

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-155**

### **PROCEDURAL HISTORY**

On December 20, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Vancouver School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On December 21, 2022, 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 December 21, 2022, the District requested an extension of time to submit its response. On December 22, 2022, OSPI granted that request. OSPI required the response to be submitted by January 17, 2023.

On December 21, 2022, OSPI's complaint investigator conducted a telephone interview with the Parent.

On December 22 and 23, 2022, OSPI received additional information from the Parent. That information was forwarded to the District on December 22 and 27, 2022.

On January 17, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on January 19, 2023. OSPI invited the Parent to reply.

On January 23, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on the same day.

On January 23, 2023, OSPI received additional information from the District. That information was forwarded to the Parent on the same day.

On January 25, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on the same day.

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On January 26 and 27, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on January 30, 2023.

On February 1, 2023, OSPI received the Parent's reply to the District's response and forwarded it to the District on the same day.

On February 2, 2023, the OSPI investigator consulted with OSPI's director of school health and student safety.

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

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on December 21, 2021. 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 proper restraint procedures on September 29 and October 4, 2022, including using restraint only when there was an imminent likelihood of serious harm, and following all reporting, documentation, and other requirements in WAC 321-172A-02110?
2. Whether the District engaged in prohibited practices outlined in WAC 392-172A-02076 on September 29 and October 4, 2022?
3. Whether the District implemented the Student's individualized education program (IEP)?

### **LEGAL STANDARDS**

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. WAC 392-172A-01162.

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 currently certified by a qualified provider in the use of trauma-informed crisis intervention including de-escalation techniques) and such restraints, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. WAC 392-172A-02110.

Restraint Device: Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. This section shall not be construed as encouraging the use of these devices. WAC 392-172A-01163; see also WAC 392-172A-02076.

Restraint Device Conditions: A restraint device shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of a restraint device as defined by RCW 28A.600.485 is subject to each of the following conditions: a) the restraint device must be discontinued as soon as the likelihood of serious harm has dissipated; b) the restraint device shall not interfere with the student's breathing; c) either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student; d) any staff member or other adults using a restraint device must be trained and certified by a qualified provider in the use of such restraint devices, 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, restraint, or restraint device 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.

Prohibited Practices: School personnel are prohibited from restraining or isolating a student, except when the student's behavior poses an imminent likelihood of serious harm as defined in WAC [392-172A-01092](#) and [392-172A-01109](#). Certain practices are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their

illegality. Those practices include, but are not limited to: stimulating a student with electric current such as a taser; binding a student's limbs together except under the conditions set forth in WAC 392-172A-02110; using prone (lying face-down) and/or supine (lying face-up) restraint, wall restraint, or any restraint that interferes with the student's breathing. WAC 392-172A-02076.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

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

## **FINDINGS OF FACT**

### **Background**

1. The Student's October 1, 2021 IEP provided specially designed instruction (SDI) and related services as follows:
  - Speech Language Pathology: 30 minutes/3 times Monthly (provided by speech language pathologist (SLP), in a special education setting)
  - Social/Behavior: 220 minutes/5 times weekly (provided by special education teacher, in a special education setting)

The Student's percent of time in a general setting was 36.22% and the LRE placement in general education classes was 0–39%. An emergency response protocol (ERP) and a behavioral intervention plan (BIP) was in place to address (1) the Student "leaving designated spaces (desk area, classroom, school building etc.) when he becomes frustrated or agitated," and (2) Student's violent behavior towards staff and peers when the Student becomes angry.

2. In August 2021 and August 2022, the District provided trainings for staff, including the District resource officers (DRO) that included, but was not limited to tasers, handcuffs, and de-escalation and "defensive tactics" during which they were trained in restraint. The taser training was conducted by Clear Risk Solutions, and the handcuff training was conducted by an instructor at Cascadia Tech Academy.

### **2022–2023 School Year**

3. On August 30, 2022, the District held its first day of instruction for the 2022–2023 school year. The Student attended a District school as a seventh grader and the Student's October 2021 IEP was in effect at this time. The Student was eligible for special education services under the eligibility category emotional/behavioral disability (EBD).

