

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-63

PROCEDURAL HISTORY

On September 3, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) regarding a student (Student) attending the Vancouver School District (District). The Complainant alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 4, 2019, 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 September 16, 2019, OSPI received an "authorization for release of records," signed by the Parent, allowing OSPI to release the Student's records and District response to the Complainant.

On September 27, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on September 30, 2019. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On October 2, 2019, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District on October 3, 2019.

On October 3, 2019, OSPI interviewed the District's general counsel and on October 4, 2019, the District provided additional information as requested during the interview. On October 7, 2019, OSPI forwarded the additional information to the Complainant.

On October 3, 2019, OSPI requested additional documentation from the Parent of the Student in this complaint.¹ OSPI did not receive a response from the Parent.

On October 4, 2019, the Complainant requested an extension of time to reply to the District's response. OSPI granted the Complainant's request the same day.

On October 8, 2019, OSPI requested additional information from the District and received the information the same day. On October 10, 2019, OSPI forwarded the additional information to the Complainant.

On October 25, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District October 28, 2019.²

¹ OSPI also reached out to the Parent to schedule a phone interview with the Parent regarding the allegations in the complaint and the Parent's experience with the District.

² The Complainant emailed her reply as a Google document on October 25, 2019. Because Google docs can be altered, OSPI saved a pdf copy at 3:09 pm on October 25, 2019. The Complainant's email also indicated

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

ISSUE

1. Did the District follow isolation and restraint procedures consistent with WAC 392-172A-02110 and RCW 28A.600.485 on July 17, 2019?

LEGAL STANDARDS

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.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, 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 isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

Restraint Conditions: Restraint device 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: the restraint must be discontinued as soon as the likelihood

she made "comments" on the Google doc, but it did not appear the comments were viewable on the version sent to OSPI. Subsequently, OSPI emailed the downloaded pdf to the Complainant and inquired if this was the complete version the Complainant intended to submit. OSPI received no reply. OSPI reviewed the version of the Complainant's reply downloaded at 3:09 pm on October 25, 2019 as part of this investigation.

of serious harm has dissipated; the restraint shall not interfere with the student's breathing; and, 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.

Imminent Likelihood of Serious Harm: Imminent as defined in RCW 70.96B.010 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. Likelihood of serious harm as defined in RCW 70.96B.010 means: 1) A substantial risk that: 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; 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 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.

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.

FINDINGS OF FACT

1. During the 2018-2019 school year, the Student attended a District elementary school and was eligible for special education services under the category autism.
2. The District's 2018-2019 school year began on August 29, 2018.
3. On April 18, 2019, the Student's individualized education program (IEP) team determined the Student needed extended school year (ESY) services during the summer of 2019. The Student's ESY goals focused on social/emotional behavior and adaptive skills. The Student's ESY IEP included the following specially designed instruction, to be provided in a *special education setting* by a special education teacher:
 - Adaptive Skills: 90 minutes, 1 time daily
 - Social-Emotional: 90 minutes, 1 time daily
4. Also, on April 18, 2019, the Student's IEP team discussed the Student's functional behavioral assessment (FBA). The FBA identified target behaviors (running and dropping to the floor), discussed prior interventions, identified functions of the behavior, and made extensive recommendations for the IEP team to consider in a behavioral intervention plan (BIP).
5. On May 16, 2019, the Student's IEP team—including the Parent—met to develop the Student's annual IEP. The Student's present levels noted his diagnosis of autism, the fact that he was nonverbal and "uses an iPad...for communication." The IEP noted the Student had "some very unsafe behaviors, including running away, hitting, throwing objects, screaming, and standing on tables" and his "running is extremely dangerous and he must be closely monitored at all times. He will leave the building and will leave the playground." The IEP stated, "he requires a special education paraeducator to be with him at all times to keep him safe..."

The IEP included annual goals and specially designed instruction in social-emotional, adaptive skills, behavior, math, reading, and writing. The Student also received related services in speech-language pathology and occupational therapy, as well as "additional adult support" from a paraeducator.

