

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-68

PROCEDURAL HISTORY

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

On May 6, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 8, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 29, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on June 4, 2024. OSPI invited the Parent to reply.

On June 10, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began September 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. On April 30, 2024, did the District follow proper restraint procedures under WAC 392-172A-02110(2), WAC 392-172A-02110(4), and RCW 28A.600.485(4)–(5)?
2. Beginning September 2023, did the District follow proper individualized education program (IEP) development procedures, in responding to any potential change in behavioral need resulting from the Student's qualifying disability?

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.

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 71.05.020 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical

harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Imminent: Imminent as defined in RCW 71.05.020 means: The state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Restraint Conditions: Restraint. 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; (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. WAC 392-172A-02110(2).

Restraint Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation, restraint, or restraint device consistent with RCW 28A.600.485. WAC 392-172A-02110(4).

Following the release of a student from the use of restraint, the school must implement follow-up procedures. These procedures must include: (a) 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 (b) reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. RCW 28A.600.485(4).

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: (a) The date and time of the incident; (b) The name and job title of the individual who administered the restraint or isolation; (c) A description of the activity that led to the restraint or isolation; (d) The type of restraint or isolation used on the student, including the duration; (e) Whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and (f) 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(5).

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written

notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. RCW 28A.600.485(6).

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. WAC 392-172A-02040.

"[T]he child find duty 'is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.'" *Dep't of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001) (quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)). A disability is "suspected" when a school district "has notice that the child has displayed symptoms of that disability." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016).

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. 34 CFR §300.301; WAC 392-172A-03005. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation Timeframe: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03005(3)(a).

Development of Initial IEP – Timeframe: For an initial IEP, a school district must ensure the IEP team develops the student's IEP within 30 days of a determination that the student is eligible for special education. WAC 392-172A-03105(2)(a). As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. WAC 392-172A-03105(2)(b).

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

Prior Written Notice: Districts must provide prior written notice to the parent of the decisions made as a result of the meeting. This is particularly important when there is disagreement between

the parent and the district regarding IEP content. If the IEP content reflects a district decision that it will refuse to provide certain services to the student, or if the district refuses to make changes to the IEP as a result of the parent's requests, the district must likewise provide prior written notice to the parent of those decisions. 34 CFR §300.503; WAC 392-172A-05010.

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

FINDINGS OF FACT

Background Information

1. The Student attended the District's early learning center for pre-Kindergarten and Kindergarten. The Student qualified for special education under the category of 'Developmental Delay' and received services in adaptive and social emotional. The Student was re-evaluated in the spring of 2023 and found ineligible for special education services.

2023–24 School Year

2. At the start of the 2023–24 school year, the Student was not eligible for special education, had a 504 Plan, was in the first grade, and attended a District elementary school.

The 504 Plan (dated May 12, 2023) read, in part, "Student was evaluated [and] diagnosed with sensory processing disorder and reported to be over[ly] responsive to visual, tactile and oral input."

The 504 Plan provided the Student, in part, with the following accommodations: access to counselor's office for breaks if overstimulated; access to noise-cancelling headphones during non-instructional teaching time; non-distracting sensory fidget and/or wiggle seat, teething necklace, if needed; and preferential seating away from distractions in classroom.

3. The District's 2023–24 school year began on August 31, 2023.

4. The Parent's community complaint request read, in part:

I have been requesting support since September 2023. I offered to bring in a BCBA 1-1 covered by my insurance to help Student...and [the District] repeatedly denied [that offer]. The Student's school does not have [either] a school psychologist [or] a BCBA [which prevents them from being able to] adequately support the needs of a level-2 autistic child.

According to the Parent, the 2023–24 "principal was unaware that Student was previously on an IEP" while at the District's early learning center in 2022-2023.

5. According to a discipline referral form included in the District's response, on November 7, 2023, "Student and [another student] got into a fight at last recess."

