

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-48**

### **PROCEDURAL HISTORY**

On April 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) regarding a student (Student) attending the Auburn 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 April 5, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 8, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On April 25, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 26, 2024. OSPI invited the Complainant to reply.

On May 13, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On May 28, 2024, the OSPI complaint investigator requested an interview with the Parent. The Parent did not respond.

On May 30, 2024, the OSPI complaint investigator interviewed the Student's special education teacher.

On May 31, 2024, the OSPI complaint investigator interviewed the District social worker.

OSPI considered all information provided by the Complainant 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 April 6, 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. Did the District follow restraint procedures during an incident involving the Student according to WAC 392-172A-02110?<sup>1</sup>

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<sup>1</sup> The original complaint addressed the March 6, 2024 restraint and March 7, 2024 isolation. However, the complaint issue referred to only restraints. Upon receiving the intake letter identifying the issue, the Complainant did not indicate any disagreement with the issue.

2. Did the District implement the behavior supports and accommodations, including the behavioral intervention plan (BIP), in conformity the Student's individualized education program (IEP) according to WAC 392-172A-03105?
3. Did the District address the Parent's concerns regarding the Student's behavior according to WAC 392-172A-03110?

### **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. 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.

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.

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure

occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9<sup>th</sup> Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

## **FINDINGS OF FACT**

### **2023–24 School Year**

1. At the start of the 2023–24, school year, the Student was a fourth grader who attended a District elementary school and was eligible for special education services under the category of health impairment. The Student's January 10, 2023 IEP was in place at the time.
2. The January 2023 IEP stated that the Student's behavior impeded her learning and the learning of others. The IEP included that a functional behavioral assessment (FBA) had been conducted and a behavioral intervention plan (BIP) was developed that addressed eloping and verbal/physical aggression towards others. Interventions included a private space, visual schedule, choice board, token board, sensory breaks, positive home reports, zones of regulations, positive language, headphones, and social/emotional work. The IEP provided the following accommodations:
  - 100s number table
  - Additional time for assignments
  - Adult proximity
  - Extra time for assignments

- Frequent breaks in classroom
- Allow more than one day for testing
- Cue to stay on task
- Frequent checks for understanding
- Headphones
- Preferential seating
- Provide instructions verbally
- Quiet testing environment
- Read math/content items verbatim
- Repeat directions
- Speech-to-text
- Test administered by familiar adult
- Test questions read aloud
- Testing in one-hour chunks
- Use of modified, tri-lined paper
- Use of token board or first/then strip and/or visual timer for duration with a prechosen choice

The Student's IEP provided annual goals in the areas of social/emotional (decision-making skills), behavior (engagement in learning and regulation zones), math (identifying and representing numbers within 100 with base ten blocks and story problems without regrouping), reading (sight word fluency and comprehension), and writing (sentence writing). The IEP provided for specially designed instruction, provided by a special education teacher in a special education setting in the following areas:

- Math: 50 minutes, 5 times weekly
- Reading: 50 minutes, 5 times weekly
- Written Language: 50 minutes, 5 times weekly
- Social/Emotional: 50 minutes, 5 times weekly
- Behavior: 50 minutes, 5 times weekly

The IEP also provided occupational therapy for 20 minutes, once a week. The IEP indicated the Student would spend 30.56% of their time in a general education setting. The IEP also showed that the District and Parent agreed to an emergency response protocol (ERP). The Student was placed in a District program designed to serve students with significant social/emotional and behavior needs.