6. The May 2019 IEP noted the Student had an emergency response protocol (ERP)—signed by the Parent—which stated when the Student put himself or others in imminent danger ("running towards a road/unsafe environment, kicking or hitting"), isolation or restraint may be used. The ERP specified restraints will only be used by "Crisis Prevention Institute ('CPI') trained staff" and that the "maximum duration of restraint is 20 minutes."

The Student's May 2019 IEP also included a BIP, which targeted behaviors such as running and dropping to the floor, and included positive behavior interventions and strategies to address the behaviors. The BIP included a response plan, which stated "if running occurs staff will

quickly catch up to [Student] (ignoring is not an option unless in a very safe environment because he will run straight for exits and streets) and block him.”

7. The District’s 2018-2019 school year ended on June 13, 2019.
8. On July 15, 2019, the Student’s ESY program began. The ESY services were provided at a District middle school. According to the District’s response to this complaint, the Student was accompanied throughout the day by a “familiar (same person assigned the previous school year), CPI trained, one-on-one paraeducator.” The District noted there were a total of five students attending ESY and five adults assigned to the program.
9. On July 17, 2019, an incident occurred in which the Student was restrained (twice) and isolated. According to the District’s response, the following occurred:
 - ...the Student and his paraeducator walked the hallways for a walking break. As they approached the balcony to re-enter the classroom, the Student tried to climb over the balcony railing. The paraeducator reported, ‘The Student refused to enter the classroom. The Student was laying on the floor, running and climbing on a second floor railing.’...Classroom staff expressed concerns that the Student would elevate himself on the railing and cause harm to himself. The staff restrained him from elevating himself on the railing, which lasted about one (1) minute. The teacher reports that the Student was removed from the railing and taken into the break room. The Student voluntarily remained in the break room for approximately ten (10) minutes.

The District’s response noted the ESY teacher corroborated this account when interviewed by the District’s general counsel, and reported the “Student was leaning way over the railing, the Student does not have a sense of danger, and therefore the risk of falling was great.”

Then, according to the District’s response, the Student again—after exiting the break room—attempted to elevate himself on the railing. The District stated, “staff reported they were concerned for the Student’s safety and they prevented the Student from standing on the railing” and, “in both instances, staff pulled the Student back from the railing because they reacted to the Student’s spontaneous behavior which posed an imminent likelihood of serious harm to the Student.”

According to the District, the Student’s paraeducator notified the teacher of the restraint, and the teacher completed the District’s isolation and restraint form. The District stated:

The teacher recalls placing the isolation and restraint form in the Student’s backpack for the Student to take home. The teacher reports telling the...driver to inform the parent that there was important information in the Student’s backpack. The teacher also reports calling the parent the next morning, which was within twenty-four (24) hours of the event. Additionally, the teacher sent the isolation and restraint form to the District’s ESY administrator.

10. In response to a question from OSPI regarding whether the District reviewed the incident with the Student, the ESY teacher reported the following:
 - There was an ongoing conversation with [the Student] and the para[educator] about having a safe body. [The Student] has limited communication, but it was explained to him at least

twice that he was moved because he was not having a safe body. He did demonstrate a safe body right away once he was in the safe room so the duration of isolation was very brief.

11. The District's July 17, 2019 isolation and restraint form included the following description of activity that led to the incident: "Refusal to go into classroom, laying on floor, running from staff, climbing on railing (danger of falling one story)" and "Description of Acting Out Behavior: History of injury." The report form indicated the Student was restrained from 9:40-9:41 am, isolated from 9:41-9:48 am, and restrained again from 10:00-10:02 am. The paraeducator used a "Children's Control Position (single person)." The report stated no one was injured, but the Student kicked a hole in the wall.³

Regarding reporting and follow-up, the report included the following information:

- Parent Contacted: 7/17/19 ("By: letter")
- Incident reviewed with parent and student: *left blank*
- Reviewed with staff member: "Date: 7/17/19 Time: 10:15 a.m. By: [ESY special education teacher]"
- Additional training needed: No
- Report sent home on date: 7/17/19
- Team debriefed on date: 7/17/19

The report stated "No" after "Recommendation to address the behavior that led to the isolation/restraint developed" and stated, "[Student] spent an additional 10 minutes in the break room by choice. The second restraint was in response to trying to climb on [railing] again."