4. The Student received his special education services through the "Structured Learning Center" (SLC). The SLC is a special education program that supports students with social, emotional, and behavioral skill development.
5. On September 29, 2022, the Student's IEP team reviewed the Student's recently conducted triannual reevaluation and functional behavioral assessment (FBA). The Student was found to continue to be eligible for special education services under the category of EBD. The Student's IEP team also met for the Student's annual IEP review. The Student's new IEP provided SDI and related services as follows:
  - Social/Behavior: 220 minutes/5 Times weekly (provided by special education teacher, in a special education setting)

The Student's percent of time in a general setting was 37.5% and the LRE placement in general education classes was 0–39%. An ERP and a BIP were in place to address the Student's "incredibly violent outbursts when dysregulated" that targeted staff and peers.

The prior written notice (PWN) from the IEP meeting stated, "[The Student] continues to meet eligibility criteria and demonstrates a need for SDI in social emotional. [The Student] has met his goals for speech and language therapy and scored in the average range for his communication abilities during standardized and performance based testing."

According to the District's response, "The Student had four classes a day in the SLC: Washington and World Affairs, Life Science, Math, and Success Skills. In addition to working with the Student on his IEP goals, the SLC staff utilized the Character Strong curriculum."

6. On September 29, 2022, according to a report submitted by teacher 1 on October 3, 2022, the following happened:

[P]eer [1] grabbed [the Student's] headphones and threw them on the floor. The peer threatened to attack [the Student] with a hammer and knife. The peer swung at [the Student]. They began to engage in a physical altercation in the classroom, punch each other. [The teacher] intervened in an attempt to separate them. [The Student] was unable to disengage, threatening the other student and DROs, and was restrained by DROs. 2:46 pm [DRO 1]<sup>1</sup> placed [the Student] in a prone restraint 2:48 pm Mom was contacted 2:51 pm Mom reported that she was on her way. 2:52 pm DROs attempted to handcuff [the Student]. He begged that they don't. 2:58 pm The one cuff on his wrist was removed. 2:59 pm he was he was released from restraint and offered water. 3:10 pm Mom arrived and picked [the Student] up. It appeared that [the Student] had bit his lip during the restraint. He had some blood on his shirt. He had tried to bite the DRO.

The report stated that the restraint occurred from 2:40 to 2:59. Teacher 1, paraeducator 1, and DROs were involved.

7. DRO 1's report, submitted on October 3, 2022, stated:

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<sup>1</sup> As stated in the District's response, "The District acknowledges that the written report mistakenly states that DRO [1] used a prone restraint...the prone restraint was used by DRO [2]."

[DRO 1] witnessed [the Student] throw [a peer] to the ground and throw a punch. [DRO 1] ran over and grabbed [the Student] using a seatbelt hold<sup>2</sup> and pulled [the Student] away from [the peer]. [DRO 1] had [the Student] in a seatbelt hold for 2 minutes. While pulling [the Student] away, [the Student] attempted to kick [the peer] on the ground. After getting [the Student] away from [the peer] and the rest of the classroom evacuated the room....

[The Student] turned his aggression to DRO 1 and got in a combative stance. [The Student] then grabbed a chair and attempted to use it as a weapon. [DRO 1] instantly grabbed the chair and removed it from his hands. At the same moment [DRO 2] put [the Student] in a bearhug and took him to the ground. While on the ground [DRO 2] had [the Student] pinned to the floor for 15 min. [The Student] was attempting to punch, kick and headbutt [DRO 2]. [DRO 1] restrained [the Student's] legs to keep [the Student] from kicking. At this point, [the Student] became more frustrated and began to scratch, headbutt and bite [DRO 2]. [The DROs] decided it was necessary to handcuff [the Student]. We rolled [the Student] over and [DRO 1] isolated [the Student's] right arm and began to handcuff him.

[The Student] started to struggle and attempted to get his arm free. [The DROs] noticed that [they] weren't going to be able to cuff [the Student] with one set of handcuffs. [DRO 1] started to combine the 2 sets of cuffs and [the Student] was able to get ahold of one end of the handcuff. He held on to it and was yelling 'I won't go in handcuffs again. Please don't handcuff me'. [DRO 1] explained to [the Student] if he calmed down and stopped trying to fight with us [DRO 1] would remove the handcuff. [The Student] began to deescalate and relax. [DRO 1] removed the handcuff and [DRO 2] loosened his hold.

[The Student] laid on the ground and wanted to stay there until mom showed up. [DRO 1] stayed in the room with [the teacher] and [the Student] until mom showed up. Mom arrived [the Student] got up calmly and was apologetic. [The Student] went home with mom.

