Pulling pants down prior to being in the restroom: 2 incidences.
- Elopement: 1 incident.
- Aggressive behavior, such as destruction of classroom materials, biting, pinching, or pulling: 4 incidences.

The communication log showed the Student was generally responsive to redirection when he did exhibit one of the foregoing behaviors.

16. According to September 2023 emails:

- On September 6, 2023, the Student entered the "personal space" of a kindergarten student.
- On September 7, 2023, the STRIVE teacher wrote an email related to two behaviors the Student was demonstrating: (1) improper recognition of the personal space of other students; and (2) "humping." In relation to (1), the STRIVE teacher wrote, "Drawing and drawing and more drawing about what IS okay is what we have to do. Me included. It's going to be a slog, unfortunately." In relation to (2), the STRIVE teacher wrote, "It is a natural urge...[W]e will use [the] language [suggested by Parent] when intervening. Cottage staff and I will work on hugs; asking for consent first, who to hug, when to hug, and what to do instead of a hug. High five, fist bump, cottage said they suggested 'hand hug' (CUTE) so we will work on that!"
- On September 11, 2023, the STRIVE teacher reported, "Cottage staff and school staff are working on him with personal boundaries a lot, and he is showing some improvements there."
- On September 13, 2023, the Student: (1) displayed "humping" that was "not sexual in nature"; and (2) took his pants down prior to entering the bathroom. In relation to (2), the Parent hypothesized that new medication was making the Student constipated.

- On September 14, 2023, the STRIVE teacher: (1) noted the Student had recently displaying an increased ability to communicate; and (2) hypothesized that the Student would benefit from “counseling” related, at least in part, to better understanding the privacy of other students.
- On September 19, 2023, a 1:1 was hired that would “be with Student at all time”, particularly when the Student was in the cottage.
- On September 21, 2023, the “point person” reported: (1) there had been “no odd behavior this week”; and (2) the “point person” noted the Student appeared to still believe the “point person” was the Student’s 1:1 support, when, in reality, multiple staff—including the 1:1 paraeducator hired on September 19, 2023—were to work with the Student.

17. A September 17, 2023 pupil information form noted, in part, “A few times I had to move his hands off of the [other student’s service] dog, with some struggle.”

18. According to WSD:

For the first two weeks WSD did not have anyone available [to serve as a] 1-on-1. We were seeing if we could do it and there was no After-School Program (ASP) happening during this time. During this time the staff experienced having to do a lot with this student which took away from other students or duties. [Individual 1]. She was asked if she was willing to work as a 1 on 1 and she started on the same date that the ASP began (September 18).

19. According to WSD, “a 1:1 SLC was not found and hired until September 18, 2023. [Up] until that point, Parent had been communicating with Student’s point person.” (Again, the Parent believed the transition from the “point person” primarily working with the Student, to the 1:1 paraeducator primarily working with the Student, exacerbated the Student’s emotional regulations needs.)

20. According to emails, on September 19, 2023, the Student demonstrated some challenging “behaviors.” The Parent hypothesized these resulted from transition-related processes not being clearly communicated to the Student. The Student’s “point person” hypothesized these behaviors resulted from the “point person” (a preferred staff member for the Student) not being present for a particular activity the Student expected the “point person” to be present for.

21. A September 19, 2023 pupil information form read, in part:

The paraeducator and I repeatedly tried to redirect this Student. When his physical behavior escalated, the paraeducator and I gently pushed him into his room, while he had his hands on both of our wrists, squeezing. I sat on the floor and told him to sit on the floor with me. He sat down, calmed down, while I explained that [the] paraeducator, point person, and he are nice and friends.

22. According to WSD’s response, its staff “did not apply restraints to Student, as defined in RCW 28A.600.485(1)(b).” Rather, according to WSD, its staff were trained to utilize “nonviolent Crisis Prevention and Intervention Training (CPI) disengagement skills.”⁶ WSD explained:

CPI focuses on prevention and equips individuals with proven strategies for safely defusing anxious, hostile, or violent behavior at the earliest possible stage. Residential staff used CPI

⁶ WSD’s response included training materials related to “wrist/arm holds” and “hair pulls.”

techniques, specifically the wrist/arm hold, and hair pull disengagement skills in one incident with Student.

When a staff member applies a CPI technique, staff complete Pupil Information Forms (PIFs) that are sent home to families.

...

WSD staff are trained each year in CPI techniques as well as WSD Isolation and Restraint procedures and forms.

23. The Parent stated a CPI restraint was administered to the Student on or about September 20, 2022, and the Parent was concerned said restraint "restricted movement of Students' hands, [which would] have significantly impacted his ability to utilize ASL."

In its response, WSD confirmed a "CPI technique [was] used" on the Student on September 20, 2023. WSD further stated a copy of the relevant pupil information form was "hand delivered to Parent" on September 22, 2023.

The September 20, 2023 pupil information form noted, following a "forcible hug/hold", "bite" and "pinch", a staff person "used CPI to somewhat restrain this Student from further harm...After a few minutes, Student...calmed down."

24. On September 22, 2023, the STRIVE teacher emailed the Parent, stating, in part:

I'm seeing a lot of exciting little indicators of growth in Student. The kinds you were talking about when we met on Zoom that seem trivial, but we know just how huge they are for Student.

