

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-16

PROCEDURAL HISTORY

On January 30, 2024, 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 Puyallup 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 January 30, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 31, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 23, 2024, OSPI received the District's response, forwarded a copy to the Parent on the same day, and invited the Parent to reply.

On February 28, 2024, OSPI interviewed the Parent.

On February 29, 2024, OSPI requested additional information from the District. The District provided the information, and the information was sent to the Parent on the same day.

On March 3 and 4, 2024, OSPI requested additional information from the Parent. The Parent provided the information on March 4, 2024, and the information was sent to the District on the same day.

On March 5, 2024, OSPI received the Parent's reply to the District's response and forwarded it to the District on March 7, 2024.

On March 6, 2024, OSPI requested additional information from the Parent. The Parent provided the information on March 6 and 8, 2024, and the information was sent to the District on March 7 and 8, 2024.

On March 8, 2024, OSPI requested additional information from the Parent and the District. That information was provided by the parties and forwarded to the parties on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 31, 2023. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Per WAC 392-172A-02110, did the District follow proper restraint procedures on February 9, 2023, including using restraint only when there was an imminent likelihood of serious harm, and following all reporting, documentation, and other requirements?
2. Since January 31, 2023, has the District been appropriately implementing the Student's individualized educational program (IEP), including the Student's behavior intervention plan (BIP), support protocol, behavior contract, and 1:1 paraeducator support according to WAC 392-172A-03110?
3. Since January 31, 2023, has the District followed the proper procedures for prior written notice (PWN) per WAC 392-172A-05010?
4. Since January 31, 2023, per WAC 392-172A-02050, was the Student educated in his least restrictive environment (LRE)?

LEGAL STANDARDS

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. WAC 392-172A-01162. Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation 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. RCW 28A.600.485.

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. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

IEP Implementation: At the start of the school year, a district must have in effect an individualized education program (IEP) for every student in its jurisdiction served through enrollment who is eligible to receive special education services. For a school district to provide FAPE, it is not required to provide a "potential-maximizing" education, but rather a "basic floor of opportunity." *Bd. Of Educ. Of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 200-01 (1982). "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students, provided are: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements. 34 CFR §300.116; WAC 392-172A-02060.

Prior Written Notice: Prior written notice (PWN) must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district: proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. It ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been

made. The PWN should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. A PWN is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background

1. On March 3, 2022, the Student's IEP team met to review his annual IEP. The Student was eligible for special education services under the category of autism. The Student's IEP included specially designed instruction (SDI) from March 7, 2022 until March 6, 2023, provided primarily by a special education teacher in a special education setting, as follows:
 - Behavior: 55 minutes/5 times weekly
 - Social Emotional: 55 minutes/5 times weekly
 - Communication (provided by a speech-language pathologist (SLP)): 15 minutes/3 times monthly

The IEP included the following related services:

- Speech Language Consultation: 10 minutes/1 time monthly (by SLP)
- 1:1 Paraeducator support (348 minutes/5 times weekly)

The IEP also included the following supplementary aids and services:

- Behavior Consult: 30 minutes/2 times weekly (by behavior analyst (BA))
- As determined by the IEP committee based on current data 30 minutes/2 times weekly (by BA)

The Student received 1,740 minutes per week of building instructional time, with 286.25 minutes per week served in the special education setting. The percent of time in a general education setting was 83.55% and the Student's LRE was LRE 0–39%.

2. On March 29, 2022, the Student's IEP team met to draft a behavioral intervention plan (BIP). The target behaviors were aggression and classroom participation refusal. This BIP stated in part, "Starting on 11/2/2021 the student began refusing to attend the general educational setting. This has resulted in [Student] missing out on general education lessons and classroom participation."

2022–23 School Year

3. At the start of the 2022–23 school year, the Student was an eighth grader in a District autism program at school 1. His March 2022 IEP was in effect.
4. On September 16 and 28, 2022, the Student's IEP team met and prior written notices (PWNs) from those dates stated, in part:
 - The Student was refusing to go to classes.
 - The team agreed to meet every two weeks to share Student progress and/or concerns.
 - Teacher 1, teacher 2, and board certified behavioral analyst (BCBA) would collaborate to develop a support plan that includes steps toward getting Student back to class.

- The team will update the BIP, and multiple interventions will be trialed before this revised document is finalized.
 - "The School Social Worker...offered multiple resources to [Parent] (to include WISE wraparound services, connections with local Autism Centers, support through military or foster benefits, etc.), but each was turned down as having been previously attempted with no success."
5. By the fall of 2022, with Parent agreement, the Student was on a modified schedule in which he was released from school at 12:55 on a daily basis, and as such, the Student was in the school building for 1,440 minutes per week instead of 1,740 minutes per week as stated in his March 2022 IEP.
6. On October 12, 2022, the parties drafted a support protocol and it was implemented on November 7, 2022. The support protocol stated in part:
- Unsafe Behavior for the Student is defined as:
- Bolting or eloping.
 - Verbal or physical threats of harm to others.
 - Property destruction.
- If the crisis leader determines the situation unsafe:
- Administration will call Parent to assist with de-escalating the Student.
 - School security and student resource officer will be contacted, if needed.
 - If Parent cannot be reached or able to arrive in 25 minutes, Parent requests that 911 be called.
- Emergency Protocol
- If the Student exhibits unsafe crisis behavior that is unresponsive to de-escalation techniques and his or others' safety is compromised, the emergency protocol will be initiated:
 - Staff will follow this Safety Protocol
 - Staff will call Student's Parent and call 911.
7. On November 9, 2022, the Student's team met, and a November 14, 2022 PWN stated, in part: "Student is provided assignments throughout the day, he is generally refusing assignments...When given the opportunity to receive help from a paraeducator or teacher he refuses...[Private counseling provider] contract has been signed and currently waiting on start date."
8. On December 7, 2022, the Student's team met, and a December 12, 2022 PWN stated, in part: [Private counseling provider] will be working with the school team at this time, once the evaluation begins the [private counseling provider] team will be in contact with parent and student.
- Starting after Winter Break Student will be continuing to be in the Band Practice Room during Homeroom but then will come to [teacher 2's] room where the team will be setting two small goals for Student to be working on throughout each day with no other students present. Data will be taken on the progress of these two goals and shared with the team.
- The conference Room will continue to be used to provide an alternative space for the student when it is requested. The team will be lengthening the time student is asked to stay in [teacher 2's] classroom before his request will be honored.

9. On December 12, 2022, the Student's behavior contract was shared with the IEP team. The contract's dates were January 3–June 23, 2023. Beginning in February 2023, the contract stated, in part:
- Each school day, Student will sit in a chair at a desk, with access to a weighted blanket, for 30 consecutive minutes. Each day, when this expectation is met, [Student] will have access to the beanbag chair, if desired, until his next scheduled transition.
 - Each school day, Student will engage at least 6 pro-social, respectful responses to adults.
 - Each school day, Student will tolerate being in WRAP classroom for 90 minutes. He will maintain a safe body while remaining in the physical space of the classroom during the targeted duration.

January 31, 2023: Complaint Investigation Timeline Began

10. On February 8, 2023, the Student's IEP team met to draft a BIP. The target behaviors were aggression and classroom participation refusal. The intervention strategies for aggression were stated as:

[Student] will be prompted to use prosocial functional communication in pursuit of his needs (asking for a break, asking to be left alone, asking to take a walk, asking for more time, etc.). These requests will be honored whenever possible, until additional replacement social skills are acquired.