6. The District's response included a narrative submitted by the special education director (director's statement). The director's statement read, in part:

The Student has a group of friends he plays with during recess who are also athletic, and they can become competitive with each other.

Occasionally, these competitive natures lead to fights during recess between the Student and his friends. These fights were not bullying or one child picking on another. Instead, they were the result of a mutual disagreement over who had "won" that day at recess.

Because of these disagreements, the end of recess was a trigger for the Student who would sometimes pick fights with his friends or get upset when asked to put a ball away.

Recess is a deliberately unstructured time for students during the day. With the lack of structure, some students do not react appropriately.

Part of the elementary education is learning to socialize and appropriately interact with peers. When a student struggles with appropriate interactions, often times additional support is given to the student to help them learn.

A similar plan was used for the Student during recess to help him learn how to interact appropriately with his friends. This recess plan was implemented allowing the Student to be primed about appropriate recess behaviors before recess started, a brief check-in in the middle of recess for reminders, and the availability of a post-recess break if the Student became dysregulated during recess.

The recess plan was working for the Student during the fall of 2023.

7. On November 13, 2023, via a written statement submitted to the school counselor, the Parent requested the Student be evaluated for potential special education eligibility.

According to the District's response, as of November 13, 2023, the District "overall had no significant concerns regarding the Student."

8. The Student's IEP team met on November 17, 2023. According to the director's statement:

During that meeting, the team determined that there was no need for a special education evaluation. The Student was receiving accommodations with his 504 plan which allowed him to access a general education curriculum. He was not having difficulty in the classroom due to the 504 plan accommodations.

The Student did have some behavioral issues at recess, but they were addressed with the recess plan. To formalize the recess plan, the team decided to incorporate the recess plan into the 504 plan as accommodations for the Student.

We have received guidance from OSPI that a student only qualifies for an IEP if they need supports that cannot be provided in the general education setting. Since the Student was successfully accessing the general education setting with his accommodations, we determined a special education evaluation was not appropriate.

A November 17, 2023 504 Plan did include, in part, the following accommodations: "clear, direct communication of recess plan"; and "mid-recess check-in from recess supervisor."

9. The District was on break November 23–24, 2023.
10. The District was on break December 18, 2023 through January 1, 2024.
11. The discipline referral form includes the following entry for January 23, 2024, "Student had [another student] by the neck with both hands, he then started hitting [the other student]."
12. A January 26, 2024 Guidance Team Record – Special Education Referral and related prior written notice read, in part:

Student has attended preschool in Greece. He has a difficult time adjusting, only participated in preferred activities and had frequent meltdowns. Student returned to the WA and has been receiving occupational therapy services at [a] Children's Therapy Unit. Student demonstrates good language skills...Within 25 school days (3/5/24) after the receipt of a referral, a review will be completed of available existing records in the possession of the parent, school district or other public agency. With parental input, the review will determine whether there is good reason to believe that the student is a candidate for a special education evaluation relative to potential eligibility for special education.
13. According to the discipline referral form, the Student was involved in six separate behavioral occurrences in February 2024. These incidences involved physical altercations, aggressive behavior, emotional dysregulation, and multiple students. It appeared the occurrences took place either during recess or during occasions when the student's class was lined up in the hall. By way of illustration, the February 13, 2024 entry read, in part:

Student and [another student] continue to have intense conflict about the game they are playing. Today...they were playing soccer with the soccer ball. Neither student would pause to regroup (huddle) or listen to me. The yelling, screaming continued as the bell rang. I called Student over, but he ran off. Student then took out after [the other student], chasing him around the playground and yelling that he was going to punch him in the face. I was finally able to get [Student] to stop and stand next to me.
14. A "Student determination meeting" took place on or about February 28, 2024. According to the District's response, on or about that date, "the team determined an evaluation in social/emotional, behavior, communication, and fine motor skills was appropriate, along with a functional behavior assessment."
15. According to the discipline referral form, the Student was involved in three separate behavioral occurrences in March 2024, each of which involved physical altercations. The March 1, 2024 entry read, in part, "While talking to the group about being kind and getting along, Student punched a student, put [the other student] in a headlock, then tried to take them down to the ground."
16. On March 1, 2024, the Parent provided the District with a private autism diagnosis of the Student. The private autism diagnosis noted the Student had "impairments in social

communication and social interaction, across multiple contexts” and “a history of restricted and repetitive patters of behavior and interests.” The private autism diagnosis recommended the Student be provided with SDI in social-emotional, a behavior plan, and ABA therapy.