12. The Complainant alleged the District used restraint and isolation in the absence of an imminent likelihood of harm and the District's documentation did not match what the Parent was told over the phone—for example, the Complainant stated the "Parent [was] told Student was touching the railing – not climbing on it" and that "Student did not kick hole in wall out of aggression – he liked the noise it made." The Complainant also alleged there was "no meeting set up to review the incident as law requires." The Complaint further alleged there were not two staff persons with the Student as the Student's IEP required.

³ The District's response did note the form omitted two items. First, the form "did not list the name of the staff person involved, i.e., the paraeducator's name was not listed in the section for 'Staff involved', Instead, the paraeducator's name was on the bottom of the form." The response additionally stated, "the staff did not obtain an administrator's signature before sending the form to the parent." The District stated, "these two (2) omissions are extremely minor, and did not negatively impact the essential elements of notice that the parent is require to receive."

OSPI also notes, in a photograph of the form in the Parent's July 22, 2019 email, a different paraeducator name was listed for the paraeducator involved in the incident than the name listed on the form provided to OSPI as part of the District's response.

In her reply to the District's response, the Complainant listed the following things she believed were incomplete or out of compliance regarding the District's form:

- Failed "to show the district contacting the parent via phone;"
- Failed "to describe what lead up to the restraint and failed to describe the student's emergency response protocol being followed;"
- Failed "to describe in detail what happened with each isolation and restraint;"
- Two different staff are mentioned as being involved; and,
- "No mention of how to prevent this behavior from occurring again."

13. On July 18, 2019, according to the District's response, the ESY teacher called and spoke with the Parent regarding the restraint and isolation incident the previous day.

The Complainant alleged the District did not call the Parent, and that the Parent had to initiate a call to the school to get more information. The Complainant also stated in her reply that the District "did not inform the parent within 24 hours."

The District's general counsel interviewed the ESY teacher and summarized the following: the ESY teacher reported she recalled calling the Parent, and stated she called "because she wanted to find out if the parent had any concerns or questions." The teacher reported during the conversation, she "informed the parent that the staff used a restraint because of staff's concern for the student falling over the balcony" and she "asked the parent if the parent wanted to visit the school to see the school environment." The teacher stated the Parent accepted the invitation and they arranged, during the call, a time for the Parent to visit.

14. On July 22, 2019, the Parent emailed the District's executive director for special education (executive director), director of special education (director), and the District's area manager for special education services (manager). In her email, the Parent wrote, "within an hour of being at this new school my son was restrained and isolated. I was not contacted by phone. I got an incomplete isolation and restraint form. It gave me no details as to what happened." The Parent also wrote that "no information about following the IEP was stated."

The Parent then wrote, "when I spoke to staff over the phone on 7/18 I was informed my son was not climbing on the railing, yet he was restrained. He was not in imminent danger. This is not an appropriate use of a restraint." The Parent stated she was concerned about the staff member being with the Student and stated, "my son is supposed to have two adults with him at all times yet on the report one staff member is listed who used isolation and restraint inappropriately."⁴

⁴ The Complainant, in her reply, stated the Student's IEP should read "1:1 vs. additional adult support" and that the Parent interpreted the Student's IEP as meaning he would have "2 paraeducators with him." The Complainant stated she "personally witnessed this student being picked up daily in 2016-2017 and two staff were with him every time." The Complainant also stated she believed the District should be investigated to determine if they are using funding their funding correctly regarding the use of the Student's 1:1 paraeducator. OSPI notes that allegations regarding the interpretation of the IEP, the use of funding, and services the Student received in 2016-2017 are outside the scope of this complaint investigation. First, a special education citizen complaint investigation can only review allegations going back one calendar year

Regarding the hole kicked in the wall, the Parent stated, "when speaking to staff today on the phone I was informed he was stimming on the noise the wall made and kicked too hard. It was not out of aggression. None of this information was on the isolation and restraint form."

The Parent further wrote no meeting was scheduled to discuss how to reduce this type of behavior and asked:

How is staff going to address being on the second story from now on? If he touches the railing like he did 7/17, will he be restrained or isolated? I am concerned. When staff reacts in such a way it will trigger my son to not want to participate in school. How does the district plan to address these concerns? How will the district make sure the isolation and restraint forms are properly completed? I need details of what occurred and staff to review each incident so the behaviors are stopped and staff acts appropriately. My expectation is to receive a call if there is an incident at school. I want my son to be safe and educated...