- He's adjusting to the routines of the class, he's more involved in group learning and is learning to raise his hand to comment or get attention, he contributed to group discussion a couple of times this week too.
- He's paying more attention to the signer at the front of the room.
- He's spending more time at his desk and less time in the calm corner (though still a good amount of time there, I see growth!)
- He is spontaneously signing more, and with more staff. He tends to prefer...his 1:1 at school, and their relationship is strengthening quickly.
- He is starting to pick up on the visuals we use in the classroom. We've been working on showing him our classroom schedule cards next to drawn expectations/drawings of what-we're-doing and what you should be thinking about. This is huge progress and I think eventually he will be able to recognize these symbols and need less drawings to understand the expectations and what we are doing. He has a 'First/Then' visual that we are starting to implement to support his understanding of First we do the work, Then we get to read dinosaur books It's been helping! Dude loves to read dinosaur books, that's for sure!
- He is still crossing boundaries - physically hanging on staff and hugging them / touching or grabbing things on my desk. But! Less hugging, more grabbing shoulder/arms, more high fiving/fist bumping. We're working on teaching him to tap for attention. And less grabbing things, more looking at/pointing at things. One thing I'm really excited to see – he NEGOTIATED in the library this week!

(emphasis in original).

25. In its response, WSD confirmed a "CPI technique [was] used" on the Student on September 25, 2023. WSD further stated a copy of the relevant pupil information form was "hand delivered to Parent" on September 29, 2023.

The September 25, 2023 pupil information form does not detail a staff member having made physical contact with the Student; rather, it details a staff member intentionally avoided physical contact with the Student by moving away from the Student.

26. According to the Parent, while he was informed, on at least one occasion, that a CPI intervention had been used in relation to the Student, the Parent did not understand what this meant. During this investigation, the Parent further questioned, "If Student's behavior was so severe, why were there no steps [taken] to conduct an FBA [and develop a] BIP?"
27. According to the communication log, on or about September 26, 2023, the Student's medication regime changed, and the Parent suspected this change impacted the Student's behavior. The Parent stated: the Student briefly began taking Adderall, on or about September 26, 2023; Adderall is a stimulant; Adderall increased the Student's challenges with emotional regulation; and on or about September 29, 2023, the Parent, in conjunction with a psychologist, decided to stop the Adderall.
28. On September 28, 2023, the Student's "point person" emailed the Student's "team", including the Parent, stating, in part:

First, my cottage team and I have been working super hard to make our cottage a good fit for Student. We have created a 'safe space' area in one of rooms in the Cottage for Student to go when he'd need to. There are beanbags, a bullet board with a calendar and other visual things for the SLC paraeducator and Student to decorate. We have been gathering dinosaur books, toys and stuff from other cottages for Student to be able to play with. Some other staff donated their old dinosaur things that their children have outgrew of! So far, so good! I am happy for more and more positive changes for Student.

I would like to discuss about Student' behavior towards me. I have been trying to figure out what triggers his aggressive behavior and when he would lash out on me every evening, after dinnertime. We found out that Student associates WSD with Benita. Benita is WSD. WSD is Benita. School is Benita. Benita is School. Everything is Benita. Therefore, to Student, WSD is Benita. School is Benita. Cottage is Benita. Soccer is Benita...and so on. I've become a target for Student to lash out at. I cannot be around Student for my own safety. It is not fair for both of us or everyone else. Last night, I was in the basement...for our High School students' social time. Student was able to run away from cottage, find me down there and ran directly to grab me...twice. It was unexpected and I actually thought I was safe down there. Luckily, I had a few of our staffs' help with interventions.

My staff team and I have eliminated my name completely. No more Benita. We need to teach Student I am not WSD. I am not his only staff. I am every student's staff. My name is 'Staff' from now and on for Student. I have changed Student' visual calendar, no more Benita, I am not thinking of him or in the picture at all. We put 'WSD', 'School', 'Cottage', 'Staff' or 'SLCs' instead. No names. I am asking for school to help correcting Student, if he sign 'Benita', tell him, 'No Benita, this is WSD.' (Or School, Cottage, Playtime or whatever

you guys are doing at the moment). I want to emphasize, please do not use my name while interacting with Student, call me 'Staff' instead. We want to be able to keep him here and we have to put me out of the picture so Student can associate WSD to school. Not Benita. No more Benita. If we want Student to stay, this has to be done.

On September 29, 2023, the Parent responded, stating, in part:

My concern is that Student has been significantly deprived of communication for the majority of his life. His behavior and his interpretation of things in his life are centered around language. All of his behaviors are a reaction to his inability to communicate his wants and most importantly, his needs. Removing people's names from Student's communication supposes that people are not beings but inanimate objects. All of our brains are 100% focused to be social and Student is no exception...his brain works differently because of the severe neglect he's suffered. It's going to take years to undo a lot of this damage and even with intense interventions he will likely always have difficulty. Removing names of who people are at school, deprives him of the ability to communicate about those people and hinders his overall communication. Calling team members 'staff' or 'SLC' does not help Student communicate effectively and creates an additional barrier.

...

if I were in her shoes, I would feel the same. Student is as nearly tall as she is! The behavior he is exhibiting is atypical. I have never seen him target nor 'bite at' anyone. I have seen aggression and the most recent instances are easily explained as I communicated with [two staff persons] – the first instance was when he attended soccer without any knowledge of what was going to happen (though my understanding was not aggression toward anyone but an extreme desire to participate) and the second and more recent instance was a byproduct of a reaction to an increase in his ADHD medication. I believe that both of these instances were explained and communicated to the staff and they have been resolved.

To be very clear: Student cannot have 'free time' or 'down time.' While the idea is good for typically developing children, Student does not know how to use this time. Every moment needs to be accounted for and as evidence of this, [a staff person] talked about how he worked on painting crafts for two hours. I am more than happy to send anything he needs to keep him occupied – every minute of his day needs to be planned.

Later that day, the Student's "point person" replied, stating:

After removing my name, Student has shown a lot of improvement cooperating and following the instructions given by our other staff [members].