On March 1, 2024, the teacher on special assignment provided the Parent with a consent form for her to sign.

17. The District’s response included a “New Diagnosis Meeting” invitation for March 6, 2024. According to the District’s response, “At that meeting, the team: (1) reviewed the accommodations recommended by the medical provider; (2) determined those accommodations would support the Student’s access to his education; and (3) implemented the accommodations.”
18. On March 15, 2024, the school psychologist emailed the Parent, stating, in part:
The [teacher on special assignment] said you wanted to add communication to the evaluation, and I saw it was recommended that a functional behavior analysis was recommended, so I can do that too. I’ll send home a new consent- but we will honor the first consent date...BCBA’s can come do observations at school. I can help facilitate this if you would like to go that route.¹
19. On March 19, 2024, the Parent provided a signed consent form to the District.
20. The District was on break April 1–5, 2024.
21. According to the discipline referral form, the Student was involved in approximately six separate behavioral occurrences in April 2024. Five of these occurrences involved emotional dysregulation, and one of these occurrences involved a physical altercation.
22. The District’s group of qualified professionals, including the Parent and a private BCBA, met on April 24, 2024, to review the initial evaluation of the Student.

The April 2024 initial evaluation report read, in part:

Eligibility Decision...Autism Spectrum Disorder and Anxiety disorder adversely impacts his growth in social-emotional and behavior. Student does not require specially designed instruction in Communication or Fine Motor.

...

Medical-Physical...Student is a very bright student, but has struggled with emotional regulation, especially at recess and transition times. Student struggles with sleep and is having surgery to improve breathing...Student has recently been prescribed [sleep-related medication]... Student no longer accesses services through Mary Bridge where he started shortly after he turned 2 and continued to about September/October 2020...Parent is also returning to Children's Therapy Unit for services.

...

¹ In this same email, the Parent informed the teacher on special assignment that the Student was receiving private BCBA services.

General Education...He attended the early learning center for pre-Kindergarten and Kindergarten. He qualified for special education under the category of 'Developmental Delay' and received services in adaptive and social emotional. Student was re-evaluated in the spring of 2023 and was found ineligible for special education services because he had made so much growth, met social emotional goals, and rating scales showed good adaptive and social emotional skills. The transition to first grade...has been difficult for Student. [A private] pediatrics [practice] diagnosed Student with ADHD and autism.

...
Social/Emotional...The Autism Spectrum Rating Scales were completed by Parent and general education teacher. Both rating scales confirm that Student meets the DSM-5 criteria for Autism. Student's disabilities impacts his ability to perspective take and regulate his emotion especially during transitions and unstructured times.

The BASC -3 was filled out by the parent, and shows concerns in most areas...His skills, including communication skills are greatly reduced when he is escalated. Supports such as a chewy, breathing, break pass, time to process, and positive redirection have supported Student in accessing his education. These supports are not able to be faded at this time and specially designed instruction is recommended to increase positive peer interactions during unstructured times. Instruction on perception of events and others behavior will help Student's emotional regulation as well as a sensory diet at specific times of the day, clear expectations, and structure will support Student at school....Office Referral Data show most problems to be during second recess, or during transition and unstructured times....Specially designed instruction in emotional problem solving and perspective-taking is recommended.

23. An April 24, 2024 FBA investigated the target behavior of emotional regulation, and recommended a BIP be developed for the Student.