If [Student] seeks physical space from a perceived trigger (to include peers), he may communicate his desired location...which he may access until he shows signs of de-escalation, at which point the team will prompt him to return to his designated space.

The intervention strategies for classroom participation refusal were stated as:

The following schedule will be introduced and supported for Student, with systematic increases in the number of spaces he is expected to access as he demonstrates willingness to engage in the schedule:

- Student will access [teacher 2's]...classroom from the time of his arrival to lunchtime...then he will access an upstairs conference room...until his departure at 1:00p.
- The purpose of incorporating multiple locations in his initial schedule is to familiarize Student with the expectation of movement through the school building, while permitting him to initially navigate the environment without a heavy peer presence.
- Once this routine is mastered (demonstrated by at least 80% success moving through all three physical spaces over five consecutive school days), Student will be expected to attend at least one of his general education classes (the team will allow [Student] to choose this class). Once he demonstrates willingness to attend one class for at least 8/10 consecutive school days, the team's expectation will increase such that Student be expected to attend two general education classes. This systematic progression will continue until Student demonstrates willingness and success accessing as many of his general education classes as possible.

11. On February 8, 2023, the Student's IEP team met and a PWN from that day stated, in part, " [Private counseling provider] mentioned they are looking at an evaluation at the end of March/beginning of April...Attendance was discussed as Student has been absent 12.5 of the last 25 school days."

The PWN did not provide a date for when its action would be initiated.

12. On February 9, 2023, a security person, who was "Right Response" certified, restrained the Student. Teacher 2's notes provided, in part:

- 8:15 Student arrived in my classroom and asked when he could go to the conference room (Student's 'safe space'). My response was 'The expectation is that you stay in my classroom until 9:00. If you need to go sooner, I can check to see if its available.'
- 8:30 Student advocated to access the conference room, which was occupied so Student was told that he was not able to go until 9:00. Student showed signs of agitation and began yelling and demanded to leave the classroom. Expectations were restated that the conference room would be available at 9:00.
- 8:41 Student eloped from the classroom, and I radioed for security to get eyes on student. I grabbed my radio and left my classroom. Student and I met in the hallway as he was heading back to my classroom.
- 8:43 Upon entering the classroom a chair was thrown and hit the window landing on a desk. Security entered the classroom and shut the door.
- 8:44 Student was verbally aggressive and repeatedly asked to call mom. He also ripped up his folders and paper assignments. Student threw garbage cans, opened cupboards, and threw items out of the cupboards, broke pencils, ripped up wall decorations and stomped on lunch size bags of chips. Tipped over tables. Attempted to call mom multiple times. Screamed at security multiple times that he wanted to leave the classroom, expectation for a safe body and calm voice were needed to go to the conference room. Threw a stool and another chair. Threw paper towels around the room again multiple times. Broke the classroom sign that is used when evacuating the building.
- 9:19 Tried to leave the classroom, but security stood in front of the door blocking his exit and Student began pushing security out of the way to get the door open. For about the next thirty minutes Student continued to try to leave the classroom then walking around the classroom yelling and screaming, calling the adults names then back to the door with pushing security with each encounter. Expectations were restated in calm voice that he needed to show a safe body and calm voice before we would allow him to go to the conference room.
- 9:53 Student approached security and began pushing which escalated to pinching, hitting, kicking, biting and headbutting Security. A restraint was used beginning at 9:55 and ending at 9:59. Once released from the restraint student went to the other side of the classroom and paced near the windows. He was asked to pick up one piece of garbage and throw it away before being allowed to leave the conference room. Student left the classroom at 10:02 with guidance from the BCBA and went to the conference room.

13. The Student's 1:1 paraeducator's notes provided, in part:

At 8:38 am [teacher 2] had come to the conference room I was in with the other student to ask me to come into the hallway. She told me that she might give in [to the Student], I told [teacher 2] that we need to hold firm to the time frame of 9am as it had been discussed in prior meetings she attended and informed me of the updates about. She agreed. I went back into the conference room and continued working with the other student. From the conference room, I heard an extremely loud thud. I advised the student I was working with to continue working on his assignment and I turned on music for him to listen to. I left the

room to make sure everything was okay in the classroom. I looked into the classroom and noticed that [teacher 2] is sitting at her desk taking data...the security guard was standing in front of the door and the room looked like a tornado tore through it. There were papers all over the floor, a roll of paper towels thrown across the room, tables flipped and pushed around the room, chairs on there sides. As I was in the hallway outside the classroom door making sure everyone was okay the Principal...and Vice Principal...were rounding the corner of the hallway. I walked over to both of them and let them know what I heard and saw as I was standing outside the classroom door.

14. A February 9, 2023 District form entitled, "Physical Restraint/Isolation Parent Report," signed by teacher 2, stated:

- Student was restrained on February 9, 2023 between 9:55 and 9:59 am.
- The form did not provide the name and job title of the individual who administered the restraint.
- The form contained a box "Behaviors student exhibited prior to restraint or isolation". This box contains a series of actions that can be checked. For this report the boxes that were checked included:
 - Yelling/calling out/cursing.
 - Threaten others.
 - Damaging property.
 - Kicking.
 - Biting.
 - Pushing.
 - Hitting.
 - Throwing objects.
- There was not a narrative of the incident provided in the report.
- The type of restraint or isolation used was a "standing/sitting cross arm hold" that lasted from 9:55 until 9:59 am.
- No injuries were recorded.¹
- No recommendations were provided for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.
- On February 9, 2023, verbal notification was made to the Parent.
- On February 9, 2023, the Parent received the report.

15. On February 9, 2023, the Student was suspended for five days (February 9, 10, 13, 15, and 16).² The Student's actions that led to the suspension included:

- Knocked things off his desk with a sweep of his arm.
- Took items out of the closet and threw them on the floor (books, chairs, etc.)
- Tipped over garbage cans and stomped them.
- Tipped over tables and chairs.
- Broke classroom and personal items.
- Screamed and swore at the adults in the room.
- Bit (drew blood), scratched, pushed and headbutted the school safety officer.

¹ According to the Parent, the Student's hands were bruised. Based on other documentation, the school safety officer was also injured.

² There was no school on February 14, 2023, due to inclement weather.

16. The Parent's objections to the restraint report, raised in the complaint, included:
- More than one isolation/restraint occurred but only one is documented.
 - Not clear to which incident the form is referring to.
 - Inaccurate description of restraint.
 - The time on this form does not match other forms.
 - The Student was calm and in safe place by 10:03.
 - The form does not provide who performed the restraint.
 - The Parent was not mailed the form until February 23, 2023 and not February 9, 2023.
 - Form does not provide for injuries, yet Student's hands were cut and bruised.
 - District did not follow up with Parent.
17. On February 13, 2023, a debriefing of the restraint occurred, and the security person, BCBA, teacher 2, and the principal were present. A District form entitled, "Physical Restraint/Isolation Debrief Report," signed by teacher 2 and principal, stated:
- Incident occurred on February 9, 2023.
 - BCBA and school's security person were involved in the restraint.
 - BCBA was not injured, but the security person was injured.
 - The form provides a space entitled "What went well?" and another space "What would you do more of? Less of". The form does not provide a space that mentions or discusses whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.
18. On February 15, 2023, the parties had a re-entry meeting. The Parent and Student were invited to participate, but the Student did not attend. At this meeting, the Student's BIP and "Support Protocol, Revised February 2023" were reviewed.
19. On February 22, 2023, the Student's IEP team met to draft an updated BIP. The target behaviors were aggression and classroom participation refusal. Regarding aggression, the document stated, in part:
- Peer-targeted physical aggression, which has not been noted to occur since 10/4/22, was recorded most often in the PM last academic year, during which time the WRAP classroom was most populated with students. Adult-targeted aggression occurred in the WRAP classroom on 2/9/23. It is worth noting that [Student] has self-isolated such that his access to peers and adults is severely impeded.

