

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-95

PROCEDURAL HISTORY

On June 18, 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 Monroe 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 June 18, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 20, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On July 5, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on July 10, 2024. OSPI invited the Parent to reply.

On July 22, 2024, OSPI requested that the District provide additional information, and the District provided the requested information the same day. OSPI forwarded the information to the Parent on July 24, 2024.

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 on April 1, 2024, per the allegations in the complaint. 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.

ISSUE

1. Whether the District followed proper restraint and isolation procedures in April 2024?

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.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

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).

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.

Isolation and 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 isolation or 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).

FINDINGS OF FACT

1. According to the District, at the start of the 2023–24 school year, the Student was eligible for special education services under the category of communication disorders, was in “the K1 grade,” attended a District elementary school, and the Student’s October 2023 individualized education program (IEP) was in effect.
2. According to the Parent’s complaint request, in April 2024, the Student was restrained and isolated “on multiple occasions,” and the Parent was never provided with either an “email” or “paper...report” concerning said restraint and isolations.

In relation to one specific restraint and isolation incident in April 2024, the Parent stated, “[I] was notified by [the] Student of [the] restraint and isolation. [I] immediately called the school [and it] confirmed the Student’s information.”

3. The District’s response read, in part:

On April 18, 2024, Student became upset because he could not access a preferred toy. Student began pushing and hitting the general education teacher and attempting to throw items. General education teacher implemented a number of de-escalation strategies and called the school administrative office for support. The office sent the paraeducator, who had Crisis Prevention Intervention training, to provide general education teacher with the requested support. General education teacher and Paraeducator attempted additional de-escalation, but Student continued to escalate, pushing over a standing whiteboard that narrowly missed hitting two classmates. At this point, general education teacher and Paraeducator became concerned that there was in imminent likelihood of serious harm to Student, other students or themselves.

General education teacher therefore briefly implemented a one-person restraint hold with Student and then continued the hold while walking Student from the classroom to a calming space. (The calming space is a room with windows that contains a beanbag, other soft items and nothing else.) Student continued to hit and kick general education teacher during the transition.

Paraeducator stayed with Student in the calming space and did not close the door at any time. Student remained escalated and hit, kicked, and spit for around five minutes after entering the calming space. He then fell asleep. Student remained out of class from 12:35 to 1:46. Although Student was never isolated as defined by RCW 28A.600.485, general education teacher erroneously recorded the time he was out of class as ‘isolation’ on the District’s Restraint/Isolation Report Form, which she completed the same day.

Following the incident, general education teacher called Student’s family on the same day and informed them of the incident and also informed school principal. The principal reviewed the incident with general education teacher to discuss whether proper procedures

were followed and what training or support general education teacher needed to help Student avoid similar incidences.

...

The District appropriately restrained Student due to a reasonable concern that his conduct had created an imminent likelihood of serious harm to himself, other students or District staff.

...

The school neglected to send written notification of the incident to Student's family within five business day of the incident. It also neglected to hold a meeting with Student and Parent to address the behavior that precipitated the restraint or isolation and the appropriateness of the response...The District also admits that its Restraint/Isolation Report Form did not include space for recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidences.

The District proposes the following corrective action to ensure procedural compliance going forward: (1) The District will provide additional training to all certificated staff and paraeducators at Student's then school regarding isolation and restraint requirements by October 1, 2024; (2) the District will provide additional training to the principal of Student's then school specific to procedural reporting requirements by October 1, 2024; and (3) the District will update its Restraint/Isolation Report Form consistent with the corrective action requirement issued by OSPI in SECC No. 24-66.

4. A "Restraint/Isolation Report" included in the District's response, dated April 18, 2024, included the following information:
 - The incident started at 12:28 pm.
 - A narrative that read, "We were doing math. We were playing 'guess my number.' I used sticks to [assist Student in] pick[ing] a number. After [the game], [we] went to math concept development. Student was upset. He was defiant [and] push[ed] me to get to his toy Yoda. He was hitting [and] tried to throw things."
 - The following de-escalation strategies were used: offered break; redirection; choices; and offered calming object.
 - A "one-person restraint" was used in the classroom and a "two person escort" was used in the hallway.
 - It stated a restraint, escort, and isolation were implemented. The escort lasted five minutes, from 12:30 to 12:35 pm. The isolation took place from 12:35 to 1:46 pm.
 - The general education teacher was the individual that administered the foregoing; no individuals were injured during the time periods detailed; the principal was notified within 24 hours; a "report [was] sent to the District office within 48 hours"; and the Parent was notified within 24 hours, specifically, the general education teacher notified the Parent on April 18, 2024, at 3:40 pm.

5. During the course of this investigation, OSPI's investigator asked the District, "To confirm, the only known incident of restraint or isolation in April 2024 took place on April 18th, correct? There were no other known incidents of either restraint or isolation that month?"

The District responded, "Yes, that is correct."

6. According to the Parent, at some point after April 2024, the Student "switched to a new school."

CONCLUSIONS

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.