...

We are also aware that Student cannot have any isolated room or free time. This 'safe space' we have created at cottage is for ALL students to use with Student. It is not his isolation room. We like to see this room as a quiet room without any distractions when Student (and other students) needs the extra attention one on one communication without any interruptions from anyone. We have been creating a lot of new routines and planned activities for Student to have that kind of stability at cottage. We hope to start this new approach next week. We completely understand this will take a lot of time and patience for Student to get used to the changes.

On September 30, 2023, the Parent responded, stating he too had "daily" experienced some of the Student's behaviors reported by the "point person", the Parent was unaware what the

"triggers" were for the Student's behaviors, the Parent offered WSD team "art supplies" or "activities", and "I had no idea he would exhibit these behaviors to anyone else but me or I would have mentioned it at the intake. He had some minor instances at school that I shared at the intake but nothing like he is demonstrating now."

29. In a separate email, dated September 29, 2023, the Student's 1:1 paraeducator provided the Parent with an "update for the week." The 1:1 paraeducator thanked the Parent for providing a "fossil set" and "vocab cards." The 1:1 paraeducator noted the Student "continue[d] [to] make strides following routines and participating in class," and engaged in "vocal stimming" on one occasion, when bored with a particular class activity. In part, the email read:

There was quite a bit of humping on Monday and Tuesday. Student seems to experience more arousal earlier in the week is what we're noticing as a pattern. This morning he was pulling at his pants as if uncomfortable while at his desk, and he went to the calm corner and simply laid down on bean bags with a sequin pillow to fidget with and still kept his eyes on the signer for the most part. It feels like he has been using that space very appropriately and has come to see it as a safe spot to get sensory needs met while staying close to/in the group. Makes me happy - that's the calm corner goal! In response to the concerns at the cottages - our classroom staff met with the cottage staff this week. We shared resources and brainstormed ideas in hopes to support Student' after school needs.

30. According to WSD's response, "By late September or early October 2023, WSD administrators had concerns about Student's behavior in the residential program. These concerns included: lack of physical boundaries, trying to leave campus, hitting staff, and mimicking sexual acts." According to WSD, on at least one occasion, the Student entered a "construction zone" during an elopement.

According to the Parent:

Wandering off campus never happened (to my knowledge). The campus is very safe with locked gates all around. Student wandering into construction zones was because the staff propped open a door to the construction zone (this was chronicled in one of the weekly summary reports) and Student attempted to wander out into the construction. This was a lack of diligence on the part of WSD staff and really was putting Student...in danger, and then blaming him for his reaction.

31. According to WSD:

The 1:1 SLC for Student (in the residential cottage setting) [that was provided through approximately October 12, 2023], was meant to only be in place during the 45-day diagnostic placement to provide some support to Student while he acclimatized to the WSD environment. In the [intake] interview [that took place on August 9, 2023], the principal stressed to Parent that students must be able to be independent if they are in the residential department, because WSD does not have permanent 1:1s in the residential system. Parent insisted that Student needed very little, if any, assistance in the residential department.

...

1:1 support paid by the State of Alabama would not have changed the decision to end the diagnostic placement or not admit Student to WSD. To our understanding, the State of Alabama was willing to pay for a 1:1 for his stay at the cottage. This does not change the

fact that WSD does not have the staffing resources to provide a long-term 1:1 in the Cottage.

32. According to emails, in October 2023:

- The Student was demonstrating "increased behaviors" at the Cottages.
- The interim director informed the Parent WSD did "not routinely have students with 1:1 aides in the residential system," even though the Student was "making progress in the academic setting."
- The Parent expressed frustration with a perceived lack of communication on the part of WSD.
- On or about October 2, 2023, on a bus ride, the Student eloped from his assigned seat and was, at least initially, resistant to staff directives to return to his assigned seat.
- On October 3, 2023, the STRIVE teacher reported the Student "did well keeping his patience and [with] staying on task", the Student touched another student's iPad, that student got upset, but the Student accepted staff redirection to not touch the other student's iPad, and the Student tried placing his glasses on other students but accepted staff redirection to stop attempting to place his glasses on other students.
- On October 4, 2023, the STRIVE teacher noted the Student was "really making awesome gains," particularly in the area of utilizing communication drawings related to emotions.
- On October 5, 2023, the Student's "point person" reported the Student had experienced a "great week", including working with teammates during a soccer match, listening to directives from staff while watching a volleyball game, and successfully completing his bedtime routine.
- On October 8, 2023, the SLC agreed with the Parent's impression the Student was progressing academically, noting, in part, "I am pretty stoked with how fast Student is picking up and grow past 2 weeks!"
- The Student is starting to communicate more and more using sign language.
- One of the Student's normally-scheduled 1:1 aides was absent on October 9, 2023, but a substitute was available and present.
- On October 10, 2023, the Student had "a bit of a better day" than on previous days.
- On October 11, 2023, both the principal and the Parent noted the Student had experienced notable academic growth during his time at WSD.

33. An October 8, 2023 "Admissions Team Student Review Form," completed by the Student's "point person," noted the Student:

- Needed "maximum support."
- Demonstrated increased communication abilities and the ability to follow staff redirection.
- Required a 1:1 paraeducator.
- Usually cooperated with others, followed instructions, and was on time for class activities.
- Sometimes took care of personal belongings, participated in class play, "carrie[d] out [assigned] duties", related well to peers, followed rules, and demonstrated empathy.
- Rarely respected boundaries, made friends, communicated needs, and resolved conflicts.

Similar feedback was also given by the STRIVE teacher, art teacher, and physical education (PE) teacher.