8. DRO 2's report, submitted on October 3, 2022, stated:

[DRO 2] received a radio call for an escalated student...[Student] picked up a chair and tried to throw it at [DRO 1 and 2], [DRO 1] grabbed the chair, [DRO 2] grabbed [the Student] in a bear hug and took [the Student] to the ground. [The Student] then said 'I'll [expletive] kill you guys.' [Student] then tried to bite [DRO 2] on the shoulder, [the Student] punched [DRO 2] in the ribs a couple of times [Student] also scratched [DRO 2's] hand and tried to head bunt (sic) [DRO 2]. At that point the [DROs] decided to put handcuffs on [the Student], [DROs] rolled [the Student] to his stomach due to his size [the DROs] tried double handcuffing [the Student], as [DRO 1] was putting cuffs on the student [the Student] got a hold of one of the cuff loops and wouldn't let go.

At this point [DRO 2] put [the Student] in a wrist roll on his left hand and held his right wrist so [DRO 1] could unlock the handcuff on [the Student's] right hand. [The Student] continued to be aggressive towards [the DROs], the [the DROs] decided not to handcuff [the Student]. [DRO 2] held [the Student] down with [DRO 2's] chest on [the Student's] back for around 20 minutes, finally [the Student] calmed down and [DRO 2] was able to let him go.

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<sup>2</sup> The District stated that the DROs receive a training called "defensive tactics" and in this training, they learned the restraints that the DRO referred to as a "bear hug" and "seat belt" restraint.

9. According to the Parent, peer 1 brought a hammer to school a week before this incident and threatened to strike the Student with it.
10. According to the District's attendance records, the Student was suspended for one day (September 30, 2022) for fighting.
11. On October 3, 2022, the parties held a meeting regarding and to debrief the September 29, 2022 restraint incident. The Parent and Student were present for the meeting. Additionally, the District emailed the Parent a full report of the September 29, 2022 restraint incident involving the Student.
12. On October 4, 2022, a second physical altercation involving the Student and the DROs occurred. According to the District's response, during the incident, school staff contacted the Parent and explained what was happening. The Parent immediately went to the school.
13. DRO 1's incident report, submitted October 6, 2022, stated:

...saw [peer 2] punching [the Student] in the face.

I ran over and grabbed [peer 2] and pulled him away from [the Student]. [Teacher 2] was holding [the Student]. [The Student] got away from [teacher 2] and went after [peer 2]. I turned my attention to [the Student] and held him in a bearhug for approximately 1 minute. [The Student] continued to pursue [peer 2] while I was holding him. When [peer 2] was taken into the 300 building, [the Student] began to deescalate so I let him go. [The Student] turned around and pushed me but backed up and leaned against the wall and took a seat.

[The Student] sat on the ground for approximately 2 minutes. He then got up and ran towards the front of the school at approximately 3:37 pm. [Staff] tried to stop [the Student] from running past them. [The Student] ran into [staff] and tried to get through them. DRO [2] was able to stop [the Student] and went to the ground. While holding [the Student] down, [the Student] was actively trying to punch and kick DRO [2] while on the ground. DRO [2] held [the Student] on the ground until Mom showed up approximately 3:59pm. As soon as Mom arrived [the Student] was calm and was no longer showing signs of aggression. [The Student] got up and went home.

It was reported later by Para-educator [2] that prior to the fight, [peer 2] had knocked a bag of chips out of [the Student's] hands. [The Student] then began to chase [peer 2] and caught up to him and pinned him to the wall and began to two-hand choke [peer 2]. [Paraeducator 2] pulled [the Student] off of [peer 2] and that's when [peer 2] threw the punch which hit [the Student] in the face.

14. DRO 2's incident report, submitted October 7, 2022, stated:  
DRO 2 saw [the Student] start to run after [peer 2] that he had already choked and kicked. [DRO 1] yelled for [the Student] to stop but [the Student] continued running DRO 2 yelled for [the Student] to stop as he was running towards [DRO 2], [the Student] was unresponsive as [the Student] got closer to me I grabbed him by his arm and sleeve of his shirt but [the Student] got by me. [Staff] then blocked [the Student's] pathway long enough for me to catchup to him as [the Student] turned around he ran into me, we fell to the

ground I rolled [the Student] to his back and straddled him with my knees close to his hips and my hands holding his wrist to the ground above his head.