3. The District's 2023--24 school year began on September 6, 2023.
4. According to the Complainant, the Parent had repeatedly expressed concern to the District about the Student's aggressive behaviors and that "she did not want any of these events leading to instances of isolation or restraint."
5. To address the Parent's ongoing concerns about the Student's program, on September 27, 2023, the Parent and District engaged in mediation and a facilitated IEP meeting followed on October 13, 2023. On October 26, 2023, the Student began attending school.
6. On October 13, 2023, a facilitated IEP meeting was held to review the Student's IEP. The team, in part, discussed whether an ERP was necessary and the Parent's insistence that isolation and restraint not be used due to past trauma. According to the meeting notes, the following was agreed to:
  - Adding "in the classroom" to the behavior present level
  - Change physical education to general education
  - Checking "No" to the ERP
  - Provide supplemental academic and social/emotional materials to Parent
  - Arranging transportation for when the Student begins school

- Provide weekly data to Parent
  - Provide daily positive reports to Parent
7. Beginning October 23, 2023 through February 26, 2024, the Parent and teacher continually communicated through a message service about Parent concerns, setting up meetings, and how the Student was progressing. During this period of time, the District stated the Parent periodically came to school at times to check on the Student. At times, the Parent met with the Student's special education teacher (teacher) when the teacher was available.
  8. The December 2023 report on the Student's progress toward the annual goals showed that the Student was approaching the goal target in most goals, but had demonstrated emerging skills in two goals.
  9. In early December 2023, the Parent requested a meeting to discuss a behavior incident. According to the District, it set up a meeting with the Parent about the incident, but the Parent did not attend.
  10. On December 7, 2023, the teacher emailed the Parent, asking if the Parent was available for an IEP meeting on December 14, 2023.
  11. On December 8, 2023, the Parent sent the teacher a message, stating:

Don't send me anymore text messages about my daughter unless you are reporting everything...[Student] was once again exposed to physical violence in this classroom for the 3rd time this year...Also she fell off a desk and HIT HER HEAD...nobody sent her to get any kind of medical attention from the school nurse or anything...Also she was physical with the teacher...NOBODY CALLED ME...I'm tired of sending my daughter to this behavior class you guys have her in an abusive triggering hostile environment and so often so many different paras she doesn't even know...I'm afraid for her safety and emotional well-being while in you and your staffs care...I will be consulting my attorney and district individuals on what steps should be taken to ensure my daughter is safe moving forward.

The teacher continued to send messages to the Parent about the Student's activities and her progress.

12. According to the complaint, the Student reported to the Parent that she was being regularly isolated and restrained. The Parent stated she did not receive notice of these incidents.
13. On December 12, 2023, the Parent emailed the teacher, asking that the meeting be delayed until an independent educational evaluation (IEE) was conducted (although there was no documentation that one was completed.) The Parent expressed concern about not being notified about incidents when the Student was "physical" with a teacher, two head injuries, and the Student received nursing care at school.
14. On December 12, 2023, the teacher responded to the Parent, stating:

Thank you for letting me know that you are feeling overwhelmed. I appreciate you still taking the time to communicate with me about [Student's] IEP meeting and needs!

Were you able to schedule the IEE? If so, when is that scheduled to take place? Due to her IEP expiring on 1/9/2024, Winter Break, and coordinating with the rest of [Student's] IEP team members, 12/15/23 seems to be the best date to ensure that all necessary people are available. I will certainly do my best to communicate with you daily through Remind, phone-call, or email. In the past, you said Remind is most convenient for you. Please let me know if you would prefer another mode of daily communication. My goal is to highlight [Student's] positive accomplishments for the day, as she is doing well! She has made a lot of progress in the weeks we have had her! I will also share any concerns that come up. Please don't hesitate to contact me if you have any questions or concerns, we're a team.

15. In response to the complaint, the District stated:

[Teacher] reported that, with implementation of this plan, [Student] had demonstrated success through mid-February, making progress toward her January 10, 2023 IEP goals (Item 2-5), despite having not attended school March 16-2023-October 26 2023. When she returned to school after mid-winter break, she demonstrated significant behavioral challenges that had not been seen during the 2023-24 school year, and she was arriving at school dysregulated on a daily basis. After her first week back, the team recognized that they needed to regroup, and they focused on providing high levels of praise, reducing expectations, and rebuilding relationship with [Student].

16. The District scheduled an IEP meeting for January 4, 2024, but the Parent was unable to connect to the meeting and wanted to reschedule. The team did not meet until March 19, 2024, to review the Student's IEP due to scheduling problems and the time devoted to trying address the Parent's concerns.