The April 2024 FBA read, in part:

Setting Event Strategies...Sensory diet at regularly scheduled times, Break space with access to sensory tools, visual card he can use to ask for help, offer two choices when Student starts to shut down.

...
Antecedent Strategies...Visual schedule, plan for transitions, direct warning if he will have a substitute teachers or major changes in routine, visual schedule with changes indicated, allow Student to finish a task he is engaged in, or if he wants to move on, a specified time for finishing work with finish work folder.

When Student exhibits level one behaviors, like growling and verbally shutting down. Give him space, don't continue with request. Check back in a few minutes later. Let Student verbalize his thoughts.

...
Teaching Strategies...Emotional problem-solving, perspective taking, locus of control, plan for bus with structured activities.

Consequence Strategies...When Student is able to use a tool or take a break when needed with adult support, the adult will acknowledge Student's feelings [and] praise his ability to regulate.

24. One of the April 30, 2024 entries on the discipline referral form read, in part:

Student was brought to [the social emotional learning specialist's] office to take a break. The intern principal was with him. He got calm and wanted to return to class, which wasn't an option at the time. He escalated and began trying to exit the room, throw things, yell. [The social emotional learning specialist] and [the special education teacher] switched in to assist. Total escalation was about 1 hour.

According to the Parent:

Student was restrained for ten minutes on April 30, 2024 by the special education teacher. I believe this restraint did not meet the criteria of 'imminent danger.' Student was knocking items over in a classroom [wherein the following individuals were present]: Student and three adults. No objects were broken. [They adults present] did not properly deescalate Student to avoid the restraint.

25. The director's statement read, in part:

On April 30, 2024, the Student was having an off day and became dysregulated in class. He was brought to the social-emotional learning specialist's room, where he began throwing items. He threw magnetic tiles, which are very heavy, at Principal intern. He also threw Legos around the room and at the social-emotional learning specialist.

The Student was not calming down, so Principal intern went to get assistance from the special education teacher.

The special education teacher observed the Student throwing Legos and attempting to pull down boxes full of heavy objects on his head, which would have seriously injured the Student.

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The special education teacher is Right Response certified, so her first step was to deescalate the situation and help the Student reregulate. She got the Student to sit down next to her, sitting hip-to-hip.

The Student was not able to reregulate, and began to throw Legos around the room.

In the past, the Student has sought deep-pressure stimulus to help him regulate his emotions.

The special education teacher gave the Student a bear hug which provides deep-pressure stimulus.

The Student was calmed by the deep-pressure, and began to relax and gain control over his emotions. Once she felt him relax, the special education teacher released the Student and began coaching him through continuing to calm down.

The special education teacher asked what the Student wanted to do, and he said he wanted to return to class. The special education teacher worked with the Student to come up with a list of what the Student needed to look and sound like before he could return to class.

The Student's emotions were not completely regulated, and the Student became frenzied again. He sought out more Legos to throw, so the special education teacher gave him another bear hug to help calm him. When he relaxed again, the special education teacher let go.

The process repeated for a little under ten minutes. The special education teacher would hug the Student when his emotions were elevated and he sought destructive and dangerous outlets. Once the Student was able to control his emotions and relax, the special education teacher would let go.

In between the hugs, the special education teacher would work with the Student on his list of how to look and sound. The special education teacher also provided options to the Student to help him regulate including a stuffed duck to snuggle and a piece of paper to tear up.

During the ten minutes, the special education teacher spent about half the time hugging the Student, and about half the time talking to him. Each hug was about 30 seconds long.

Eventually the Student was able to regulate, complete all the items on his 'look and sound' list, including helping to clean up the social-emotional learning specialist's room, and was able to return to class...The Student's teachers had several, small check-ins with the Student over that afternoon to discuss what happened in The social-emotional learning specialist's room.

The teachers also worked with the Student to develop a plan for what the Student could do if he gets frustrated again. They brainstormed with the Student different options and created an image sheet to help him identify what support he needed.

