

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-66**

### **PROCEDURAL HISTORY**

On May 3, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a teacher (Complainant) regarding students (Students) attending the Monroe 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 Students' education.

On May 3, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 6, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 7, 2024, OSPI requested additional information from the Complainant. OSPI received the information on May 7, 8, and 9, 2024, and forwarded it to the District on May 9, 2024.

On May 8, 2024, OSPI requested additional information from the Complainant. OSPI received that information on May 15, 2024, and forwarded it to the District on the same day.

On May 10, 2024, OSPI received part 1 of the District's response. Part of that response was forwarded to the Complainant on May 11, 2024.<sup>1</sup>

On May 14, 2024, based on the District's response, part 1, OSPI requested an additional response from the District. The District provided parts 2, 3, and 4 of its response on May 28 and 29, 2024. OSPI sent part of the District's response to the Complainant on May 31, 2024.

On May 14, 16, June 5, and 12, 2024, OSPI interviewed six current or former District employees.

On May 16, 2024, OSPI requested additional information from the Complainant. OSPI received that information on May 16, 2024, and forwarded it to the District on May 17, 2024.

On May 29, 2024, OSPI requested additional information from the Complainant. OSPI received the information on May 29, 31, and June 4, 2024, and forwarded it to the District on May 29, 31, and June 5, 2024.

On May 29 and 30, 2024, OSPI requested additional information from the District. OSPI received the information on May 29 and 31, 2024, and it was not forwarded to the Complainant.

On May 31, 2024, OSPI requested additional information from the Complainant. OSPI received the information on May 31, 2024, and sent it to the District on the same day.

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<sup>1</sup> When OSPI does not forward a district's information to a complainant it is because that information contains student personally identifiable information for which OSPI has not received releases of information from the students' parents that would allow a complainant to see those documents.

On May 31, 2024, OSPI requested additional information from the District. OSPI received the information on the same day and part of it was forwarded to the Complainant on the same day.

On June 5, 2024, OSPI received additional information from the Complainant. OSPI forwarded it to the District on the same day.

On June 7, 2024, OSPI received additional information from the District, and forwarded it to the Complainant on the same day.

On June 8, 2024, OSPI received additional information and the Complainant's reply to the District's response and forwarded it to the District on June 9 and 10, 2024.

On June 10, 2024, OSPI received additional information from the District, and forwarded it to the Complainant on June 12, 2024.

On June 12, 2024, OSPI received additional information from the Complainant, and forwarded it to the District on the same day.

On June 12, 13, and 17, 2024, OSPI received additional information from the District, and forwarded it to the Complainant on the same days, respectively.

On June 17, 2024, OSPI received additional information from the Complainant, and forwarded it to the District on the same day.

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

### **SCOPE OF INVESTIGATION**

This decision references events from before the investigation period, which began on May 4, 2023. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations from before the investigation period.

### **ISSUES**

1. Since May 4, 2023, per WAC 321-172A-02110, has the District followed proper restraint procedures with the Students, including using restraint only when there was an imminent likelihood of serious harm and following all reporting, documentation, and other requirements, such as staff being certified in using restraint techniques?
2. Since May 4, 2023, per WAC 392-172A-03105, has the District properly implemented the Students' individualized education programs (IEPs), including accommodations and behavioral intervention plans (BIPs)?
3. Since May 4, 2023, per WAC 392-172A-03095, were proper excusal procedures from IEP meetings followed for the general education teachers?

## 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 beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Meeting-Attendance Excused. A school district member of the IEP team is not required to attend a meeting, in whole or in part, if the parent of a student eligible for special education services and the school district agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A member of the IEP team described in (a) of this subsection may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if: (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members. WAC 392-172A-03095 (5)(a) and (5)(b).

### **FINDINGS OF FACT: BACKGROUND**

1. The Complainant was a teacher in the District's self-contained program (Program) during the 2022–23 school year and until October 2, 2023. The Program consisted of two classrooms with between eight and eleven students from kindergarten through fifth grade in each classroom. The classrooms were each staffed by a teacher and paraeducators.
2. For the 2023–24 school year, the first day of instruction for elementary school students was September 6, 2023, and for Kindergarten, the first day of instruction was September 11, 2023.
3. Between September 20–22, 2023, the Complainant was absent from work due to injuries and to seek medical attention after being struck by a Student.
4. From September 25–29, 2023, the Complainant was on paid administrative leave<sup>2</sup> and on October 2, 2023, the District sent the Complainant a letter that stated, in part, "Beginning

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<sup>2</sup> During these five days, the Complainant remained in her office which was next to the classroom.

