

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-14

PROCEDURAL HISTORY

On February 28, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen 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 March 1, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 4, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 5, 2019.

On March 11, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 12, 2019.

On March 18, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 20, 2019.

On March 22, 2019, 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 with any information she had that was inconsistent with the District's information.

On March 22, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on March 27, 2019.

On March 27, 2019, OSPI received a letter from the District regarding the additional information received from the Parent on March 18, 2019.

On March 28, 2019, the Parent requested an extension of time for the submission of her reply to the District's response. OSPI granted the Parent's request. The Parent was asked to submit her reply no later than April 10, 2019.

On April 8, 2019, OSPI responded to the District to confirm that it was in receipt of its letter dated March 27, 2019.

Also on April 8, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On April 8, 2019, OSPI requested clarifying information from the District. OSPI received the requested information on April 10, 2019, and forwarded it to the Parent on April 12, 2019.

On April 17, 2019, the OSPI complaint investigator conducted a site visit and conducted interviews.

On April 18, 2019, OSPI requested additional information from the Parent. OSPI forwarded the additional information to the District April 19, 2019.

On April 22, 2019, OSPI received additional information from the District. OSPI provided the information received to the Parent on April 23, 2019.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit and interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period which began on March 1, 2018. 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 for developing and implementing the Student's individualized education program (IEP), including any paraeducator support, accommodations, related services, and functional behavioral assessments (FBAs)/behavioral intervention plans (BIPs) from March 1, 2018¹ through February 28, 2019?
2. Did the District use restraint and/or isolation consistent with the requirements of WAC 392-172A-02110 from March 1, 2018² through February 28, 2019?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education

¹ The complaint was originally opened from March 1, 2018 through February 28, 2019, because the one-year timeline for a special education citizen complaint began on March 1, 2018. However, the District's response showed that the timeline of the complaint should have begun on March 30, 2018, when the IEP was developed for the 2018-2019 school year—especially given that the Parent's allegations concerned the March 30, 2018 IEP. Accordingly, the timeline for the events described in this complaint begins on March 30, 2018.

² See above.

teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115.

IEP Accommodations: IEP accommodations do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; rather they provide equal access to learning and equal opportunity to demonstrate what is learned. Grading and credit are the same as typical students.

Difference between Specially Designed Instruction and Related Services: Special education includes the provision of speech-language pathology services, physical therapy, occupational therapy, and audiology services, as defined in WAC 392-172A-01155, that meet the criteria in WAC 392-172A-01035(1)(c), travel training, and vocational education, when any of these services are provided as specially designed instruction. These services are considered related services under WAC 392-172A-01155(1) if they are required to assist a student who is eligible for special education services to benefit from special education, and not provided as specially designed instruction. 34 CFR §300.39; WAC 392-172A-01175.

Supplementary Aids and Services: Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the student's least restrictive environment. 34 CFR §300.42; WAC 392-172A-01185. A student's IEP must include a statement of the supplementary aids and services to be provided to the student or on behalf of the student. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Behavior: When considering special factors unique to a student, the IEP team must consider the use of positive behavioral interventions and supports, as well as other strategies, to address behavior in the case of a student whose behavior impedes the student's learning or that of others. WAC 392-172A-03110(2)(i). 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.

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives

to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2). The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's IEP and LRE requirements. Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. Districts must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each student. 34 CFR §300.117; WAC 392-172A-02065.

Consideration of Less Restrictive Placement Options: Less restrictive placements always have to be considered, but they do not always have to be tried. As a rule, when there is uncertainty about the appropriate placement for a student, a district should make a diligent effort to educate him in a less restrictive environment before proposing a more restrictive one. *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

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 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.

Imminent: Imminent as defined in RCW 70.96B.010 means: the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote. WAC 392-172A-01092.

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: 1) a substantial risk that: a) 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; b) 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 c) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or 2) the person

has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Follow-up and Reporting Requirements: 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/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 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 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: 2010-2017

1. The Student was initially evaluated and found eligible to receive special education services in 2010 under the category developmental delay.
2. In 2012, the Student underwent surgery for partial temporal lobe removal to address a severe seizure disorder. Following an evaluation in 2013, his eligibility category was changed to other health impairment due to his diagnosis of a severe seizure disorder and related conditions, including moderate neurocognitive disorder and attention deficit hyperactivity disorder (ADHD) (combined type).
3. On June 6, 2016, the District completed a functional behavioral assessment (FBA) for the Student. The FBA focused on the following target behaviors: screaming, hitting, kicking, throwing furniture, running out the classroom door, and refusal to transition. The FBA hypothesized that:
 - when the Student is given an instruction, peers are present, the Student is involved in transitions and/or is given a correction, the Student will scream, hit, kick, throw furniture,

run out of the classroom and refuse to transition, in order to gain adult attention, avoid a task or activity and gain attention.

The FBA offered the following strategies for responding to target behaviors and reinforcing the development of desired replacement behaviors:

- Immediate reinforcement when using replacement behaviors;
- Ignoring target behavior as much as possible;
- Re-direct with non-verbals when needed; and,
- As much as possible keep task demand in place.

The FBA included a recommendation that a behavioral intervention plan (BIP) be developed for the Student.

4. Also on June 6, 2016, the District developed a behavioral intervention plan (BIP) based on the recommendations in the FBA to address a target behavior of verbal and physical aggression.

The Student's BIP included a reinforcement plan that directs staff to use the following *positive behavior interventions*:

- Positive praise and reinforcement of appropriate interactions; and,
- Structured opportunities for social skills building and practice.

If a targeted undesired behavior (defined as: screaming, hitting, kicking, throwing furniture, running out the classroom door, and refusal to transition) occurs, the BIP instructed staff to:

- Ignore targeted behaviors as much as possible; and,
- Maintain safety.

The BIP included a de-escalation plan. If target behaviors occur and the Student is escalated, the BIP directed staff to:

- Reduce verbal commands;
- Clear students away; and,
- Give choices for a break space.

The BIP required data be collected on its effectiveness weekly. The BIP listed the case manager as responsible for its implementation.

5. On June 12, 2017, the Parent signed an emergency response protocol (ERP), consenting to the District's use of isolation and/or restraint as described in the protocol. The ERP was signed by a District representative on June 13, 2017.