34. An October 11, 2023 pupil information form read, in part, "It took two staff and off-duty staff to get Student off the ground to guide him back to the van....[Shortly thereafter], Student had to be pulled away from humping the goal post while the [soccer] game was going on."

35. WSD's response read, in part, "On October 12, 2023, the SLC assigned to provide 1:1 support to Student refused to provide further 1:1 support for Student. The SLC's refusal was related to exhaustion from working with Student." According to WSD, and confirmed via the October 12, 2023 email:

[An administrative team member] did [subsequently] send out an email asking any of the on-calls/morning staff if anyone was willing to take on more work as a 1 on 1. Only one person responded that they would but then declined when they found out they needed to be physically able to meet the demands of the job (run if needed to when the student absconded from supervision).

36. In its response, WSD noted in the weeks preceding October 13, 2023, "the Student was making positive progress in the classroom setting [but] was not necessarily the case in the residential setting."

37. According to WSD:

On Friday, October 13, WSD residential administrators determined that there were no SLCs who could provide 1:1 support for Student the week of October 16. Without Student receiving 1:1 support in the residential program, Student's safety as well as that of others was at serious risk. On October 13, WSD administrators informed Parent that Student could not return to the residential program the week of October 16.

38. An October 17, 2023 letter read, in part, "The Admission Team has determined Student needs additional support from a one-to-one aid to be successful in the residential system and make safe decisions...Student requires more resources than WSD can currently offer new students. Therefore...ongoing enrollment is denied."

39. According to WSD, certain "mid-dx review forms", which represented data on the Student's performance during the "diagnostic placement", was "shared with the Admissions Team on October 16, 2023."

40. In an October 19, 2023 email, the Parent wrote:

Student aggressively hugging people is something that could have been prevented if attention was on him with boundaries/rules drawn and written clearly as well as given in ASL. He does not do this at home, because I prevent it by giving him multiple points of access to language, not just one.

...

Student's humping behavior that you mentioned is, of course, totally inappropriate at school and the cottage. When Student used to do this at home, we worked on where and when it was appropriate and where and when it wasn't as well as why. I have tried several times to offer ideas and suggestions to your staff about how to work with Student but was told that if I don't like how they were handling Student, then he doesn't need to attend WSD.

...

I would like to mention that most of the behaviors you have mentioned are, in my professional and personal opinion as a working school psychologist, not real 'Safety-Issues'. Unexpected and inappropriate, certainly, but not as you mentioned, 'Safety-Issues.'

...

Last Friday [I let transportation staff] know that I had previously provided a drawing for him about how to conduct himself on the bus (it was on the bus monitor's clip board). Clearly someone went over this with him because even without his devices (his iPhone did not come home with him nor did his Amazon Kindle) he was reported to have excellent behavior and stayed in his seat and followed all of the rules.

...

[Student] has gained [academic skills] since attending WSD as well as having access to 24 hr. direct communication from both deaf and hearing peers and staff. He has started using possessive signs and comes home using language he's never used before in appropriate ways. I believe this is because he is attending WSD and receiving support from everyone around him.

41. In its response, WSD stated, "based on the safety risk posed by Student without a 1:1 SLC coupled with the diagnostic placement ending on November 6, 2023, WSD administrators decided to end the diagnostic placement and not admit Student as a student."
42. On November 13, 2023, a WSD staff person emailed the "point person," stating, in part: On October 12, when I came into the cottage [the Student's 1:1 hired on September 19, 2023] was in the kitchen with Student. She looked frustrated and was overseeing him by the refrigerator. Student was getting stuff to make a sandwich. She turned to me to tell me that he won't listen to her and felt that she couldn't do what was expected from her. While she was telling me this, Student tapped her hard on the shoulders and when she moved away from him he got on the floor and started hitting her foot with a plastic mustard bottle. She apologized and told me this was her last day working as a 1 on 1. She said she can't do it anymore.
43. In its response, WSD acknowledged:
WSD admits that mid-diagnostic review data was not shared with Parent because it is WSD's responsibility to evaluate whether the school has the resources to provide a safe educational environment. In WSD's view, a student's parent, guardian, or family is not in the position to evaluate whether WSD has the resources to provide a safe educational environment for the student, and that is why Parent was not involved in this discussion.⁷
44. According to the Parent, were OSPI to find IDEA violations during its investigation of SECC 23-159, the Parent wants WSD to be required to reenroll the Student.

CONCLUSIONS

Preliminary Issue: Responsibility for Free Appropriate Public Education (FAPE) for Student
– WSD responded to this complaint that it was not responsible for the provision of FAPE to the Student in fall 2023. WSD made several arguments in support of its position on this issue: "during [the] 45-day diagnostic placement [at] WSD, [a] student's local...school district is responsible for

⁷ In support of this position, WSD cited WAC 148-172-100(3), which reads, in part, "WSD will assess the appropriateness of admission by first considering the student for evaluation in a diagnostic placement."

developing the student's IEP"⁸; in this case, WSD accepted the Student with the understanding the Student was either "still enrolled in [Washington State school district 1]" or that the Student would "be enrolled in [Washington State school district 2 in the near future]"; and an applicable Washington state regulation—WAC 148-172-100(6)(d)—mandated that "the diagnostic placement [at WSD] shall not become the Student's stay-put or current educational placement should the parents or school district contest the decision [reached by WSD] at the conclusion of the diagnostic placement."

This fact pattern presents a unique situation. WSD's own process states, "Students who have just moved to Washington must register with their local school district. The district is responsible for establishing the student's eligibility for special education and creating an initial Washington IEP. WSD cannot accept a new Washington student for diagnostic placement until this has been completed." It does not appear WSD confirmed the Student was registered with a local district prior to accepting the Student for a diagnostic placement. And for three reasons, in this specific instance, OSPI finds WSD was responsible for providing the Student with FAPE during fall 2023.

