

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-03

PROCEDURAL HISTORY

On January 10, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On January 13, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On January 31, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 3, 2023. OSPI invited the Parent to reply.

On February 3, 2023, OSPI's complaint investigator conducted a telephone interview with the Parent.

On February 6, 2023, OSPI received additional information from the District. That information was forwarded to the Parent on February 8, 2023.

On February 6, 7, and 8, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on February 8, 2023.

On February 9, 2023, OSPI received additional information from the District. That information was forwarded to the Parent on February 13, 2023.

OSPI considered all information provided by the Parent and the District, including a video of the September 1, 2022 incident, as part of its investigation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 11, 2022. 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. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly for the 2022–2023 school year, including the Student's "no physical contact" provision?
2. Per WAC 321-172A-02110, did the District follow proper restraint and isolation procedures with the Student, including using restraint and isolation only when there was an imminent

likelihood of serious harm and following all reporting, documentation, and other requirements?

3. Per WAC 392-172A-02110, was the staff who restrained the Student properly trained and currently certified to use restraint techniques?
4. Per WAC 392-172A-03005, was the Student reevaluated in a timely manner?

LEGAL STANDARDS

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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 Conditions: 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 certified by a qualified provider in the use of 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.

Restraint Training: 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)(c).

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent or guardian to address the behavior that precipitated

the restraint or isolation and the appropriateness of the response, and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office.

The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Evaluation Timeline: Within thirty-five school days after consent has been received, a school district must assess a student in all areas related to his suspected disability. The timeline can be extended if agreed to by the parent and documented by the district, including specifying the reasons for extending the timeline. WAC 392-172A-03005.

FINDINGS OF FACT

Background

1. The Student had a comprehensive special education reevaluation in April 2021. The prior written notice (PWN) stated, "It is proposed that [Student] continue to receive specially designed instruction [SDI]. The category of health impairment is the most appropriate for the provision of these services."
2. On March 21, 2022, teacher 1 (also the special education director) sent the Parent the following email:
Attached is a prior written notice detailing the new behaviors we are seeing at school and how we will react. I will ensure that all staff who work with [Student] are aware. As I mentioned, I have also added paraprofessional time to [Student's] classroom to better support his needs at this time.

A PWN, dated March 21, 2022, stated, in part, as follows:

[Student] is demonstrating new behaviors. He is frequently engaging in withdrawal behaviors including hiding his face, going under his desk, not coming in from the playground—at least 2 times per day that his teacher needs to call for assistance from special education staff. [Student] has not demonstrated these behaviors previously.

...

[W]hen [Student] becomes upset we will continue to offer unconditional positive regard, a safe place to regain control, and opportunities to connect with staff rather than implementing typical discipline measures.

The Parent sent the following email on February 7, 2023, regarding the information in the March 21, 2022 PWN, "Please see...in re: of the no physical contact when interacting with [Student]."

2022–2023 School Year

3. On August 29, 2022, the District held its first day of instruction for the 2022–2023 school year. The Student attended a District school as a third grader and the Student's April 2022 IEP was in effect. The Student was eligible for special education services under the eligibility category of other health impairment.
4. On September 1, 2022, a video provided by the District showed the Student being restrained for over two minutes. In the video, there is one adult grasping each one of the Student's arms near his armpits and he is being moved down a hallway. The Student's body is limp, and his feet are dragging. This happens for about 14 seconds, then the three of them stop and the adults get the Student to his feet. The Student walks for about ten seconds, and then he goes totally limp. They stop for about 25 seconds. The restraint continues moving down a long hallway and then the staff and Student make a left turn into another hallway and the video feed is lost. Then, when the video is continued, the group makes a right turn into the final hallway. The adults stop for two seconds, they try to get the Student to stand and continue moving. The Student goes limp, and the adults stop for about 25 seconds. When the group continues moving, the Student tries to dig his feet into the floor to prevent forward movement, but he slides. The Student does not appear to be aggressive with the adults. They finally arrive at a door and go in. One adult woman was following the Student and the two restraining adults the entire way, and during the incident, two more adults followed the group.
5. Photos of the Student from the incident showed a scratch and black/blue marks near both armpit areas.
6. A paraeducator's report regarding the September 1, 2022 restraint provided the following information:

After [teacher 3] was finished reading aloud [the Student] slid under his desk and moved it several feet backwards, still underneath. [Teacher 3] addressed him, said 'we can't do that.' I walked over to help him get up. I got him out from under the desk, and everything back in place. When activities changed & we had to line up he went to the back of the classroom. I talked to him on & off for a few minutes during his cool down. Once I started giving him more space helping other students, I came back to him hitting his head on the wall/cabinet.

I told him it wasn't very safe, I didn't want him to get hurt. Head hitting sped up, he ripped student work posters down. When it became very loud and strong (head to wall) I ran to Rm 13 and asked for assistance. 2 staff helped remove him from the classroom, I followed behind until they arrived in 'new beginnings'. I went back to teacher 3's classroom to help another student.

7. On September 1, 2022, teacher 2 and teacher 4 each filed an "Isolation and Restraint Incident Report." These are the two adults on the video who were restraining the Student.
8. Based on documentation from the District, teacher 2 was right response certified from January 10, 2022 through January 10, 2023. Teacher 4 was not right response certified at the time of the incident. Teacher 4 became right response certified in November 2022.

In its response, the District's stated the untrained staff member was "new to the special education department and is currently taking courses to gain her special education certification, she was not certified. She has completed her certification since the incident with [Student]."

9. On September 2, 2022, the Parent met with the District and was provided the reports filed by teachers 2 and 4. Later that day, the Parent emailed the District as follows:

I appreciate you both meeting with me this morning regarding Student. Thank you for providing the incident report for 9/1/22. Additionally, thank you for your verbal recount of the incident that as you stated violated protocol where two staff unreasonably physically moved Student down the hallway by his arms and the marks/bruising he now has as a result. At this time I am requesting to review and receive a copy of the video footage of Student for the entire day 9/1/22.
10. Regarding the September 1, 2022 incident, teacher 1 stated in an email to OSPI on February 9, 2023, that she "debriefed with the [S]tudent informally given his developmental age."

11. On September 7, 2022, the principal sent the superintendent an email that stated, in part:

Staff were interviewed after the restraint incident on September 1, 2022, by both [teacher 1 and school principal]. A debriefing meeting was held, and Staff were provided with feedback that restraint was to be used as a last resort and best practice would indicate that we need to be aware of specific plans before restraining students. It was also reinforced that it is always helpful to evaluate, reevaluate, and call for an administrator whenever you are considering using a physical restraint. [Teacher 1] then called and informed the parent as to the event. The following morning the [P]arent of [Student] came to the building and teacher 1 and principal met with Parent.

During the debrief with staff on September 1, 2022, we learned the following:
It was clear that all involved staff were deeply concerned for [Student's] safety and well-being.
We learned about the procedural failings and discussed procedural changes that resulted from this incident.

Procedural failings were as follows:

- The use of the 'Wall Call' to get immediate help from a person knowledgeable about the specific needs of the student was not used.
- Staff who restrained were unfamiliar with the [S]tudent and his plan for de-escalation.
- Support staff did not utilize the 'Wall Call' protocol.
- Adequate time for staff, including recent hires, was not provided to collaborate on students with special needs was not offered prior to the start of the school year.

Procedural Changes that resulted from this incident:

- All staff received training of school policy to use the intercom system when urgent and emergent issues arise.
- A trauma-informed care plan was specifically developed for [Student] and has been shared with all staff who may work with him.
- The calendar committee is exploring ways to increase the time for collaboration prior to the start of school.
- New Staff will be provided with Right Response Training in November 2022.

12. On September 12, 2022, according to teacher 1's parent log (parent log): the Student was "in the hall and covered the lock so that principal could not let a little girl into her classroom. I mentioned doing an [functional behavioral assessment] FBA and scheduling an IEP meeting to make a plan that will support Student's current needs."