[The Student] was highly aggressive and escalated he was flailing his arms and kicking me in the back. This continued for about 10 minutes. His arms were becoming sweaty and hard to hold one arm slipped out of my grasp. [The Student] then rolled to his side reaching for my handcuffs and taser so I rolled him to his belly and straddled him with my feet inside his knees and my knees on the outside of his thighs, again holding is (sic) wrist above is (sic) head. [The Student] continued to be aggressive for about another 10 minutes. I asked him several times if he calmed his body I would let him go I also kept encouraging him to take deep breaths to try and calm him down. [The Student's] mom arrived and [the Student] immediately calmed down.

15. According to the District's attendance records, the Student was suspended for two days (October 5 and 6) for fighting.
16. Regarding the October 4, 2022 incident, the District obtained nine witness statements from staff. None of those statements stated that the restraint interfered with the Student's breathing.
17. On October 6, 2022, the Parent and District met to debrief the October 4, 2022 restraint incident and created and implemented preventative measures for dealing with the Student. The Student was not present. The District informed the Parent a "[t]rainer is coming tomorrow to provide support for the response prior to calling DRO."
18. On October 7, 2022, the District had a staff meeting on how to best serve the Student considering the two physical altercations that had occurred between the DROs and the Student in less than one week. This meeting's participants included, but were not limited to, teacher 1, DRO 1, DRO 2, associate principal, board certified behavior analyst, and a behavior specialist. The meeting's topics included, but were not limited to, escalation cycle/staff response protocol, eliminating peer conflict, therapeutic language, and working with the Parent on stressful situations.
19. On November 17, 2022, the Parent emailed the principal as follows, "I'm officially pulling [the Student] out of school."
20. The District's attendance records from September 29 through November 18, 2022 (35 days) showed the Student was absent sixteen full days, two half days, and suspended four days.
21. The District submitted progress notes taken daily for the Student's IEP. The progress notes monitored three social-emotional goals. The progress notes recorded the following:
  - Student's interactions with peers and staff on September 26, 27, 28, 29, 30, October 3, 4, 11, 13, 19, 20, 25, 31, November 1, 3, 8, 9, and progress with respect to the Student's goals around interactions.
  - Student absences on October 7, 10, 12, 17, 18, 24, 26, 27, 28, November 4, 7, 10, 14, 15, 16, 17, and 18.
  - Student's suspensions on October 5, 6, and November 2.



- Teacher in service day on October 14.
- Student conference with Parent on October 21.
- School holiday on November 11.

22. On November 30, 2022, the parties had a meeting. A PWN dated December 1, 2022, stated: [The Parent's] concerns with [the Student] regarding the Student's current educational placement at [his school] and review placement options at [his school] and other ...schools with [the District]. [The Parent] reported she enrolled [the Student] at a Washington [online school]<sup>3</sup> and is not considering enrolling him at [the District] at this time. [The District] stands ready to provide [the Student's] individual education program in full as agreed upon at the IEP meeting, dated 9/29/2022."

...

If parent chooses to enroll [the Student] at [the District]. The IEP would be expected to revisit and update the Behavior Intervention Plan and Emergency Response Protocol to ensure the appropriate interventions and supports would be installed and ready for implementation prior to [the Student] starting at school.

23. On December 6 and 7, 2022, the District convened a "Use of Force Review Board" to review the restraint incidents involving the Student, DRO 1, and DRO 2 that occurred on September 29 and October 4, 2022. The review board members consisted of the director of security and athletics, security supervisor, executive director of schools and learning, executive director of special services, and the District's assistant general counsel. On December 9, 2022, based on, but not limited to, nine witness statements from staff, the incident reports from the DROs, and a county public records request, the board found:

1. The Student's behavior on September 29, 2022 posed an imminent likelihood of serious harm, in response to which the use of a physical restraint was permitted under [District] Policy and Procedure 3246.
2. The Student's behavior on October 4, 2022 posed an imminent likelihood of serious harm, in response to which the use of a physical restraint was permitted under [District] Policy and Procedure 3246.
3. DRO 1's use of a physical restraint of the Student on September 29 and on October 4, 2022 was consistent with [District] Policy and Procedure 3246, and therefore justified.
4. DRO 2's use of a prone restraint of the Student for approximately 29 minutes on September 29, 2022 was prohibited under [District] Policy and Procedure 3246, and therefore not justified.
5. DRO 2's use of a prone restraint of the Student for approximately 10 minutes and use of supine restraint of the Student for approximately 10 minutes on October 4, 2022 was prohibited under [District] Policy and Procedure 3246, and therefore not justified.
6. The Use of Force Review Board recommends that the Human Resources Department consider these findings and review DRO 2's use of prone and supine restraints of the Student, as indicated above.

