

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-20

PROCEDURAL HISTORY

On February 6, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a legal advocate (Complainant) representing a student (Student) attending the Highline School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 6, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 7, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 27, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day.¹ OSPI invited the Complainant to reply.

On March 12, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On March 25, 2024, OSPI requested that the Complainant provide OSPI with additional information. OSPI received the additional information from the Complainant and OSPI forwarded the additional information to the District on the same day.

On March 26, 2024, OSPI requested that the District provide additional information. The District provided the requested information on March 27, 2024 and OSPI forwarded the information to the Complainant on the same day.

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

ISSUES

1. Did the District follow restraint procedures during the incident that occurred with the Student on March 28, 2023, according to WAC 392-172A-02076 and 392-172A-02110?
2. Did the District follow the required timelines when conducting a reevaluation of the Student according to WAC 392-172A-03015?²

¹ OSPI notes that it received a release of information, signed by the Student's Parent, giving OSPI permission to share Student personally identifiable information with the Complainant.

² Subsequent to the filing of the complaint, it was clarified that the allegations concerned an initial evaluation, not a reevaluation.

LEGAL STANDARDS

Child with a Disability/Student Eligible for Special Education Services: For the purpose of providing a student with procedural safeguard protections, the term “student eligible for special education services” also includes a student whose identification, evaluation, or placement is at issue. WAC 392-172A-01035.

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. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Prohibited Practices: School district personnel are prohibited from using aversive interventions with a student eligible for special education services and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm. WAC 392-172A-02076.

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with prior written notice consistent with WAC 392-172A-05010 of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Decision Whether to Conduct an Initial Evaluation: Following a written request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral and: notify the student's parents of the referral; collect and examine existing school, medical, and other records in the possession of the parents and school district; and within 25 school days after receipt of the referral, decide whether or not to evaluate the student. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation Timeline: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within 35 school days after the date written consent for an evaluation has been provided to the school district by the parent, 35 school days after the date the consent of the parent is obtained by agreement through mediation, the refusal to provide consent is overridden by an administrative law judge following a due process hearing, or such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline. WAC 392-172A-03005.

Initial IEP Development: A district must hold a meeting to develop a student's individualized education program (IEP) within 30 school days of a determination that the student is eligible for special education and related services. WAC 392-172A-03105.

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was a kindergartener who attended a District elementary school. The Student was not eligible for special education services.
2. On February 10, 2023, the Student's private counselor emailed the school's counselor, requesting an evaluation of the Student due to "behavioral/social difficulties." After not hearing back from the District, the private counselor again emailed the school counselor on February 22, 2023, asking "if we can get started on an evaluation."

3. According to the District, the school psychologist that coordinated the referral and evaluation process for the Student did not receive the referral until February 24, 2023.
4. On March 28, 2023, the Student was involved in a behavior incident in which the Student was "dragged" by staff, according to the Complainant. The District described the incident as follows:

[Assistant principal] approached the Student, who was lying on the cafeteria floor, and pulled him by one arm toward a table where the Student remained lying and [assistant principal] left. The security footage further showed [principal] take Student by the arm and pull him to another space in the cafeteria. Neither [assistant principal] or [principal] filed a report or otherwise notified anyone of their actions.

5. The complaint stated that this action constituted a "restraint" and there was no imminent likelihood of harm. The complaint also stated that the District did not inform the Parent about the restraint; the Parent heard about the restraint through "happenstance." The Complainant later stated the District notified the Parent "at the earliest" on April 8, 2023.

The District reported that the Complainant's claim that the Parent was never notified of the incident and came to learn the restraint had been performed only through happenstance was contrary to the multiple contacts documented by the District. For example, on April 21, 2023, the District human resources director exchanged emails with the special education director, stating the Parent would be contacted regarding "concerns communicated to the district regarding safety for students that we are looking into." The District stated that other emails from May to July 2023 indicated that the incident was discussed with the Parent.

6. On April 21, 2023, the District observed the security video of the incident. At that time, the District placed the principal on administrative leave pending the completion of an independent investigation of the incident.
7. The District stated that during the pendency of the investigation, the District notified the Parent of the incident and consistently engaged with her around the issue. The District documented the incident in its isolation and restraint data log and notified Child Protective Services (CPS) and law enforcement. In addition, the District stated that it had, on May 5, 2023, proactively provided extra de-escalation training to all certificated and classified staff at the Student's school. The restraint data log included the grade, school, incident code, date, time of restraint, and duration of restraint.
8. On April 11, 2023 (33 school days after the February 10, 2023 referral), the District and the Parent met to discuss the need to evaluate the Student. The "Guidance Team Record – Special Education Referral" stated the date of the referral was February 27, 2023. The meeting minutes showed the team discussed the Student's behavior challenges and interventions that were attempted, such as using a behavior technician, a behavior plan, a crisis plan, and breaks in the office (30 minutes minimum).
9. The prior written notice that documented the April 11, 2023 meeting stated the District proposed evaluating the Student. The notice stated that the Student had been "struggling to

manage his behaviors” and that the Student may have a disability and need specially designed instruction.

10. On April 12, 2023, the District school psychologist emailed the referral paperwork to the Parent.
11. On April 13, 2023, the “Consent for Initial Evaluation” form stated the Parent gave verbal consent for the initial evaluation. No written consent by the Parent was provided to OSPI.
12. On May 23, 2023 (28 school days after receiving Parent consent), the Student’s evaluation team met and determined the Student was eligible for special education services under the category of developmental delay. On the same day, the Student’s team developed an IEP that focused on the Student’s behavior.
13. On June 16, 2023, the Student was withdrawn from the District and enrolled in another school district.
14. On July 6, 2023, the District received the independent investigation report regarding the incident. The District then reported the principal and assistant principal to OSPI’s Office of Professional Practices (OPP). The District terminated the principal’s contract and the assistant principal eventually resigned.

