

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-001

PROCEDURAL HISTORY

On January 1 and 4, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a former staff member (Complainant) who worked with students attending a specific school and program in the Seattle 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 students' educations.

On January 5, 2021, 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 7, 2021, the District requested an extension of time to respond to the complaint.

On January 12, 2021, OSPI received the District's pre-response to the complaint and selected a representative sample of students (Students 1-6) to investigate. OSPI forwarded pre-response materials that did not contain Student personally identifiable information to the Complainant on January 14, 2021.

On January 14, 2021, OSPI asked the District to provide additional responsive documents and provided the District with an extension of time to respond to the complaint. OSPI asked the District to provide certain responsive documents by February 1, 2021, and the remaining documents by February 8, 2021.

On January 15, 2021, the Complainant provided additional information. OSPI forwarded that information to the District on January 20, 2021.

On February 1 and 3, 2021, OSPI received the District's response to the complaint and forwarded the portions of the District's response that did not include Student personally identifiable information to the Complainant on February 4, 2021. OSPI invited the Complainant to reply.

On February 17, 2021, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on February 18, 2021.

On February 22, 2021, OSPI received additional information from the District. OSPI forwarded the additional information to the Complainant the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 5, 2020. 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. Did the District follow procedures regarding restraint and isolation of Students, including using restraint and isolation only when there is an imminent likelihood of serious harm and following all reporting, documentation, and other requirements in WAC 392-172A-02110 (referencing RCW 28A.600.485), from January 5, 2020 through the end of the 2019-2020 school year?
2. Did the District consider Students' needs for and provide positive behavioral interventions and supports as outlined in WAC 392-172A-03110, from January 5, 2020 through the end of the 2019-2020 school year?

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 closely monitored to prevent harm to the student and 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. 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 closely monitored to prevent harm to

the student and must be discontinued as soon as the likelihood 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. WAC 392-172A-02110.

Likelihood of Serious Harm: Likelihood of serious harm means: 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 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. By January 1st annually, each district must summarize the written reports and submit the summaries to OSPI. For each school, the school district shall include the number of individual incidents of restraint and isolation, the number of

students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used. RCW 28A.600.485.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Definition: An IEP must contain a statement of, among other things: the special education services, related services, and supplementary aids to be provided to the student; the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; behavioral intervention plan (BIP), if necessary for the student to receive a free appropriate public education (FAPE); emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; and, the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210¹. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes their learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and BIP must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP must include a BIP to

¹ Further, RCW 28A.600.486 requires districts to provide parents and guardians of children who have IEPs or section 504 plans a copy of the district's policy on the use of isolation and restraint at the time that the program or plan is created.

address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Positive Behavioral Interventions: Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01142.

FINDINGS OF FACT: BACKGROUND

1. The school at issue in this complaint is a “continuum” school, which the District explained meant there are several special education programs at the school to support students, including the social emotional learning program (SEL), “Access,” and “Resource.”
2. The District’s 2019-2020 school year began on September 4, 2019.
3. The timeline for this complaint investigation began on January 5, 2020.
4. During the 2019-2020 school year, the school had two SEL classrooms, one for primary students (grades kindergarten through second) and the other for intermediate students (grades third through fifth). The primary SEL classroom had one teacher, two instructional assistants (IAs), and five students; and the intermediate classroom has one teacher, two IAs, and eight students.
5. SEL is a District service model for students who “typically have significant social and emotional learning needs and may require small group learning for a good portion of the day.” The District explained that students have case managers who teach and coordinate special education support and that special education services are often delivered in a small group setting. The District stated the amount of time a student spends in the SEL classroom depends on the student’s needs and varies.

The District described the tiered supports in place at the school and in the SEL classroom, which included generally:

- Whole class reward system;
- Whole class behavior plan supported by a behavior technician (BT);
- “Token economy” (points for good behavior to use toward rewards);
- “If-then” visual schedule; and,
- Designated break/cool down space.

The District stated, in addition to the class-wide supports, each student was supposed to have an individual behavior plan.

6. The District also noted that during the 2019-2020 school year, the District contracted with a private provider (behavior group) to provide onsite support from a board certified behavior

analyst (BCBA) to “help create, teach, and coach positive behavior supports for the students in the SEL classrooms.”