13. On September 13, 2022, according to a PWN:

Parent proposed half days for a short period of time in order to help [Student] through this time period. The team agreed. Originally, the team suggested 6 weeks parent is not sure that adequate childcare can be found for more than a week or 10-days.

...

Parent requested that [Student] spend his school time primarily in the resource room. The school team agreed.

...

Providing services in the general education classroom is not currently meeting [Student's] needs, he is continuing to demonstrate triggered behaviors such as hood up, under desk, and is escalating by being destructive and unable to engage with staff during de-escalation.

...

Parent declined a Functional Behavior Assessment (FBA) . . . because she does not see these episodes as behaviors but as a student who is triggered and not in control of his behaviors.

14. On September 20, 2022, a trauma informed care plan was drafted for the Student. Under "Prevention", point 8 stated, "Utilize trauma sensitive training and avoid touching" the Student. Under "How will we react when [the Student] is triggered," point 3 stated, "If Student's behaviors escalates, a. [Parent] can often deescalate him over speakerphone...b. clear the classroom of students to protect [Student's] dignity, c. only one to two adults (with at least one admin) should be in the classroom."

15. On September 23, 2022, teacher 1 emailed the Parent a draft of a trauma informed care plan. The email stated, in part, "Let me know how you think it reads and I'll get it in his file once you've approved it."

16. On September 30, 2022, the parent log stated:
[Parent] and I were able to connect this afternoon. I discussed the challenges of having Student in the resource room, including that it isn't designed to be a full-time placement. As a halftime teacher, I am not typically in the classroom much during the afternoon though I have been to support Student. Parent agreed to have Student visit the classroom but does not want Student to feel pressured to do so.
17. Attendance records show that the Student was absent on October 20, 21, 24, 25, 26, 27, 28, 31, November 1, 2, 3, 4, 7, 8, 9, and 10.
18. On October 25, 2022, the Parent emailed the District requesting that the Student's step-parent attend school with the Student to help the Student succeed by having a "safe" person available.
19. On November 3, 2022, the parties met. It was at this meeting that the District learned that the Student was refusing to come to school. The Parent requested an independent educational evaluation (IEE). The District agreed to the IEE and proposed a person to conduct the IEE.
20. On November 10, 2022, the parties agreed to an interim placement for the Student at the District office for a shortened day to conduct the evaluations. The Parent agreed to the District's suggestion for the independent evaluator.
21. On November 14, 2022, the District received the Parent's written consent to conduct the IEE, and according to attendance records, the Student started going to the District office to receive instruction and to participate in the testing for his evaluation.
22. On January 10, 2023, the Parent filed special education community complaint (SECC) 23-03 with OSPI. The Parent's complaint alleged, in part:
- A failure to implement the Student's IEP.
 - Improper restraint of the Student.
 - The person who implemented the restraint on the Student was not trained.
 - The Student's evaluation was not done in a timely manner.
23. A PWN, dated January 16, 2023, stated:
[The independent education evaluator] recommends beginning [the Student's] school day at...2 hours. As he becomes more comfortable with the implementation of the new Trauma Informed Care plan, his hours will be increased. [The Student's] step-[Parent] will be allowed to assist in the transition to school. The action will be initiated on: 02/07/2023.
24. On January 18, 2023, the IEE was completed, and the evaluator's report was issued. It stated, in part, "I support continuing to serve [the Student] under the IDEA category of Other Health Impairment. However, I am recommending that the minutes he receives specialized instruction be increased significantly."

25. In the District's evaluation, which references and incorporates the IEE, dated January 26, 2023, the Student is listed as eligible for special education services under the eligibility category of other health impairment.