The intervention strategies for aggression were stated, in part, as:

Instead of aggressing to escape or reduce a nonpreferred interaction/demand/trigger, [Student] will select and use a coping strategy to increase his tolerance to the non-preferred demand/stimuli.

[Student] will use functional communication to request escape/removal, which will be honored within pre-determined boundaries. Wait time will be gradually increased before access to requested spaces is honored such that his request will be reinforced while he is concurrently increasing his tolerance to non-preferred stimuli.

Regarding classroom participation refusal, the document stated, in part:

Since his return from Winter Break, [Student] has remained inside the school building on all days of attendance, accessing a Band storage room, the WRAP classroom, and an

upstairs papered conference room until his (early departure at 1:00pm). He is presented with academic assignments every day and has unhindered access to his school device, but has seldom elected to engage in offered assignments and has refused most offers of assistance/scaffolding/support. [Student] has not yet been successful in accessing any of his general education classrooms this academic year.

The intervention strategies for classroom participation refusal were stated, in part, as:

An assortment of 'reasonable ask' behaviors will be established as [Student's] new baseline, upon which new goals will be set. Once [Student] demonstrates mastery of the 'reasonable asks,' new goals will be systematically added, addressing areas of tolerance, social Interactions, flexibility, self-assessment, coping, and more.

...

The student is invited to access [teacher 2's] WRAP classroom after arriving on campus, but he consistently chooses to wait until peers have exited that space before he enters from the band storage room. Upon entering the WRAP classroom, he will remain there for increasing durations of time (thereby delaying access to self-seclusion). The current goal (as of February 2023) is 90 minutes in the WRAP room.

20. Also, on February 22, 2023, the Student's IEP team met to develop a new IEP. the Student's IEP included SDI from March 3, 2023 until March 2, 2024, provided by a special education teacher and SLP in a special education setting, as follows:

- Communication (by SLP): 20 minutes/1 times monthly
- Behavior: 287 minutes/5 times weekly
- Social Emotional: 287 minutes/5 times weekly

The IEP included the following related services:

- Speech Language Consultation: 10 minutes/1 time monthly (by SLP)
- 1:1 Paraeducator support (288 minutes/5 times weekly)

The IEP also included the following supplementary aids and services:

- As determined by the IEP committee based on current data: 30 minutes/2 times weekly (by BA).
- Behavior Consult: 30 minutes/2 times weekly (by BA).
- Consultation with [private counseling provider]: 60 minutes/2 times monthly (by [private counseling provider]).

The Student received 1,440 minutes per week of building instructional time, with 1,440 minutes per week served in the special education setting. The percent of time in a general education setting was 0%. Student's LRE was LRE 0–39%.

A PWN from that day stated, in part:

Minutes were changed to reflect the actual time [Student] is in attendance. He currently has an early release schedule and is able to leave at 12:55 each day. His total minutes present at school is 1440. He spends the entirety of his day self-contained either in the WRAP classroom or other designated area. He does not attend General Education classes.

...

[Private counseling provider] was added to the Supplementary Aid and Services section of the IEP reflecting that the school team meets twice a month for 60 minutes each time for consultation.

The IEP goals from the previous IEP were not attainable for [Student]. With the consultation of [private counseling provider], the IEP goals are now reflective of a new baseline of 'reasonable asks', upon which additional goals will be added as [Student] demonstrates mastery.

...

At the request of parent and advocate, the IEP team agreed to not implement the FBA and BIP until after the [private counseling provider] evaluation is completed. Once the evaluation is completed, the team will use their findings to discuss the FBA and BIP.

...

The district provides [SDI] in the areas of Social Emotional Skills, and Behavior from 7:45-12:55 daily when he attends.

Due to non-attendance, the IEP school team will work to discover other possibilities to provide strategies to encourage student to return to school.

...

FBA and BIP were considered by the IEP Team.

...

The school team disagrees with parent's position that SDI is not being offered to [Student].

School team consultation model with [private counseling provider] is for the support of the school team, with family being included once the evaluation process begins.

FBA and BIP were rejected by parent because they weren't effective at this time and would like to relook at them after the [private counseling provider] Evaluation.

This PWN was to be initiated on March 3, 2023.

21. A March 18, 2023 PWN stated, in part:

The director of special education...parent advocate...and parent...met on March 14, 2023 to discuss [Student's] absences from school. [Student] has not accessed his special education services at...School since 02/09/23. He has attended school fewer than twelve of the last fifty school days. His anxiety has spiked and is impacting his ability to access services. The team has offered services within the home, the public library, or limited access at [school] when students are not present. The District has secured a contract with [private counseling provider] to conduct a comprehensive evaluation, scheduled to commence on April 10, 2023...Parent has requested that the District delay their evaluation timeline. [Private counseling provider]...District, [Parent advocate], and [Parent] will meet as an eligibility team to review the results from [private counseling provider] once the evaluation and subsequent report has been completed.

...

Family has agreed to the lapse in the current evaluation to allow time for [private counseling provider] to complete their assessments of [Student].

...

The team and the family agreed to wait until the evaluation from [private counseling provider] has been completed prior to opening the District evaluation. The District will send consent forms to the family in mid-April to accommodate the [private counseling provider] timeline.

This PWN was to be initiated on March 27, 2023.

22. On March 21, 2023, the Student's IEP team met and a PWN from that day stated, in part: Specially Designed Instruction options that were offered to parent:

- In home assessment to come up with a plan to meet the needs of trying to get student to access [school].
- Specially Designed Instruction at library or other public venue.
- Specially Designed Instruction provided after school hours [at school].
- Specially Designed Instruction in home environment.
- Online.
- Online check in with [school] Staff.
- Attending [building 2].
- Observe General Education classes remotely with check in with para.
- Remote access to [another District school's] classes with para.

...

[Parent] has refused the above list of options for Specially Designed Instruction service options as she indicated during the 3/14/2023 meeting that [Student] will not leave his bedroom.

The PWN did not provide a date for when its action would be initiated.

In a March 3, 2024 email, the Parent expressed, "they did not offer remote learning, even though they referenced it in the PWN."

On March 4, 2024, in response to this information, OSPI asked the Parent, "What alternative learning did the District offer?" To this question, the Parent responded on the same day:

I have gone through my files again. I am not aware of anything except for a few sporadic emails (less than 2 or 3) attaching assignments in mid/late April. On May 9th we discussed [Student] attending the [building 1], two days a week for one to two hours each day following input from [private counseling provider]. I believe his time at the [building 1] with his 1:1 instructor started on Monday, May 22nd. He was to attend twice a week for an hour at a time. He attended 8 of 10 days, from 05/22/23 to 06/22/23, due to 2 holidays.