October 3, 2023...For the remainder of the 2023-2024 school year, [Complainant] will be assigned as an itinerant substitute teacher.”<sup>3</sup>

5. On May 3, 2024, the Complainant filed a complaint with OSPI, alleging, in part, that:
  - Students were unnecessarily restrained.
  - Students were not in their least restrictive environments (LRE).
  - Students’ IEP accommodations were not being provided.
  - Behavior intervention plans (BIPs) were not being implemented.
  - Staff was leaving IEP meetings early without parent/guardian consent.
  - The Program was insufficiently staffed with paraeducators.
  - Program paraeducators were not adequately trained.
6. OSPI initially requested information for five Students (Students 1–5) who had been in the Complainant’s class during the 2022–23 and 2023–24 school years. Subsequently, OSPI requested information on five additional Students (Students 6–10).

### **FINDINGS OF FACT: ISSUE 1 (RESTRAINT)**

7. In emails to OSPI, the Complainant stated that she witnessed the following being done by staff without Students’ consent:
  - On May 4, 5, 19 and 23, 2023, a rolling chair was used to move Student 6 around the classroom instead of allowing the Student to walk on his own on.
  - On May 5 and 18, 2023, Student 7’s hand was held to restrict the Student’s movement on the playground.
  - On May 24, 2023, Student 4’s hand was held to restrict the Student’s movement on the playground and in the classroom.
  - On September 13, 2023, Student 8 and 9’s hands were held to restrict the Students’ movement on the playground and in the classroom.
  - On September 14, 2023, Student 8 was grabbed and picked up off a table.
  - On September 14, 15, 18 and 19, 2023, Student 10 was grabbed in the classroom to prevent the Student from moving.
  - On September 13-19, 2023, many instances of grabbing and holding students, or moving them. Mainly Students 8, 9, and 10.

On September 25–29, 2023, the Complainant was on administrative leave in her office and these instances were either reported to her, she saw them occur through her blinds, or heard them through her office door. These instances included:

- Placing Students in rolling chairs to move them.
  - Strapping Student 10 into the stroller while staff attended to other Students.
  - Holding Students 6, 8, 9, and 10 in chairs.
  - Holding Students’ hands to restrict movement.
  - Grabbing Students 6, 8, and 9 from furniture without asking them to get down.
8. The Complainant also mentioned that during lunch on September 11 and 12, 2023, teacher 1 held Student 10 on her lap during lunch so that the Student would stay at the table.

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<sup>3</sup> Beginning November 13, 2023, the Complainant started her leave and has yet to return to work.

On June 5, 2024, OSPI interviewed teacher 1 who stated: Student 10 could not support herself and sit at the picnic-style tables found in the cafeteria, and the school did not have the necessary adaptive chair on September 11 and 12, 2023. Teacher 1 said she did not place Student 10 on her lap, nor did she restrain Student 10. Teacher 1 said she prevented Student 10 from falling back by sitting perpendicular to the Student with one arm and leg in front of and behind Student 10 to support the Student as she ate.

9. On May 14, 16, June 5, and 12, 2024, OSPI interviewed six current and former District employees who worked with the Students in the Program.<sup>4</sup> Regarding the allegations of restraint, the individuals interviewed commented, in part, as follows:

- One person refused to answer if she held Students' hands to restrict movement during transitions or on the playground.
- Students 6 and 10 were restrained.
- Student 10 has been held in an adult's lap and at times was prevented from freely moving around the classroom.
- Staff grab with their hands Students more than is necessary. They pick Students and place them on their laps or use their bodies to physically restrain Students in their seats.
- Student 10's stroller is overused. Student 10 can now walk the needed distances, although she could not at the beginning of the year.
- The stroller is being used because the Program is understaffed.
- Chairs are pushed in so Students cannot leave their tables and they are forced to work.
- Staff are no longer restraining Students in chairs with their arms.