In February 2020, the District also contracted with a BT to provide further support in the SEL program. The District noted the BT worked with both classes, but spent more time in the primary SEL class.

7. The District stated that all relevant staff members were trained using “Crisis Prevention Institute” (CPI) and there was a “focus on reducing the incidents of isolation and restraint at [school] through additional training and supports.”
8. The District noted during the 2019-2020 school year, District staff spent time at the school assisting special education staff in developing plans for and providing support to students. A District program specialist spent time weekly at the school training staff and assisting with behavior supports for specific students. An administrator on special assignment also spent three days each week at the school to assist with documentation and staffing issues.

Emails from the program specialist indicate she worked with specific students, assisted with IEP paperwork, worked on functional behavioral assessments (FBA), team taught, and attended special education related meetings.

9. The District also noted that a high level of teacher turnover had an impact at the school, especially on the primary SEL classroom. The District stated that between January and March 2020, the primary classroom had two different teachers and at least one long-term substitute teacher. The District stated this also impacted the intermediate classroom. The District noted there was turnover at the administrative level with the principal leaving in February 2020, an interim principal beginning, and then a new permanent principal beginning at the end of the 2019-2020 school year.

The District stated that since March 9, 2020, there has been one teacher in the primary SEL classroom, which has returned a “sense of stability to the program and students.” The District also added an additional special education teacher to the intermediate classroom who worked with the students from March 9 through June 19, 2020.

FINDINGS OF FACT: ISSUE ONE

Complainant’s Allegations and District’s Response

10. The Complainant filed her complaint based on her concerns that restraint was being used inappropriately at the school, particularly with students in the SEL program. The Complainant stated restraint and isolation were used excessively, and that incidents were not accurately reported to OSPI and parents. The Complainant stated her allegations were based on what she observed in the SEL program at the school. In particular, the Complainant noted an incident that occurred on January 14, 2020, during which the Complainant observed what she described as an “abusive restraint of a student.” The Complainant reported her concerns to

the school and noted this was the “second time that I had reported a specific incidence of physical mishandling of a student in the 19-20 school year.”²

11. In her reply to the District’s response, the Complainant stated the number of restraint and isolation incidents were underreported at the school and that “restraint and isolation practices are mainly and regularly used in combination, mainly by physically forcing children into what are called ‘break rooms’, pulling them by the arm, or dragging them into these spaces and then containing them in the space with the ‘blue mats.’” The Complainant stated, “based on my own witnessing, as well as information shared with me by other concerned colleagues who witnessed the SEL Program...I allege that between the two SEL classrooms these restraint and isolation incidents happened on average about 8 times a day.”
12. The Complainant also stated the “Crisis Prevention Institute” (CPI) training was not enough training to support student needs, and that teachers should receive training in “trauma responsive positive behavioral supports.”
13. Documentation included in the complaint and the Complainant’s reply to the District’s response indicated that there were other staff who were concerned about the use of restraint and isolation interventions with students during the 2019-2020 school year, and who were concerned about the expectations with respect to the use of the “break rooms” in the SEL classrooms. The documentation also indicated that other staff felt the SEL classrooms were “chaotic” and that the “school did not have the support it needed.”

In an email from the principal in October 2019, in response to questions regarding the break rooms, the principal emphasized the importance of working toward the best response to student behaviors. The principal noted they were working to ensure that going hands on with a student was the last resort and that they were changing the “practice of how we use those small rooms” and “finding a path to sunseting the use of the mats,” but that this might mean a temporary increase in the need to use physical restraint. The principal also noted that “Superintendent procedures require that we need to document and report the use of mats in the same way we report hands on restraint.” And, the principal noted that part of this work was addressing student elopement.

Documentation also indicated teachers were concerned that the message was not getting through to the IAs.

14. The District’s response included the total number of restraint and isolation incidents at the school during the 2019-2020 school year that was reported to OSPI, as follows:
 - Students Restrained: 8
 - Restraint Incidents: 35
 - Students Injured While Restrained: 0
 - Staff Injured While Restraining: 10

² The Complainant included in her complaint and reply to the District’s response the complaint she filed with HR in March 2020 and the outcome of the HR complaint. OSPI notes that the HR complaint process is separate from and not connected to OSPI’s special education complaint process. However, information from the Complainant’s HR complaint is referenced where relevant to the special education allegations at issue in this complaint.