Later that day, the special education teacher also gave her report on the incident to Principal intern. Principal intern prepared the written report, which was automatically sent to the District office.

After completing the report, and talking with the Student's teachers, principal intern called the Parent to discuss the incident. Principal intern also shared the progress the Student made during the afternoon and his partnership in creating a list of activities to regulate his emotions.

26. In relation to the April 30, 2024 incident, the District's response read, in part:

The special education teacher became alarmed when Student began to reach for bins above his head full of...heavy objects [that were not Legos]. Had the Student successfully pulled on the bins, he would have, at a minimum, seriously injured himself...The special education teacher prevented the Student from dumping the heavy objects on his head, and had him sit on the floor next to her, side-by-side and hip-to-hip...The special education teacher prevented the Student from harming himself and others with the sharp and heavy objects.

27. The District's response included an isolation and restraint internal documentation file (internal restraint file). In regards to the April 30, 2024 incident, the internal restraint file stated:

- The restraint lasted 9 minutes 50 seconds;
- "Student was verbally escalating in class and was asked to take a break. The principal intern told him he could not return to class. Student was throwing items in the social-emotional specialist's office...hitting staff with chewy necklace, throwing items."
- "Reteaching strategies to avoid future incidents" were utilized;
- It was recommended the Student's BIP be "update[d]" (even though, as of April 30, 2024, the Student did not have a BIP);

- The Parent had been notified of the restraint via phone; and,
- The report detailed in the internal restraint file had been completed by principal intern.

The District's response included an email showing certain District administrators were automatically informed of the principal intern's restraint report when she completed it on April 30, 2024.

28. The District's response included an isolation and/or restraint – notification to family document. It detailed, in part:

- The restraint lasted 9 minutes 40 seconds;
- "Student was verbally escalating in class and was asked to take a break. The principal intern told him he could not return to class....Student was throwing items in [the social emotional learning specialist's] office, trying to access his classroom, hitting staff with chewy necklace, throwing items at staff";
- The restraint was initiated by the special education teacher and the report was completed by principal intern; and,
- Neither the Student nor the special education teacher were injured during the administration of the restraint.

29. The District's response read, in part:

The District acknowledges that there were some technical, but harmless, errors with the reporting form. For example, the special education teacher should have completed the written report rather than principal intern after the special education teacher oral report. In addition, the report was missing the time of the incident and the special education teacher job title.

Recognizing these mistakes, the District is in the process of updating the form so that time of incident and job title are required fields. In addition, the District is reteaching administrators and Right Response certified personnel that the person administering the restraint or isolation must complete the written form.

However, these are harmless errors because the report still complied with the primary purpose of the RCW by including what happened, how it happened, and how it was resolved.

30. According to documentation included in the District's response, the following individuals were right response certified: principal intern; the social-emotional learning specialist; the paraeducator; and the special education teacher.

31. The District's response included a narrative from the occupational therapist (OT) (OT statement). The OT's statement read, in part:

One type of sensory input that many children seek is proprioception, or the body's need to sense and understand its position and movements in space. The proprioceptive system helps control the responses to sensory stimuli. Children with sensory differences will often seek proprioceptive input with such activities as jumping, stomping, pushing and pulling things, or seeking deeper pressure input. For the deeper pressure, children will sometimes seek tight hugs or heavy objects such as a weighted blanket. As an OT, I often recommend the use of proprioceptive input for students who have trouble with sensory stimuli. In fact,

I recommend proprioceptive input for almost everyone since it is one of the most regulating techniques available and almost never produces a negative reaction.

In this case, the Student has a history of seeking proprioceptive input when dysregulated, including during his evaluation.