First, under WAC 392-172A-01010, WSD has responsibility for adhering to IDEA processes for any students with IEPs placed at its school. For example, WAC 392-172A-01010(1)(a)(iii) reads, in part, "The provision of this chapter [relating to special education] apply to all political subdivisions and public institutions of the state that are involved in the education of students eligible for special education services, including...the Washington State School for the Blind and the Washington Center for Deaf and Hard of Hearing Youth, established and operated pursuant to chapter 72.40 RCW."

Second, there does not appear to have been any other Washington state school district that the Student was enrolled in during the relevant time period; the Comprehensive Education Data and Research System (CEDARS) listed the "Washington Center for Deaf and Hard of Hearing Youth" as the Student's "Home District."

And third, OSPI has "general supervisory responsibility" to ensure compliance with the IDEA. 34 CFR § 300.600; *see also Letter to Warkomski* (Mar 30, 2001); *Letter to Librera* (May 26, 2004) ("The SEA is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State.")

In sum, for the foregoing reasons, in this instance, OSPI finds WSD was responsible for providing the Student with FAPE during fall 2023.⁹

⁸ In support of this argument, WSD cites WAC 148-172-100(6)(b), which reads, "The...school district is responsible for ensuring that the student's IEP and evaluations remain current and valid through the end of the diagnostic placement."

⁹ In the more traditional scenario, wherein a student is enrolled in a particular school district, and that school district's IEP team decides to place the student at WSD, then—while WSD would be responsible for adhering to all relevant IDEA processes during that student's tenure at WSD—the resident district would be the entity ultimately responsible for ensuring FAPE was provided to the student. In other words, in the more traditional

Issue 1: Evaluation Procedures – The Parent alleged WSD did not follow proper IDEA evaluation procedures in fall 2023.

In its response, WSD argued its data-gathering processes were separate from the IDEA's requirements regarding reevaluations. For example, WSD's response read, in part:

WSD's 45-day diagnostic evaluation procedure is not the same as an IEP team meeting to develop an IEP. An IEP team generates individualized education programs with full participation of parents as team members. In general, the 45-day diagnostic evaluation procedure does not involve the same level of communication and collaboration with parents or guardians as an IEP team meeting, because the diagnostic evaluation does not involve developing a program or plan.

However, a diagnostic placement, while not specifically defined in Washington's special education regulations, is addressed by the U.S. Department of Education in Appendix A to the IDEA Part B regulations, Question 14 (1999). The Department of Education states that an IEP must precede placement; however, "This requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process -- before the IEP is finalized -- to assist a public agency in determining the appropriate placement for the child. However, it is essential that the temporary placement not become the final placement before the IEP is finalized." Thus, based on this guidance and WSD's stated purpose of the diagnostic placement—to address the student's needs and determine if WSD is an appropriate placement—OSPI finds that WSD's diagnostic placement, while part of their admission process, must align with the IDEA and special education processes and procedures, including ensuring that sufficient, student-related data is gathered, addressing and considering behavior needs, and ensuring parent participation in placement decisions (discussed in issue 2).

Here, OSPI makes several interrelated conclusions.

First, WSD did have a formal process for gathering information on enrolled students. For example, in relation to the Student, WSD gathered information via "mid-dix review forms," a communication log, "Pupil Information Forms," emails, and an "Admissions team Student Review Form." For the reasons outlined above—in the *Preliminary Issue* section—WSD's position that its data-gathering processes did not need to align with the IDEA's reevaluation requirements is erroneous; for students with IEPs, WSD must ensure its data-gathering processes align with IDEA reevaluation requirements. And while WSD did have a process for systematically gathering information on the Student, as is detailed below, this process did not satisfy IDEA reevaluation procedures in all respects.

scenario, the resident district would be responsible for collaborating with WSD to ensure the student's IEP services are being implemented at WSD, and were OSPI to find any violations in a community complaint decision regarding the same, the resident district would be the entity responsible for fulfilling certain corrective actions.

Second, it was evident the Student had certain behavioral needs,¹⁰ particularly in the residential setting. However, the substance of the limited data that was gathered on the Student also showed that WSD's program (including both the academic and residential components) was incredibly helpful in increasing the Student's academic performance, particularly in the areas of adaptive behavior and communication. As but one example of this: in her September 22, 2023 email, the STRIVE teacher noted the Student exhibited an increased ability to handle transitions and classroom routines, demonstrated an increased ability to stay focused on a particular activity and/or speaker, and displayed increased communicative abilities via sign language.

Third, WSD staff did collaborate together, and to some extent, with the Parent, regarding interventions that would best address the Student's behavioral needs. For example, in part, on September 7, 2023, the STRIVE teacher noted visual drawings were helpful to the Student and that WSD staff should use language suggested by the Parent; as reflected in the September 29, 2023 email thread, WSD staff adjusted the Student's Cottage environment to better address his behavioral needs; and, on or about September 29, 2023, WSD staff began to use "vocab cards" provided by the Parent. However, the Parent was not ultimately included in the decision to disenroll the Student, as discussed further in issue 2. While WSD's position that it knows its program and ability to serve student's best is valid, IDEA requires that parents participate in placement considerations for their children. The diagnostic placement process, again by its stated purpose, is a process to look at whether WSD is an appropriate placement. Here, this Student's Parent had valuable information about the Student and his needs that factor into the placement decision.

Fourth, the IDEA requires that data gathering, whether in a full comprehensive reevaluation or a diagnostic placement, is done to determine the education or related services needs of a student. This could have included conducting an FBA of the Student.¹¹ And an IEP team meeting, including the Parent, was not convened to formally discuss the available data on the Student's behavioral needs.