24. On December 20, 2022, the Parent filed special education community complaint (SECC) 22-155 with OSPI. The Parent's complaint alleged:

- Isolation and restraint are prohibited.
- Restraint interfered with breathing when choke, prone, supine restraint which is prohibited.

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<sup>3</sup> The online school is a program run out of a different Washington school district and is a full-time online public school for students in grades K-12.

- Restraint went beyond imminent harm when the duration was over 20 minutes.
- DRO did not have trauma-informed de-escalation training-nor did he use trauma informed de-escalation.
- DRO had a taser which is also prohibited practice.
- Failure to implement the IEP for two months following restraint-failure to provide safe environment for school so [the Student] could access FAPE.

Along with the complaint, the Parent submitted seven photos of the Student from the October 4, 2022 incident. The photos showed discoloration circles around the Student's eyes, lip and facial bruises, and Student's tee-shirt that was dirty on both sides.

25. On January 8, 2023, the District sent an internal email to all District staff that stated in part,"(WAC 392-172A-02076) **prohibits all school district employees--including DROs--from using prone restraints, supine restraints, wall restraints, or any other type of restraint that interferes with a student's breathing**...[District] Procedure 3246P also prohibits the use of prone, supine, and wall restraints." (Emphasis in original).

26. The District's response stated, in part:

(1) It was permissible under state law to restrain the Student on both September 29 and October 4, because his behavior posed an imminent likelihood of serious harm, but the District only partially fulfilled the documentation requirements of RCW 28A.600.485(6); (2) the DRO [2] who restrained the Student engaged in 'prohibited practices' by using prone and supine restraints; and (3) the District materially implemented the Student's IEP following the September 29 and October 4 incidents.

...

The District therefore acknowledges violations of WAC 392-172A-02076(2)(j) and of WAC 392-172A-02110(4). Furthermore, the District apologizes to the Student and the Parent for these violations—in particular, the use of prone and supine restraints to control the Student's behavior on September 29 and October 4. (Emphasis in original).

...

[T]he District acknowledges that on September 29 a prone restraint was used for approximately twenty minutes and on October 4 a prone restraint was used for approximately ten minutes and a supine restraint was used for approximately ten minutes. However, the District denies the allegation that the September 29 and October 4 restraints interfered with the Student's breathing and that staff choked him.

...

State law and District policy and procedure prohibit the use of tasers on students who receive special education services...However, DROs may carry tasers, because their use is permitted in other circumstances. *See, e.g.,* RCW 9.41.280(3)(b) (allowing "school district security" staff with proper training to possess tasers.)

...

Neither state law nor District policy and procedure place specific time limitations on the duration of a restraint; however a restraint 'must be closely monitored to prevent harm to the student, and must be discontinued as soon as the likelihood of serious harm is dissipated. RCW 28A.600.485(3)(b)'.

On September 29, DRO [2] restrained the Student ...[and] was monitored by DRO 1....

On October 4, DRO [2] again restrained the Student ...[and] was monitored by DRO [1]...And on both occasions, DRO [2] released the Student when, in his assessment, the Student's behavior no longer posed an imminent likelihood of serious [sic].

...

District DROs received de-escalation training in August 2021...

District DROs also received training on trauma-informed approaches to student interactions in Spring 2022. This training was presented by Educational Services District...through its SRO Summit: Safety and Support for Students...

...

The District acknowledges that it sent written notice within five business days of the September 29, 2022, but it also acknowledges that it did not send the Parent written notice of the October 4, 2022, restraint incident as required under RCW 28A.600.485(6).

...

District materially implemented the Student's IEP following the September 29 and October 4 incidents, through the date the Parent voluntarily withdrew him.

...

The District proposes the following corrective actions to address these violations:

1. **Training on WAC 392-172A-02110.** This training will be provided to all DROs and their supervisors, focusing on the reporting and documentation requirements of RCW 28A.600.485, as incorporated into WAC 392-172A-02110. As background information, at the beginning of the 2022-2023 school year, the District transitioned from handwritten to electronic documentation of the use of restraint and isolation. Training on this new system, and the reporting and documentation requirements of WAC 392-172A-02110, was provided to building administrators and certificated special education staff. The District's new system has improved documentation of the use of restraint and isolation, as well as the District's ability to monitor incidents and provide targeted support to school teams. Unfortunately, District's DRO staff, who may use restraints in emergency circumstances, were not trained on the new system. The District there proposes to train DROs and their supervisors on the District's new electronic reporting system and the reporting and documentation requirements of RCW.28A.600.485. The District proposes this training occur within 60 days of receiving OSPI's decision in this matter.
2. **Training on WAC 392-172A-02076.** This training will be provided to all DROs and their supervisors and will (a) state law governing the use of restrains with students by DROs, (b) de-escalation strategies and techniques for DROs, and (c) hand-on instruction in permissible use of restraints, including permissible use of mechanical restraints. Specifically, the hands-on portion of this training will provide strategies and techniques for DROs to safely and effectively intervene in the situations they regularly encounter in schools. The District notes that DROs assist school staff in responding to student behavior when staff are unable to safely manage the situation. This includes assisting special education staff—who are trained in de-escalation techniques, trauma-informed practices, Ukeru Systems, and Crisis Prevention Institute restraint techniques. Accordingly, the District recognizes that the hands-on training it provides its special education staff is insufficient to equip DROs with the full range of knowledge, strategies, and techniques necessary to perform their duties. The District further requests OSPI's assistance in either providing training or in helping identify suitable

trainers for the District to engage. The District proposes this training occur within 90 days of receiving the OSPI-recommended trainer.

3. **Review of Applicable District Policy and Procedures.** The District will review and, as necessary, revise [District] Policy 3246P (Restraint, Isolation, and Other Uses of Reasonable Force). The District will also review and, as necessary, revise [District] Policy 5830 (District Resource Officers). In addition, the District will draft an accompanying procedure for [District] Policy 5830. The DRO policy and procedures will meet the requirements of RCW 28A.320.124. The District will provide draft documents for OSPI's review no later than April 15, 2023, and final documents will be available for the beginning of the 2023-24 school year.

Because the Student no longer attends the District, there are no student-specific corrective actions.

27. On January 23, 2023, the Student began an online school based in another school district.

## CONCLUSIONS

**Issues One and Two: Proper Restraint and Prohibited Practices** – OSPI notes that initially, these issues were opened as separate issues, but upon investigation, they are inherently intertwined and therefore will be analyzed together. The Parent's complaint specifically alleged: (1) Isolation and restraint are prohibited, (2) Restraint interfered with breathing when choke, prone, supine restraint which is prohibited, (3) Restraint went beyond imminent harm when the duration was over 20 minutes, (4) DRO did not have trauma-informed de-escalation training-nor did he use trauma informed de-escalation, and (5) DRO's possession of a taser is prohibited.

The Two Restraints of Student: Restraint is a "physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement." According to the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC), restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. Districts are not permitted to use prone (lying face-down) and supine (lying face-up) restraint. Both restraint and isolation must be discontinued as soon as the likelihood of serious harm has dissipated.

It is important to note that having a safe/calm body or being fully deescalated is not necessarily the same as the likelihood of serious harm dissipating. OSPI acknowledges that it is challenging to judge the imminent likelihood of serious harm from a restraint or isolation report—not having been present for the actual incidents. OSPI understands that during many of these incidents, staff are required to make a challenging judgment call for the safety of the Student, other students, and staff. Here, OSPI finds that restraints and isolations were improper for several reasons.

In the present matter, although the Student may not have initiated the actions that led to the fights on September 29 and October 4, 2022, (peer 1 threw the Student's headphones on the floor and peer 2 knocked a bag of chips out of the Student's hands), the Student was involved in dangerous fights with peers. The Student was punching and choking peers and was not able to de-escalate when District staff initially intervened in the incidents. This action rises to the level of

“imminent likelihood of serious harm” that would have made the restraint of the Student permissible.

However, on September 29, 2022, DRO 2 used prone restraint on the Student for approximately 20 minutes, and on October 4, 2022, DRO 2 used prone restraint on the Student for approximately 10 minutes and supine restraint on the Student for approximately 10 minutes. WAC 392-172A-02076 prohibits all school district employees from using prone restraints and supine restraints, such as the type of restraints DRO 2 used on the Student in the present case. The District’s Procedure 3246P also prohibits the use of prone and supine restraint. The District acknowledges that DRO 2’s restraint actions on the Student on September 29 and October 4, 2022 were prohibited.

Based on the teacher and two DRO reports for the September 29, 2022 incident, and the two DRO reports and nine witness statements from the October 4, 2022 incident, OSPI finds that the prohibited prone and supine restraints were: (1) A violation of established law, (2) Did not interfere with the Student’s breathing, and (3) Lasted the time it was necessary for the Student to become de-escalated and return to acting in a manner that did not pose an imminent likelihood of serious harm to others.