26. An IEP, dated January 26, 2023, provided the Student SDI and related services, as follows:

- Math: 20 minutes/2 times daily (provided by special education teacher/paraeducator, in a special education setting)
- Reading: 20 minutes/2 times daily (provided by special education teacher/paraeducator, in a special education setting)
- Writing: 20 minutes/2 times daily (provided by special education teacher/paraeducator, in a special education setting)
- Social/Emotional: 20 minutes/3 times daily (provided by special education teacher/paraeducator, in a special education setting)
- Adaptive: 20 minutes/3 times daily (provided by special education teacher/paraeducator, in a special education setting)
- Occupational Therapy: 30 minutes/1 time weekly (provided by an occupational therapist (OT), in a special education setting)

The Student's percent of time in a general setting was 28.7% and LRE placement in general education classes was 0–39%. The Student was provided direct paraeducator support two hours a day. The emergency response protocol was marked yes.

Annual de-escalation/trauma informed training for school personnel was included in the IEP.

27. On January 31, 2023, an updated draft of a trauma informed care plan was created. Under "Prevention," point 9 stated, "Utilize trauma sensitive training and avoid touching" the Student. Under "How will we react when [the Student] is triggered," it stated:

Students with a history of trauma have a difficult time with social engagement when they are frustrated and anxious. Therefore, when [Student] appears distressed:

- a. Step away from him until he appears calm for 2 to 3 minutes. That is, do not initiate conversations with him about why he is upset until he sits quietly for 3 minutes and approaches his paraeducator for assistance.
- b. If [Student] behaviors escalate and demonstrate a potential for self-harm or danger to others, block [Student] gently from hurting himself.

28. Regarding the case's first issue, IEP implementation, the District's response provided, in part:

Student's IEP was implemented, however, due to changes in behavioral needs as well as the increased demands of 3rd grade, strategies and services as written in his IEP were insufficient to support Student. There was not a formal 'no physical contact' provision in Student's IEP, however, our common procedure is to use restraint as a last resort when all other measures have failed to help a student who has become dysregulated. There was a common understanding between Student's IEP team that restraint would not be used given his history of trauma unless Student was a danger to himself or others.

29. Regarding the case's second issue, related to the restraint incident, the District's response provided:

On September 1st, protocol was not followed when [Student] became dysregulated. The paraprofessional who was working with [Student] in his classroom became concerned and went to get help rather than using the procedure of using the 'wall call' system to get a person familiar with [Student's] IEP and needs. Staff who were unfamiliar with the student came to help. Staff felt that the student was in danger of hurting himself and removed him to a safe location. Due to his size, the distance traveled, and the student's past history of trauma the restraint was inappropriate.

Parent was contacted and provided with the restraint paperwork as well as a verbal accounting of the incident. [Principal and teacher 1] met with the parent the following morning to discuss her concerns regarding the restraint. The district regrets that the incident took place and any negative consequences that occurred for the student and the family. The district shared with the parent that they were sorry that this had occurred and detailed the following changes to our procedure that will take place in light of the circumstances. Procedural changes were made so that the 'wall call' system would be implemented with fidelity. It should also be noted that the paraprofessional was new to our district as was [Student's] general education teacher. Right Response training was provided to all paraprofessionals in November 2022. [Teacher 4] was provided Right Response Training in October 2022 by ESD...with the physical pieces being offered in November 2022. [Principal and teacher 1] presented 'wall call' protocol to the staff in September in order to ensure that such a mistake would not happen again.

30. Regarding the case's fourth issue, the reevaluation, the District's response provided: The student had a full special education reevaluation in April 2021. Further assessment, including a functional behavioral assessment, was offered and rejected by the parent in September 2022. Parents requested an independent evaluation on November 3rd. Consent was returned on November 14, 2022. Evaluation was held on January 26, 2023.

CONCLUSIONS

On January 10, 2023, the Parent filed a special education community complaint with OSPI, alleging, in part, failure to implement the Student's IEP, improper restraint of the Student, that the staff who implemented the restraint on the Student was not trained, and that the Student's evaluation was not done in a timely manner.

Issue One: IEP Implementation – The Parent alleged that the District failed to implement the Student's IEP with respect to the Student's "no physical contact" provision.

