

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-36

PROCEDURAL HISTORY

On April 15, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Battle Ground School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

The Parent submitted the complaint in Spanish; thus, all communications from OSPI were translated. The procedural dates indicate when the version of each communication in English was sent. The translated versions were sent several days to a week after each noted date, due to the time it took to translate documents.

On April 22, 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 May 12, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not reply.

On May 26, 2021, OSPI telephoned the Parent for additional information.

On June 1, 2021, OSPI telephoned the District for additional information.

On June 4, 2021, OSPI telephoned the District for additional information.

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

ISSUE

1. Did the District follow restraint and isolation procedures during the March 5, 2021 incident?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

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: a) the restraint must be discontinued as soon as the likelihood of serious harm has dissipated; b) The restraint shall not interfere with the student's breathing; and c) any staff member or other adults using a restraint must be trained and certified by a qualified provider in the use of such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

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

Background

1. The Student is six years old, in preschool in the District, and is eligible for special education services under the category of developmental delay.
2. On April 15, 2021, the Parent filed this complaint. The complaint stated:
Because of what happened I think the district violated restrictions, isolation, mistreatment, abuse of minors...On Friday, March 5 in the evening, my son told me, Mommy you don't know what happened at school. And I answered, what school, because he goes to two preschools. And he told me, with tears in his eyes, at my brother's school. The teacher pushed me and yanked my clothes and put me outside and they didn't give me snow [phonetic] cookies. And I was scared and cold and it was raining. And I was watching the cars going by the fences and I stayed there outside until the bus came. They opened the door and gave him his backpack and they got on the bus and he came home. And I talked with the principal about this twice, and they have changed things for me. And there's something, I don't know what it is because the child doesn't change things and I don't know, he forgets what happened.

2020-2021 School Year

3. On September 2, 2020, the 2020-2021 school year began in the District.
4. On November 20, 2020, the District conducted an annual review of the Student's individualized education program (IEP). Among the special considerations, the IEP stated the Student's behavior did not impede his learning or the learning of others. The IEP provided for annual goals in the areas of communication, behavior/social, and adaptive skills and specially designed instruction in each area. The Student's IEP included an accommodation for visuals and visual schedules.

5. On Friday, March 5, 2021, the Student attended preschool 1 until 12:30 pm, at which time he was transported to the District preschool (preschool 2), as part of his usual routine on Fridays. The alleged incident occurred on Friday afternoon while at the District preschool.
6. On March 8, 2021, the Parent emailed the preschool 2 principal about an incident occurring with the Student, which allegedly occurred on March 5, 2021. The email stated:

Last Friday 3/5/21 I was talking with my son about his day and he told me that one of his teachers had pushed him outside in the rain and that he was scared because all the students were inside with the teachers and he was by himself outside in the rain watching cars pass by. I'm extremely concerned about this incident for multiple reasons:

 - * Isolation of my son in the school setting
 - * Safety in the classroom
 - * Safety in the school surrounding
 - * Risk of my son getting stolen or lost
 - * Lack of communication from the school
 - * No incident report

As soon as my son told me what had happened, I showed him pictures of his teachers and he said that [paraeducator] was the one that pushed him outside in the rain and left him there. I asked my son what were the other children and teachers doing? He told me that they were getting a snack. I asked him if he ate a snack. He told me no, and he was very hungry. He also told me that he stayed outside until the bus came to pick them up at the end of the day. I would like to request an IEP meeting as soon as possible. Please give me three different days and times that the IEP team is available so I can put it in my agenda.
7. On March 12, 2021, the principal sent the Parent a letter, asking to talk with the Parent as soon as possible about the incident and scheduling an IEP meeting.
8. According to an email, dated March 17, 2021, from the principal to the District's assistant special education director, the principal indicated he met with the Parent about the incident. The principal told the Parent he "was unable to confirm [the incident the Parent described] through my investigation."
9. As part of OSPI's investigation, the Student's special education teacher provided a description of the Student's activities on March 5, 2021. The activities during the day were as follows:

On Friday, March 5th [Student] came to school by the bus. He entered the classroom after attestation, put away his backpack and successfully performed all steps of his morning routine independently. He usually does not come with a mask. He puts it on with no prompts.

1:05–1:20 pm: [Student] sat at his spot for table time and played with individual items 6 feet socially distanced from his peers.

1:20–1:40 pm Circle time: [Student] independently and successfully participated in all the activities including movement, answering questions about feelings, numbers, weather and ABC's.

1:40–2 pm Centers: Students transition back to their table spots. We worked on art and crafts, writing names and counting 1:1 correspondence. [Student] participated in all activities. Students stay in their table spot and we adults change out the activities.

2–2:20 pm: Wash hands, snack time, clean tables. We had popcorn for Friday's snack and granola bars. [Student] ate with his peers and washed hands and cleaned up independently – Mask off.

2:20–2:40 pm Recess: Masks off – [Student] played on the play structure and with the tricycles. No incidents.

2:40–3 pm: Transition back to circle coats off and hands sanitized for Free Choice. [Student] chose cars (which he usually does). Students are socially distanced so [Student] plays on a car mat with the cars.

3–3:25 pm 2nd circle – Story and Movement: This weeks' theme is transportation. We read a Pete the cat book on trains and then did transportation yoga. [Student] did not want to do the movements for this although he has been doing well participating more during these group activities. I tried to engage him but he would not participate. I left him alone and did not push him further. He did not get to the green zone to push the red button. I did not make a big deal about it and he didn't seem bothered. Students got their back packs, coats and notebooks and [Student] walked with staff to his bus. End of day.

10. According to the District, the District human resources office interviewed the paraeducator that was working with the Student on the afternoon of March 5, 2021. According to the District, the paraeducator stated the incident did not occur or relay any details that might have led to the Student reporting the incident to the Parent.

11. On April 15, 2021, the Parent filed this complaint.

CONCLUSIONS

Issue One: Restraint and Isolation Procedures – The Parent alleged the Student was subjected to restraint and isolation and that the District failed to follow procedures, including reporting the incident to the Parent. The Student told the Parent that he was grabbed by his teacher and pushed outside while other students went inside. The Student remained outside by himself during the rest of the afternoon until he went home on the bus.

Isolation means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. Restraint is defined as physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. A district is required to follow reporting requirements as described in WAC 392-172A-02110.

Here, the Student's individualized education program (IEP) provided for services in the areas of behavior/social, communication, and adaptive skills. The IEP did not indicate that behavior impeded the Student's learning or the learning of others. On March 5, 2021, the six-year-old Student reported he was grabbed by the teacher and pushed outside the school while other students went inside the building. The Parent reported the incident to the District on March 8, 2021. The District initiated investigations of the incident, conducted by the principal of the Student's District preschool and the District human resources office. Neither were able to

substantiate that an incident involving the Student had occurred on March 5, 2021, or any other time. In addition, the Student's special education teacher provided an account of the Student's activities at the District preschool on March 5, 2021, which did not substantiate the incident. Further, staff reported that nothing had occurred on March 5, 2021 that they thought would trigger the Student to report such an incident occurring. The District promptly responded to the Parent when the Parent raised the concern. The incident could not be substantiated and no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June, 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.)