23. A May 10, 2023 PWN stated, in part:

[Student] has not attended school...since February 9th, 2023.

School work remains electronically available to [Student] through his school device and his teachers' Schoology pages, respectively. [Student] continues to resist accessing this work. School work has also been emailed to parent beginning on May 1st. As of May 18th, 2023, no academic assignments have been submitted (via email or paper) since [Student's] last day of attendance on 2/9/23.

In addition, on May 1st, parent was offered instruction provided to [Student] at...[building 1]. On May 8th, parent agreed to explore the provision of 1-2 hours per week of academic support...but asked that the team contact [private counseling provider] to confirm this as an appropriate option for [Student]. [Private counseling provider] agreed that some academic support...would be better than no attendance...as long as this was very clearly explained to the student as a short-term intervention while we await the eligibility feedback meeting, scheduled for 6/2/23 at 11:30am.

...

As of May 10th, 2023, instruction at [building 1] has been accepted by parent.

This PWN was to be initiated on May 26, 2023.

24. On June 16, 2023, the Student's team met and a PWN from the same date stated, in part:
Using the input from [private counseling provider's] Evaluation, we are taking actions toward meeting [Student's] identified needs and providing him with Free and Appropriate Public Education.
...
Conducting an FBA now was rejected due to [private counseling provider's] recommendation to initiate this in the Fall of 2023.

This PWN was to be initiated on July 3, 2023.

25. On June 21, 2023, the Student's IEP team met and a PWN from the same date stated, in part, "A triennial evaluation was completed by [private counseling provider]...At the eligibility determination meeting, it was determined that the most appropriate category to highlight his complex and unique needs is Multiple Disabilities."
26. For the 2022–23 school year, the Student was absent on:
- | | |
|----------|--------------------------------------|
| February | 1, 3, 6-8, 21-24, 27 and 28 |
| March | 1-3, 6-10, 13-17, 20-24, 27-31 |
| April | 3-7, 17-21, 24-28 |
| May | 1-5, 8-12, 15-19, 23, 24, 26, 30, 31 |
| June | 1,2, 6, 7, 9, 14-16, 20, 21, 23 |

According to attendance records for the 2022–23 school year, after the February 9, 2023 restraint incident, the Student did not go to school in February, attended school one day in March, no days in April, two days in May, and five days in June.

Summer 2023

27. On August 30, 2023, the Student transferred to District building 2. On the same day, the director sent an email that stated that the Student would no longer have a 1:1 paraeducator because the Student's instruction was going to be provided 1:1 by teacher 3.
28. On August 30, 2023, the Student's IEP team met to draft the Student's IEP. The Student's IEP included SDI from September 5, 2023 until September 3, 2024, provided by a special education teacher in a special education setting, as follows:
- Written Expression: 60 minutes/5 times weekly
 - Adaptive Behavior: 60 minutes/5 times weekly
 - Social Emotional: 50 minutes/5 times weekly
 - Behavior: 60 minutes/5 times weekly

The IEP included the following related services:

- Speech Language Consultation: 10 minutes/1 time monthly (by SLP)

The IEP also included the following supplementary aids and services:

- Behavior Consult: 30 minutes/2 times weekly (by BA)

- Consultation with [private counseling providers]: 60 minutes/2 times monthly (by [private counseling providers])

The Student received 180 (sic) minutes per week of building instructional time, with 900 minutes per week served in the special education setting, and the percent of time in a general education setting was -400% (sic).³ The Student's LRE was LRE 0–39%.

2023–24 School Year

29. A September 5, 2023 PWN stated, in part:

The team proposed a new IEP that includes updated goals for the areas [Student's] disability adversely Impacts: Written Expression, Adaptive, Communication, Social/Emotional skills, and Behavior. The IEP team also discussed accommodations for the classroom and the location and timing of the delivery of special education services.

...

[Student] is making progress in the areas of safety, self advocacy and being present. We are proposing to implement the IEP and continue [Student's] educational placement as discussed as an IEP team during recent meeting.

[Student] has been making progress in the areas of being safe, present, and productive. The team reviewed the data which supports the agreement to begin the school year with a modified schedule at [building 2]. The team will use data to determine [Student's] readiness to re-enter the general education environment (15 days' worth of safety presence, and participation will initiate a meeting, at which time the team will review data and discuss his readiness for increased class time and the potential incorporation of interactions with [school 2]). Each subsequent 15-school-day-period of [Student] meeting expectations will initiate another team meeting, at which time the team will consider his readiness for more class time and/or the incorporation of access to [second school].

A subsequent email was sent to the parent and student outlining the student schedule and expectations for the 2023-2024 school year. He will spend the first three periods of the day within the [building 2] program continuing his school work and working on being safe, present and participation. After 15 school days being successful, the team will re-convene and consider adding an additional class at [building 2].

This PWN was to be on initiated on September 11, 2023.

30. On September 5, 2023, the director emailed the Student as follows:

I am understanding that you would like to know your school schedule. The team has shared your desires with me and I appreciate your self-advocacy. Below is the school schedule you will need to follow:

You will begin the school year at [building 2] for the first three periods of the day. You will attend school Monday through Friday. The classes will be Math, English and Study Skills. During study skills you will be given the opportunity to complete the class you had started in Edgenuity so that you can receive your .5 credit for the work you had already completed.

³ On March 6, 2024, OSPI asked the District whether they had updated this IEP to correct the mistakes. As of the date of this decision, OSPI had not received an updated IEP.

Period 1: English with [teacher 3] at [building 2]-8:35-9:25
Period 2: Study Skills with [teacher 3] at [building 2]-9:25-10:15
Period 3: Math with [teacher 3] at [building 2]-10:15-11:05

There are three data points that you will need to work on in addition to your school assignments:

- Remaining safe at all times while you are on the [building 1] campus.
- Being present for class which means coming to school each day ready to learn. If you will be absent, you will need to follow the process for all of our students on this campus. The expectation is that students who will be absent are to call [building 2] and report the absence. Parents do not make the call for the students. It is your responsibility to report that you will not be coming to school.
- Participation: You will engage in the learning process being provided. You will actively listen and receive instruction from the teaching staff. You will complete all assignments in class. The teacher will determine what assignments may be completed at home.

After 15 school days of demonstrating Safety, Presence and Participation, the team will meet to review the data and consider adding another class period to your schedule at [building 2]. After another 15 school days of safety, presence and participation, the team will meet to review data and consider adding another class period at [building 2] to your schedule. As progress continues, classes will be added until you are successfully meeting the criteria with a full, 6 period day at [building 2]. After 15 school days with the 6 period day of safety, presence and participation at [building 2], a team meeting will be held to review the days and consider swapping one [building 2] class for one class period at [school 2]. This pattern will continue, contingent on your success remaining safe, present and participatory until you are attending [school 2] full time.

We are looking forward to seeing you on Wednesday, September 6 at 8:35.

31. A September 5, 2023 PWN stated:

The IEP team reviewed [Student's] current IEP and the progress made on current goals. The team proposed a new IEP that includes updated goals for the areas of [Student's] disability adverse impacts...The IEP team also discussed accommodations for the classroom and the location and timing of the delivery of special education services.

...

[Student] has been making progress in the areas of being safe, present and productive. The team reviewed the data which supports the agreement to begin the school year with a modified schedule...The team will use data to determine [Student's] readiness to re-enter the general education environment.