- Student's Isolated: 1

- Isolation Incidents: 1

15. In its response, the District acknowledged it did not fully comply with the isolation and restraint documentation and reporting requirements. In particular, the District acknowledged it did not complete the required report in a timely manner following a restraint of [REDACTED] and did not notify [REDACTED] Parent in a timely manner following a second restraint. The District noted that several restraint and isolation reporting forms completed during the investigation time period were incomplete and that additional follow-up and reporting procedures were not followed in all instances, such as promptly notifying the school principal.

16. The District also stated that while school staff were CPI trained, used proper CPI transports, and discontinued restraints as soon as the likelihood of imminent harm passed, the District stated that with respect to [REDACTED]

[REDACTED]

17. To correct the identified errors, the District proposed the following corrective actions:

- Training on restraint and isolation requirements as outlined in WAC 392-172A-02110 and notification requirements outlined in WAC 392-172A-03090.
- Review IEPs of students in the SEL classrooms between January 5 and June 19, 2020, and who still reside in the District, to determine if students require additional counseling services as compensatory education for inappropriate restraints and/or lack of appropriate social/behavior services.

Student 1

18. [REDACTED]

19. [REDACTED]

[REDACTED]

[Redacted]

20.

[Redacted]

Student 2

21.

[Redacted]

22.

[Redacted]

23.

[Redacted]

24.

[Redacted]

25.

[Redacted]

26.

[Redacted]

[Redacted]

[Redacted]

27.

[Redacted]

28.

[Redacted]

[Redacted]

Student 3

29.

[Redacted]

30.

[Redacted]

Student 4

31.

[Redacted]

32.

[Redacted]

33.

[Redacted]

34.

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35. █
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36. █
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37. █
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Student 5

38. █
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39. █
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Student 6

40. █
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³ █
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41.

[REDACTED]

42.

[REDACTED]

CONCLUSION

The Complainant alleged the District used restraint and isolation inappropriately and excessively with students at the school in the social emotional learning (SEL) program. The Complainant also alleged that incidents of restraint and isolation were not accurately reported to OSPI, and therefore, it was likely the incidents were not being reported to parents.

Appropriate Use of Isolation and Restraint

Imminent Likelihood of Serious Harm: Isolation or restraint may only be used when a student's behavior poses an imminent likelihood of serious harm. Isolation and restraint must be discontinued as soon as the likelihood of serious harm has dissipated. Likelihood of serious harm means there is a substantial risk physical harm will be inflicted by a person on his or her own person, physical harm will be inflicted upon another person, or physical harm will be inflicted upon property.

The District stated that staff discontinued restraints as soon as the imminent likelihood of serious harm had passed. This is generally supported by the documentation, which indicated that restraints were generally a few seconds or minutes. However, the District stated there were instances where the incident reports were unclear, whether a student's behavior posed an imminent likelihood of serious harm. For example, the District stated that [REDACTED]

[REDACTED] OSPI agrees. OSPI acknowledges that it can be difficult to tell from a report form read almost a year after the fact, whether there was a legitimate likelihood of harm. For example, on January 14, 2020, [REDACTED]

[REDACTED] The Complainant also shared that she witnessed another student being [REDACTED]. While this student was not included in the students selected for review, and thus OSPI does not have the full details of the incident, the Complainant's description does raise concern and the principal—in an email to the Complainant—stated that, "based upon your report, this incident did not go as it should have."

The District also acknowledged that there were examples of isolations that lasted too long and were not discontinued when the serious harm passed. During the [REDACTED]

[REDACTED] but, OSPI reminds the District that being escalated is not necessarily the same as there being a likelihood of serious harm, and waiting for the harm to pass does not always equate with a student being completely calm. OSPI finds that this isolation should have been discontinued sooner.

Overall, the District acknowledged that there were instances where restraint and isolation were used in the absence of imminent harm and where isolations were not discontinued when the harm had passed. OSPI finds that the documentation supports the improper use of and improper duration of restraint and isolation in several instances. Thus, OSPI finds the District in violation.