Training & Other: Although DRO 2 engaged in prohibited restraints, and the District acknowledges this, the DROs did receive de-escalation training and training related to restraints in August 2021 and August 2022. OSPI finds that while there are concerns, as discussed above about how the DRO implemented the restraint, the staff administering the restraint were trained. OSPI finds no violation.

Additionally, the Parent made an allegation with respect to the DRO’s taser. Although tasers may not be used on students (this is a prohibited practice per WAC 392-172A-02076), the WAC does not prohibit a DRO from *carrying* a taser on school property. School staff may use such devices on people who trespass on school property during instruction hours if those people pose a risk of harm to others on the campus. Here, the DRO was carrying a taser; however, it was not used in this incident. OSPI finds no violation.

Restraint Device: A restraint device is a device used to assist in controlling a student, including but not limited to, metal handcuffs. Restraint devices are currently permitted under Washington law and 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:

1. The restraint must be discontinued as soon as the likelihood of serious harm has dissipated;
2. The restraint shall not interfere with the student’s breathing;
3. Either the student shall be capable of releasing himself or herself from the restraint device or the student shall continuously remain within view of an adult responsible for supervising the student; and,
4. Anyone using a restraint device 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.

During the September 29, 2022 incident, the Student “began to scratch, headbutt and bite [DRO 2]” and that is when the DROs attempted to handcuff the Student. The DROs were able to handcuff the Student’s right arm only because the Student’s actions prevented the handcuffing of his left arm. Shortly thereafter, the Student began to de-escalate and the DROs decided that handcuffing the Student was not necessary. Although WAC 392-172A-01163 does not encourage the use of handcuffs, it does not currently prohibit their use.

Based on the present case’s facts, it appears that (1) the DROs ceased using the handcuffs on the Student shortly after the Student de-escalated and the serious threat of imminent harm to others ended, (2) The handcuffs did not seem to appear to interfere with the Student’s breathing, (3) The DROs were continuously monitoring the Student during this part of the incident, and (4) the DROs were trained in the use of handcuffs in August 2022. As such, the DROs use of handcuffs while problematic, is not a violation based on current applicable laws and regulations in a setting such as the one in the present case.

OSPI does recommend, however, that the District review how training is provided related to restraint devices and de-escalation of students. OSPI notes a few points of concern in the reports of the restraint with respect to practice. First, OSPI notes the DRO told the Student that if he calmed down, they would remove the handcuffs. OSPI notes that is very subjective and provides the Student with no instruction on how to deescalate or strategies to use. Additionally, the report stated that following the removal of the handcuff, the DRO “loosened his hold” and OSPI notes this is problematic as a hold should already be as loose as necessary to maintain safety.

#### Meeting Requirements

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

Regarding the September 29, 2022 incident, the District met with the Parent and the Student on October 3, 2022, to debrief the incident. Regarding the October 4, 2022 incident, the District met with the Parent on October 6, 2022, but the Student was not present. The meeting notes show that the parties had a conversation about how to best serve the Student. This conversation included providing the Student additional breaks, a break space, and keeping him separated from DRO 2. The District’s response noted that staff discussed the new break schedule with the Student upon the Student’s return to school following his suspension and the Student advocated for taking breaks in the classroom rather than in an alternative location as originally contemplated at the October 6 meeting. Thus, OSPI finds the District appropriately debriefed the incidents with the Parent, but did not debrief the second incident with the Student. OSPI finds a violation related to the second incident and requirement to debrief with the Student.

DROs/Staff Meeting: Upon release of a student from restraint or isolation, the school must review the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

On October 7, 2022, the District had a meeting on how to best serve the Student considering the two physical altercations that had occurred between the DROs and the Student in less than one week. This meeting's participants included, but were not limited to, teacher 1, DRO 1, DRO 2, associate principal, board certified behavior analyst, and a behavior specialist. The meeting's topics included, but were not limited to, escalation cycle/staff response protocol, eliminating peer conflict, therapeutic language, and working with the Parent on stressful situations. Based on the facts above, the District satisfied its meeting requirements under the WAC and OSPI finds no violation.