This PWN was to be initiated on September 11, 2023.

32. On September 12, 2023, the District received the Parent's consent to conduct an FBA with the assistance of the private counseling provider.

33. On September 26, 2023, the Student's IEP team met to review instructional needs, adding a class to the Student's schedule, and to draft a new IEP. The Student's IEP included SDI from September 27, 2023 until September 3, 2024, provided by a special education teacher in a special education setting, as follows:

- Written Expression: 50 minutes/5 times weekly
- Adaptive Behavior: 50 minutes/5 times weekly
- Social Emotional: 50 minutes/5 times weekly
- Behavior: 50 minutes/5 times weekly

The IEP included the following related services:

- Speech Language Consultation: 10 minutes/1 time monthly (by SLP)

The IEP also included the following supplementary aids and services:

- Behavior Consult: 30 minutes/2 times weekly (by BA)
- Consultation with [private counseling provider]: 60 minutes/2 times monthly (by private counseling provider)

The Student received 1,000 minutes per week of building instructional time, with 1,000 minutes per week served in the special education setting. The percent of time in a general education setting was zero. The Student's LRE was LRE 0–39%.

34. A September 26, 2023 amended PWN stated, in part:

The team met to amend the IEP, discuss [Student's] progress and modify his schedule (which impacts service minutes) and to include a fourth class. [Student] has been attending school at [building 2] regularly since the start of school. He has been participating in all his classes by: initiating assignments promptly, submitting assignments on time, following directions, asking clarifying questions, and having his cell phone put away. [Student] states he feels that he is making progress and things are going well for him at [building 2]. The team asked [Student] which class he would like to add to his schedule. [Student] chose science and suggested that he take it at [second school]. The team did not feel that there was enough data to support a transition to [school 2] at this time however acknowledged his self-advocacy.

This PWN was to be initiated on September 27, 2023.

35. On October 24 and November 16, 2023, the Student's team met again, and a PWN, dated October 24, 2023, stated, in part:

The IEP team agreed in June 2023 to the creation of an FBA/BIP with [private counseling provider's] consultation, planned to occur in the Fall of 2023. When the team agreed to this plan, [Student] was struggling to attend school and his participation in academic work had been minimal for an extended period of time.

[Student's] participation increased notably, in terms of attendance participation, and tolerance of previously-aversive stimuli at the time of the FBA initiation. Even so, the team proceeded with , conducting the FBA.

...

The [FBA], created in collaboration with [private counseling providers], was created to inform support strategies for [Student].

This PWN was to be initiated on November 27, 2023.

36. An October 24, 2023 BIP stated, in part:

Data was collected between the dates of 09/06/23 and 10/16/23 on [Student] meeting the criteria of safety, presence, and participation at the [building 2] location. This criteria was established with the support of [private counseling provider].

Between 9/6/23 and 9/27/23, [Student] was scheduled to attend [building 2] for 2.5 hours per day (8:30am – 11 am). During these dates [Student] was absent once (9/25/23). He met safety, presence, and participation criteria on all days of attendance. During this time frame, [Student] also advocated to ride the bus, and has successfully done so since transportation was arranged. The team met on 9/26/23 to review data and decide on his readiness to increase his schedule by one hour, unanimously agreeing on his readiness for this progression.

To recognize [Student's] success and his voiced interest in attending [school 2] full-time, the team offered extracurricular opportunities for [Student] to pursue at [school 2] while he continues demonstrating presence, safety, and participation with an increased duration of dally [building 2] attendance. To date, he has not indicated engagement in any of the offered extracurriculars, but he has voiced Interest in track, which begins in Spring 2024.

Between 10/02/23 and 10/16/23, (the cut off date for data incorporation into this FBA), [Student] was scheduled to attend [building 2] for 3.5 hours per day (8:30am - 12pm). He was absent with reported symptoms of illness on four days (10/09, 10/11, 10/12, and 10/13). These absences resulted in a hold on earning days, rather than a reset of consecutive days toward the 15-day criteria. Of the days he attended school within this time frame, he met safety, presence, and participation criteria on 9/9 days. The team plans to review data and evaluate his readiness to increase his schedule by at least one more hour on 10/24/23.

...

The intensity and duration of challenging behaviors have shown decreases since the start of the school year.

...

Several skills are emerging, including self-advocacy, requesting help, asking clarifying questions, and tolerating changes (the latter is evidenced by his ability to maintain safety, presence, and participation in the midst of a substitute teacher, delays in his bus arrival, increased duration school days, a lockdown drill, and a changed mode of transportation).

...

It is worth noting that the setting at [building 2] differs from Junior High and High School settings in myriad ways, including, but not limited to:

- Significantly fewer students on campus (less than 10 at [building 2], compared to approximately 700 at Junior High and approximately 1,700 at High School).
- Fewer physical transitions (through passing periods, crowded hallways).
- Fewer instances of accidental physical contact with peers and fewer invasions of his personal space.
- Less auditory and visual input than would be experienced in General Ed setting with 20-30 peers.
- Fewer students per staff member.

...

[Student's] current program has been set up to decrease the likelihood of intense target behaviors (alternate setting, decreased school day, fewer peers, low student: staff ratio, accommodations, etc.). It should be noted that this BIP is written with two transitions

anticipated within the next year (to [school 2], when criteria are met), and again In September 2024, when [Student] transitions to High School. As such, the following recommendations are made to be generalizable to various settings. Exposure to potential triggers and increased demands will be strategically presented in a supported manner until [Student] is demonstrating the necessary skills to manage his needs in tandem with the desired full-day school expectations. Examples of this strategically-presented exposure will include, but not be limited to: peer proximity, unfamiliar people in the classroom, presentation of non-preferred demands, unexpected changes to routine, et cetera.

37. On November 21, 2023, the Student's IEP team met and PWN from the same day stated, in part:

[Student's] IEP team (excluding [Student] who was invited, but declined to participate) met virtually via Zoom on 10/24/23 and 11/16/23 at 12:30p to consider implementing a [BIP].

The team recognized the potential value of a [BIP], designed with the collaboration of [private counseling provider], in June 2023. An FBA was agreed to be initiated in Fall 2023, and a BIP considered in relation to the resulting data analysis.

...

1) The team determined that a [BIP] would support his needs at his current location, as well as provide guidance to staff at the locations to which he is expected to transition within the next year.

2) The team determined that the [BIP] offers response strategies to address his current challenging behaviors.

...

15-DAY DATA REVIEW

The team unanimously agreed to 'stay' at [Student's] current level of participation, rather than to increase or decrease his schedule, due to a recent increase in absences and a higher frequency of behaviors resulting in temporary escape from demands.

This PWN was to be initiated on November 27, 2023.

38. On December 20, 2023, the Student's IEP was amended again. The Student's IEP included SDI from January 4 until September 3, 2024, provided by a special education teacher in a special education setting, as follows:

- Written Expression: 55 minutes/5 times weekly
- Adaptive Behavior: 55 minutes/5 times weekly
- Social Emotional: 55 minutes/5 times weekly
- Behavior: 55 minutes/5 times weekly

The IEP included the following related services:

- Speech Language Consultation: 10 minutes/1 time monthly (by SLP)

The IEP included the following supplementary aids and services:

- Behavior Consult: 30 minutes/2 times weekly (by BA)
- Consultation with [private counseling provider]: 60 minutes/2 times monthly (by [private counseling provider])

The Student received 1,500 minutes per week of building instructional time, with 1,100 minutes per week served in the special education setting. The percent of time in a general education setting was 26.67%. the Student's LRE was LRE 0–39%.