Because of this history, his 504 plan had an accommodation to chew on something so the Student could actively provide that proprioceptive input.²

32. According to the Parent, during a behavioral occurrence that took place sometime soon after April 30, 2024, "the principal called in Student's sister to try and call Student down."
33. According to an email thread, on or about May 1, 2024, District staff collaborated with the Parent on a draft FBA.
34. District staff and the Parent collaborated via email on a draft IEP and BIP on May 6, 2024.
35. On May 7, 2024, the Student's IEP team developed a new annual IEP for the Student. The IEP included annual goals as follows: social skills (perspective taking); social skills (emotional regulation); social skills (peer interaction); and behavior (calm down tools).

The Student's May 2024 IEP provided the Student with the following specially designed instruction in a *special education setting* beginning May 8, 2024:

- Social Skills: 15 minutes a day (to be provided by a special education teacher or paraeducator)

The Student's May 2024 IEP provided the Student with the following specially designed instruction in a *general education setting* beginning May 8, 2024:

- Social Skills: 30 minutes a day (to be provided by a special education teacher or paraeducator)
- Behavior: 30 minutes a day (to be provided by a special education teacher or paraeducator)

The May 2024 IEP included, in part, the following accommodations: noise canceling headphones; use of a blanket for sensory input; clear, concise instructions given before tasks; direct communication of recess plan; individual reinforcement system; lunch room seating preference away from certain sensory overloads; mid-recess check-in; non-contingent breaks offered after recess and if shut down; and using zones of regulation.

36. The May 7, 2024 BIP reflected the contents and recommendations found in the April 2024 FBA.
37. The District's last day of school was June 12, 2024.

CONCLUSIONS

Issue 1: Restraint Procedures (April 30, 2024) – The Parent alleged that on April 30, 2024, the District did not follow proper restraint procedures under WAC 392-172A-02110(2), WAC 392-

² The OT's statement further read, "The Student's 504 Plan also had the accommodation to use a weighted blanket, a passive form of proprioceptive input." But the May 2023 504 Plan included in the District's response did not include the accommodation of a weighted blanket.

172A-02110(4), and RCW 28A.600.485(4)–(5). The foregoing regulations and statutes relate to various restraint-related procedures.

Justification of Restraint

Restraint means physical intervention or force used to control a student. Likelihood of serious harm means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. Imminent means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote.

If a restraint is administered, the restraint must be discontinued as soon as the likelihood of serious harm has dissipated.

Here, as a preliminary matter, OSPI finds it does not appear, based on the information provided to OSPI during this investigation, that the circumstances presented an imminent likelihood of serious harm, such that would have permitted the administration of a restraint. For example, the District's response read, in part, "The special education teacher became alarmed when Student began to reach for bins above his head full of...heavy objects." But the only "heavy objects" mentioned in the director's statement were "magnetic tiles." And both the internal restraint file and the notification to family document detailed the Student was "throwing items" and "hitting staff with [a] chewy necklace." Importantly, though, the Student was in the first grade. A first-grade student throwing magnetic tiles and Legos, and swinging a chewy necklace at staff does not pose an imminent likelihood of serious harm, such that administration of a restraint would be justified. Therefore, OSPI does not need to address the issue of whether the restraint was discontinued as soon as the likelihood of serious harm had dissipated, as no such conditions existed that would have justified administration of said restraint. This represents a violation of the IDEA, and to rectify this violation, certain District staff will be required to attend a training on proper restraint procedures.

Qualification of Staff Administering Restraint

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). Here, the special education teacher was right response certified. Accordingly, OSPI does not find a violation of the IDEA on this score.

Review of Restraint with Student and Parent

Following the release of a student from the use of restraint, a district 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.

Here, according to the director's statement, multiple District staff, including the special education teacher, reviewed the April 30, 2024 incident with the Student. In part, District staff checked in with the Student and helped the Student create "an image sheet to him Student identify what support he needed." (It is also notable a BIP was developed after the incident, on May 7, 2024.) According to both the director's statement and the internal restraint file, the Parent was notified of the restraint the same day, April 30, 2024. According to the director's statement, "the principal intern also shared the progress the Student made [in social emotional regulation] during the afternoon and his partnership in creating a list of activities to regulate his emotions." OSPI does not find a violation of the IDEA on this particular restraint-related requirement.