On February 7, 2023, the Parent sent OSPI an email, referencing a PWN from March 21, 2022, as the basis for the "no physical contact" provision. This PWN stated, in part, "[W]hen [Student] becomes upset we will continue to offer unconditional positive regard, a safe place to regain control, and opportunities to connect with staff rather than implementing typical discipline measures." The Student's IEP did not include a "no touch" or "no physical contact" provision. As such, the September 1, 2022 incident at the center of the Parent's concern will be discussed in the second issue. However, there is no failure to implement a provision of the Student's IEP, as this was not part of the Student's IEP.

OSPI notes that if a student's disability impacts their learning or the learning of others, the IEP should address behavior, including developing a behavioral intervention plan and including positive behavioral interventions and supports (see in part WAC 392-172A-01031 and -03090). Here, and in general, while a "no touch" provision may seem like a positive behavior support, it would be unnecessary and unenforceable. The provision is unnecessary because WAC 392-172A-02110 clearly states, "restraint . . . shall be used **only when** a student's behavior poses an imminent likelihood of serious harm" (emphasis added). The provision is unenforceable because WAC 392-172A-02110 allows district personnel to use restraint when a student's behavior poses an imminent likelihood of serious harm to the student or another person.

Issue Two: Restraint – The Parent's complaint alleged that the Student was improperly restrained on September 1, 2022. Regarding the case's second issue, the District's response acknowledged that the restraint was inappropriate and provided, in part:

On September 1st, [internal] protocol was not followed when [Student] became dysregulated. The paraprofessional who was working with [Student] in his classroom became concerned and went to get help rather than using the procedure of using the 'wall call' system to get a person familiar with [Student's] IEP and needs. Staff who were unfamiliar with the student came to help. Staff felt that the student was in danger of hurting himself and removed him to a safe location. Due to his size, the distance traveled, and the student's past history of trauma the restraint was inappropriate.

Restraint is a "physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement." According to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC), restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. OSPI acknowledges that it is challenging to judge the imminent likelihood of serious harm not having been present for the actual incident, and OSPI understands that during many of these incidents, staff are required to make a challenging judgment call for the safety of the student, other students, and staff.

Information from the staff indicated that the initial restraint was prompted by the Student hitting his head against the wall. Regarding the Student's restraint, the District's video showed, in part, one adult on each arm of the Student. The Student's body is limp, and his feet are dragging, and he begins to walk for a little while, and once again goes limp. The adults stop for a few seconds and then continue to walk, while dragging the limp Student. At one point, the Student tries to dig his feet into the floor to prevent forward movement, but he slides. They moved down three separate hallways before they finally arrive at a door and go in. While the restraint may have been appropriate in the initial seconds to prevent the Student from hitting his head, during this entire video, it does not appear that the Student is engaging in activity that would pose a likelihood of serious physical harm. It is important to note that being fully deescalated is not necessarily the same as the likelihood of serious harm dissipating. In the video, while the Student may not have been totally de-escalated and ready to follow instructions, he was not engaging in activity that would pose a likelihood of serious physical harm.

In addition to the District acknowledging that this restraint was inappropriate, OSPI finds that the Student's restraint was improper because the Student's behavior in the video does not appear to

pose an imminent likelihood of serious harm. OSPI finds a violation regarding the September 1, 2022 restraint.

Despite the violation, no additional Student specific corrective action will be ordered in the present matter because the District has already taken steps to avoid having to use restraint on the Student again. Those steps include, but are not limited, to:

- A staff meeting shortly after the September 1, 2022 restraining incident that resulted in changes to how the Student's behavior will be addressed when he becomes escalated.
- The development of trauma informed care plans, dated September 20, 2022 and January 31, 2023.
- An IEE, dated January 18, 2023, performed by an independent evaluator.
- An IEP, dated January 26, 2023, that included direct paraeducator support and annual de-escalation/trauma informed training for school personnel.

Meeting Requirements

Parent/Student Meeting: Upon release of a student from restraint or isolation, the school must review the incident with the student and the parent to address the behavior that precipitated the restraint or isolation and the appropriateness of the response.