2017-2018 School Year

1. During the 2017-2018 school year, the Student was a fourth-grade student at a District middle school. He was eligible for special education services under the category of other health impairment.

2. On March 2, 2018, the District sent a meeting notice to the Parent that an IEP meeting had been scheduled for March 30, 2018, to review the Student's current IEP, review instructional needs, discuss annual goal progress, determine placement, review the BIP, and review the ERP.
3. On March 30, 2018, the District completed its triannual evaluation of the Student and met with the Parent to review the evaluation report and recommendations. The Student was evaluated in the following areas: medical-physical, social/emotional, adaptive, behavior, cognitive, academic, communication, observation, and occupational therapy.

The Student was determined to have a full-scale IQ of 77 (borderline impaired) and he continued to be eligible to receive special education services under the category of other health impairment. The evaluation recommended the Student receive specially designed instruction in the following areas: reading, writing communication (speech and language), adaptive, and social/emotional/behavior. The evaluation additionally recommended the Student receive occupational therapy consultation and additional adult support as a related service. The Student scored within the average range in the area of math calculation. It was noted that the Student "ha[d] a strong number sense and [did] a nice job with recognizing patters in numbers. He [was] able to apply math strategies to word problems and use his math skills in everyday situations."

4. Also on March 30, 2018, the Student's IEP team met to develop the Student's annual IEP for the 2018-2019 school year. The IEP contained 12 measurable annual goals in the following areas: social/emotional/behavioral (raising hand to speak, keeping hands and feet to self, taking a break, ignoring distractions), adaptive/skills (completing work, transitions), and reading (fluency, comprehension). The IEP noted the Student's scores on the winter 2018 I-Ready testing in math (413) and reading (424) for the first time. He scored below grade level in both.

The March 2018 IEP provided the Student with the following specially designed instruction, to be provided in a special education setting:

- Writing: 30 minutes, 2 times daily (to be provided by a structured learning teacher);
- Social/emotional/behavioral, 170 minutes, 5 times weekly (to be provided by a structured learning teacher);
- Communication, 30 minutes, 2 times weekly (to be provided by a speech-language pathologist);
- Reading, 60 minutes, 5 times weekly; (to be provided by a special education teacher); and,
- Adaptive skills, 30 minutes, 5 times weekly (to be provided by a special education teacher).

The IEP provided the Student with the following supplementary aides and services:

- Additional adult support, 1,900 minutes, 1 time weekly (to be provided by a paraeducator)
- Occupational therapy consultation, 90 minutes annually (to be provided by an occupational therapist)

The IEP includes 18 accommodations, including testing accommodations.³ Some of the daily classroom accommodations include the following:

- Adult proximity
- Allow extra time to respond
- Breaks available when frustration level escalates
- Heavy work breaks built into day
- Present information visually
- Reminders to stay on task
- Visual schedule

The IEP stated the Student required an FBA/BIP and an ERP.

The Student's IEP indicated that the Student would spend 5.14% of his time in the general education setting. The IEP did not indicate that any settings other than the Student's self-contained classroom were considered for the Student. The IEP stated that the Student "participates in general education classes when his behavior and frustration levels allow. These classes include library, PE, recess, and assemblies."⁴

5. On March 30, 2018, the District sent prior written notice (PWN) to the Parent that it was proposing to continue the Student's eligibility category of other health impairment. The PWN additionally noted that the Student required "specially designed instruction in the areas of Reading, Writing, Communication, Adaptive, Social/Emotional/Behavior in order for him to access and benefit from his educational program. He also has OT Consultation and Additional Adult Support, as supplementary aids and services."
6. Also on March 30, 2018, the ERP was updated and signed by both the Parent and a District representative. The March 2018 ERP provided that when the Student "becomes aggressive (hitting, pushing, throwing items) and is in imminent danger of hurting himself (running away) or of harming others," the following types of isolation, restraint, or restraint device(s) may be used and for the following purposes: "CPI trained staff will use Applied Physical Techniques, Child's Control Position, Two Person Escort, and the Isolation Room. CPI restraints will help prevent (the Student) from harming himself or others."

The ERP granted the following staff members permission to utilize isolation, restraint and/or restraint device on the Student consistent with the protocol:

- Special education teacher

³ In her complaint, the Parent raised concerns about the District's failure to include the use of essential oils and spiral learning, both which were included in previous IEPs and which the Parent alleged were removed without her knowledge or consent. Because these are not present in the March 2018 IEP and because any alleged removal was determined to have occurred before the one-year timeline at issue in this complaint, these specific accommodations are not addressed in this complaint.

⁴ As further explained in the conclusion, OSPI determined that the library and physical education classes the Student was receiving were being provided in a special education setting, not a general education setting as indicated in the Student's IEP.

- 1:1 paraeducator
- General education teacher/counselor
- Structured Learning Classroom (SLC) staff who are CPI trained
- Other CPI trained staff in the building in the case of emergency and imminent danger

According to the Student’s ERP, the following will occur after de-escalation:

- The team involved will rebuild the relationship with [Student]; and,
- The staff will discuss the situation with [Student] and explain what happened/why.⁵

Maximum duration of restraint is listed on the ERP as 10 minutes or until Student is safe.

7. On March 30, 2018, the District sent the Parent prior written notice, stating it was proposing to continue the Student’s eligibility category of other health impairment and that it was proposing to provide specially designed instruction as agreed to at the March 30, 2018 IEP meeting.

2018-2019 School Year

8. The District’s 2018-2019 school year began on September 5, 2018.
9. During the 2018-2019 school year, the Student attended fifth grade at a District elementary school. The Student was eligible for special education services under the category of other health impairment. The Student’s March 2018 IEP, which included a BIP and an ERP, was in place at the start of the 2018-2019 school year and remained in place at the time the Parent filed this complaint with OSPI.
10. During the 2018-2019 school year, the Student’s schedule has been displayed visually on a large chalk board. A second schedule was taped to the Student’s desk. A typical schedule for the Student is as follows:⁶

| | |
|---|---|
| <ul style="list-style-type: none"> • 8:30 – 9:00 breakfast • 9:00 – 9:30 station 1 • 9:30 – 10:00 assembly • 10:00 – 10:30 snack • 10:30 – 11:30 reading | <ul style="list-style-type: none"> • 11:30 – 12:00 lunch • 12:00 – 12:30 recess • 12:30 – 1:00 station 2 • 1:00 – 2:00 iPad time • 2:00 – 2:30 pack up |
|---|---|

11. The Student received all instruction in a self-contained classroom in the special education setting. The Parent expressed concerns in her complaint and reply to the District’s response that she had made several requests at IEP meetings for the Student to have an opportunity for increased time in the general education setting, but stated she was told the Student’s

⁵ The Student’s ERP stated that “[t]his step is very important to rebuilding and repairing the relationship to promote positive behaviors in the future.”