Fifth, OSPI finds that WSD did not collect complete or sufficient data on this Student as it ended the diagnostic placement earlier than 45 days (the diagnostic placement was to go through approximately November 6, 2023, and was ended on or about October 16, 2023). Beginning on

¹⁰ Between September 19 and 29, 2023, the "point person" began to work with the Student less often, and an SLC paraeducator began to work with the Student more often. And this change appears to have impacted, at least in part, the Student's emotional regulation. The Parent also provided information about medication changes that likely impacted the Student behavior.

¹¹ OSPI notes an FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

or about October 12, 2023—when WSD was unable to find a 1:1 paraeducator for the Student in the residential setting—WSD ended the Student’s enrollment. While certainly connected to information about the Student’s needs around behavior and 1:1 support, the fact remains that WSD ended the diagnostic placement early based on a lack of staffing.¹²

In conclusion, under the specific circumstances present with this Student, OSPI finds a violation, as WSD’s diagnostic placement process fails to align with the IDEA.¹³ With this finding, OSPI is not stating that WSD must conduct a comprehensive reevaluation—in other words, a reevaluation to confirm continued eligibility for special education services—under the IDEA for every student admitted to the 45-day diagnostic placement. Rather, OSPI is stating IEP development decisions must be based on sufficient, relevant information on a student’s needs resulting from that student’s disability. When a local educational agency (LEA) determines the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, so the IEP team is equipped with sufficient, relevant information on the student’s needs resulting from the student’s disability, to permit the IEP team to properly address the same, the IDEA requires an LEA to complete those steps.

To address this violation, WSD will be required to take several steps, including:

1. Collaborating with an outside consultant in ensuring its institution-specific policies align with all relevant IDEA requirements.
2. Provide the Student’s current resident district with a report of the Student’s experience at WSD, including all relevant information WSD gathered on the Student’s needs resulting from the Student’s disability.
3. Provide the Student the option to reenroll in WSD’s diagnostic placement process. If the Student chooses to reenroll in WSD’s diagnostic placement, WSD’s newly designed, IDEA-compliant policies will apply to the Student’s time at WSD.

¹² On this point, it appears WSD did not follow each of its own policies regarding the enrollment of new students at its facility. For example, Policy 3000 does not condition the provision of “residential program services” on a student not requiring any behavioral support needs in that environment; in fact, Policy 3000 states, “residential programming [may be] required to provide the student a FAPE pursuant to the current IEP.” Additionally, Policy 3000 also states, for students with certain behavioral needs, WSD staff will explore the use of a “safety plan” prior to deciding to end the 45-day diagnostic placement. Here, there is no indication WSD staff formally developed and/or implement a “safety plan” under Policy 3000.

¹³ OSPI further clarifies in the event a student is a resident student in a different Washington state school district, that student’s resident district IEP team decides to place the student at WSD for the 45-day diagnostic placement, and said placement would constitute a “significant change of placement”, thus necessitating a reevaluation of the student, the resident district would be the LEA responsible for completing that evaluation prior to the student beginning enrollment at WSD. (Of course, it is also possible to envision circumstances under which a specific student’s enrollment in the 45-day diagnostic placement would not constitute a “significant change of placement”, and thus, the resident district would not need to complete a reevaluation of the student. For example, not all students at WSD live there, some are only present for the academic portions of the schedule.)

Issue 2: Parent Participation – The Parent alleged WSD did not follow proper parent participation procedures in fall 2023.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting.

Here, as detailed above, WSD staff did collaborate with the Parent, to at least some extent, regarding identifying interventions that best addressed the Student’s behavioral needs. Crucially, though, WSD staff did not gather and consider the Parent’s input in its mid-October 2023 decision to end the Student’s enrollment. This represents a violation of the IDEA.¹⁴ The above-stated corrective actions will address this IDEA violation.

Issue 3: IEP Development: Quiet Room – The Parent alleged WSD did not follow proper IEP development procedures regarding the Student’s use of a “quiet space” in the Cottages between August and October 2023.

Generally speaking, an IEP team’s decisions must be based on a student’s needs resulting from that student’s disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student’s needs resulting from the student’s disability. An IEP team must also be responsive to any change in need resulting from a student’s disability. For example, a student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters; and a school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation.

Here, the Parent expressed concern that, if the Student was provided with “quiet time” while at the Cottage, the Student’s emotional regulation would be disrupted. Specifically, the Parent stated the Student wanted to constantly be near other people, did not understand what the “quiet time” period was supposed to be for, and would not do well with unstructured time periods; the Student needed a schedule comprised of continual activities.

¹⁴ Furthermore, it would have been appropriate—prior to mid-October 2023—for a formal IEP team meeting, including the Parent, to be convened to thoroughly discuss all available data on the Student’s needs, clearly determine what interventions were appropriate, and provide the Parent with a prior written notice regarding any decisions made at said meeting.

For several reasons, OSPI does not find an IEP development violation in relation to the Student's use of a "quiet space" while at the Cottages. First, according to the residential schedule, the amount of time devoted to "quiet time" was relatively small: 30 minutes, approximately 8–8:30 pm. Second, as explained by the "point person" in emails, dated September 29 and 29, 2023, WSD staff did plan activities for the Student to engage in during "quiet time", and the Student was not isolated from other students:

My cottage team and I have been working super hard to make our cottage a good fit for Student. We have created a 'safe space' area in one of rooms in the Cottage for Student to go when he'd need to. There are beanbags, a bullet board with a calendar and other visual things for the SLC paraeducator and Student to decorate. We have been gathering dinosaur books, toys and stuff from other cottages for Student to be able to play with.