Regarding the September 1, 2022 incident, the Parent's email showed that the District met with the Parent on September 2, 2022, to discuss the September 1 incident. Based on a February 9, 2023 email from the District, teacher 1 stated that she debriefed with the Student after the incident in a developmentally appropriate manner. Thus, OSPI finds that the District satisfied its requirement to debrief with the Parent and Student.

Staff Meeting: Upon release of a student from restraint or isolation, the school must 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.

On September 7, 2022, the principal sent the superintendent an email that stated in part that the incident had been debriefed with the staff on September 1, 2022. The email detailed procedural failings regarding the incident and the procedural changes that resulted from the incident. Thus, OSPI finds that the District satisfied its requirement to hold a staff meeting to debrief subsequent to the incident.

Reporting Requirements

Staff Reporting: Any school employee or resource officer who uses isolation or restraint on a student during school-sponsored activities must inform the building administrator, and within two business days submit a written report of the incident to the district office that must include, at a minimum:

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 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,
5. any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

Regarding the September 1, 2022 incident, on September 1, 2022, teacher 2 and teacher 4 submitted reports that provided the date and time of the incident; the name, but not job title of the individuals who restrained the Student; a description of the activity that led to the restraint; and the type of restraint used on the Student. The reports do not provide recommendations for avoiding similar incidents.

Based on the facts above, OSPI finds the District's reports do not comply with regulatory requirements, in that there is not a space in the reports to provide the title of the staff person performing the restraint, nor a space to provide recommendations for avoiding similar incidents. Thus, OSPI finds that a violation has occurred.

Communicating with Parent: The principal or principal's designee must:

1. Make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and,
2. Send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred.

Regarding the September 1, 2022 incident, the Parent's email, dated September 2, 2022, showed that the District met with the Parent on September 2, 2022 regarding the incident and on September 2, 2022, the District provided the Parent the incident reports filed by teachers 2 and 4. Thus, OSPI finds the District has satisfied its reporting requirement to the Parent, although as noted above, the written incident reports were missing elements.

Based on the violations that have been established for the second issue related to the incident reports, the District will be required to update its incident report form to ensure it aligns with the required components in the regulations.

Issue Three: Staff Training – the Parent has alleged that the District staff who implemented the Student's restraint was not trained to conduct such a procedure. Based on information provided by the District, teacher 2, who was one of the people who implemented the September 1 restraint, was properly trained and certified, and teacher 4 was not trained and certified on September 1, 2022. Teacher 4 was properly trained and certified in November 2022.

According to the applicable regulations, 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 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.

The applicable regulation referenced just above allows for untrained personnel to participate in emergency restraint situations if there is a currently certified person present. In the present case,

teacher 2, who was right response certified, was supervising the restraint at the time it occurred. Thus, despite teacher 4's lack of restraint certification during the incident, OSPI does not find a violation regarding the staff's training.

Issue Four: Evaluation Timeline – The Parent alleged that the Student's evaluation was not conducted in a timely manner. Based on the applicable regulations, a school district must assess a student in all areas related to his suspected disability within thirty-five school days after consent has been received.

Here, the parties agreed to an evaluation on November 3, 2022, and the District agreed to fund an IEE. The signed consent for the IEE was provided to the District on November 14, 2022, and the IEE was completed on January 18, 2023. During the two-month calendar period between the day when the signed consent was obtained by the District and when the IEE was completed, schools were closed for the Thanksgiving break, Christmas/New Year break, and Martin Luther King Jr. Day. The evaluation was completed 32 school days after the consent was signed. Based on this fact and the applicable regulation, OSPI finds that the District conducted the evaluation in a timely manner and there is no violation for the fourth issue.

CORRECTIVE ACTION

By or before **April 21, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Restraint Form

By or before **April 14, 2023**, the District will update its restraint and isolation incident form to ensure it includes all elements required in the regulations: 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 used, including the duration; whether the student or staff was physically injured during the 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.

By or before **April 21, 2023**, 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 February, 2023

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.)