⁶ The Student’s schedule was observed on April 17, 2019, during an on-site visit conducted by OSPI. The special education teacher confirmed that the schedule observed was typical for the 2018-2019 school year, but that on days when there is not an assembly, there are generally three (3) stations during the day instead of the two (2) observed. These stations are math, writing, and science.

behaviors prevented him from being able to receive instruction in the general education setting.

12. The Student's March 2018 IEP stated the Student has "access to general education classes when his behavior and frustration levels allow." OSPI requested clarification from the District regarding what this meant, to which the District replied:

Students must manage consistent behavior for twenty (20) days before going to the general education classroom. When twenty (20) days is reached, the family is informed, and the student's instruction is moved to a general education setting with appropriate support. A conversation also occurs with the general education teacher to ensure proper supports are in place. If moving to general education will change the student's LRE, an IEP meeting is scheduled.

13. OSPI requested additional information regarding the math instruction the Student was receiving. The District responded:

[T]he Student has access to general education [math] curriculum generally every day for 30-45 minutes in the special education classroom. The general education math curriculum is provided in his special education classroom. [. . .] [I]nstruction is provided in the general education setting, 'when his behavior and frustration levels allow.' Opportunities have been provided for the Student to access the general education classroom on several occasions this school year. However, his behavior required that he return to the special education setting and on one occasion, he requested to return to the special education setting.

14. The District's response included service logs documenting the minutes of specially designed instruction (SDI) the Student received in communication (speech/language) from September 14, 2018 through February 28, 2019. From September 14, 2018, the Student was generally scheduled to receive instruction from a speech-language pathologist twice a week on Thursday and Friday for 30 minutes. However, on the following dates, the Student was scheduled to receive instruction and did not for the reason indicated:

- September 28, 2018 – absent (Student)
- October 12, 2018 – no school
- October 18, 2018 – no school
- October 19, 2018 – no school
- October 26, 2018 – assembly, field trip or teacher request
- November 8, 2018 – absent (Student)
- November 9, 2018 – absent (Student)
- November 22, 2018 – absent (Student)
- November 28, 2018 – no school
- November 29, 2018 – no school
- November 30, 2018 – absent (Student)
- December 7, 2018 – assembly, field trip, teacher request
- December 21, 2018 – assembly, field trip, teacher request
- December 27, 2018 – no school
- January 4, 2019 – no school
- January 17, 2019 – I-ready testing
- February 22, 2019 – clinician absent

15. The District did not indicate in its response whether it planned to make up the days it did not provide communication SDI to the Student because school-related activities made either the Student or the service provider unavailable during the time the service was regularly scheduled, or because the service provider was otherwise absent. From March 31, 2018

through February 28, 2019, there were five days (150 minutes) where the Student did not receive SDI for these reasons. The Student missed five (5) additional days of instruction (150 minutes) due to Student absences and six (6) days due to SDI being scheduled during anticipated school holidays.

16. As part of the District's response, the District included an email, dated March 12, 2019, from the special education teacher who reported that the following general behavior strategies had been used with the Student during the 2018-2019 school year:

- When I am angry I can do?" behavior form;⁷
- Positive Behavior Interventions and Supports (PBIS) class token and shop system;
- Monthly behavior contests where students can earn "dollars" that they can use to buy items from the class shop;
- Class-wide discussions focusing on honesty, respect, "size of my problem," "what makes me angry" (4-5 times a week); and,
- Individual discussions with students who require additional support or help with recovery or making amends.

17. On September 13, 2018, the special education teacher emailed the Parent that the Student had "expressed a desire to visit a gen-ed room," which the Parent was told would begin the following week. The special education teacher also told the Parent the Student's "overall behavior need[ed] to improve to have that time increased."

18. On September 25, 2018, the special education teacher sent the Parent the following email regarding the Student's behaviors:

[Student] had a rough day today. He was disruptive and refused to follow directions. He began rolling on the floor and was generally argumentative most of the day [. . .]. We spoke to him about acting like a kindergartner and how to act like a 5th grader. Responsibility as well. He was repeating his self-harm speech, so we had [counselor] speak with him for the afternoon.

19. On October 10, 2018, the Student received a school bus referral for inappropriate behaviors on the bus. The referral stated:

Every day [the Student] tickles a little kindergarten girl that gets on after his stop. [. . .] [The Student] is remind[ed] [. . .] not to do this and [. . .] that she does not like it. [Both students are moved]. He will not stop. Today he got mad after he was told not to tickle her and while we were at school and teachers were on the bus he destroyed a toy filled with gel and made a big mess. He continued to be disruptive the rest of the route.

20. On October 15, 2018, the Parent was contacted by phone regarding the bus incident on October 10, 2018. The driver also held a conference with the Student and spoke to school staff

⁷ The "When I am angry I can do?" behavior form was developed by the Student's special education teacher. The form is a piece of paper with two columns: "Column A" containing phrases responding to the question, "When I am angry, I can do?" and "Column B" containing phrases responding to the question, "Things I cannot do." The piece of paper is taped to the Student's desk and the Student is directed to "refer to it when he is escalated." The special education teacher reported that the Student "uses it occasionally," and that it is successful at deescalating the Student 50% of the time."

involved on the same date. Because it was the first referral for the offence, no additional discipline measures were taken by the District. On November 7, 2018, the District entered the incident into its discipline log, categorizing the incident as "physical aggression."