10. On May 29, 2024, the District submitted a part of its response. Regarding the first issue, the District responded, in part:

The District followed all requirements of WAC 321-172A-02110 for all students. From May 4, 2023 through receipt of the Complaint on May 6, 2024 there have been eight instances of restraint on students with IEPs...[Staff] are trained in proper de-escalation and restraint and are certified by the District utilizing the Crisis Prevention Intervention (CPI) training. All eight of the restraints...were properly documented using the District Isolation and Restraint form...The Complainant alleges other incidents of restraint but the incidents she reports do not meet the definition of restraint...[Also] students in the...program are significantly impacted by their disabilities and staff will at times use physical assistance such as hand holding or other physical prompts to aid them in moving from place to place which does not meet the definition of restraint.

11. On June 8, 2024, OSPI received the Complainant's reply to the District's response. The reply stated, in part:

- At the beginning of the 2023–24 school year, three out of the five staff members, including the Complainant, were not certified to perform restraints.
- After the Complainant went on administrative leave, four staff members were hired for her classroom before they were certified to perform restraints.
- In September 2023, the vice principal responded to support the Complainant's classroom on six documented occasions despite not being certified to perform restraints until October 9, 2023.

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<sup>4</sup> OSPI was not able to interview three additional former staff members.

- District policies state "...NEVER touch a student in the following ways: (Examples are not exhaustive): Having a student sit in your lap...Holding a student from running in the classroom or building. Holding hands or arms...to prevent a student from throwing. To enforce compliance with a demand or task."

### **CONCLUSION: ISSUE 1**

Regarding the restraint issue, the Complainant has alleged that District staff, who were not properly trained, restrained Students when there was not an imminent risk of serious harm to the Students or others, and the District has not satisfied reporting requirements for these restraints. The District responded that it followed all the requirements of the applicable regulations.

Under the applicable statute, restraint is a physical intervention, including the use of a device, used to restrict a student's freedom of movement. Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm to the student or others.

In the present case, the Complainant gave a detailed, eyewitness account of the many times that staff grabbed, moved, or restricted the movement of Students when there was not an imminent risk of serious harm to the Student or others in the area. In some instances, these accounts were corroborated by other staff members during their interviews who described physical interventions that restricted the Students' movement. Additionally, at least one District staff person refused to answer whether she held Students' hands to restrict movement despite answering many other questions related to the present complaint, which OSPI notes could indicate staff likely did, at times, restrain Students when there was not an imminent risk of harm to the Students or others. In other instances, staff explained why the physical intervention was not a restraint but was a physical prompt or a support for the Student, such as supporting Student 10's posture during lunch. The District stated the Complainant's alleged incidents did not meet the definition of a restraint and that "students in the...program are significantly impacted by their disabilities and staff will at times use physical assistance such as hand holding or other physical prompts to aid them in moving from place to place which does not meet the definition of restraint."

Because there were not restraint reports filed for all of these instances, OSPI cannot say for certain that every time the staff used a physical intervention, that it met the definition of a restraint; however, staff described enough instances where staff physically restricted a Student's movement—such as picking up a student and lifting them off a table—that likely meet the definition of restraint and were not considered or documented as such. Thus, OSPI finds a violation as to the first issue because District staff were using restraint without understanding that what they were doing met the definition of a restraint and the District did not provide evidence establishing that all these uses of restraint occurred only when the Students' behaviors posed an imminent likelihood of serious harm. As a corrective action, training will be ordered regarding behavior management/support, de-escalation, and the regulations and requirements around use of restraint, reporting, and follow up.

Additionally, the District submitted eight restraint/isolation reports. According to the applicable regulations, those written reports 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.
6. Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

A review of those reports shows that the reports do not satisfy the regulation's sixth requirement. The reports do 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.

Finally, OSPI would like to remind the District that as much as feasibly possible, staff's restraint training should be up to date.