17. On March 4, 2024, a behavior incident involving the restraint of the Student occurred. The documentation stated the Student eloped from the classroom to the bus loading area. The "Documentation of Restraint/Isolation" form provided the following information:

- Report staff: [Student's special education teacher]
- Name of staff administering the restraint/isolation: [Assistant principal and occupational therapist (OT)]
- Student's name: [Student]
- Date of incident: 03/04/2024
- Name of school: [School]
- Location of incident: Near load/unload bus area
- Staff involved: [Assistant principal, OT, paraeducator]
- Restraint, isolation, or restraint and isolation: Restraint
- Time restraint began: 10:25 AM
- Duration of restraint: Two minutes
- Type of restraint: Walking restraint/escort
- Disciplinary removal: No
- Antecedent: "[Student] was listening to a story from our curriculum when she suddenly ran toward the classroom door, pushing a staff member out of the way. She eloped from the program classroom and ran down the stairwell. Staff were following her. [Student] exited the building and went outside towards the load/unload zone for buses.
- De-escalation strategies: Success reminder, change in staff, mindful strategies
- Student response during and after: "[Student] walked with staff during escort."

- Recommendations to reduce the need for future restraint and isolation: "Consider updating IEP/504/Positive Behavior Support Plan...Adding an ERP."
- Student injured: No
- Student medical care: Not applicable
- Staff injuries: 0
- Staff medical care: Not applicable

18. On March 4, 2024, the teacher sent an email to the Parent, describing the incident as follows:  
I just wanted to let you know of an incident that occurred. It was reported to me this morning that [Student] eloped from one of our program classrooms during ELA time. She eloped downstairs as staff followed her and ran outside towards the bus load/unloading area. She was escorted by two staff members back to one of my classrooms. We were asking her what she wanted/needed, and she was shouting 'no' while grabbing, hitting, and kicking us. She was able to return to baseline and re-engage in classwork. Assistant Principal, [assistant principal], attempted to call you at approximately 10:34 am.

19. Also on March 4, 2024, the teacher sent a letter to the Parent about the incident. The letter stated:

While at school on 3/4/2024, [Student] was involved in an incident that included school staff using physical restraint. The restraint lasted for a total of 2 minutes. This incident took place in the following location: The incident took place outside near the load/unload bus area.

The following is a description of the behavior that led to the incident: [Student] ran outside towards the load/unload bus area where staff also park their cars.

If you have questions about this incident, please contact the school during regular operating hours.

20. On March 6, 2024, the Student was involved in another behavior incident that resulted in restraint. The "Documentation of Restraint/Isolation" form provided the following information:

- Report staff: [Student's special education teacher]
- Name of staff administering the restraint/isolation: [Assistant principal and teacher]
- Student's name: [Student]
- Date of incident: 03/06/2024
- Name of school: [School]
- Location of incident: "The restraint took place outside on the sidewalk near the bus loop."
- Staff involved: [Assistant principal, OT, paraeducator]
- Restraint, isolation, or restraint and isolation: Restraint
- Time restraint began: 10:03 AM
- Duration of restraint: Two minutes
- Type of restraint: Walking restraint/escort
- Disciplinary removal: No
- Antecedent: "[Student] was working on ELA (English language arts) work with her teacher. [Student] stated "I hate this" and threw the workbook then eloped from the classroom. She then ran down the stairs pushing a staff member out of the way and ran out of the building."
- De-escalation strategies: Success reminder, change in staff
- Student response during and after: "[Student] was resistant to the walking escort."

- Recommendations to reduce the need for future restraint and isolation: "Consider updating IEP/504/Positive Behavior Support Plan...Adding an ERP."<sup>[2]</sup>
- Student injured: No
- Student medical care: Not applicable
- Staff injuries: 0
- Staff medical care: Not applicable

21. On the same day, the teacher emailed the Parent the following:

I wanted to inform you of an incident this morning. While we were working on ELA, [Student] became dysregulated and said, 'I hate this' and threw her workbook. She then ran out of the classroom and down the stairs exiting the building near the bus unload/load area. We were able to support [Student] in getting back inside. She was able to return to baseline when we got back to our classroom. Attached is the report.