21. On October 26, 2018, the Student received a school bus referral, which stated:
[Student] tore apart a toy he got from school, took the light out of it and threw it towards the garbage can on the bus. This was at a stop while a mom was getting her child off. It went over her head and hit the back of the driver's seat.
22. On October 29, 2018, the Parent was contacted by email regarding the incident. The referral form indicates a conference was held with the Student regarding the incident the same day. A District administrator signed the referral form. On October 31, 2018, the District noted the incident in its discipline log categorizing the incident as "physical aggression."
23. On December 7, 2018 the special education teacher emailed the Parent to describe the following behavior incident that occurred at school:
The students were given squeeze balls [. . .]. I asked each student repeatedly to put the balls in their desks [. . .]. I saw that [Student] had a ball in his pocket and was playing with it. I asked him for the ball. He gave it to me and that was it. After the movie I saw that he was agitated so I asked him why he had the ball with him even though I asked for it to be in his desk. He said he 'found it.' I asked where and he said on the floor. I replied that no matter where it was I asked everyone to have it in their desk. He became angry and stated he didn't steal it and stormed away. I repeated to him that all of the balls needed to be in the desks. He stated that it was. I asked him how it ended up in his pocket then. He replied that it was on the floor but he didn't know where it came from. Then he repeated again that he didn't steal it. I never accused him of stealing it nor did any staff. While lining up he was still agitated and was pushing his way past another student and continued to yell that he didn't steal it [. . .].
24. On December 20, 2018, the special education teacher emailed the Parent and described the following behavior incident that occurred at school:
[Student] was given multiple warnings to stop yelling at the bus driver as she simply asked him to place the bag at the front. He rudely said 'no' and 'why' to her when she asked politely. I was there for this exchange and she even explained that it was simply so it would be safe for the drive home. He also bumped [another student], began screaming at the bus driver as she helped him buckle in which then sent [the other student] off [. . .]. Fourth, the gifts bought for each student and had them 'buy' them for the shop for each other. [Student] was extremely rude throughout the process and was demanding that certain things be given to him. I came close to not allowing him to participate but I do like him and tried my best to have him involved. Fifth, there were no sides. [Student] has to accept that his behaviors get him in trouble or deny him access to things. He was very very mean to me today. He said he never wanted to see me again. That I was stupid. He wished that winter break was here already because he hated me and that I could just go away, and he would be happy. [. . .] I only confront [Student] with things I personally witness or endure and not word of mouth [. . .] He gets upset when he is caught. I have backed off from confronting him in any aggressive manner or 'in his face.' There is no contact physically

whatsoever. I let him stew a bit and he eventually recover[ed] and figured things out and [was] repentant.

25. On January 15, 2019, the Student received a school bus referral, which stated:

At another student's stop, [Student] got out of his seat to retrieve a Lego that he dropped. [H]e then threw it into his backpack so hard that it bounced out and hit the mother of student we were picking up. I moved him to a front seat and took his backpack. He continued to kick the metal panel in front of his seat and bang his head on the window. In the [afternoon] [route] home he apologized to the mom. [Special education teacher] contacted [Student's] mother. No toys will be allowed on the bus for him. Phone or tablet only.

A conference was held with the Student on January 15, 2019. The bus driver spoke with the special education teacher on the same date.

26. On January 16, 2019, the special education teacher emailed the Parent his concerns regarding the Student's behavior:

I was speaking to the class about our day and [Student] was blatantly ignoring me and listening to his music. I had prior to this asked for him to put it away. He aggressively yelled back at me that he was listening to his 'favorite song' and needed to finish it. I expressed that I was disappointed that a song was more important than what I had to say. He then slammed his water bottle on his desk and began tilting his desk. He became more agitated and I felt that he was going to throw it or damage the wall again. I called [counselor] and I asked him to put his water bottle and headphones on my desk. We then had him go to the office where he spent most of the morning. He had access to his headphones when he came back. [. . .]

At the end of the day in line [Student] was dancing and disrupting a fellow student who asked him 4 times to please stop bumping into him and yelling into his ear. Both [1:1 paraeducator] and [paraeducator 2] repeatedly asked [Student] to stop. At a certain point the other student yelled at Student to stop and turned around. [Student] then bumped into [student 2] aggressively. [1:1] intervened and spoke to [Student] about what his actions of antagonizing other students can lead to.

[Student] has gone back to wishing he wasn't at school and that I am and the school is stupid. He has continued to be very mean to me in general over the last few weeks. I have tried avoidance, calm voice, tough love, and even just begging him to please understand how his actions impact the other students, let alone myself. His afternoon was great and we can usually recover and have good conversations when he is calm, but his agitated state has gotten pretty mean and nasty. We did attempt to have him involved in the [school activity] but he was far too disruptive of the other students to keep him going. We tried 3 1/2 day/times to make it work as I do think he would enjoy it. But it is a process he needs to be able to follow directions and requests consistently to be able to partake. We also did talk about him bringing toys in. Which this conversation has happened many, many, many times before. His backpack was full of everything I can only assume he could get his hands on this morning. It is a problem and one that we cannot compete with. I have tried every warning I can think of and he won't listen to me. I will keep working on improving his day

and interactions at school. In the grand scheme of things he is still improving both academically and behaviorally.

27. On January 17, 2019, the special education teacher emailed the Parent regarding a new worksheet he developed to deal with actions-consequences typical to the Student that would be reviewed with the Student following behavior escalations so that the Student would have a visual reminder of his actions and consequences in addition to verbal reminders. The Parent responded the same day that she thought it was a "great idea."
28. On January 25, 2019, the Student was restrained using children's control position (single person) by his special education teacher after he "became escalated and began to self-harm." The Student's special education teacher completed an isolation and restraint report form the same date. According to the report, the Student was: "restrained for 5 seconds to stop self harm and then [was] escorted to the [school] Gym to de-escalate." The report provided the following timeline of events:
- 9:30 am – restraint started
 - 9:31 am – restraint ended
 - 9:50 am – Parent was notified about use of restraint by special education teacher
 - 10:00 am – special education teacher reviewed the incident with Parent and Student
 - 10:00 am – special education teacher reviewed incident with staff and decided no additional training was needed⁸

The special education teacher signed the report. The report stated it was sent home the same day. The report indicated that no injuries occurred and that no medical attention was provided.