Training: Any staff member or adult using a restraint or isolation must be trained and certified by a qualified provider in the use of such restraints or 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.

The Complainant alleged that staff were not properly trained and stated the teachers required training in "trauma responsive positive behavioral supports." The regulations do not specify the specific training or training provider, only that it be by a qualified provider. The District's response stated that school staff were trained using "Crisis Prevention Institute" (CPI) training and restraint and isolation reports indicated that CPI restraints or holds were used when students were restrained. There were examples in the documentation of substitutes using improper holds (e.g., on [REDACTED]

However, while important pieces of documentation, these specific examples and concerns arose outside the one-year investigation time period. And, the regulations do allow an untrained staff person to use restraint or isolation in an unforeseeable emergency when trained personnel are not immediately available. Thus, OSPI finds that the District met the training requirement. OSPI does recommend the District have protocols in place for substitutes and untrained staff to ensure these staff know they should not use restraint or isolation. And, OSPI encourages the District to consider whether training on trauma and trauma informed practices would be valuable to staff in addition to CPI training.

Follow-Up & Reporting Procedures

The District acknowledged it did not fully comply with the isolation and restraint documentation and reporting requirements.

Review the Incident with the Parent, Student, and Staff: After an incident of restraint or isolation, a district is required to review the incident with the student and the parent/guardian to address

the behavior that precipitated the restraint or isolation and the appropriateness of the response. After an incident of restraint or isolation, a district is required to review the incident with the staff member(s) 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.

Based on the documentation in this complaint, the District inconsistently reviewed incidents with the involved student and the parent. For example, [REDACTED]

[REDACTED] indicating the review did not occur in a timely manner. However, a [REDACTED]

Incidents of restraint and isolation were inconsistently reviewed with staff involved in the incident. Again, for example, the [REDACTED]

[REDACTED] was also reviewed with staff. However, the [REDACTED] was not reviewed with staff.

Thus, as these requirements were inconsistently met in the incidents reviewed, OSPI finds a violation.

Inform Administrator: After a restraint or isolation incident, the staff involved must inform the building administrator (or administrator's designee) as soon as possible. The District also acknowledge the principal was inconsistently informed following incidents of restraint or isolation. The documentation confirmed this: the principal was notified in the [REDACTED] [REDACTED] was *not* notified following the [REDACTED]. Again, OSPI finds a violation as this requirement was met inconsistently.

Written Report to District and Parent: Within two business days, a written report must be submitted to the District. The written report must include, at a minimum: 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, 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. Further, within five business days, written notification must be sent to the Parent. OSPI has found that the "written notification" to parents is the same as the "written report" sent to the District.

Similar to the above requirements, the written report requirement was inconsistently completed. All incidents reviewed during the time period were captured in a written report; however, these were not always completed within two business days for the District report and five business days

for the parent. For example, the written report of the [REDACTED] [REDACTED] Although, the other incident report forms were completed within the required timeframe. Additionally, most of the reports were missing some required elements. For example, the reports were variously missing the staff involved (name and job title), whether there was any injury to staff or student (often this was left blank instead of noting "no injury," which would more clearly indicate that there was no injury), any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. OSPI finds a violation based on the untimely completion of an incident report and the failure to consistently include all required elements.

Verbal Notification of Parent: A district must make a reasonable effort to verbally notify the parent within 24 hours of a restraint or isolation. The documentation indicates that generally, the parents were notified following incidents of restraint or isolation (e.g., the Parent was notified after the [REDACTED], and documentation indicated the interim principal called the Parent of [REDACTED]. In one incident, it appears the Parent of [REDACTED] was notified via email. OSPI reminds the District that it must make an effort to *verbally* notify the parents; however, based on the incidents reviewed, OSPI finds the District made reasonable efforts to notify parents and finds no violation of this specific requirement.

Reporting to OSPI: By January 1st annually, each district must summarize the written reports and submit the summaries to OSPI. For each school, the school district shall include the number of individual incidents of restraint and isolation, the number of students involved in the incidents, the number of injuries to students and staff, and the types of restraint or isolation used.