15. The District's response noted, in reaction to the Parent's July 22, 2019 email, that the Student is assigned one, not two, paraeducators, per his IEP.
16. On July 24, 2019, the school staff met with the Parent, and provided the Parent an opportunity to observe the ESY program and tour the school. According to the District, during the tour, "staff explained to the parent their concerns regarding the Student when on the balcony and leaning over the railings. Classroom staff also explained the reasons for the prior use of restraints." The staff suggested to the Parent she contact the 2019-2020 program staff prior to the start of the school year to ensure all necessary safeguards were in place for the Student, because the Student would return to the same building for the 2019-2020 school year. According to the teacher, the "purpose of the meeting and tour was to make the parent aware of all the action steps taken to keep the Student safe."
17. The Complainant, in her reply, maintains that the Parent did not come to the school on July 24, 2019 to meet with staff and that the restraint and isolation incident was not reviewed with the Parent.
18. On August 1, 2019, the District's ESY program ended.
19. On August 5, 2019, the director emailed the Parent and stated she had just returned to work, and would be "investigating the situation." The director stated she was "sorry you have had this concern. We will be in touch when we have more information." According to the District's response, the director "determined that staff substantively followed the procedures."

from the date of filing a complete complaint. Second, allegations regarding the development and interpretation of the Student's IEP were not raised as issues in the original complaint. This complaint will touch on the use of the paraeducator in the context of the restraint and isolation incident, but will make no comment on the Complainant's newly raised allegations. If the Parent has concerns regarding the level of paraeducator support the Student is receiving, the Parent should request an IEP meeting to discuss the Student's educational program.

20. The director stated she subsequently called the Parent; and, according to the District, "at the conclusion of the conversation, [director] reports the parent had no additional concerns." The director also stated that during the phone call with the Parent, she told the Parent that the District was "reviewing" its restraint and isolation processes.

21. On August 16, 2019, the director sent the executive director a memorandum regarding the Parent's concerns. The director wrote that on July 22, 2019, the Parent emailed and outlined her concerns "about an inappropriate use of restraint and lack of documentation." The director noted the Parent "was responded to via email and then with a follow up phone call." The director stated they "also received an email from OSPI with questions about the event." The director documented her investigation findings, which included:

- "The student attended ESY with the 1:1 paraeducator who had worked with him throughout the 2018-19 school year as outlined in his IEP. Student had two adults assigned to support him for the last weeks of ESY...⁵"
- "Student was restrained on 7/17, 7/22 and 7/23. Forms were sent home in student's backpack."⁶
- "Parent invited to visit program and did so on 7/24."
- "Parent contacted on 8/15/19 and reported that she feels 'comfortable and that he will be supported at that school.' She felt 'good about' what she saw in the program and that if he was at the railing he was in danger."
- "Parent reported that other parent(s) had contacted her about their concerns with the program but she is happy with what she had seen."
- "When asked specifically about her concerns regarding the restraints, she stated that she had written the email when she was upset before having seen the program and met the staff. She is now very comfortable and has no concerns."

The director also wrote that, based on the investigation, the District would:

- "Review isolation/restraint process with ESY staff and include in Coordinator handbook."
- "Inform all staff that parents need to be contacted within 24 hours of a restraint by the principal/designees or ESY admin and outline in the Coordinator handbook how this is to be addressed during ESY."
- "The department called [OSPI's assistant superintendent of special education] on 8/19/19 to review the findings and our recommendations for next steps."

⁵ During the interview with the District's general counsel, OSPI asked about the Complainant's statement that the Student was supposed to have two assigned paraeducators. The general counsel emphasized the Student's IEP required he have 1:1 paraeducator support—one paraeducator, not two. However, the general counsel stated she believes that following the incident on July 17, 2019, and due to the Student's behavior of running towards the railing, the teacher and Parent had a conversation about strategies to support and keep the Student safe. The general counsel stated she believes the teacher suggested having two adults accompany the Student when he took walking breaks during ESY. Based on the director's investigation and follow up, this occurred during ESY.