...

"safe space" we have created at cottage is for ALL students to use with Student. It is not his isolation room. We like to see this room as a quiet room without any distractions when Student (and other students) needs the extra attention one on one communication without any interruptions from anyone. We have been creating a lot of new routines and planned activities for Student to have that kind of stability at cottage.

Third, the Student's June 2023 IEP stated the Student would periodically benefit from access to a "quiet zone":

Allow [Student] to go to quiet zone with 'fidget' or distracting items for a set amount of time...if Student shows undue interest in his own body. During these times, heavy work, physical activities may also be successful to redirect and re-focus him. Heavy work sensory breaks should be offered periodically through the day.

For the foregoing three reasons, OSPI does not find an IEP development violation of the Student's use of the "quiet zone" at the Cottages.

Issue 4: Restraint Notifications – The Parent alleged WSD did not follow proper restraint notification procedures between August and October 2023.

It is first necessary to determine those incidences during which the Student was actually restrained. Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student.

As a preliminary matter, OSPI notes a properly executed CPI intervention does not represent a restraint under RCW 28A.600.485. CPI interventions are strategies developed to address situations wherein a student has grabbed a provider's hair or wrist. The CPI techniques are designed to permit providers to be released from such holds, without injuring either the student or themselves. The CPI techniques were not developed to forcibly control a student. For example, the documentation provided to OSPI during this investigation does not show the Student was restrained on September 25, 2023. Rather, in its response, WSD stated a "CPI technique" was utilized that day, but the relevant PIF does not detail a staff member having made physical contact with the Student; rather, the relevant pupil information form details a staff member intentionally avoided physical contact with the Student by moving away from the Student. Without more, the foregoing factual data does not represent a restraint under RCW 28A.600.485.

The documentation, though, does show the Student was restrained on three other occasions. A September 17, 2023 pupil information form noted, in part, "A few times I had to **move his hands** off of the [other student's service] dog, with some struggle" (emphasis added). Forcibly moving the Student's hands represents a physical effort to control the Student. A September 19, 2023 pupil information form read, in part, "The paraeducator and I repeatedly tried to redirect this Student. When his physical behavior escalated, the paraeducator and I gently **pushed him into his room**" (emphasis added). Pushing the Student into a room against that Student's will does represent a force used to control the Student. A pupil information form detailing events of September 20, 2023 noted that following a "forcible hug/hold", "bite" and "pinch," a staff person "used CPI to somewhat **restrain** this Student from further harm" (emphasis added). OSPI understands the foregoing PIF entry to mean a CPI technique was not implemented with complete fidelity, and the Student was consequently restrained, as that term is defined under RCW 28A.600.485. And an October 11, 2023 pupil information form read, in part, "Student had to be **pulled away** from humping the goal post while the [soccer] game was going on" (emphasis added). Staff "pulling" the Student off a goal post represents application of a force meant to control the Student.

Following the release of a student from the use of restraint, the school must implement follow-up procedures. A local educational authority must generally undertake three steps following the use of a restraint: (Step 1) administration must review the incident with the student, parent, and staff person that administered the restraint; (Step 2) the staff person that administered the restraint must inform administration of the incident with a written report within two business days of the incident; and (Step 3) the LEA must inform the parent of the incident, verbal notification within 24 hours, and written notification "postmarked no less than 5 business days" after the incident.

The four incidences of restraint will be analyzed in turn, in relation to whether Steps 1–3 were followed.

September 17, 2023

The documentation shows step 1 was partially completed. For example, the September 17, 2023 pupil information form related an SLC paraeducator discussed the situation with the Parent via text message at 8:25 pm that day. The Parent recommended, in part, that the Student be redirected using communicative drawings. The September 17, 2023 pupil information form also related, in part, the interaction the SLC paraeducator had with the Student, showing, at least to some degree, the SLC paraeducator discussed the incident with the Student. The documentation provided to OSPI during this investigation, though, does not show that WSD administrators reviewed the incident with the SLC paraeducator. This latter omission represents a violation of the IDEA.

Step 2 was completed. The September 17, 2023 pupil information form itself represents a WSD generated, hardcopy report.¹⁵

¹⁵ Generally, the PIFs did include the information required by RCW 28A.600.485(5)(a)-(e).RCW 28A.600.485(5)(f) requires said reports to include the following, "Any recommendations for changing the

Step 3 was completed. For example, the September 17, 2023 PIF stated the Parent was informed of the incident via text message that same day, and a copy of the pupil information form was "sent home" to the Parent on September 22, 2023.

September 19, 2023

The documentation shows step 1 was partially completed. The September 19, 2023 pupil information form related, in part, the interaction the "point person" and SLC paraeducator had with the Student, showing, at least to some degree, the "point person" and SLD paraeducator discussed the incident with the Student. And emails show the Parent was consulted regarding the September 19, 2023 incident. For example, emails dated September 19, 2023 showed the "point person" and Parent discussed the reason for the Student's "behaviors" that day. But the documentation provided to OSPI during this investigation did not show WSD administrators discussed the September 19, 2023 restraint with either the "point person" or SLC paraeducator. This latter omission represents a violation of the IDEA.

Step 2 was completed. The September 19, 2023 pupil information form itself represents a WSD generated, hardcopy report.

Step 3 was completed. The documentation shows the Parent was informed of certain challenging "behaviors" the same day—on September 19, 2023—and the Parent was provided a copy of the relevant pupil information form within five business days of the incident—on September 22, 2023. This represents correct restraint follow-up procedures, in relation to after-the-fact notifications.