The District's response included the total number of restraint and isolation incidents at the school during the 2019-2020 school year that was reported to OSPI, as follows:

- Students Restrained: 8
- Restraint Incidents: 35
- Students Injured While Restrained: 0
- Staff Injured While Restraining: 10
- Student's Isolated: 1
- Isolation Incidents: 1

The Complainant, in her reply, disputed the District's reported numbers, stating incidents of restraint and isolation were underreported. The Complainant stated that "based on my own witnessing, as well as information shared with me by other concerned colleagues who witnessed the SEL Program...I allege that between the two SEL classrooms these restraint and isolation incidents happened on average about 8 times a day." Documentation indicated staff were concerned about the use of restraint and isolation, and that the school was actively working to change practices. For example, an email from the principal indicated they were working on better responses to student behaviors and working to "sunset" the use of blue mats (to isolate students in the break rooms). Because OSPI requested documentation on certain students, it is unclear if there were eight incidents a day as alleged by the Complainant.

However, based on the documentation provided by the District during this investigation, at minimum, the District's reporting of isolation is incorrect. The District's documentation includes a minimum of three isolation incidents involving three different students: [REDACTED]

[REDACTED] There were also at least two other instances where it is unclear if the student was isolated or just taken to the break room and staff remained with the student (e.g., [REDACTED] and the Complainant reported seeing another Student [REDACTED]). OSPI does note that some of this documentation comes from outside the one-year investigation time period. Therefore, OSPI cannot find a violation, but does recommend the District correct their reporting in the Comprehensive Education Data and Research System (CEDARS) for the 2019-2020 school year.

Overall, OSPI finds the District improperly used restraint in instances where there was no likelihood of serious harm, failed to discontinue isolation after the serious harm had passed, and inconsistently completed the follow-up and reporting requirements. OSPI finds a violation. It is also likely restraint and isolation were overused at the school, although the documentation indicated the school was actively working to change its practices. The District proposed the following corrective actions:

- Training on restraint and isolation requirements as outlined in WAC 392-172A-02110 and notification requirements outlined in WAC 392-172A-03090.
- Review IEPs of students in the SEL classrooms between January 5 and June 19, 2020, and who still reside in the District, to determine if students require additional counseling services as compensatory education for inappropriate restraints and/or lack of appropriate social/behavior services.

OSPI accepts these corrective actions with the modifications and deadlines noted in the corrective action plan below.

FINDINGS OF FACT: ISSUE TWO

Complainant's Allegations & District Response

43. The Complainant alleged that students in the SEL program were not receiving the services to "be and feel safe, and to learn and succeed." The Complainant alleged the school did not use the school-wide positive behavioral interventions and supports (PBIS) with students receiving special education services that it used with general education students. The Complainant noted that positive reinforcement or other positive behavioral supports were not used.
44. Further, in her reply to the District's response, the Complainant stated she saw "few positive or supportive interactions, and so little positive relationship building, as well as an absence of social emotional teaching or skill building."
45. In its response, the District acknowledged that it was inconsistent in adequately considering the Students' needs for behavior support, as well as providing those supports. The District noted some students had robust BIPs and adequate goals, while others did not. For example, the District stated:

[REDACTED]



The District proposed corrective actions as follows:

- Training on considering student need for, and providing, positive behavioral interventions and supports as outlined in WAC 392-172A-03110.
- Review the IEPs of students in the SEL classrooms between January 5 and June 19, 2020, and who still reside in the District, to determine whether their social/behavior needs are appropriately described, whether any adjustments are needed, and whether compensatory education is necessary.

46. The District also noted that it appeared the school staff did not collect data regarding Student progress on IEP goals, stating, "Thus, even if the team did attempt to adequately address the Students' social/behavior needs, it is not readily apparent if the goals, strategies, and interventions were effective."

The District noted that per the corrective action plan in a recent previous complaint, the District conducted training for all special education staff on progress monitoring.

Student 1

47. 

48.

[REDACTED]

49.

[REDACTED]

50.

[REDACTED]

51.

[REDACTED]

52.

[REDACTED]

[Redacted]

53.

[Redacted]

[Redacted]

54.

[Redacted]

55.

[Redacted]

[Redacted]

[Redacted]

56.

[Redacted]

57.

[Redacted]

58.

[Redacted]

59.