2023–24 School Year

15. On January 16, 2024, the Student was re-enrolled in the District. The Student continued to be eligible for special education services under the category of developmental delay.
16. On February 6, 2024, the Complainant filed this complaint with OSPI.

CONCLUSIONS

Issue One: Restraint Procedures – The complaint alleged the District failed to follow restraint procedures, including reporting the incident to the Parent. School district personnel are prohibited from using aversive interventions with a student eligible for special education services and are prohibited from physically restraining or isolating any student, except when the student's behavior poses an imminent likelihood of serious harm. The district must follow restraint procedures when a student eligible for special education is restrained. The District denied the allegation. The District stated:

The District admits that [principal’s] and [assistant principal’s] conduct toward Student on March 28, 2023 constituted inappropriate restraint in violation of WAC 392-172A-02076 and WAC 392-172A-02110. However, the District asserts that it has proactively taken all steps necessary to address this incident. The District notified the parent, CPS and law enforcement of the incident; documented the incident in its isolation and restraint data log; funded an independent investigation of the incident; reported [principal] and [assistant principal] to [the office of professional practices]; and initiated adverse employment action against both, which resulted in their subsequent separation of employment with the District. As a further preemptive step, the District provided additional training in

appropriate escalation techniques to all certificated and classified staff at the School. The District completed all of these steps more than half a year in advance of [Complainant's] complaint in this matter.

Here, in February 2023, the Student was referred for a special education evaluation by the Student's private counselor. The incident involving restraint occurred on March 28, 2023. Regarding the special education division's jurisdiction over the issue, since the referral for evaluation was "at issue," the Student was considered a "student eligible for special education services" for purposes of receiving the procedural safeguards afforded to students eligible for special education. Thus, the District was required to follow the restraint procedures that are incorporated into the special education rules, including the restraint reporting requirements.

The District acknowledged that the restraint was a violation of state regulations. While the District aggressively addressed the personnel issues and reported the incident to outside agencies, the District was also required to follow the reporting requirements according to RCW 28A.600.485 that included verbally notifying the Parent of the incident within 24 hours and by writing within five business days. There were different accounts of when the Parent was contacted about the incident, but there was no indication that the Parent was contacted within 24 hours and five business days. In addition to notification, the District was required to review the incident with the Parent and Student to address what precipitated the behavior and the appropriateness of the response, along with reviewing the incident with the staff member. And the staff member was required to notify the District office in this case, as soon as possible, since the incident involved the building administrators and to submit a written report regarding the incident within two business days. The District acknowledged that the principal and assistant principal did not notify anyone and as a result, the incident was not discovered until April 21, 2023, when the security tape was reviewed. The District failed to report the incident with all the required information and review the restraint with the Parent and Student in a timely manner. As a result of the District not following the restraint procedures, a violation is found. The District has already provided training to staff regarding de-escalation strategies, but the District is required to provide further training on restraint procedures, including reporting requirements, to all special education staff and administrators at the school the Student attended at the time of the violation.

Issue Two: Initial Evaluation Timeline - The complaint alleged the District exceeded the initial evaluation timeline. After receiving a referral, a district must decide within 25 school days whether it will evaluate the student or not. Once parent consent for the evaluation is received, the district has 35 school days to evaluate and determine eligibility.

Referral Timeline: Here, on February 10, 2023, the District received a referral to evaluate the Student from the Student's private counselor, although the school psychologist who coordinated the evaluation stated they did not receive the referral until February 24, 2023, and the referral form stated the referral was received on February 27, 2023. On April 11, 2023, 33 school days after receiving the February 10, 2023 referral, the District determined the Student would be evaluated. The District was required to make the determination within 25 school days of the date of the private counselor's initial referral on February 10, 2023. Since the determination should have been made by March 22, 2023, a violation is found. For corrective action, the District is required to

provide written guidance regarding referral procedures to the special education staff and administrators at the school the Student attended at the time of the violation. The written guidance must provide staff guidance to ensure that referrals are accurately documented, especially given the District's confusion over the correct date of referral.

Evaluation Timeline: After determining on April 11, 2023 that the Student would be evaluated, the District received the Parent's verbal consent to evaluate the Student on April 13, 2023. The Student was evaluated and then determined eligible on May 23, 2023, which was 28 school days after receiving verbal consent. The Student's IEP was developed on the same day. Because the District met the 35-day timeline from consent to eligibility determination, no violation is found.

Regarding the possibility of compensatory education services because of delay in the referral, the District had 30 school days to complete the IEP after determining eligibility. But the District developed the Student's IEP on the same day, which meant that the Student would not miss any special education services, even taking into account the referral delay. Therefore, there is no need for compensatory education.

CORRECTIVE ACTIONS

By or before **April 19, 2024, May 10, 2024, and May 17, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **May 3, 2024**, the District is required to provide written guidance regarding referral timelines to all special education staff and administrators, both general education and special education, that are assigned to the school where the Student attended at the time of the violation. The guidance should address properly documenting referrals to ensure a timely start of the 25-school day timeline.

By **April 19, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by April 26, 2024.

By **May 10, 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.

Training

By **May 10, 2024**, the District is required to provide training regarding restraint procedures, including reporting requirements, to all special education staff and administrators, both general education and special education, that are assigned to the school where the Student attended at

the time of the violation. The District may use District staff, the Educational Service District, or a private contractor to provide the training.

By **April 19, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by April 26, 2024.

By **May 17, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

RECOMMENDATION

OSPI reminds the District that parent consent for an evaluation must be in writing. OSPI suggests the District take steps to ensure staff is aware of the requirement for written consent.

Dated this 3rd day of April, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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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.)