39. The December 20, 2023 PWN stated, in part:

[Student] has been successful previously at four hours a day, however with five hours he has shown increased attendance issues which averaged unexcused absence two days per week in the month of December. We are proposing to continue the schedule at five hours to build resilience and improve upon attendance.

...

The team considered [Student's] request to shorten his school day to three hours per day.

...

This option was rejected because it did not support [Student's] goal to attend on a full day schedule successfully this coming fall when he will be in the high school.

...

To help make these decisions the IEP team reviewed [Student's] participation, attendance, work with his teachers and support staff as well as the behavior support specialist. The team also used current evaluation, classroom data, teacher input, parent input and student input.

...

The team met to review [Student's] progress and schedule. [Student] has attended school 52 days this school year as of the date of this meeting. In this time, he has 15 excused and 5 unexcused absences. In December alone [Student] missed 5 days of unexcused absences. [Parent] shared that [Student] continues to have difficulty sleeping at night which impacts attendance. The team discussed the District's challenges securing an...individual therapist for [Student] and the parent's consideration of whether to expand the geographical range (thereby inviting the possibility of remote therapy services)...Parent indicated a preference to maintain [private counseling provider's] recommendation, but wanted time to consider the options and agreed to let the team know at the next meeting.

The team considered [Student's] schedule and the scheduling options as they relate to the overall goal of attending full time next year...[Student] proposed reducing his schedule to three hours which reflects the half day schedule some of his peers are on. This would allow him to ride the bus with his peers. [Student] ascertains that he can complete six course requirements in three hours. [Teacher 3] shared that she has been modifying curricular expectations and [Student] is not completing his work in a timely manner at this time. She also shared that [Student] tends to rush through writing assignments and continues to struggle to show his work in math. [Student] is also reluctant to complete assignments on computer, which is integral to the general education student learning experience. Several team members expressed concern that [Student] will not be prepared for the rigor of the general education coursework next school year if he shortens his schedule. The team agreed and it was decided that [Student] will continue with five classes with a five minute passing time between each where he will be allowed to use the restroom, get water etc. This more closely mirrors the high school academic environment and allows [Student] to adjust prior to attending [high school]. [Student] will also be held accountable for all assigned course work, check grades on Schoology and complete course work online when required. A follow up meeting was scheduled for January 29th at 12:30pm via Zoom.

This PWN was to be initiated on January 4, 2024.

40. On January 30, 2024, the Parent filed this complaint with OSPI that alleged the District did not:
- Follow proper restraint procedures, including paperwork, on February 9, 2023, when isolating and restraining the Student.
 - Properly implement the Student's IEP, including the BIP, Student support protocol, & Student behavior contract.
 - Provide the related services of 1:1 paraeducator support.
 - The PWN procedures were not followed.
 - The Student was not in his "Least Restrictive Environment" (LRE).
41. On February 23, 2024, the District submitted its response. Regarding the first issue, whether the District followed the proper restraint procedures, the District denied it "failed to follow in all material respects the applicable restraint procedures regarding the February 9, 2023 incident...While the incident was not directly reviewed by the building staff with Student that is only because Student did not attend the February 15, 2023 meeting or return to [school 1]."

Regarding the second issue, whether the District appropriately implemented the Student's IEP, the District replied:

As of January 31, 2023, Student's instruction was being delivered each class period in WRAP, as Student refused to leave WRAP to attend general education classes. Student was receiving 287 minutes of SDI in social/emotional and behavior within that special education classroom. Even though Student refused attendance in general education, [teacher 2], case manager and...1:1 paraeducator, continued to offer him access to those classes each day. The team also brought the general education curriculum to Student for access.

After the February 9, 2023 incident, the District staff worked exhaustively and cooperatively with Parent regarding strategies and supports to increase Student's school attendance. This included contracting with...offering multiple service options after the February 9, 2023 incident...This ultimately led to Student returning to instruction first at [building 1] and then the [building 2] program location. Student's instruction was implemented in both of those alternate settings with 1:1 instruction, thus replacing the need for 1:1 paraeducator support. The team has continued to work cooperatively with Parent to increase Student's participation at the [building 2] location, including completion of a new FBA and BIP to support.

Once Student began attending [building 2] in the 2023-2024 school year, the team was able to increase his school day and access to the general education curriculum. The team met and continues to meet every 15 school days to review the data with the family and advocate and make recommendations to increase his time and participation at school.

...

9.6.2023: Attending 3 hours per day Monday through Friday.

9.26.2023: Attending 4 hours per day Monday through Friday.

12.20.2023: Attending 5 hours per day Monday through Friday.

2.1.2024: Attending 6 hours per day Monday through Friday.

Regarding the third issue, whether the District appropriately followed procedures for PWNs, the District replied, "Even if certain issues may not have been fully addressed in a PWN and/or Parent is dissatisfied with the wording of the District's PWN, the District denies that those issues rose to the level of a significant procedural violation."

Regarding the fourth issue, whether the Student was educated in his LRE, the District replied:

...Student refused to attend the general education classes offered to him at [school 1]. The District appropriately honored Student's choices, but staff continually worked to provide Student access to the general education environment to the maximum extent appropriate to his individual needs.

After Student was disciplined for the February 9, 2023 incident, Student was eligible to return to [school 1]. Student, however, reportedly refused to return to school at [school 1]. In response, the District offered services within the home, the public library or limited access at [school 1] when students were not on campus...Parent refused services due to Student reportedly being unwilling to leave his home. Parent also declined the District's offer of a FBA/BIP on February 22, 2023.

Ultimately, Parent accepted the District's offer to serve Student at the [building 1]. At that point in time, Parent did not want Student to return to any other comprehensive building in the District...The District was able to provide Student 1:1 instruction at the [building 1] and help him prepare for more intensive instruction.

The District was then able to transition Student by the fall to receiving services at its [building 2] location. While he has continued receiving 1:1 instruction at that site for the duration of this school year, he has had access to other peers who receive services at [building 2]. More importantly, the IEP team, including Parent, has continued to meet every 15 school days to review Student's progress and assess his ability to safely return to a general education environment.

Given the reported complexity of Student's needs, the District denies that it has failed to provide Student educational services in his LRE appropriate to his then-current educational needs.

42. On February 29, 2024, OSPI asked the District the following question:

[Parent] claims that on February 9, 2023, after the restraint incident had calmed down, she was taken to a conference room, which was her son's safe space, and the Student's paraeducator unlocked the conference room door so she could speak to her son. Does the paraeducator remember unlocking this door to allow the parent to see the student?

On the same day, the District responded:

The District has confirmed that Student was alone in the conference room awaiting Parent. Student was able to open the door at anytime to leave the conference room, as the door does not lock from the inside. While he was waiting for Parent, Student specified that he did not want any staff member in the room with him and continually told them to get out in no uncertain terms.

Once Parent arrived, the paraeducator let Parent into the room to be with Student. From the outside of the conference room, the door does lock. As a practice, that door was kept locked to keep other students from entering the conference room while Student was working. So, to let Parent into the room, the paraeducator unlocked the door. Again, however, whether the door is locked from the outside or not, anyone inside the room is able to exit the room without the door needing to be unlocked.