## **FINDINGS OF FACT: ISSUE 2 (IEP IMPLEMENTATION)**

### **IEP Implementation and Staffing**

12. On June 8, 2023, the Washington Education Association<sup>5</sup> (WEA) emailed the District, requesting a meeting. The email stated, in part:

...having untrained paras...where we need trained Para 3's in the Association's perspective is not an acceptable solution to the issue. [Complainant] was told by [principal] that if she placed an instructional para in...[the] classroom and they were getting paid as a para 3 for that day, that she expected them to do the diapering and holds even though that para has never been trained to do that...this is not legal.

13. On June 14, 2023, the Complainant emailed the District's chief student services officer (chief officer) as follows:

I just wanted to have some clarification on the diapering/toileting conversation. My understanding is that only specialized instructional paras (Tier 3) can do/or assist with this. I know we had a discussion on this, but I was not clear on the answer. If I have a LAP para filling in in my room, or a substitute for the district, am I supposed to have them assisting or doing the changing? Am I supposed to train these paras on this, if they are expected to do this? And who is telling them that they are supposed to do these duties when they are in [my classroom]?

Chief officer responded, "We will need to look into this question further to ensure what we can expect the instructional paras to do when they are covering for a specialized para. At a minimum, we will need them to be trained to do diapering before having them do that duty."

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<sup>5</sup> The Washington Education Association is a union for professional public-school educators.



14. On June 15, 2023, the principal emailed the Complainant as follows, "We are down 5 paras across the building and it is unlikely that I will be able to give you a third para."

15. On June 16, 2023, the Complainant emailed the District, in part, as follows:

Just a reminder, that only [paraeducator 2] and I can change diapers/pull ups and help when students escalate. [Student 7] has escalated everyday this week when [paraeducator 2] and I are changing a student, this is happening 3-4 times per morning. I am having to count in my head how many times I hear him hit the floor to get data. The only time he did not engage in SIB (self-injurious behavior) when we changed a student was yesterday morning when he came to the changing area and stood behind [paraeducator 2] and I while we changed the student. (A violation of this student's privacy), I was asking the subs to come get him and asking him to go back to class, neither worked. If [teacher 2] has 1 person on lunch, she does not provide support when we ask. If we call on channel 1, it can take 10 minutes for someone to come - if anyone responds and comes at all.

16. On September 7, 2023, the Complainant emailed the principal, in part, as follows:

...paras who do not know our students would not have been able to assist in supporting the students and new staff...Paras coming from another area of the school would not have known student health, supervision, eating, etc needs...I had to explain students needs and what it looks like for them to participate in PE. During lunch - I had to assist all of my team on what recess then lunch would look like...Going forward, I am hoping the new staff are trained and won't need this support. But for now, that is needed.

17. On September 18, 2023, the Complainant sent an internal District email that stated:

I wanted to check in on sending my students to their gen ed classes, with support. [Paraeducator 3] (our shared para) asked me this morning about who she was taking...I told her that my understanding was we were still holding off and directed her to [principal]...(as I have been)...but I can't send kids to their classes when they need to go (even the times written in their LRE statements).

On September 19, 2023, the chief officer responded, "If the schedule is set and [paraeducator 3] is able to be out of the room to take the students to their general education classes, that would be great and a decision that you and [teacher 2] can make with the knowledge of how your programs are running."

The Complainant replied, "I do not want to deny kids their Gen Ed time, but the support that I have is not even enough to keep students and staff safe or learning in my room. Let alone, taking them out to Gen Ed."

On September 19, 2023, the principal responded, in part, "Based on the LRE minutes listed below and knowing the abilities of the students, it is important that the following students<sup>6</sup> attend their general ed time. This could be general ed specialist, classroom time, and recess/lunch."

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<sup>6</sup> Two names were redacted.

18. On October 1, 2023, the Complainant sent an internal district email, stating, "Currently none of the students...are accessing Gen Ed. They have not been since a hold was placed on it for the safety of the students in the room as we needed more support..."

19. As part of this investigation, OSPI interviewed six current or former District employees who worked with the Students in the Program. Regarding the allegations related to LRE, they commented, in part, as follows:

- "No academic work was done last September. Students were watching lots of videos."
- "Could not take students to general education, and some students who previously went to general education stopped going, while some others would go by themselves."
- "Students are currently attending general education."