### Reporting Requirements

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

1. The date and time of the incident;
2. The name and job title of the individual who administered the restraint or isolation;
3. A description of the activity that led to the restraint or isolation;
4. The type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and,
5. Any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

Regarding the September 29, 2022 incident, on October 3, 2022 (second business day), the teacher, DRO 1, and DRO 2 submitted reports that provided the date and time of the incident, the name and job title of the individuals who restrained the Student on September 29, 2022, a description of the activity that led to the restraint, and the type of restraint used on the Student, including the duration. The reports did not contain recommendations for avoiding similar incidents.

Regarding the October 4, 2022 incident, on October 6, 2022 (second business day), DRO 1 submitted a report and on October 7, 2022 (third business day), DRO 2 submitted a report that provided the date and time of the incident, the name and job title of the individuals who restrained the Student on October 4, 2022, a description of the activity that led to the restraint, the type of restraint used on the Student, including the duration. The reports did not contain recommendations for avoiding similar incidents.

Based on the facts above, OSPI finds that DRO 2 did not submit his report regarding the October 4, 2022 incident in a timely manner and the reports did not include recommendations for avoiding similar incidents; thus, a violation is established.

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

1. Make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and,

2. must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred.

Regarding the September 29, 2022 incident, teacher 1 called the Parent during the incident and the Parent arrived at the incident's location just after the incident ended. On October 3, 2022 (two business days), the District emailed the Parent a full report of the September 29, 2022 restraint incident involving the Student. Thus, based on these facts, the District satisfied its responsibilities to contact the Parent for this incident.

Regarding the October 4, 2022 incident, a school staff member called the Parent during the incident and the Parent arrived at the incident's location during the incident. The District acknowledges that it did not provide the Parent with a written report of the incident as it was required to do. Based on this fact, a second violation has been established regarding the reporting requirements.

Based on the violations that have been established for the first and second issues related to the use of prone/supine restraints and violations related to notification and reporting, the District's suggestions for corrective action will be adopted.

**Issue Three: IEP Implementation** – the Parent alleged the District failed to implement the Student's IEP for two months following restraint incidents.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

The only SDI that the Student was receiving under his September 2022 IEP was social/emotional skills. The District's response shows that teacher 1 created daily progress notes regarding her daily monitoring of the Student's social/emotional goals from late September 2022 through mid-November 2022, when the Student was withdrawn from school, which indicates the teacher was providing the Student SDI per his IEP. Based on this fact, it appears that the District appropriately implemented the Student's IEP, and thus there is not an IEP implementation violation in the present matter.

### **CORRECTIVE ACTIONS**

By or before **February 28, 2023, March 22, 2023, March 31, 2023, April 14, 2023, May 19, 2023, May 24, 2023,** and **August 16, 2023,** the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.



## **DISTRICT SPECIFIC:**

### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or Lee Collyer, OSPI's director of school health and student safety, or other pre-approved trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 22-155. The training will be provided to all DROs and their supervisors. The training will include the following topics:

- Training on WAC 392-172A-02110.
- Training on WAC 392-172A-02076.

By or before **February 28, 2023**, the District will notify OSPI of the name of the trainers and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By or before **March 22, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by April 12, 2023.

By **May 8, 2023**, the District will conduct the trainings regarding the topics raised in this complaint decision.

By **May 24, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

### **Review of Applicable District Policies and Procedures**

The District will review, and as necessary, revise [District] Policy 3246P (Restraint, Isolation, and Other Uses of Reasonable Force). The District will also review, and as necessary, revise [District] Policy 5830 (District Resource Officers). In addition, the District will draft an accompanying procedure for [District] Policy 5830. The DRO policy and procedures will meet the requirements of RCW 28A.320.124. The District will provide draft documents for OSPI's review no later than **April 14, 2023**, and final documents will be available for the beginning of the 2023–2024 school year.

The District will review its current internal practices and the District's procedures addressing District Policy 3246P (Restraint, Isolation, and Other Uses of Reasonable Force), and as necessary, review District Policy 5830 (District Resource Officers) to determine whether it needs to revise internal practices or procedures in accordance with the IDEA and other law.

By **March 31, 2023**, the District will provide OSPI with the results of its review, including its rationale for either maintaining or revising the current internal practices. If revisions are needed, the District will provide OSPI with a draft of the proposed revisions for review and OSPI will provide feedback as needed.

By **May 19, 2023**, the District will provide OSPI with documentation that any changes to internal practices or District procedures have been approved and adopted by administration, including the date of approval. OSPI will review the documentation.

By **August 16, 2023**, the District will also provide documentation that the District's internal restraint, isolation, and use of force practices and procedures are posted to the District's inter-district website so that District staff members can easily access the information.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 16th day of February, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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