Review of Restraint with Staff that Administered Restraint

Following the release of a student from the use of restraint, a district must also review 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.

Here, the special education teacher administered the restraint, and the principal intern completed the internal restraint file. Accordingly, the principal intern and special education teacher must have necessarily discussed the restraint the special education teacher administered to the Student on April 30, 2024. But the documentation provided to OSPI does not make it clear whether that discussion addressed whether proper procedures were followed and what training or support the special education teacher needed to help the Student avoid similar incidents. In other words, based on the documentation provided to OSPI, it appears the special education teacher merely conveyed what had occurred to the principal intern, in contrast to a more substantive conversation having taken place. This represents a violation of the IDEA. This violation will be addressed with the above-described training for certain staff.

Submission of Written Report to School Administration

Any school employee who uses restraint on a student 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: (a) the date and time of the incident; (b) the name and job title of the individual who administered the restraint; (c) a description of the activity that led to the restraint; (d) the type of restraint used on the student, including the duration; (e) whether the student or staff was physically injured during the restraint incident and any medical care provided; and (f) any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

Here, according to the internal restraint file, certain District administrators were informed of the creation of the principal intern's restraint report the same day the restraint was administered, on April 30, 2024. And the internal restraint file included elements (c) through (f), above. But the internal restraint file did not include elements (a) through (b); the internal restraint file did not document the time of the incident and the name and job title of the individual who administered the restraint. This represents a violation of the IDEA, and it will be addressed with a training.

Parental Notification of Restraint

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within 24 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.

Here, as noted above, the principal intern spoke with the Parent the same day, regarding the incident. Regarding the requirement of submitting a written report to the Parent, the District's response did include a restraint notification to family document. Five business days after April 30, 2024 would have been May 7, 2024. While it is not entirely clear when the restraint notification to family document was provided to the Parent, emails show District staff and the Parent collaborated on an FBA, draft IEP, and draft BIP between May 1 and 6, 2024. Therefore, OSPI finds it likely the restraint notification to family document was shared with the Parent prior to May 7, 2024. OSPI does not find a violation of the IDEA on this score.

Issue 2: Response to Student's Behavior-Related Needs – The Parent alleged the District did not follow proper procedures for responding to the Student's behavior-related needs during the 2023–24 school year.

Here, the Parent first requested the Student be evaluated for potential special education eligibility on November 13, 2023. For analytical purposes, then, the first question to answer is whether the District had reason to suspect a disability prior to November 13, 2023?

School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. The child find duty is triggered when the district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. A disability is suspected when a school district as notice that the child has displayed symptoms of that disability.

Here, prior to November 13, 2023, the following knowledge regarding the Student was available to the District: the Student was previously eligible for special education; beginning May 2023, the Student had a 504 Plan; the Student was involved in at least one behavioral occurrence at recess, on November 7, 2023; and District staff began providing the Student with certain accommodations during recess, and these appeared to be helpful. On the basis of the foregoing, OSPI does not find the District should have suspected a disability prior to November 13, 2023. OSPI does not find a violation on this score.

Within 25 school days of receiving a written request for an initial special education evaluation, the district must gather existing data and make a determination as to whether it will evaluate the student. Here, the District responded to the Parent's November 13, 2023 referral on November 17, 2023, well within the 25-school day window. For example, according to the director, on November 17, 2023, the Student's IEP team reviewed existing data on November 17, 2023, principally the fact that the Student was successfully accessing the general education setting with the assistance of his 504 Plan accommodations. OSPI does not find a violation on this score.

The Parent next made a referral for an initial special education evaluation on January 26, 2024. 25 school days after January 26, 2024 would have been March 5, 2024. Here, the District agreed to administer an initial special education evaluation on or about March 1, 2024. For example, on March 1, 2024, the teacher on special assignment provided the Parent with an initial evaluation consent form. In conclusion, appropriate timelines were followed, and OSPI does not find a violation of the IDEA on this sub-issue.