20. On May 29, 2024, in its response, the District stated:

The District acknowledges that there were times in September 2023 when there were unfilled paraeducator positions, as well as dysregulated students in the...program, that led to some students not having full access to their general education programs. This temporary measure was to ensure safety and to ensure the Students would be able to benefit from their general education experience. The situation was quickly rectified and was not a pattern or sustained lack of implementation of this portion of Students' IEPs such that there was a material failure to implement any of the Students' IEPs...

21. On June 4, 2024, the Complainant sent OSPI an email that stated, in part:

During my absence 9/20/23 to 9/22/23 and the week of 9/25/23 to 9/29/23 while I was on paid administrative leave, no [specially designed instruction] SDI minutes for students who qualified in cognitive, or academics (reading, writing, and math) had their minutes served - this is the entire class.

Additionally because new staff were not trained in de-escalation techniques, how to manage behaviors, how to implement the IEP programs, how to assist students with adaptive needs, and take data on these things - every student in the room would be missing minutes from 9/11/23 to 9/29/23 for SDI in all areas not provided by a related service provider (OT/PT/SLP/Audiology). Students were restricted to the classroom because district admin and building admin said students should not be sent to their general education classrooms if I could not send them completely alone.

The behavioral and safety needs of the classroom were so high that from the time that kindergarteners started, 9/11/23, to the time that I was placed on leave we were managing behaviors and I was trying to correct staff behaviors nearly all day everyday.

22. On June 5, 2024, the Complainant sent an email to OSPI that stated, in part:

[Student 7] had 1:1 paraeducator support approved...Unfortunately the paraeducator was not prepared for the behaviors she needed to support. Despite assistance, breaking down the tasks, and support from myself, the BCBA (board certified behavioral analyst), and other paraeducators in the room - the 1:1 requested to not be assigned to [Student 7] and be transferred back to the old school.

...from 5/4/23 to 6/21/23, [Student 7] did not have a 1:1 assigned to him.

If the investigation sees the program paras acting as the 1:1, and sees that as a [sufficient] alternative - then the rest of my (8) students were not provided the adequate staffing for their IEP placements, as it was only myself and one para.

On June 7, 2024, the District responded to this allegation, in part:

The allegation that the District denied the student the supplementary aid and service of a 1:1 is inaccurate. While there were multiple people who served as his 1:1 para educator, the principal ensured that there was someone assigned to support him as per his IEP. The school would fill the vacancy with a substitute or would rotate another para educator to cover the open 1:1 position.

The District's response during this time was to prioritize BCBA support to the [Program]. From May 5 through June 21, 2023 the BCBA provided support...on nine occasions...In addition to the paraeducators assigned to the classroom, the school reallocated paraeducator support to [Complainant's] classroom 12 days between May 3 and June 22, 2023<sup>7</sup> to ensure students were supported (office support document). There was a paraeducator, [paraeducator 2], acting as the student's 1:1 during the days it was claimed he did not have a 1:1 paraeducator.

The principal...communicated with [Complainant] regarding paraeducator coverage in her classroom and encouraged her to radio if the coverage was not enough. [Complainant] refused to call the adjacent...classroom for support which would be her first call before calling the office.

23. On June 8, 2024, the Complainant, in her reply to the District's response, expressed, in part, "In May and June of 2023, there was no 'shared' para."

24. In its response to this complaint, the District explained the program's staffing as:

In addition to the certificated teachers, each classroom has two 6.5 hour paraeducators, as well as a shared 6.5 hour paraeducator who supports Students with their inclusion in general education settings.<sup>8</sup>

...

In addition to resources that are specifically allocated to the...program, paraeducators who support other programs at the school are made available to respond and support the...program when there is a need.

25. On June 10, 2024, the District sent OSPI two emails, explaining that the District has "instructional paraeducators" and "specialized instructional paraeducators". Specialized instructional paraeducators have additional training and are assigned to the Program. When instructional paraeducators cover in the specialized position, they receive the specialized instructional paraeducator pay for the additional responsibilities.<sup>9</sup> The supervising teacher and school nurse provide additional training in this area.

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<sup>7</sup> There were about thirty school days during this time period.

<sup>8</sup> Additionally, some Students will have a 1:1 paraeducator listed on their IEPs.