22. Also on March 6, 2024, the teacher sent the Parent the following letter:

While at school on 3/6/2024, [Student] was involved in an incident that included school staff using physical restraint. The restraint lasted for a total of 2 minutes. This incident took place in the following location: The restraint took place outside on the sidewalk near the bus loop.

The following is a description of the behavior that led to the incident: [Student] ran out of the building stating 'I'm going to run to the street'.

23. The complaint alleged the Parent only received the two letters that only briefly described the incidents and which did not provide the Parent with required information reporting. The complaint did not address whether the Parent received the two emails from the teacher regarding the incidents.

24. The District also provided a copy of a spreadsheet in its response that documented all restraint and isolation incidents during 2023–24 school year. The spreadsheet showed three incidents of restraint and one incident of isolation during the time the Student attended school. Based on the spreadsheet provided, the Complainant alleged the Parent did not receive notification of an isolation incidents on February 29, 2024 and March 7, 2024.

25. On March 7, 2024, there was a behavior incident that resulted in the Student being isolated.

26. Starting on March 8, 2024, the Student no longer attended school. The Student attended school from October 26, 2023 through March 7, 2024.

27. The Student's March 2024 progress report stated the Student was approaching the target for all goals, except one goal, which was an emerging skill.

28. On March 19, 2024, a draft IEP was proposed at an IEP meeting, but the team was not able to complete the IEP due to addressing the Parent's concerns, according to the District. The January 2023 IEP continued to be implemented. Following the meeting, the Parent informed the District that the Student would continue to not attend school.

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<sup>2</sup> The Complainant added that ERPs are "not an appropriate recommendation to reduce/prevent the need for future restraint and isolation...."



29. On April 5, 2024, this complaint was filed with OSPI.
30. The complaint also alleged that the District failed to implement the Student's IEP services and BIP. The Parent reported that the Student's classroom did not have visual tools, no visual schedule, and no token board.
31. In its response, the District provided a picture of the token board that was used, along with an explanation of how the BIP was implemented. The District explained how the token board was used, as follows:
- [Student] had a laminated board with yellow tickets (Item 2-3) that she could earn to exchange for preferred activities. Initially, the token board was used to immediately reinforce every positive behavior. As [Student] demonstrated success, the reinforcement frequency was reduced. [Teacher] reports that earning small rewards throughout the day was very motivating for [Student].

The District also explained how interventions were adapted, such as the visual schedule, when they were not working as planned, as follows:

Daily visual schedule posted for her to reference - Initially, laminated cards were used to present visual schedules to [Student], but she didn't like them, so the team switched to using the classroom whiteboard to create a new schedule daily. The schedule consisted of 10-15 minutes of work time followed by breaks. [Student] chose her break activities while the schedule was developed.

32. The OSPI complaint investigator interviewed the Student's teacher. The teacher provided the following information:
- The teacher reviewed the Student's January 2023 IEP and BIP and other information about the Student before the Student began attending school in late October 2023.
  - Even after reviewing the Student's information, the teacher stated she needed time to become familiar with the Student.
  - From October 2023 to February 2024, the Student did not display the physically aggressive behavior that was prevalent in the Student's information. As the teacher became more familiar with the Student, the January 2023 BIP appeared inconsistent with the Student's behavior.
  - Some of the behavior strategies in the BIP were not effective so the strategies were changed as needed. The newer strategies were much more effective. The Student's behavior had changed since the January 2023 plan was developed.
  - Token board: It was used when the Student was open to it. The Student did not seem to care about it at times.
  - Visual schedule: The Student ripped up the visual schedule on her desk so a white board was used. The Student better responded to the white board than having it on her desk. The schedule was also changed from being more detailed to more general because it gave greater flexibility and was more responsive to the Student. Transitions from one activity to another sometimes caused the Student to become dysregulated.
  - Choice board: The Student had no interest in it and ripped it up because it sometimes had nothing that she wanted and then became dysregulated. Directly asking the Student what she wanted was much more effective.
  - There was no gap in the implementation of the Student's special education services, except when the Parent chose to keep the Student out of school.