⁶ The Complainant's original complaint only made allegations regarding the July 17, 2019 restraint and isolation incident. While there were restraints or isolations on two other dates during ESY services, this complaint investigation does not address those incidents. However, it seems likely, based on the documentation in this complaint, that the Parent's meeting on July 24, 2019 with the school staff addressed the multiple incidents as a whole.

According to the District's general counsel, the director confirmed these proposed actions have since occurred—e.g., isolation and restraint processes have been reviewed with ESY staff and the handbook has been updated.

CONCLUSIONS

Issue One: Isolation & Restraint – The Complainant alleged the District failed to follow isolation and restraint procedures consistent with WAC 392-172A-02110 and RCW 28A.600.485 on July 17, 2019.

Restraint, as defined in WAC 392-172A-01162 and 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. Isolation, as defined in WAC 392-172A-01107 and 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. Isolation 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.

Conditions for the Use of Restraint & Isolation: The Complainant stated she believed restraint and isolation were used in the absence of an imminent likelihood of harm because the District's documentation did not match what the Parent was allegedly told over the phone; namely, the Complainant stated the Parent was told the Student was "touching" the railing, not climbing on it. The Parent, in a July 22, 2019 email to the District, stated she believed the Student was not in imminent danger because she was informed the Student "was not climbing on the railing." A district may only use restraint or isolation when a student's behavior poses an imminent likelihood of serious harm. Likelihood of serious harm, as defined in WAC 392-172A-01109, means that there is substantial risk that the person will inflict physical harm upon him or herself, another person, or the property of others. Once the likelihood of serious harm has dissipated, any use of restraint or isolation must be discontinued.

On July 17, 2019, while attending his extended school year (ESY) services, the Student was restrained twice (for one minute and then two minutes) and isolated for seven minutes. Based on the documentation provided in this complaint, the Student was taking a break with his paraeducator and walking in the hallway when he either ran toward, or ran to and began climbing on the balcony railing. Staff were concerned the Student would "elevate himself on the railing and cause harm to himself," potentially falling over the railing. The District removed the Student from the railing—restraining him briefly—and took him to the break room. The Student was isolated in the break room for seven minutes and then voluntarily remained in the break room for ten more minutes. Upon exiting the break room, the Student again moved toward the railing and the staff again restrained the Student to prevent him from climbing over the railing. According to the teacher, the paraeducator had an ongoing conversation with the Student about having a "safe body," and noted that once the Student was in the break room, he "demonstrate[d] a safe body right way...so the duration of the isolation was very brief." The District maintained that the restraints and isolation were proper as staff were reacting to the Student's "spontaneous behavior which posed an imminent likelihood of serious harm to the Student."

Documentation in this complaint—including the Student’s May 2019 functional behavioral assessment (FBA) and individualized education program (IEP)—and staff statements indicate the Student had a pattern of unsafe behaviors that included running toward unsafe environments, and that ignoring the Student’s behaviors was not an option, unless in a very safe environment, because the Student would run for exits and streets. Staff also noted the Student does not have a sense of danger, and thus, in this incident, they believed the Student was at risk of falling.

Here, OSPI finds the use of restraint appropriate as the Student’s behavior (regardless of whether he was moving toward, touching, or climbing on the railing) presented an imminent likelihood of serious harm—e.g., there was an imminent likelihood the Student *could* climb over the railing and fall to the floor below—especially given the Student’s known pattern of behavior of running toward unsafe situations/environments. It was reasonable for the staff to believe the Student was endangering himself and to briefly restrain him as they walked him away from the railing. Further, the restraint was limited in duration and ended as soon as the imminent harm had passed.

The District stated the Student was isolated for seven minutes after the staff walked him to the break room. Here, the teacher stated the Student demonstrated a “safe body” once in the break room, and so the isolation was brief. OSPI finds the use of isolation was appropriate in response to the totality of the circumstances and because it was limited in duration.