<sup>9</sup> The District explained that additional responsibilities include: "Attend to basic care of students which may include toileting, diapering, dressing and feeding and are able to perform the function of toileting."

## **Accommodations and Alternative and Augmentative Communication Devices (AACs)<sup>10</sup>**

26. From May 4–24, 2023, and from September 11–29, 2023, the Complainant detailed 21 incidents involving Students 6, 7, 9, and 10<sup>11</sup> in which paraeducators either took away the Students' communication devices (AAC and/or core boards) or did not replace them when they were taken away by another Student, or did not provide the Student the device.

The Complainant stated that the paraeducators were told by her, as well as the speech language pathologist, the importance of having access to the AAC devices and/or core boards, despite behaviors of their own or other Students' behaviors. The AAC and/or core boards would be returned to Students and then removed again by the same staff members.

27. Regarding the allegations related to accommodations and AAC devices, the staff interviewed as part of this investigation commented, in part, as follows:

- AAC device should be in all settings.
- Staff were not getting the AAC from one location to another.
- Student 6's AAC was at times in a cubby, which prevented him from accessing it.
- Student 6 has an oral sensory device listed in his IEP. There are times staff has threatened to take it away, and has seen on at least one occasion staff take the oral sensory device away, throw it on the ground and tell the Student to pick it up. He did pick it up off the ground and was redirected from there, but the entire interaction felt very dehumanizing and not okay.
- Student 10's AAC device was not being used.
- Student 10 has hearing loss, and the class microphone is not being used.
- One staff person did not remember ever removing the AAC from a student or seeing someone else doing it. She did take it away from Student 9 when he threw it or hit someone but cannot remember when. Someone else fished it out of the toilet bowl.
- One of the individual's interviewed asked a staff member to use the AAC or verbally model what needed to be said for Students, and that staff member refused.

28. On May 29, 2024, the District's response stated, in part, "The Complainant alleges that the Students have their augmentative and alternative communication (AAC) devices removed from them. The District denies this allegation...Core boards are also prominently displayed in the classrooms and other visuals are taped to desks and readily accessible."

### **BIP Data**

29. On September 25, 2023, the Complainant sent an internal District email that stated, in part:  
...While I was out, staff that were not trained on [Student 7's]<sup>12</sup> BIP, data taking, and/or CPI trained (so they could not support him) were with him while his 1:1 was on

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<sup>10</sup> Often an ACC device is a tablet with icons that students can use to communicate.

<sup>11</sup> These Students have an AAC listed on their IEPs.

<sup>12</sup> Student's 7's May 2023 BIP stated, in part, "ABC (antecedent, behavior, consequence) and Frequency data will be collected daily."

lunch/break...Inaccurate data was recorded, or no data was recorded. His BIP was not followed when these staff members were supporting.

30. On September 28, 2023, the Complainant sent an internal email to the District, stating, in part:

I keep being asked about data tracking for [Student 7's] behaviors. These include: hitting/punching, biting, throwing items at other students, pinching, spitting, kicking, pulling other students glasses off - throwing them in the trash, hair pulling, ripping up the materials in our room and my belongings. While I was out last week I was left notes about it, and all the staff that were in my room kept telling me what had been happening...

Since I am not allowed to interact with the students, I am still told - and have been asking my team to tell [principal] and document it how they can...As I am not sure what my place is in giving advice on what is happening in my classroom, and implementing anything to help the staff still in there - I left it alone. If I keep leaving it alone, there will not be data to help support the student, the other students, and the staff still working in there.

31. On May 29, 2024, in its response, the District responded, in part:

The District has been and continues to properly implement Students' IEPs, including accommodations and BIPs since May 4, 2023.

...

While the District maintains that no violations of IDEA occurred, the District recognizes that there is always room for growth and will voluntarily undertake the following:

- Annual staff training from SLPs for all staff who support students who are trialing or have AAC services documented on the IEPs.
- Annual staff guidance on proper parental notification when there is a lapse in any component of the IEP or any concern regarding student safety.
- An audit of the five students selected for the multi-student investigation indicates that progress reports are being completed for the Students as per their IEPs. Although parents received all progress reports, two students did not have progress reports completed in IEP online in June 2023. Additional staff training and guidance for all special education staff will be completed to reinforce the requirement of reporting progress to parents at least as often as identified in the student's IEP and to consistently complete these progress reports in IEP online.