- The teacher wanted to talk about the changes to the BIP at the January and March 2024 IEP meetings, but there was no opportunity because the meetings focused solely on the Parent's concerns.
- After returning from the winter break, the Student became noticeable more aggressive and defiant. It was not clear why there was such a change of behavior.
- Some behavior resulted in the Student being restrained and isolated.
- The teacher filled out the restraint and isolation forms contacted the Parent about the incidents after an administrator "walked through" the reporting procedures with her.
- When asked what the Parent wanted for the Student, the teacher stated the Parent thought the Student should be in general education more often but also would say the Student needed a private placement.

33. The OSPI complaint investigator interviewed the school social worker who worked with the Student and in the Student's classroom. The social worker provided the following information and their perspective on the Student's needs:

- The social worker worked in the Student's classroom once a week and provided social/emotional learning sessions with the Student.
- After a "rough start" when the Student began attending school, the Student made progress until March 2024, when the Parent stopped sending the Student to school.
- The token board was available, but it was not used with the Student. All students in the classroom had one.
- The choice board would be effective for the Student if it listed high rewards and medium rewards that the Student could pick from.
- A consistent visual schedule would help the Student day-to-day.
- Movement breaks should be scheduled and not by request.
- The Student needed consistency in her work, consequences, and breaks.
- The Student should be offered headphones rather than required to request them.
- The Student continues to need to form positive relationships with school staff.
- The Parent wants to know everything that is going on with the Student.
- The Parent does not understand the Student's progress the way the District explains it to her.

## **CONCLUSIONS**

**Issue One: Restraint Reporting** – The complaint alleged the District failed to follow restraint reporting requirements. School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. The District denied the allegation.

Here, several incidents of restraint occurred with the Student. After a school employee engages in restraint 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 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 met these two responsibilities. The building administrator was involved in the incident, and she and the teacher filled out written reports on the day of the incident.

*Reporting Requirements:* The written report must include:

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

On March 4 and 6, 2024, a District form entitled "Documentation of Restraint/Isolation" was filled out by the teacher, and that form satisfies the six requirements listed above.

*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.

Regarding the March 4, 2024 restraint, the teacher emailed the Parent about the incident the same day it happened that provided a description of the behavior that led to the restraint, the type of restraint, and the Student's reaction. The teacher also sent a letter, dated March 4, 2024, to the Parent that provided a description of the behavior that led to the restraint, the duration of the restraint, and the length of the restraint. The letter stated the assistant principal attempted to call the Parent regarding the March 4, 2024 restraint, but there was no indication other than the teacher's statement that the assistant principal followed up with the Parent.

On March 6, 2024, the documentation showed that the teacher sent the Parent an email, describing the incident. The email stated the "report" was attached. The teacher also sent a letter to the Parent that described the behavior that led to the incident, length of the restraint, the location of the incident.

The documentation did not show that the District verbally informed the Parent within 24 hours of the incidents, although the assistant principal attempted to call the Parent and provide the Parent with written notice of the incidents. Written notice consists of all information that is provided in the District report. The District provided some of the required information but not all.

*Post-Incident Reviews:* Following a student's release from restraint, the school must review the incident with:

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

The documentation did not indicate that the school reviewed the incidents with the Parent and Student. The principal attempted to call the Parent regarding the March 4, 2024 incident, which appeared to be to talk to the Parent about the incident.

Restraint and isolation are serious issues that require time and expertise to address them. The reviews with the Parent and Student and staff member should not be perfunctory steps in the process. The review should be thoughtful about how future restraints or isolation can be prevented and provide specific strategies to mitigate the need for restraint or isolation. While reviewing the IEP and BIP may be necessary, but it is not a sufficient strategy by itself to prevent future isolations and restraints. In addition, adding an ERP does nothing to prevent future restraints or isolations. A violation is found. The District must provide training to all special education staff and administrators in the building regarding reporting requirements.