[Redacted]

60.

[Redacted]

61. On March 12, 2020, school facilities closed due to the COVID-19 pandemic. The District, in its response, noted that this impacted the school's ability [Redacted]

62.

[Redacted]

[Redacted]

[Redacted]

63.

[Redacted]

[Redacted]

64.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

65.

[Redacted]

[Redacted]

Student 2

66.

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

67. [REDACTED]

[REDACTED]

[REDACTED]

68. [REDACTED]

⁴ OSPI notes that several of the students reviewed in this complaint had specially designed instruction in [REDACTED]

█
█
█
█

[Redacted]

69. [Redacted]

70. [Redacted]

[Redacted]

[Redacted]

[Redacted]

71. [Redacted]

72. On March 12, 2020, school facilities closed due to the COVID-19 pandemic.

73. [Redacted]

74. [Redacted]

[Redacted]

Student 3

75.

[Redacted]

76.

[Redacted]

77.

[Redacted]

[Redacted]

1 [REDACTED]

[REDACTED]

78. On March 12, 2020, school facilities closed due to the COVID-19 pandemic.

79. [REDACTED]

[REDACTED]

80. [REDACTED]

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

82.

[Redacted]

Student 4

83.

[Redacted]

[Redacted]

[Redacted]

[Redacted] ⁵

84. [Redacted]

85. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

⁵ The District noted in its response [Redacted]

[REDACTED]

86. On March 12, 2020, school facilities closed due to the COVID-19 pandemic.

87. [REDACTED]

88. [REDACTED]

89. [REDACTED]

Student 5

90. [REDACTED]

91. [REDACTED]

[REDACTED]

[REDACTED]

92. On March 12, 2020, school facilities closed due to the COVID-19 pandemic.

93. [REDACTED]

94. [REDACTED]

95. [REDACTED]

[REDACTED]

96.

[REDACTED]

97.

[REDACTED]

Student 6

98.

[REDACTED]

[Redacted]

99.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

100.

[Redacted]

101.

[Redacted]

102.

[Redacted]

CONCLUSION

The Complainant alleged that students in the SEL program did not receive positive reinforcement or positive behavioral supports.

An individualized education program (IEP) must include a behavioral intervention plan (BIP) if it is necessary for the student to receive a free appropriate public education (FAPE), and an IEP team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. Meaning, that in most cases in which a student's behavior impedes their learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

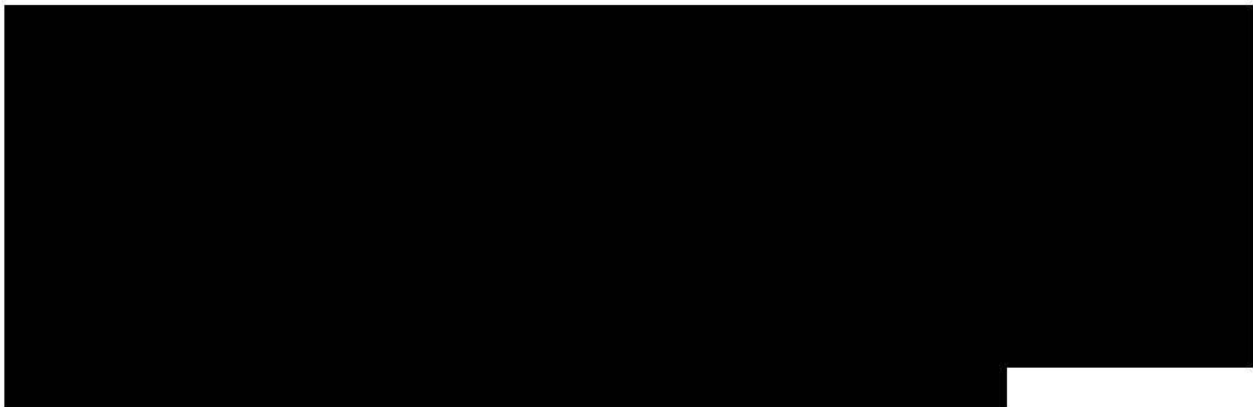
While the District described features of the SEL program that supported all students (e.g., small group setting, tiered supports such as reward system, token economy, break spaces, etc., and support from a behavior technician), the District acknowledged it was inconsistent in adequately considering individual student needs for behavior support, as well as providing those supports. The District noted some students had robust BIPs and IEP goals, while others did not. The District noted there was a high level of staff turnover in the SEL program, and at the administrative level during the 2019-2020 school year and that this negatively impacted students; although, the District stated that staffing has stabilized in the program since March 9, 2020. The District also stated that additional District staff worked at the school during the 2019-2020 school year to help support the SEL program, and the District contracted with a private provider (behavior group) to provide onsite support in the SEL classrooms.