43. On March 6, 2024, OSPI's investigator emailed the Parent as follows:

I know that you stated that on February 9, 2023, the school called the police before contacting you, instead of doing the opposite as was required by the support protocol. What other things did the District not do correctly regarding the BIP, support protocol, and behavior contract since January 31, 2023?

On March 8, 2024, the Parent replied, in part:

- 1:1 paraeducator was not in the classroom during the 02/09/23 Incident.
- Please review the Prior Written Notice, dated 2/22/2023, where it states, "FBA and BIP were rejected by parent because they weren't effective at this time..."

Regarding the support protocol, the Parent replied:

- Staff will have walkie-talkies and/or working cell phones on them at all times.
- Multiple crises team members will spend at least 10 minutes a week building a positive relationship with the student.
- The focus will be on regulation before any attempts to re-engage the student.

CONCLUSIONS

Issues One: Proper Restraint and Reporting Requirements – Regarding the first issue, the Parent's complaint stated, "The school district did not follow proper restraint procedures, including paperwork, on 2/9/2023, when isolating and restraining my student."

Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of restraint as defined is subject to each of the following conditions: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and currently certified by a qualified provider in the use of trauma-informed crisis intervention, including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with applicable regulations.

Restraint Incident: Teacher 2's notes provided a detailed glimpse into what happened on February 9, 2023, that resulted in the security person, who was Right Response certified, restraining the Student. Teacher 2 indicated that the Student eloped from the classroom for a few minutes and teacher 2 found the Student in the hallway as he was on his way back to the classroom. Shortly after the Student re-entered the classroom, the school's security person entered the room, shut the door, and stood in front of the door. The teacher and the security person were in the room with the Student. The notes detailed that for approximately the next 30 minutes, the Student was verbally aggressive and destroyed classroom items, and then at approximately 9:20, the Student attempted to leave the room, but the door was blocked by the security person. Over the next 30 minutes until approximately 9:50 am, the Student continued his verbal assault on the staff and attempted to leave the room multiple times, but each time was denied by the security person who was blocking the doorway. During this time, teacher 2 restated expectations multiple times in calm

voice that the Student needed to show a safe body and calm voice before they would allow him to go to the conference room.

Finally, at approximately 9:50, the Student initiated a physical confrontation that included the Student biting, scratching, and head-butting the security person. Based on the Student's actions, the security person placed the Student in a restraining hold for approximately four minutes. When the Student was released, the Student moved to the other side of the room. District records stated that the Student's bite of the security person drew blood, and according to the Parent, the Student's hands were bruised. Based on these facts, the Student's actions posed an imminent likelihood of serious harm to the security person, justifying the security person's brief restraint of the Student for four minutes, and thus, OSPI does not find a violation regarding the use of a restraint.

Isolation: Later, on February 9, 2023, the Parent witnessed the paraeducator unlock a conference room door so the Parent could speak to the Student. The District has stated the conference room door was not locked from the inside and the Student could open the door to leave the room at any time. This conference room was the Student's "safe space" and the door was locked from the outside to ensure the Student's privacy while in his safe space so that other students would not accidentally walk into the room while the Student was in the room. OSPI notes that isolation does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavior intervention plan. This is what was occurring in this instance, and thus, this particular incident was not an isolation of the Student.

Reporting: After a school employee engages in restraint or isolation on a student, the applicable regulations require the following steps to report and follow up on incidents.

Staff's Responsibilities: A district employee who uses isolation or restraint on a student during school must:

1. inform the building administrator as soon as possible, and
2. within two business days submit a written report of the incident to the district office.

Based on the facts, the District satisfied these two responsibilities because on February 9, 2023: (1) the principal was aware of the situation while it was occurring; and (2) a District form entitled "Physical Restraint/Isolation Parent Report" was signed by teacher 2.

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 incident and any medical care provided; and,
6. Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

Although teacher 2 drafted a report of the incident, that report does not satisfy the regulation's second and sixth requirements. The report does not indicate the name and job title of the person who restrained the Student, and it also does not provide recommendations to avoid similar future incidents with the Student. As such, OSPI finds a violation regarding the District's restraint/isolation reports and will order as a corrective action that the District update its form to be in compliance with applicable regulations.

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.

The principal's responsibilities were satisfied because on February 9, 2023, the Parent: (1) was verbally informed of the incident; and (2) received written notice of the incident within five days.

Post-Incident Reviews: Following 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.

The principal held a meeting February 15, 2023, to discuss the restraint and the Student's return to school. Both the Parent and Student were invited to the meeting, but the Student did not attend. Teacher 2 and the BCBA participated in the meeting.

On February 13, 2023, a debriefing of the restraint occurred and teacher 2, security person, the BCBA, and principal participated in the meeting. The debriefing form provides a space entitled "What went well?" and another space entitled "What would you do more of? Less of". The form does not provide a space that mentions or discusses whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents; therefore, it is difficult for OSPI to determine whether the staff met the debrief requirements. OSPI notes that while the regulations do not specify the elements of a staff debrief form, the regulations do have required topics of discussion. As such, OSPI finds a violation regarding the District's debriefing report and will order as a corrective action that the District update its form to ensure that teams discuss and are able to document their discussion in compliance with applicable regulations.

Issues Two and Four: IEP Implementation & LRE – When this investigation commenced, OSPI opened the IEP implementation and the LRE issues separately. After a review of the record, it is apparent that these issues are intertwined and will be addressed together.

Regarding the second and fourth issues, the Parent has alleged that the District did not properly implement the Student's IEP in his LRE, including the BIP, support protocol, behavior contract, SDI and 1:1 paraeducator support.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

Regarding a student's LRE, school districts must ensure that a student's SDI shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

2022–23 School Year: In the present case, the investigation period began on January 31, 2023, and at that time, the Student's March 2022 IEP was in effect. It called for the Student to be served approximately 83% of his time in a general education setting, with 286 minutes of SDI per week along with 348 minutes of 1:1 paraeducator support every day.

In the days prior to the restraint incident, the Student was absent on February 1, 3, 6–8, 2023. On February 9, 2023, the Student was suspended for five school days from February 9 until February 16, 2023. The Student was eligible to return on the next school day, which would have been February 21, 2023, but attendance records show that the Student was absent for the remainder of February. On February 22, 2023, the parties updated the Student's IEP and it called for the Student to receive 1,440 minutes of SDI per week with 100% of his time to be served in a special education setting, along with 288 minutes of 1:1 paraeducator support every day. OSPI notes that the decision to shorten the Student's school day occurred in fall 2022, prior to the start of the investigation time period and with the Parent's involvement with IEP team decision making and agreement. Further, the documentation showed that the Student increasingly was refusing to go to general education classes, which the investigation shows the IEP team had continued discussion about and worked to address through a variety of strategies. The February 2023 IEP amendment reflected the Student's changing needs and the ongoing work to address those needs.

This ongoing work to address the Student's needs and provide access to instruction is documented in multiple prior written notices, reflecting IEP team meetings and IEP discussion throughout spring 2023. A March 18, 2023 PWN stated, in part, "[Student] has not accessed his special education services at...School since 02/09/23. He has attended school fewer than twelve of the last fifty school days...The team has offered services within the home, the public library, or limited access at [school] when students are not present." The Parent declined many of the options for instruction the District offered as the Student was refusing to attend school; for example, a March 21, 2023 PWN stated in part that:

Specially Designed Instruction options that were offered to parent:

- In home assessment to come up with a plan to meet the needs of trying to get student to access [school].
- Specially Designed Instruction at library or other public venue.
- Specially Designed Instruction provided after school hours [at school].
- Specially Designed Instruction in home environment.