32. On May 29, 2024, OSPI asked the Complainant for information she had on Student 7's self-injurious behavior. On the same day, she responded, in part, "[When] I was on paid administrative leave [Student 7] engaged in SIB and it was not tracked and reported to the parents as described in the BIP/IEP. I documented what was given to me ... but untrained staff were with him during his 1:1 break/lunch."

33. On June 8, 2024, the Complainant replied, in part, to the District's response:

[District's response] does not address the inaccurate information provided and how to convey that information to the parent/guardian...you can see that I was given inaccurate data from the time period that I was out for 3 days. I requested clarity on how to convey that to the family, and if someone had communicated these things to the family. No clear reply was given. I completed the data sheet and relayed what I was able to - however there was never any clarification given on this or my ability to communicate with the

family(s) that I was on paid administrative leave. Following this time period, only his 1:1, the BCBA, and myself we trained on accurately taking the data and charting it. I am not sure what happened following my departure.

## **CONCLUSION: ISSUE 2**

The Complainant alleged that in May and June 2023, and in September 2023, primarily, Students were not provided with special education services per their IEPs. Specific allegations by the Complainant will be addressed in turn below.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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.

The Complainant has stated that in May and June 2023, during which there was approximately 30 school days, her class was staffed with only two paraeducators instead of having two classroom paraeducators and a 1:1 paraeducator assigned to Student 7. The District responded that during May and June 2023, staffing and support for students was provided. The District stated:

From May 5 through June 21, 2023 the BCBA provided support...on nine occasions...In addition to the paraeducators assigned to the classroom, the school reallocated paraeducator support to [Complainant's] classroom 12 days between May 3 and June 22, 2023 to ensure students were supported...There was a paraeducator, [paraeducator 2], acting as the student's 1:1 during the days it was claimed he did not have a 1:1 paraeducator.

Regarding the staffing allegation, what must be addressed specifically is whether Student 7 was provided his 1:1 paraeducator as required by his IEP. Based on the present case's facts, Student 7 did receive his 1:1 paraeducator services from paraeducator 2 and other staff members. Thus, the District did not materially fail to implement Student 7's IEP concerning his 1:1 paraeducator.

The Complainant also alleged that if paraeducator 2 is considered Student 7's 1:1 paraeducator, then her classroom lacked adequate staffing because it did not have a second classroom paraeducator during May and June 2023.<sup>13</sup> OSPI notes, and as outlined in this case's opening letters, OSPI can investigate whether the District materially failed to implement the Students' IEPs. While classroom staffing may relate to an IEP being implemented—and OSPI has reviewed information here related to staffing in so far as it helps OSPI determine whether IEPs were implemented—OSPI does not have authority through the special education complaint process to investigate the District's general staffing levels and staffing assignments, which are at the

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<sup>13</sup> On at least 20 of the last 30 days of the school year, there was another staff member (reassigned paraeducators or the BCBA) in the Complainant's classroom.

District's discretion. In the present case, there is no evidence that the District materially failed to implement the IEPs of the Complainant's classroom during May and June 2023.

As for September 2023, the Complainant has alleged that Students were not being educated in their LRE and that the accommodations in IEPs were not being followed. The District's response stated, in part, "...there were times in September 2023 when there were unfilled paraeducator positions, as well as dysregulated students...that led to some students not having full access to their general education programs."

Emails between the Complainant and the District show that during September 2023, Students were not attending their general education activities as required by their IEPs. Additionally, staff members corroborated the Complainant's account that in September 2023, little to no academic work was being done in the classroom. Based on this evidence, OSPI finds a violation as to the second issue because in September 2023, the District materially failed to implement the IEPs of the Students who were in the Complainant's classroom. As such, OSPI is ordering the District to conduct an audit of the IEPs, including BIPs, for the Students who were in the Complainant's classroom in September 2023, to determine what compensatory education is warranted for each Student for the period of September 2023. The District will also provide the training around implementation as the District outlined in its response.