IEP & BIP Development

The documentation supports the District's admissions regarding IEP and BIP development. Some students, like

[REDACTED], which was delayed by the school facility closures and COVID-19 pandemic.

However, for other students, the District does not appear to have addressed the student's behavior as thoroughly as it did for [REDACTED]. For example, [REDACTED]



OSPI also notes that the regulations require an IEP team to consider the use of *positive* behavioral interventions and supports and other strategies to address a student’s behavior, and that the regulations specify that a BIP should include “positive behavior interventions and supports.” Because restraint or isolation should only be used when there is an imminent likelihood of serious harm, there should not be a planned use of restraint or isolation as a behavior strategy. Nor is restraint or isolation a positive behavior intervention; it is a response to an unplanned, emergency situation. Districts are permitted to outline conditions under which restraint or isolation may be used in an emergency response protocol (ERP). But restraint or isolation should not be included in a BIP, again because restraint and isolation are responses and not positive behavior interventions or supports. Here, there were a few instances when restraint was inappropriately included in what is, functionally, a BIP. For example,



Overall, OSPI finds that the District did not thoroughly address each individual student’s needs on an individual level. This can be seen in a failure to develop or updated BIPs when needed, inappropriately including restraint or isolation in behavior plans, some examples of not responding to parent concerns regarding behavior, and a lack of documentation explaining why

behavior service minutes and goals remained the same from year to year. Thus, OSPI finds a violation.

Implementation of Positive Behavior Supports

The District also acknowledged behavior services were not consistently implemented and that the staff were not routinely collecting data regarding the students' progress on IEP goals and stated, "Thus, even if the team did attempt to adequately address the Students' social/behavior needs, it is not readily apparent if the goals, strategies, and interventions were effective."

The documentation provided is mixed. There are examples of some services being provided. For example, emails indicate that [REDACTED]

However, other emails raised concerns, such as a [REDACTED]

Further, once school facilities closed due to the COVID-19 pandemic, there is little documentation that specially designed instruction in social emotional/behavior specifically was being provided, or whether other behavior related supports and accommodations were provided during the closures. The District did create continuous learning plans (CLPs) for students and provided information about assignments and resources provided during the closures. However, few of the IEPs included specific information about the provision of behavior instruction or positive behavior strategies and supports during the closures.

Finally, the progress reporting largely stated the behavior goals were "not applicable" during the school facility closure period due to the COVID-19 pandemic. However, even prior to the COVID-19 closures, progress reporting indicated that progress monitoring did not occur due to disruptions in staffing. This combined with the lack of other documentation that services were provided, indicates that little behavior instruction or support was provided to the Students in the SEL program, especially during the school facility closures and when staffing changes were made.

Thus, OSPI finds the District in violation for failing to consistently implement IEPs and BIPs with respect to the positive behavior strategies and supports, and for failing to provide behavior instruction and support to the maximum extent possible during the school facility closures.

The District proposed the following corrective actions:

- Training on considering student need for, and providing, positive behavioral interventions and supports as outlined in WAC 392-172A-03110.
- Review the IEPs of students in the SEL classrooms between January 5 and June 19, 2020, and who still reside in the District, to determine whether their social/behavior needs are appropriately

described, whether any adjustments are needed, and whether compensatory education is necessary.

OSPI accepts these corrective actions with the modifications and deadlines noted in the corrective action plan below.