When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within 35 school days after the date written consent for an evaluation has been provided to the school district by the parent. Here, it is not entirely clear when the Parent first provided the District with her consent for an initial special education evaluation. For example, the Parent provided a signed consent form to the District on March 19, 2024, but a March 15, 2024 email from the school psychologist referred to the fact the Parent had previously provided the District with a completed consent form. If, for the purposes of these conclusions, OSPI assumes the Parent returned the consent form the day she first received it, on March 1, 2024, then the date 35 school days after March 1, 2024 would have been April 25, 2024. And, here, the District's group of qualified professionals completed its initial evaluation and FBA of the Student on April 24, 2024. OSPI does not find a violation of the IDEA.

For an initial IEP, a school district must ensure the IEP team develops the student's IEP within 30 days of a determination that the student is eligible for special education. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. Here, 30 days after April 24, 2024 would have been May 24, 2024. And the Student's IEP team developed the BIP and IEP before that date, on May 7, 2024. Furthermore, said services were to be provided to the Student the day after those documents were finalized, on May 8, 2024. Accordingly, OSPI does not find a violation of the IDEA.

CORRECTIVE ACTIONS

By or before **July 19, 2024, August 16, 2024, and September 20, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and jointly conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-68.

The following District staff at the Student's 2023–24 school will receive training: District special education administrators and psychologists, principal, assistant principal, special education certified staff (teachers), educational staff associates (ESAs), paraeducators, etc. The training will cover proper restraint and restraint reporting procedures. The training will include examples.

By or before **July 19, 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.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation support could include job-embedded coaching, additional trainings or development of a training series, exploring policy and procedure revision, development of a District monthly audit, etc.

By or before **August 16, 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 23, 2024.

By **September 20, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 20, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

REMINDER #1

The director's statement read, in part: the District previously "received guidance from OSPI that a student only qualifies for an IEP if they need supports that cannot be provided in the *general education setting*." OSPI states that the foregoing statement is not accurate.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability, and to ensure access of the student to the general

curriculum. A student may qualify for special education even if that student only requires services that are to be provided in a *general education setting*. Not infrequently, students who qualify for special education will be provided with certain IEP services—SDI, related services, accommodations, etc.—in the *general education setting*.

REMINDER #2

In its response, the District appeared to argue the special education teacher, in administering “hugs” to the Student, was actually providing a form of behavioral intervention, namely that the Student’s needs resulting from the Student’s disability necessitated the periodic administration of “proprioceptive input,” such as a hug, when the Student experienced dysregulation.

OSPI notes, though, an IEP and BIP were not in existence on April 30, 2024, and neither the May 2024 IEP or BIP state “proprioceptive input,” such as the hugs administered on April 30, 2024, should be administered to the Student when the Student is dysregulated. In fact, the Parent appears to strongly disfavor any such approach, and the May 2023 BIP states the Student should be “give[n] space” when dysregulated.

OSPI reminds the District if it believes the Student’s needs resulting from the Student’s disability require the administration of “proprioceptive input” hugs when the Student is dysregulated, the IEP team, including the Parent, need to meet to discuss this topic. Any decisions should be based on sufficient, relevant data on the Student’s needs resulting from the Student’s disability, the Parent’s concerns should be noted, and a detailed prior written notice should be issued.

OSPI further reminds the IEP team it is possible “proprioceptive input hugs” administered to a student could be utilized in such a fashion as to represent “physical intervention or force used to control a student.” In any such case, said interventions would represent a restraint and would be subject to all applicable requirements for state reporting, and the development of an emergency response protocol with parent consent as described in WAC 392-172A-02105, observance of the prohibited practices described in WAC 392-172A-02076, etc.

Dated this 2nd day of July, 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.)