OSPI would like to remind the District that its staff must provide all the accommodations listed in an IEP, and that behavior is never a reason to deny an accommodation, unless providing the accommodation may cause a serious risk of imminent harm.

Finally, the Complainant expressed that replacement staff were not properly trained,<sup>14</sup> while the District responded that either the supervising teacher or school nurse should provide certain trainings such as toileting, feeding, and taking BIP data that are specific to a particular Student. Regarding student specific training such as those just mentioned, OSPI would like to remind the District that it is ultimately responsible for implementing a student's IEP and FAPE, which includes supporting staff in ensuring they are properly trained and informed about the needs of particular students.

### **FINDINGS OF FACT: ISSUE 3 (IEP MEETING EXCUSALS)**

34. On May 29, 2024, the Complainant shared information and described four instances in May and June 2023 when general education teachers left IEP meetings early without a parent having signed an excusal form.

35. On May 29, 2024, the District submitted its response regarding the third issue, which stated, in part:

While the District maintains that no violations of IDEA occurred, the District recognized that this is an area that needs additional training and will voluntarily undertake the following:

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<sup>14</sup> The training referred to here does not include restraint training that was addressed under the first issue.

1) Create a document for general education teachers in the District to clarify their important role on an IEP team. Principals can present this document at their August training days with their teaching staff.

2) Continued parent training on required IEP team members and their rights to excuse or not excuse IEP team members. The District hosts monthly parent engagement meetings with parents of students with IEPs and Section 504 Plans where these topics are routinely discussed. The District began providing IEP 101 training sessions with preschool families in February 2024 and these meetings will continue for the 2024-2025 school year.

36. On May 31, 2024, the District emailed OSPI with information regarding the four IEP meetings that took place between May 15 and June 8, 2023, in which general education teachers left early without an excusal form being signed by a parent.

### **CONCLUSION: ISSUE 3**

Regarding the third issue, the Complainant has alleged that on multiple occasions, she witnessed District staff leave IEP meetings before the end without first obtaining prior written approval from Students' Parents.

A member of the IEP team may be excused from attending an IEP team meeting, in whole or in part, if: (i) The parent, in writing, and the public agency consent to the excusal; and (ii) The member submits written input into the development of the IEP prior to the meeting and provides the input to the parent and other IEP team members.

Here, in its May 31, 2024 email to OSPI, the District conceded that it did not comply with special education regulations when general education teachers left IEP meetings early without written consent from Parents on several occasions. As such, OSPI finds a violation regarding the third issue and accepts the District's proposal of training for staff as a corrective action.

### **CORRECTIVE ACTIONS**

By or before **August 1, 2024, August 15, 2024, August 22, 2024,** and **September 26, 2024,** the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education<sup>15</sup>**

By or before **September 19, 2024,** the District will conduct an audit of the IEPs for the Students who were in the Complainant's classroom in September 2023 to determine if compensatory

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<sup>15</sup> OSPI reminds the District that compensatory education is an equitable remedy that does not need to be awarded on a one-to-one ratio with the missed educational time because it is often provided on an individual basis instead of a classroom setting that may have multiple students.



education for any of these Students is warranted for any special education services missed in September 2023 due to the circumstances described above.

By or before **September 26, 2024**, the District will submit the outcome of its audit to OSPI. Once OSPI receives that information, OSPI will make a decision about what compensatory education may be awarded in the present case.

#### **DISTRICT SPECIFIC:**

##### **Training**

The District will develop and conduct a trainings on the following topics:

- Behavior management/support, de-escalation, and the regulations and requirements around use of restraint, reporting, and follow up.
- IEP meeting excusal procedures.
- The use of AAC services as documented on student IEPs.

The training will be provided to the District's special education staff and administrators at the Program. The District will provide the trainers with a copy of SECC 24-66's decision.

By or before **August 1, 2024**, the District will notify OSPI of the name of the trainers and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By of before **August 15, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 22, 2024.

By or before **September 13, 2024**, the District will conduct the staff training mentioned above.

By or before **September 26, 2024**, the District will submit documentation that required staff participated in the trainings. 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 trainings, so OSPI can verify that all required staff participated in the trainings.

##### **Restraint Form**

By or before **August 15, 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 **August 22, 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 27th 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.)