Further, the Student had an emergency response protocol (ERP), which was signed by the Parent and which stated when the Student put himself in imminent danger (“running towards a road/unsafe environment, kicking or hitting”), isolation or restraint may be used. The ERP specified restraints will only be used by “Crisis Prevention Institute (‘CPI’) trained staff” and that the “maximum duration of restraint is 20 minutes.” The Complainant indicated the Student’s ERP was not followed; however, given the documentation in this complaint, it appears the restraint and isolation on July 17, 2019 were used in line with the circumstances described in the ERP. While an ERP would not excuse an improper use of restraint or isolation, here, the signed ERP indicates the Parent was aware that restraint or isolation could occur. If the Parent is concerned about the use of restraint or isolation with the Student, the Parent should request that the Student’s IEP team discuss additional positive behavior supports and services, and consider withdrawing her consent for the ERP.

Overall, OSPI finds no violation related to the use of restraint or isolation during this incident.

Follow-up Procedures: The Complainant also alleged there was no meeting set up “to review incident as law requires” related to the July 17, 2019 incident. Following the release of a student from restraint or isolation, a school must implement follow-up procedures, including: include reviewing the incident with the student and the parent to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and, reviewing the incident with the staff 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.

The Parent expressed concern regarding the incident in a July 22, 2019 email to the District and asked how the Student's behavior and safety would be addressed moving forward. The Parent visited the school on July 24, 2019, a few days after the July 17, 2019 incident.⁷ During the visit, staff report the Parent observed the ESY program, toured the school, and discussed concerns related to the Student's safety and behaviors. OSPI believes this meeting and tour of the school covered the requirement that the District review the July 17, 2019 incident with the Parent and that the meeting sufficiently addressed the Parent's concerns (OSPI also believes this meeting likely addressed the Parent's concerns about the restraint and isolation incidents as a whole, including incidents that occurred on other dates during ESY that were not part of the allegation in this complaint). Here, it is possible the Complainant—as she is not the Student's parent and was not involved in the meeting with school staff—was not aware a meeting occurred. Further, the District stated upon further investigation of the incident, staff and the District's special education director believed the Parent's concerns had been resolved (*see*, director's recollection of a phone call she had with the Parent in early August 2019, in which the director reported the Parent expressed no additional concerns).⁸

The District also provided information that the incident was debriefed with the Student. The teacher stated that while the Student does have limited communication abilities, the Student and the paraeducator had an ongoing conversation about having a "safe body." The teacher stated, regarding the specific incident, "it was explained to him at least twice that he was moved because he was not having a safe body." OSPI finds, given the Student's communication levels and behavior, this was an appropriate method to debrief the incident with the Student.

The isolation and restraint form did note the team debriefed the incident with staff involved in the incident the same day as the incident. The form did not include any recommendations to address the behavior or note any additional training needs for staff. However, accounts of the Parent's visit on July 24, 2019 indicate the Parent and staff discussed additional supports and strategies.

OSPI finds the District completed all of the required follow up actions and finds no violation.

Reporting Procedures: The Complainant also alleged the District's documentation did not reflect what the Parent was told via phone. Any school employee who uses restraint on a student must inform the building administrator as soon as possible, and submit a written report of the incident to the district office within two business days. The written report must include, at minimum, the following information:

- The date and time of the incident;
- The name and job title of the individual who administered the restraint;

⁷ The Complainant maintains that the Parent did not come to school on July 24, 2019 or meet with staff. However, multiple District staff stated this meeting occurred with the Parent. Absent any definitive documentation that the meeting did not occur, OSPI believes the Parent met with school staff on July 24, 2019.

⁸ OSPI reached out to the Parent to set up an interview in an attempt to see if the Parent agree with this statement or whether she had any continuing concerns about the July 17, 2019 incident. OSPI did not receive a response from the Parent.

- 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.

Here, the District completed a restraint and isolation form on July 17, 2019. The District noted the form omitted the paraeducator's name next to the section for staff involved, but argued this omission was minor and did not negatively impact the essential elements of notice.

The District's restraint and isolation form contains a section for all of the above required elements. OSPI agrees with the District that the original version of the form sent to the Parent was confusing regarding the staff person involved. However, missing an element on the form is not itself a violation; especially given the other follow up that occurred with the Parent, which as a whole, indicates the Parent was informed of the incident and given the opportunity to participate in discussions about the Student's educational program, supports, and safety strategies.