CORRECTIVE ACTIONS

By or before **March 26, 2021** and **June 11, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meetings

For each student who received services in the primary or intermediate SEL classroom between January 5 and June 19, 2020, and who still reside in the District (even if they are no longer at the school at issue in this complaint), the District will schedule an IEP meeting for that student. Each IEP team should include someone knowledgeable about the issues identified in this complaint. At the IEP meeting, the IEP team will do the following:

- Review the student's current IEP and the student's current behavior needs.
- Determine if the current behavior needs are appropriately described in the IEP.
- Determine if the IEP needs to be amended to update the student's present levels, goals, accommodations, and services.
- Review the student's BIP and determine if the BIP needs to be updated, or if no BIP exists, determine if an FBA should be conducted and BIP developed.
 - For Student's 1 and 2, inappropriate references to restraint and isolation should be removed from the BIP.
- Review whether the student has an ERP and whether the ERP needs to be updated.
- Develop a plan for recovery services to address the failure to provide social/behavior instruction and support during the school facility closures. Recovery services could be additional behavior services, or services in other areas of the IEP (e.g., reading, writing, math, etc.), if the team determines the lack of behavior support also impacted those other areas. OSPI anticipates that, unless declined by the parent, all students in the SEL program will require some amount of recovery services, given the overall disruption and chaotic environment during the 2019-2020 school year in the SEL program due to staffing changes and the school facility closures.
- Develop a plan for compensatory counseling services to address inappropriate restraint and lack of appropriate social/behavior services. OSPI anticipates that, unless declined by the parent, all students in the SEL program will require some amount of counseling, given the overall disruption and chaotic environment during the 2019-2020 school year in the SEL program due to staffing changes and the school facility closures.

By or before **March 19, 2021**, the District will notify all families of students who were in the SEL program between January 5 and June 19, 2020 that the District will be scheduling an IEP meeting to review, and address student behavior needs. By **March 26, 2021**, the District will provide OSPI with documentation that this has occurred, including: 1) a copy of the scheduling communication; 2) a list of all the students in the SEL program between January 5 and June 19, 2020, with a clear

notation of those students that are still in the program, those students that were in the program but are now in different programs/schools in the district, and those students who transferred out of the district; and, 3) documentation of the IEP member who will attend the meetings and who has knowledge about the issues identified in this complaint.

By or before **June 4, 2021**, the District must hold all IEP meetings and determine next steps based on those meetings (e.g., if an FBA needs to be conducted, or a subsequent meeting is needed to develop a BIP).

By **June 11, 2021**, the District will provide OSPI with the following documentation from each IEP meeting: 1) Meeting agenda or notes; 2) IEP or amended IEP; 3) Updated progress reporting; 4) BIP or amended BIP; 5) ERP if relevant; 6) prior written notice; and, 7) any other relevant documentation.

By June 25, 2021, OSPI will review the documentation provided and notify the District if any further monitoring deadlines are necessary based on the next steps identified at IEP meetings.

DISTRICT SPECIFIC:

Training

The District will work with OSPI's special education division and Program Supervisor Lee Collyer to develop and schedule a training that addresses the issues raised in this complaint. The training will address:

- Restraint and isolation practices, procedures, and conditions;
- Reducing the use of restraint and isolation;
- Reporting and documentation requirements (e.g., review incident with involved staff, review incident with parent and student, verbal notification of parent, written report to district and parent); and,
- Behavior intervention plans and positive/proactive behavior supports and interventions.

All staff working at the school with students in the SEL program will be required to attend, including the principal, certificated special education teachers, instructional assistants, and related service providers. OSPI also strongly recommends, but is not requiring, that general education teachers attend the training as well.

By **June 11, 2021**, the District will submit documentation that all staff working with students in the school's SEL program participated in the training. Documentation will include 1) a sign-in sheet from the training or zoom screenshot of participants, and 2) 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.

RECOMMENDATIONS

OSPI recommends the District have protocols in place for substitutes and untrained staff to ensure those staff know they should not use restraint or isolation. Protocols should also address what untrained staff are expected to do if a student does present an imminent likelihood of serious harm.

OSPI strongly recommends the District consider providing staff in the SEL program training how trauma impacts students and trauma informed practices/teaching in addition to the training ordered above and CPI training.

Finally, OSPI recommends the District review all the restraint and isolation reports from the 2019-2020 school year and correct its restraint and isolation reporting for the school in CEDARS for the 2019-2020 school year.

Dated this ___ day of March, 2021

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.)