29. On February 1, 2019, at 3:19 pm, the special education teacher emailed the Parent regarding the Student's behaviors that day.
- It started on the bus when he and [another student] were watching a video and were using vulgar language. I have asked the bus driver to keep them separate but somehow they keep talking her into it. He was upset that he got caught and continued while they were in line going in this morning. Defiant, arguing and kicking and throwing things (bark, dirt, etc.). When we got inside he continued to escalate and threw a chair and was yelling, cursing in the cafeteria. [1:1 paraeducator], [staff 1] and [counselor] all tried to calm him. He did strike his head against a door. He was fine and stated so afterward. His day did improve but he was on edge most of day. Towards the end of the day we watched [movie] and he was disruptive and rude throughout. When we cashed out he destroyed a book, used vulgar language towards me multiple times. He refused his purchase and stated he didn't care and 'cash out was stupid.' He called me stupid, called school stupid and overall was rude to everyone in the room. This was a rough week for him overall. I am concerned about the growing self-harm tendencies. I would like for him to touch base with [counselor] throughout the week next week. Is there an option for counseling? We will be back at it next week, but he does owe me an apology.

⁸ During an interview with the special education teacher on April 17, 2019, the special education teacher clarified that he reviewed the incident with his team, which consisted of himself and his three classroom paraeducators, including the Student's 1:1 paraeducator.

30. A restraint and isolation report was attached to the February 1, 2019 email to the Parent. A copy of the report was not found among the other restraint and isolation reports maintained by the District for this Student and submitted in response to this complaint. The Parent reported that she did not receive a copy by mail and that she did not receive any verbal notification of the restraint. She additionally reported that she did not open the attachment because she thought it was a draft IEP, because the subject line for the February 1 email was "draft IEP" and the email did not mention the use of restraint. Accordingly, the Parent reported that she was not aware of the February 1, 2019 restraint.

31. The restraint report attached to the February 1, 2019 email stated the Student was restrained by his 1:1 paraprofessional in children's control position (single person) for the following behavior:

[Student] became escalated while in the cafeteria and began to self-harm. He expressed being 'caught' using vulgar language on the bus ride in and this was a possible reason for the behavior. Multiple attempts were made to de-escalate but [Student] began to put other students in the cafeteria in danger and then began to hit himself and attempt to hit his head on a door.

The report provided the following timeline of events:

- 8:23 am – restraint begin
- 8:35 am – restraint ended
- 9:00 am – special education teacher reviewed the incident with his team
- 11:00 am – Parent was contacted by the special education teacher
- 11:00 am – special education teacher reviewed incident with Parent and Student

The report stated that the Student was able to recover and re-enter the classroom in 20 minutes and that no other action was necessary. The report indicated the team was debriefed the same day and a report was also emailed to the Parent the same day.

32. During OSPI's on-site visit, OSPI interviewed the principal, special education teacher, and paraeducator regarding the incident that occurred on February 1, 2019. All three staff confirmed that a restraint occurred as described on the restraint and isolation report attached to the email sent to the Parent on February 1, 2019. During the interview with the principal, the principal stated he could not recall whether the Student received medical attention. He also said he was not sure if a school nurse was on site that day. He explained that a school nurse may not always be on site and that if a nurse was not on site when a student injured their head, he would have kept the Student in his office and monitored the Student for signs of injury for the next few minutes to determine if medical attention was necessary. He said if the Student had been injured, a letter would have been sent home to the Parent. OSPI followed up with the Parent, who said she did not receive notification from the school regarding any injuries from February 1, 2019.

33. On February 11, 2019, the special education teacher emailed the Parent concerns regarding the Student's behavior on the bus that day. As part of the email, the special education teacher noted that "[Student] is very close to being dismissed from the bus. He has been destructive

and damaged the bus multiple times. I have asked the bus driver to give him many chances but they are wearing out.”

34. Also on February 11, 2019, the Parent responded and asked why she was “just hearing about destruction on the bus.” Regarding behaviors in the classroom, she told the special education teacher that she would “like to make a chart of options for him to do when he is angry,” and asked if he “had suggestions of things [the Student] could utilize in the room.” The special education teacher responded that he “did get a draft of the form we talked about for his desk,” and that he “[would] try to roll it out tomorrow.”

35. On February 21, 2019, around 2:30 pm, the special education teacher emailed a behavior referral that stated the following:⁹

Student became agitated – tipped over desk and chair – staff members tried to de-escalate – he kicked one – physically postured to throw a punch at two different staff, asked to leave classroom in hallway, hit his head, held breath. Called people stupid. We escorted him to office. (Out of school on 2/22/19). This verbal and physical threats [have] been ongoing.

36. Also on February 21, 2019, an isolation and restraint report was completed in response to the above behavior incident. The Student’s special education teacher filled out the form and listed the special education teacher and Student’s 1:1 paraeducator as the individuals involved. It stated the following:

[Student] began to tip desk and kick staff. Once staff body blocked he made a threatening posture and faked punch[ed] both [1:1 paraeducator 1]/[paraeducator 2]. At that point, he was asked to leave the room. In the hall he began to self-harm which required a restraint to escort student to safe area and halt the self harm.

⁹ In its response, the District acknowledged that the Student’s escalation was “triggered when one teacher told the Student he could not use his iPad.” The District’s response included the following summary of what occurred next, which was not included in either the original or revised isolation and restraint reports:

A short time later, a different teacher allowed the Student to use his iPad, but then one of the teachers took away his iPad because the Student was using it inappropriately. Taking away the iPad was a trigger for the Student. After that the Student became escalated. After the Student became escalated, the school team followed the Student’s behavior intervention plan regarding proximity. In the past, the approach successfully de-escalated the Student. On February 21st, the Student continued to escalate. The school counselor was in the classroom and suggested the Student go to her office to calm down. Going to the counselor’s office was a strategy that also worked previously. The Student was asked to leave the classroom to go to the counselor’s office. The Student ran to the door and began self-injurious behavior. In the hall, the Student dropped to the floor and began to bang his head. School staff considered this dangerous, self-injurious behavior. School staff offered the Student a hand to continue walking. The student stood up and staff proceeded with a two (2) person escort to the counselor’s office, which was only a short distance away. School staff wanted to ensure the Student’s safety, prior to other students entering the hallway at the end of the school day. The Student remained calm once inside the counselor’s office. The two (2) person escort is an agreed approach written in the Student’s emergency response protocol (ERP).