September 20, 2023

Step 1 was partially completed. The September 20, 2023 pupil information form related, in part, to the interaction the "point person" and two SLC paraeducators had with the Student, showing, at least to some degree, the "point person" and two SLD paraeducators discussed the incident with the Student. And emails show the Parent was consulted regarding numerous aspects of the Student's behavior between September 22 and 29, 2023. But the documentation provided to OSPI during this investigation did not show WSD administrators discussed the September 20, 2023 restraint with either the "point person" or the two SLC paraeducators. This latter omission represents a violation of the IDEA.

Step 2 was completed. The September 20, 2023 PIF itself represents a WSD generated, hardcopy report.

Step 3 was functionally completed. The documentation provided to OSPI showed the Parent was not verbally informed of the September 20, 2023 restraint; but, a hardcopy of the relevant pupil

nature or amount of resources available to the student and staff members in order to avoid similar students." Here, the PIFs often included this type of information, but, on occasion, a particular PIF would lack clarity on the specific recommendations being advised. OSPI recommends WSD review the PIF form to ensure it specifically includes a section for information responsive to RCW 28A.600.485(5)(f).

information form was provided to the Parent within 24 hours, a copy was “sent home” to the Parent on September 21, 2023. OSPI does not find a violation of the IDEA on this score.

October 11, 2023

Step 1 was not completed. The October 11, 2023 PIF was the principal documentation related to this incident. It did not document that WSD administrators discussed the restraint implementation with either relevant staff¹⁶ or the Parent. And the October 11, 2023 pupil information form did not include information showing the incident of restraint was discussed with the Student. For example, the October 11, 2023 did not include information detailing redirection, a conversation between WSD staff and the Student, etc.

Step 2 was completed. The September 20, 2023 pupil information form itself represents a WSD generated, hardcopy report.

Step 3 was functionally completed. The documentation provided to OSPI showed the Parent was not verbally informed of the October 11, 2023 restraint; but a hardcopy of the relevant pupil information form was provided to the Parent within 24 hours, a copy was “sent home” to the Parent on October 12, 2023. OSPI does not find a violation of the IDEA on this score.

To remedy the restraint reporting violations discussed above, WSD will be required to provide written guidance regarding restraint reporting requirements to certain staff.

CORRECTIVE ACTIONS

By or before **January 24, 2024, January 31, 2024, February 2, 2024, February 9, 2024, February 14, 2024, and February 23, 2024**, WSD will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Creation of Report on Student Specific Data Available to WSD; Provision of the Same to Student’s Current Resident District

By or before **January 31, 2024**, WSD will compile a comprehensive report of the data available to it regarding the Student’s needs resulting from the Student’s disability. Said report will detail the Student’s experience at WSD in fall 2023.

By or before **February 2, 2024**, WSD will provide a copy of the report to both OSPI and the Student’s current resident school district.

IEP Meeting

By or before **February 9, 2024**, the Student’s IEP team at the Student’s current resident school district, including the Parent and two WSD representatives, will meet. At the meeting, the IEP team

¹⁶ The October 11, 2023 PIF noted multiple staff were likely involved in the administration of the restraint to the Student, “two staff and [an] off-duty staff.”

must address the following topics: the comprehensive report on the Student's needs resulting from the Student's disability created by WSD, and whether the Parent and Student want the Student to go through WSD's diagnostic placement procedures again.

If the Parent and Student wish to attend WSD for another diagnostic placement term for a second time, then the Student must be afforded this opportunity. Importantly, if this is the case, WSD's revised admissions and/or diagnostic placement policies will apply to the Student's second diagnostic placement at WSD.

By **February 14, 2024**, WSD will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

WSD SPECIFIC:

Collaboration with Outside Consultant on Review of WSD's Admissions and/or Diagnostic Placement Policies – To Ensure Alignment with IDEA

By or before **February 9, 2024**, WSD will develop admissions and/or diagnostic placement policies that are in alignment with IDEA processes. WSD will collaborate with an outside consultant in reviewing its existing admissions and/or diagnostic placement policies to amend the same, as needed, to ensure they are in alignment with IDEA requirements.

By or before **January 24, 2024**, WSD will inform OSPI of the outside consultant it has hired to assist it in its review of the admission and/or diagnostic placement policies.

By or before **February 9, 2024**, WSD will provide OSPI with a copy of its revised policies. The February 9, 2024 submission will note the specific changes that were made to the relevant policies. OSPI will approve said policies by or before February 14, 2024.

Training

WSD, in cooperation and collaboration with a non-WSD employee (e.g., the ESD or other trainer), will co-develop and jointly conduct a training on the revised admissions and/or diagnostic placement policies. WSD will provide the trainer with a copy of this decision, SECC 23-159.

The following WSD staff will receive training: WSD special education administrators and psychologists, principal, assistant principal, special education certified staff (teachers), general education teachers who have students with IEPs in their classes, educational staff associates (ESAs), paraeducators, etc.

The training will include examples.

By or before **January 24, 2024**, WSD will notify OSPI of the name of the trainer and provide documentation that WSD has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **February 9, 2024**, WSD will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by February 14, 2024.

By **February 23, 2024**, WSD will conduct the training regarding the revised policies.

By **February 23, 2024**, WSD 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.

Written Guidance

By **February 9, 2024**, WSD will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education certificated staff (teachers), and school psychologists, etc., at WSD. The guidance will include examples and discussion of best practices.

- Topic 1: Restraint Reporting Requirements

By **January 31, 2024**, WSD will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by February 7, 2024.

By **February 9, 2024**, WSD will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

RECOMMENDATION

OSPI recommends WSD review the PIF form to ensure it specifically includes a section for information responsive to RCW 28A.600.485(5)(f).

Dated this 12th day of January, 2024

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.)