**Issue Two: IEP Implementation** – The complaint alleged the District failed to implement special education services in conformity with the Student’s IEP. The complaint alleged the District did not provide the Student visual tools, a visual schedule, and token board per the behavioral intervention plan. A district is required to provide special education services in conformity with the student’s IEP. The District denied the allegation.

Here, the Student’s January 2023 BIP called for a visual schedule, a choice board, and token board, among other strategies. According to the teacher, the behavior strategies were used after the Student started attending in late October 2023. After working with the Student, the teacher found that some of the strategies were not working well. Rather than continue to use ineffective strategies, the teacher reasonably adapted them to the Student’s current needs. For example, when the Student tore up the visual schedule on her desk, the teacher used the white board which the Student responded to. At the time the teacher recognized that parts of the BIP were either outdated or no longer effective, the District should have requested an IEP meeting to amend the BIP. The teacher stated she wanted to discuss the new strategies and amend the out-of-date BIP at the January and March IEP meetings, but the meetings focused on the Parent’s concerns and not on the IEP itself. Although the strategies in the BIP were not implemented specifically as written, alternative strategies were used to accomplish the same intended results. The changes were Student centered and consistent with the needs and abilities of the Student. No violation was found.

OSPI notes that the school social worker also recommended additional strategies that she thought would be beneficial to the Student. OSPI believes this is an opportune moment to move forward to develop a new IEP for the Student with input from the Parent, social worker, and other professionals on the team.

**Issue Three: Parent Input** – The complaint alleged the District failed to consider the Parent’s input into developing the Student’s IEP. A district is required to consider the parent’s input and concerns in developing the IEP. The District denied the allegation.

Here, at the beginning of the school year when the Parent was holding the Student out of school, the District and Parent engaged in mediation in September 2023 and a facilitated IEP meeting in

October 2023 to ensure the Parent had an opportunity to express her concerns about the Student's program. After becoming familiar with the Student, the District proposed meetings in December 2023 and January 2024, but the January 2024 meeting was canceled at the last minute because of the technical issues the Parent was having. The District made attempts to reschedule and eventually met in March 2024, but the meeting focused on hearing the Parent's complaints about the program and the IEP was unable to be addressed, according to the District. The Parent had continual contact with the teacher and sometimes met with the teacher informally to express her concerns. While the Parent may have disagreed with the program, the documentation showed the Parent had input in it and the District considered her input as it was required to do. No violation was found.

OSPI notes that case law provides precedent supporting the emphasis on parent participation, both the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE.<sup>3</sup> Here, OSPI acknowledges the efforts the IEP team went to amending the IEP and BIP for the Student and ensure Parent participation and while Parent participation is essential, a team also cannot meet indefinitely to develop an annual IEP or BIP, in this case, when FAPE may be compromised. OSPI also finds that after the IEP meeting that did not result in a finalized BIP, the District should have amended the BIP as necessary and communicated that to the Parent. Once the BIP is finalized and implemented, the IEP team can always continue to meet to try to reach consensus on any remaining disagreements and amend the IEP as needed.

### **CORRECTIVE ACTIONS**

By or before **September 6, 2024, September 13, 2024, and October 4, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By **September 27, 2024**, The District, in cooperation and collaboration an outside trainer, will co-develop and jointly conduct a training on restraint/isolation report procedures. The District will provide the trainer with a copy of this decision, SECC 24-48.

All special education certified staff and general education administrators in the Student's building are required to receive training in reporting procedures.

By or before **September 6, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

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<sup>3</sup> See, *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

By or before **September 13, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by **September 20, 2024**.

By or before **October 4, 2024**, the District is to provide OSPI with documentation that the required participants have received 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 recommends the District hold an IEP meeting to consider the recommendations from the social worker and Parent, as always, into developing a new BIP since there appeared to be consensus that the BIP was out of date and needed changed.

Dated this 3rd day of June, 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.)