The transport position (two person) restraint was listed as the type of restraint used. No injuries were reported, and no medical attention was provided. The report provided the following timeline of events for what occurred on February 21, 2018:

- 2:45 pm – restraint began
- 2:46 pm – restraint ended
- 3:00 pm – Parent contacted by the principal and special education teacher
- 3:00 pm – incident reviewed with Parent and Student
- 3:00 pm – principal made recommendation to address the behavior that led to the restraint developed (comment: Student has history of self harm) / reviewed with staff member

The report indicated that no additional training was needed and that the team was debriefed, and a report was sent home on February 21, 2019. The report was signed by the special education teacher, 1:1 paraeducator, and the principal.

37. The District's response included a revised incident and restraint report for February 21, 2019.¹⁰ The report was dated February 22, 2019. It contains the same description of the activity that led to the restraint as the original report, but provides a revised timeline for what occurred following the restraint.

According to the revised report, the following events took place on February 21, 2019, following the restraint of the Student:

- 2:30 pm – Phone message home by principal¹¹
- In person Parent contact by principal to "explain incidents that led to the 1-day suspension. [Principal] let Parent know that since it was at the end of the day, more investigating would [occur] next day."
- "[General education teacher and school counselor] informed Parent that a 2-person escort occurred.

The revised report indicated the following events took place on February 22, 2019:

- 7:30 am – Principal made recommendation to address the behavior that led to the restraint developed (comment: Student has history of self harm) / reviewed with staff member
- 2:20 pm – Incident was reviewed with Parent and Student; "Parent was informed by email from [principal] that a 2-person escort was used during the escalation."

The revised report confirmed no additional training was needed and stated a report was sent home to the Parent on February 22, 2019. The team was debriefed on February 25, 2019. The revised report was signed by the special education teacher, 1:1 paraeducator, paraeducator 2, and the principal.

¹⁰ An IEP meeting was held on March 13, 2019, during which the incident report was reviewed for the restraint that occurred on February 21, 2019. The District agreed that the original report was inaccurate and agreed to amend the report.

¹¹ OSPI notes that the time of the phone message home by the principal and the time of the contact of the Parent were documented to have occurred prior to the time of the restraint, which would have been impossible.

38. In her reply, the Parent expressed concern that the District continued to discipline the Student for behaviors related to his disability and suggested that staff were not taking into consideration the Student's perspective. The Parent provided OSPI with the Student's account of the events leading up to the use of restraint on February 21, 2019. The Student's account included confusion over staff member's verbal instructions.
39. In her reply, the Parent additionally asserted that proper procedures related to the use of restraint were not followed on February 21, 2019. She stated that she was not verbally notified of the restraint within 24 hours because the District initially told her only that the Student was "escorted," and did not use the word "restraint" until 2:20 pm the following day.
40. The Parent further stated in her reply that she believed the Student's behaviors on February 21, 2019—as described by the District—did not pose risk of "imminent serious harm" to the Student nor to others. In particular, the Parent stated her understanding that "the restraint started after the behavior was over as indicated by the teacher stating he offered [Student] his hand to get up off the floor," and by "the principal [who stated] that [Student] was 'walking on his own' and the escort 'was only for guiding his direction.'"
41. The Parent also expressed concern that no medical attention was provided on February 21, 2019, even though the Student reported that he expressed that he was hurt. The Parent wrote the following in her reply:
- [The Student] states that twice during restraint he told [District staff] they were hurting him and that he told [counselor] that his arm was twisted and hurt. However, he was dismissed and told it didn't happen. I was told it didn't happen. On the report, they said no injuries occurred. But really, how do you know whether or not it did happen when you didn't bother to check[?]
42. On March 13, 2019, a meeting was held at the request of the Parent to review the incident that occurred on February 21, 2019. The meeting was attended by the Parent, the special education teacher, the principal, and the director of special education. The Parent recorded this meeting and provided a copy to OSPI. The copy of the recording was additionally reviewed by the director of special education. In the recording, the special education teacher described the events that occurred once the Student became escalated on February 21, 2019. He described the Student banging his head on the floor and engaging in self-injurious behaviors, and offering the Student the opportunity to take a break in the counselor's office. It appeared from the recording that the Student was able to stand and walk on his own at the time the two-person escort was initiated and that the Student was no longer resisting the escort by the time the Student and staff reached the copy room.
43. On April 17, 2019, OSPI conducted an on-site visit of the Student's classroom during snack time, reading, and the transition time between the two. During the observation, the 1:1 paraeducator led a group reading activity. The special education teacher and paraeducators 1 and 2 were observed providing prompts to the Student to stay on task and helping to facilitate the reading activity while providing various support to other students who were at different stations. The Student was observed actively participating in his station activity. He did not

exhibit any inappropriate behaviors during the observation. A large visual schedule was displayed on a chalkboard containing the Student's schedule for the day. The Student also had his schedule taped to his desk, along with his "When I am angry I can do" chart. The Student's desk was at the front of the classroom and it had his headphones on it, available for his use should he need them.

During the April 17, 2019 site visit, OSPI interviewed the general education teacher, special education teacher, 1:1 paraeducator, and the school principal. The District special education teacher sat in on and participated in the interviews.

The general education teacher provided OSPI with the following information:

- The special education teacher has access to the same general education curriculum bank as the general education teachers, which the special education teacher may use to access general education curriculum for the Student. The general education teacher consults with the special education teacher on his provision of general education math curriculum to the Student, as needed.
- The general education teacher's fifth-grade math students are currently working on finishing a unit on multiplying and dividing fractions.
- The Student had been invited to visit the general education classroom five or six times during the 2018-2019 school year during morning meeting time and math. Prior to each student's visit to the general education classroom, the special education teacher had spoken with first the general education teacher and the Student's 1:1 paraeducator. Each time the Student visited the general education classroom, the Student exhibited inappropriate behaviors (usually the making of inappropriate comments about other students' disabilities or using inappropriate language) and the Student was asked to leave, or the Student expressed to an adult staff member that he felt overwhelmed and requested to go back to the special education classroom.
- The general education teacher confirmed that the Student was not in physical education (PE) or library with other general education students because all of the students in the Student's PE and library classes have IEPs.