- Online.⁴
- Online check in with [school] Staff.
- Attending [building 2].
- Observe General Education classes remotely with check in with para.
- Remote access to [another District school's] classes with para.

...

[Parent] has refused the above list of options for Specially Designed Instruction service options as she indicated during the 3/14/2023 meeting that [Student] will not leave his bedroom.

Ultimately, a May 10, 2023 PWN provided, in part, "As of May 10th, 2023, instruction at [building 1] has been accepted by parent." At this location, the Student received 1:1 instruction. Although the Student was still struggling with attending instruction at this point, and between February 16 and June 26, 2023 (school's last day), the Student attended school one day in March, no days in April, two days in May, and five days in June, for a total of eight days.

Based on these facts, between January 31 and June 26, 2023, the District attempted to provide the Student his SDI in his LRE, but the Student's very limited attendance during this time prevented the District from satisfying its IEP responsibilities to the Student. The investigation indicated that the Student was refusing to attend school and OSPI finds the District and Student's IEP team had continued discussions and meetings to work on strategies to meet the Student's needs and develop a plan to provide instruction. Thus, given the circumstances, OSPI finds that the District did not materially fail to implement the Student's IEP in his LRE between January 31 and June 26, 2023.

The Parent also raised concerns that the Student's BIP, support protocol, and behavior contract were not implemented because of the restraint that occurred. Between January 31, when the investigation period begins, and February 9, 2023, when the restraint took place, the Student only attended school on February 2, 2023. Even if it is assumed that the provisions of these three documents were not implemented at all, the District's failure to implement these provisions for one day would not be sufficient to establish a material failure by the District. The District also did not materially fail to implement the three documents between February 21 and June 26, 2023, based on the Student's limited attendance.

2023–24 School Year: Regarding the 2023–24 school year, the Student started the school year on a three-period schedule in a 1:1 setting with teacher 3 and the August 2023 IEP, that was in effect at the start of the school year, called for 100% of the Student's SDI to be delivered in a special education setting. The expectations for the Student included remaining safe at all times, being present for class, and engaging in the learning process. Every 15 school days, the IEP team would meet to review the Student's behavior to determine if data supported increasing the Student's school day. According to the District's reply, the Student's school schedule increased as follows:

9.6.2023: Attending 3 hours per day Monday through Friday.

9.26.2023: Attending 4 hours per day Monday through Friday.

⁴ In a March 3, 2024 email, the Parent expressed, "they did not offer remote learning, even though they referenced it in the PWN."

12.20.2023: Attending 5 hours per day Monday through Friday
2.1.2024: Attending 6 hours per day Monday through Friday.

Between September 5, 2023 and February 1, 2024, the Student's behavior improved and his time in school increased according to the IEP team's plan. Thus, during the 2023–24 school year, the District did not materially fail to implement the Student's SDI, nor did the District fail to provide his SDI in his LRE.

For the second and fourth issue, it is also necessary to address the Student's shortened school day. Any decision to limit or restrict a student's access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. Districts should not use a shortened school day as a form of disciplinary punishment or as a substitute for positive behavior strategies and supports or a BIP. Instead, an IEP team should consider developing an IEP that includes a BIP that describes the use of positive behavioral interventions, supports, and strategies reasonably calculated to address the student's behavioral needs and enable the student to participate in the full school day.

In the Student's March 29, 2022 BIP, the IEP team stated that "[s]tarting on 11/2/2021 the student began refusing to attend the general educational setting. This has resulted in [Student] missing out on general education lessons and classroom participation." By the fall of 2022, the Student was on a modified schedule in which he was released from school at 12:55 on a daily basis, and as such, the Student was in the school building for 1,440 minutes per week instead of 1,740 minutes per week as stated in his March 2022 IEP. Based on this investigation, the Parent was involved in making and supported this decision.

In the present case, the IEP team attempted to address the Student's behavior and classroom participation refusal issues with a BIP, a behavior contract, and support protocols. Additionally, the Student's February 22, 2023 IEP listed behavior consultations for the Student with District staff and a private counseling provider for six hours a month. The record shows the Student's IEP team attempted to develop positive behavioral interventions, supports, and strategies reasonably calculated to address the Student's behavioral needs and enable the Student to participate in the full school day. The team also had ongoing discussions and amended the Student's IEP to address his needs. The decision to limit the Student's school day was made by his IEP team based solely on the Student's unique needs. The Parent, and the Student in fall 2023, participated in these IEP team discussions and decisions. Thus, for the reasons provided above, there is not a violation in the present case regarding the second and fourth issues.

However, OSPI does note some concerning language in the documentation outlining the plan to increase the Student's time at school. While OSPI would advise that for any student whose IEP team determines a shortened school day is warranted, the team should also plan for the student to increase access to school, and the district should be cautious about wording that indicates a student is required to "earn" increased time in school. The District is reminded that students have a right to a full school day. Here, the plan required the Student to meet a certain number of days

of safe behavior, presence, and participation before he could add additional class time to his schedule. As discussed above, the District and IEP team were actively discussing and providing supports and strategies to support the Student's needs and enable the Student to participate in school, thus OSPI does not find a violation. However, OSPI recommends that the District conduct training on appropriate team decision making around shortened school days.

Issues Three: Prior Written Notices – Regarding the third issue, the Parent alleged that the PWN procedures were not followed.

A PWN must be provided to the parents of a student eligible for special education, or referred for special education, a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation, educational placement of the student, or the provision of FAPE to the student. It ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. A PWN is not an invitation to a meeting.

Of the PWNs reviewed for this case that have been drafted since January 31, 2023, two of them (February 8, 2023 and March 21, 2023) left blank the date for when the action mentioned in that PWN would be initiated. Based on this fact, OSPI finds a violation regarding the third issue and will order as a corrective action that the District issue guidance to case managers that PWNs must include that date upon which the action mentioned in that PWN will be initiated.

CORRECTIVE ACTIONS

By or before **May 31, 2024** and **June 17, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

PWN Written Guidance

By **June 10, 2024**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, principals, assistant principals, and special education case managers. The guidance will address that a prior written notice must provide a date when the actions in the document will be initiated.

By **May 31, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by June 5, 2024.

By **June 17, 2024**, the District 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.

Restraint Form

By or before **June 10, 2024**, the District will update its restraint and isolation incident form to ensure it includes all elements required in the regulations, including: (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 used, including the duration; (5) Whether the student or staff was physically injured during the incident and any medical care provided; and (6) Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

By or before **May 31, 2024**, the District will provide OSPI with a copy of the updated incident report form for review and approval.

Debriefing Form

By or before **June 10, 2024**, the District will update its debriefing form for restraint and isolation incidents to ensure it includes space to document discussions of all elements required in the regulations, including: (1) Discuss whether proper procedures were followed; and (2) What training or support the staff member needs to help the student avoid similar incidents.

By or before **May 31, 2024**, the District will provide OSPI with a copy of the updated incident report form for review and approval.

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 29th day of March, 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.)