Additionally, the form stated "no" after "recommendations for changing the natures or amount of resources..." While OSPI encourages districts to fill this out with more than just a yes or no answer, at the point at which the form was filled out, this conversation was not complete. As discussed above, the Parent met with school staff a few days later and discussed additional supports and strategies for the Student. The Complainant also points out the lack of detail in the District's report; however, the restraint and isolation regulations require the above listed details, but do not prescribe the level of detail required in the written report. While the form is brief (e.g., the description of the incident is concise), OSPI finds the District's written report to have substantially met the requirements and finds no violation. However, OSPI does remind the District that the purpose of this written notification is to maintain an accurate record of restraint and isolation incidents and to provide a parent with enough information about an incident so that the parent can participate in discussions about a student's educational program. To that end, OSPI encourages the District to ensure that restraint and isolation reports are complete and accurate.

Additionally, RCW 28A.600.485 requires a school principal or principal's designee to make a reasonable effort to verbally inform the student's parents within twenty-four hours of the incident. The Complainant alleged the Parent had to initiate a call to the school to get more information. The Parent, in her July 22, 2019 email to the District, initially stated she was not contacted by phone; however, later in her email, she references a discussion she had, via phone, with school staff on July 18, 2019. In contrast, the ESY teacher recalls telephoning the Parent on July 18, 2019 to find out if the Parent "had any concerns or questions." The teacher reported she "informed the parent that the staff used a restraint because of staff's concern for the student falling over the balcony."

Regardless of who called whom, a conversation occurred the morning after the incident; thus, the Parent was verbally informed of the incident within the requisite twenty-four hours. And while it does appear that some details of the incident were potentially communicated differently over the

phone than in the written report, as a whole, the Parent was informed of the incident and provided multiple opportunities (phone call, in-person meeting, and later emails with the director) to ask questions, debrief, and discuss the incident.

Further, RCW 28A.600.485 requires a school district to send a parent written notification, written notification being the same as the written report, as soon as is practical, but postmarked no later than five business days after the restraint or isolation occurred. Here, the teacher placed the isolation report in the Student's backpack to take home the same day as the incident. Documentation in the complaint confirms the Parent received the form. OSPI finds, despite the flaws described above, the District followed procedures to provide the Parent with written notification within the requisite time period.

OSPI finds the District completed all of the required reporting procedures and finds no violation.

Other Considerations: Finally, the Complainant alleged that "two staff [were] not with Student as [his] IEP states," and raised concerns about safety for the Student. The Student's May 2019 IEP did provide the Student with "additional adult support" from a paraeducator and stated the Student "requires a special education paraeducator to be with him at all times to keep him safe..." Nowhere in the documentation was the Student required to have two paraeducators with him. It appears this idea came from the suggestion of ESY staff to have two paraeducators with the Student when he took walking breaks during ESY, and according to the documentation, this occurred during ESY, following the Parent and school staff's discussion on July 24, 2019.

Regarding other safety concerns, the Parent did express concerns in her July 22, 2019 email and the documentation indicates the District responded to her concerns in a number of ways. First, the Parent met with ESY staff on July 24, 2019 to tour the building, observe the ESY program, and discuss strategies and supports. And, the ESY staff encouraged the Parent to contact the Student's 2019-2020 school team to discuss supports and strategies for the following school year. Second, the director investigated the incident, followed up with District leadership, and further followed up with the Parent later in August to ensure her concerns were addressed. The director stated she believed that based on their conversations, the Parent "had no additional concerns" at that time. The director also proposed and completed the following actions:

- "Review isolation/restraint process with ESY staff and include in Coordinator handbook."
- "Inform all staff that parents need to be contacted within 24 hours of a restraint by the principal/designees or ESY admin and outline in the Coordinator handbook how this is to be addressed during ESY."

OSPI finds that the District appropriately and thoroughly responded to the Parent's concerns regarding the restraint and isolation, and other safety concerns during the summer of 2019. If the Parent has concerns in future regarding the Student's behavior, educational program, or safety, the appropriate avenue would be for the Parent to herself request an IEP meeting to discuss such concerns with the Student's IEP team.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of October, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)