The special education teacher provided OSPI with the following information during his interview:

- The Student receives 30 minutes of math instruction a day in his self-contained classroom in group setting. One of three paraeducators provides additional adult support as necessary.
- The special education teacher did not believe the Student required specially designed instruction in math.
- The Student is currently receiving math instruction at the second-grade level in his self-contained classroom. The special education teacher reported that the Student's math group is working on multiplication, and that division "is little tricky" for most in the Student's group.
- The special education teacher wasn't aware that the Student's most recent evaluations showed the Student's performance in math to be average.
- Determinations regarding whether a student visits the general education classroom are made on a case by case basis by the special education teacher, who consults first with his team of

paraeducators and then with the student. The special education teacher stated that once a student has, in his opinion, consistently demonstrated good behavior for a certain number of days (usually somewhere between one week to twenty days), he will generally consult with his team and then the student to see if the student is interested in going to visit the general education classroom. If the student states he is interested, the special education teacher will consult with the general education teacher and then notify the parent.

- On at least one occasion, the Student was offered the opportunity by the special education teacher to visit the general education classroom but chose not to go.
- There currently is no plan to encourage the Student to self-select general education time when offered or to consider less-restrictive settings for the Student.
- The special education teacher meets daily with his team of three paraeducators to discuss the Student's behavior, including daily behavior charts kept by the special education teacher and paraeducators. These daily meetings often include conversations related to visits to the general education classroom when available but do not include discussions about strategies to encourage the Student to attend general education classes if the Student decides not to go. The special education teacher confirmed that the meetings are informal, and while the Student's behavior charts discussed, the Student's BIP is not reviewed.
- The special education teacher was present for the development of the BIP but could not recall the last time he looked at the BIP. When asked what strategies were listed on the Student's BIP for use when the Student exhibits a target behavior or becomes escalated, the special education teacher was able to identify use of a break but did not state reduction of verbal commands or ignoring of behavior—two main strategies provided on the BIP.
- Regarding the restraint on January 25, 2019, the special education teacher confirmed that the restraint occurred according to the restraint report, which stated the Student began to self-harm and was restrained for five seconds to stop the self-harm. The teacher additionally clarified that he reviewed the incident with his team, including the paraeducators, not with himself.
- The special education teacher confirmed that he remembered filing out the restraint form dated February 1, 2019. He said the Student was restrained to stop the Student from continuing to hit his head and that he had already hit his head on a door and was continuing to self-injure. The special education teacher said he reviewed the incident with the 1:1 paraeducator.
- Regarding the restraint performed on February 21, 2019, the special education teacher confirmed the Student had been engaging in self-harming behaviors prior to the restraint but that the Student was able to walk on his own when the escort began. He explained that he had been taught during CPI training in another state that an escort was not considered a restraint if the person was not struggling or resisting the physical assistance.
- The special education teacher explained that the original restraint report form, dated February 21, 2019, contained the incorrect time for when the Parent was notified because the teacher assumed the Parent would be called at the end of the day by the principal, and therefore, the teacher put "3:00" as the notification time. The special education teacher stated during the interview that he understood why the confusion occurred and confirmed that the details on the revised restraint report were correct.
- The special education teacher further confirmed that no medical attention was sought for the Student following any of the restraints.

The 1:1 paraeducator provided OSPI with the following information during his interview:

- The 1:1 paraeducator confirmed the special education teacher's explanation regarding how the Student's general education time is determined. He stated the Student has expressed interest in visiting the general education setting but reported upon entering a general education setting, the Student typically demonstrates anxiety, low tolerance, and often asks to leave or exhibits a disruptive behavior and is asked to leave. He stated the Student has reported to him that did not feel comfortable or stated that he was anxious.
- The 1:1 paraeducator told OSPI the Student is behind the general education students academically and that the Student quickly picks up on this in the general education setting. Additionally, the paraeducator told OSPI that the Student processes information more slowly than his general education peers and requires almost all instructions repeated to him individually when he is in a general education setting. He opined that the Student may be avoiding the general education setting because the special education setting is more comfortable and allows him to feel successful with less effort.
- The paraeducator said he did not believe he was intended to be used as a dedicated 1:1 paraeducator. He explained that when he is with the Student in the general education setting, he provides the Student with intensive individual 1:1 behavior and academic support, but that in the special education setting, he is utilized mostly in response to the Student's behaviors while also supporting other students.
- The paraeducator described several strategies used when the Student's behavior escalates, including counting down, giving the Student space, providing an alternative activity, prompting the Student to use the list on his desk of strategies for when he is frustrated, offering a break, and providing a preferred adult. The paraeducator stated that when the Student is escalated, he can become physically aggressive, will engage in self-injurious behaviors and that "every time can be a different strategy" behaviorally.
- The paraeducator confirmed that he meets daily with the special education teacher and other paraeducators to review the Student's behavior, but also stated they do not usually review the Student's BIP. The paraeducator discussed use of the behavior tracking sheets.
- When asked what strategies were listed in the BIP, the paraeducator did not mention ignoring the behavior or reduction of verbal prompts.
- When walking through what steps should occur when a restraint occurs, the paraeducator stated he always watches the time. He stated that he felt confident the time listed on the restraint reports was correct.

44. Also on April 17, 2019, the director of special education completed an investigation into the restraint that occurred on February 21, 2019, that concluded the staff appropriately filled out an isolation/restraint report but determined the restraint was improper because the "imminent danger" had subsided by the time the restraint commenced. The investigation also determined that the original letter notifying the Parent reached the Parent a week later than intended because it was sent by mail rather than email.

As a result of the director of special education's findings, the director of special education proposed the following corrective actions at the program level:

1. The team in the structured learning classroom (SLC) will undergo a CPI refresher which will include direct instruction on what constitutes "imminent danger."

2. The Student's Behavior Intervention Plan will be revised with input from the District's Board Certified Behavior Analyst, which is scheduled to be completed prior to the District's scheduled meeting with the Parent in May.
3. The SLC at [elementary school] will use one clinical session per month to review CPI, both practicing holds for safety and investigating when to restrain and when not to restrain.
4. The student has a history of hitting his head, which occurred during this incident. Staff have been instructed to complete a head injury form and to follow the procedure if the student's behavior warrants it.