Here, the general education teacher administered a restraint on April 28, 2024. According to the narrative statement in the District's response, prior to the administration of that restraint, the Student pushed and hit the general education teacher, threw items, and pushed "over a standing whiteboard...narrowly miss[ing] two classmates." The April 18, 2024 Restraint/Isolation Report stated the Student hit, threw things, and pushed District staff, prior to the restraint being administered.

A student in "the K1 grade" (in other words, a very young student) hitting and pushing would, in most every conceivable circumstance, not constitute an imminent likelihood of serious harm, such that either restraint or isolation would be warranted. In this instance, though, the fact the Student pushed over "a standing whiteboard" does represent an imminent likelihood of serious harm. Standing whiteboards are relatively heavy objects, with sharp, metal edges. It is conceivable another student could suffer serious harm if such an item was pushed onto them. Thus, OSPI finds there was an imminent likelihood of serious harm, such that administration of a restraint was permitted. OSPI does not find a violation of the IDEA on this score.

Duration of Restraint

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

Here, the District's narrative and the April 18, 2024 report detailed the restraint lasted for a relatively short duration, only five minutes. Specifically, the Student was "escort[ed]" to the calming room after the Student pushed the whiteboard over, and the Student continued to "hit and kick the general education teacher during the transition." Once the Student was in the calming room, the restraint was discontinued. OSPI finds the restraint to have been discontinued as soon

as the likelihood of serious harm dissipated. OSPI does not find a violation of the IDEA on this score.

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, according to the District's response, the paraeducator had trauma-informed crisis intervention, the general education teacher did not have trauma-informed crisis intervention, but it was the general education teacher that administered the restraint, not the paraeducator. This represents a violation of the IDEA. To address this violation, certain staff at the Student's 2023–24 school will be required to attend training on proper restraint and isolation procedures.

Isolation

Isolation as defined in RCW 28A.600.485 means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan.

Here, according to the District's narrative, the "paraeducator stayed with Student in the calming space and did not close the door at any time." Accordingly, OSPI finds the Student was not isolated, as that term is defined under the IDEA. And, consequently, there was no violation of the IDEA on this score.¹

Parental Notification of Restraint

The principal or principal's designee must make a reasonable effort to: (requirement 1) verbally inform the student's parent or guardian within 24 hours of the incident; and (requirement 2) must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred.

Here, the general education teacher called and spoke with the Parent the day the restraint was administered. Accordingly, requirement 1 was satisfied, and there was no violation of the IDEA. But the District acknowledges requirement 2 was not completed; the Parent was never provided with written notification within five business days of the restraint. This does represent a violation of the IDEA and said violation will be addressed via mandatory training.

¹ Though, as the District acknowledged in its response, it's post-event documentation was either inaccurate or incomplete, as it asserted the Student was subjected to an isolation. (It is also possible the District staff person that completed the isolation form was not aware of what constituted an isolation under the IDEA.) The deficiencies in the post-event report are addressed below.

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, while the Parent was verbally informed of the incident, including the restraint, on the afternoon of April 18, 2024, the documentation provided to OSPI during this investigation does not show that the District undertook a more substantive, systemic review of the behavior that precipitated the restraint with either the Student or the Parent. In fact, in its response, the District acknowledged this step was not taken. This represents a violation of the IDEA and will be addressed with a training.

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 District's narrative read, in part, "The principal reviewed the incident with general education teacher to discuss whether proper procedures were followed and what training or support general education teacher needed to help Student avoid similar incidences." Based on the foregoing, OSPI finds this step to have been completed, and that there was no violation of the IDEA on this score.

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, the April 18, 2024 restraint report did include some of the required information, such as the date and time of the incident, the name and job title of the individual who administered the restraint, and the type of restraint used.

On the other hand, though, the April 18, 2024 restraint form was missing some required information. For example, the April 18, 2024 restraint report did not detail the fact the Student

pushed over a standing whiteboard. This represents a violation of the IDEA, as restraint reporting documentation must include a detailed “description of the activity [representing an imminent likelihood of serious harm] that led to the restraint.” Additionally, the April 18, 2024 restraint form did not detail recommendations for changing the nature or amount of resources available to the Student and staff members in order to avoid similar incidents. This too represents a violation of the IDEA. A similar violation was noted in regard to the District’s restraint and isolation reporting form during an early special education community complaint (SECC), SECC 24-66. As part of the corrective actions for SECC 24-66, OSPI required the District to revise its restraint and isolation reporting form. As of the publication date of the instant decision, the District is in the process of completing the foregoing corrective action in SECC 24-66. Accordingly, with the instant decision, OSPI does not prescribe additional corrective actions in relation to the District’s restraint and isolation reporting form.

CORRECTIVE ACTIONS

By or before **August 22, 2024, September 20, 2024, and October 18, 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 24-95.

The following District staff will receive training: the following District staff at the school the Student attended through April 2024: special education administrators and psychologists, and the following at the Student’s school: principal, assistant principal, special education certified staff (teachers), general education teachers who have students with IEPs in their classes, and paraeducators. The training will cover the following topic:

- Proper restraint and isolation procedures, including reporting requirements.

The training will include examples.

By or before **August 22, 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.

By or before **September 20, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 27, 2024.

By **October 11, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 18, 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.

Dated this 30th day of July, 2024

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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)