As a result of the director of special education's findings, the director of special education proposed the following corrective actions at the District level:

1. A Program Supervisor with OSPI¹² will provide two four-hour trainings for District's self-contained special education staff on August 19 and 20, 2019 to focus on the reduction of restraints. Building administrators will be invited to the training as well. All SLC programs will use one clinical session per month to review CPI, both practicing holds for safety and investigating when to restrain and not to restrain.
2. CPI training will include fidelity checks on those staff who pass their certification throughout the district in the first two months following a training.
3. Every isolation/restraint form completed in the District will be reviewed by the school's Special Services Manager (this began at the start of the 2018-19 school year). If there are issues with the form, it will be sent back for clarification. If there are concerns about the restraint and/or isolation, the situation will be investigated. If there are findings with the investigation, progressive discipline will be followed.

CONCLUSIONS

Issue 1: IEP Development and Implementation – The first issue is whether the District followed procedures for developing and implementing the Student's individualized education program (IEP), including: paraeducator support, related services, and functional behavioral assessments (FBA)/behavior intervention plans (BIPs), from March 30, 2018 through February 18, 2019.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, including accommodations, related services, and specially designed instruction, consistent with the student's needs as described in that IEP, and to the maximum extent appropriate, in the general education environment with students who are nondisabled.

Special classes, separate schooling, or other removal of students eligible for special education from the general education environment only occurs if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services, and use of behavior supports, such as an FBA/BIP, cannot be achieved satisfactorily. A student's IEP team has the responsibility to determine the student's least restrictive environment (LRE). A student should not be removed from his or her age-appropriate general education

¹² As identified in an email to the Assistant Superintendent, dated April 22, 2019.

classroom solely because of needed modifications in the general education curriculum or need for supplementary aids and services—including use of a 1:1 paraeducator—to access the general education setting. Districts must ensure that students eligible for special education participate in nonacademic and extracurricular services and activities to the maximum extent appropriate to the needs of each student. Less restrictive placements always have to be considered, but they do not always have to be tried. As a rule, when there is uncertainty about the appropriate placement for a student, a district should make a diligent effort to educate the student in a less restrictive environment before proposing a more restrictive one.

Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

Paraeducator Support and Least Restrictive Environment: In her complaint, the Parent alleged that the District did not provide the Student with dedicated 1:1 paraeducator support, which she believed the Student's IEP required. The Parent alleged the paraeducator was mostly utilized as a shared paraeducator who had provided additional adult support to several students in the Student's classroom and who would provide 1:1 support in response to the Student only after the Student's behavior had already escalated. The Parent alleged that because the Student was denied dedicated 1:1 paraeducator support as indicated by his IEP, the District overly relied on the use of punitive and reactive disciplinary practices, including suspensions, and that the Student had been suspended for disability-related behaviors that could have been prevented had a dedicated 1:1 paraeducator been used to implement preventative and positive behavior interventions. The Parent additionally stated that because the Student's paraeducator was not being utilized as a dedicated 1:1 support, the Student was being denied access to the general education setting at a greater frequency than would otherwise be necessary and was therefore not in his least restrictive environment.

In its response, the District stated that the "Student is not assigned a dedicated [1:1] paraeducator throughout the school day," and that "[t]he IEP team, of which the Parent was a participant, did not require a dedicated one-on-one for this Student to receive an educational benefit." The Student's IEP provided the Student the following as a related service: "additional adult support to be provided by a paraeducator, in the special education setting, 1 x weekly for 1,900 minutes."

The service matrix of the Student's March 2018 IEP lists "adult support" to be provided by a "paraeducator." It accordingly did not specify "1:1 paraeducator;" however, language throughout the Student's IEP almost exclusively refers to the Student's need for a "1:1 paraeducator." Thus, while the service matrix does not specify "1:1 paraeducator," the Student's IEP and related documents, as a whole, do. For example:

- The March 2018 IEP states "[a] 1:1 paraeducator is needed at all time when [Student] is in the general education setting to facilitate instructions given by general education teachers," and that the "[Student] has behavior needs. A 1:1 paraeducator is required to help [Student] from becoming aggressive towards self and/or others, and to maintain student and safety if aggression occurs."
- On the Student's emergency response plan, the Student's "1:1 paraeducator" is listed as one of the individuals who is permitted to utilize isolation and restraint.

- In her reply, the Parent provided additional documentation to show that the District applied for safety net funding for a “1:1 paraeducator” for the Student for the 2018-2019 school year.
- Interviews with staff during the April 17, 2019 site visit additionally highlighted the Student’s reliance on his paraeducator as a dedicated 1:1 support to be able to access the general education setting.

The adult support provided by a paraeducator listed on the Student’s IEP is accordingly interpreted by OSPI to mean dedicated “1:1 paraeducator” support. OSPI does not interpret dedicated or 1:1 to mean the support has to be provided by the same individual throughout the school day, but instead that a single dedicated person is supporting a student as specified in an IEP (although this could be a different person throughout the day as long as the student to staff ratio remains 1:1). Here, the Student’s IEP and supporting documents indicate that he is intended to have a paraeducator dedicated to supporting his needs—which may include, but are not limited to—providing behavior support, accessing his least restrictive environment, and ensuring he is making progress—at all times throughout the school day. This is in contrast to “additional adult support” provided by a paraeducator—with no specific student to staff ratio—which may allow for one paraeducator to be assigned to multiple students at one time. OSPI acknowledges the service matrix of the Student’s IEP did not indicate 1:1 paraeducator support; however, nearly every other document provided to OSPI included the language “1:1 paraeducator” and the District requested reimbursement for a 1:1 paraeducator from OSPI for the time period in question. In addition, interviews with District staff made clear to OSPI that the Student was unable to access the general education setting without a dedicated 1:1 paraeducator.

In its response, the District conceded that the student to staff ratio has been three (3) paraeducators, two (2) teachers, and fourteen (14) students. The District therefore failed to implement the paraeducator as a 1:1 support as required by the current IEP, and is in violation. The District will be required to have an IEP meeting at which the IEP team will be required to discuss how to revise the Student’s IEP to reflect the 1:1 paraeducator support the Student should have been receiving. The IEP team will also be required to discuss in what settings the 1:1 paraeducator is required in and for how much time, how close in proximity the paraeducator needs to be to the Student (e.g., line of sight, attached at the hip), and whether additional adult support is needed on the Student’s IEP in addition to 1:1 paraeducator support.

Additionally, when developing and implementing the Student’s IEP, the District did not consider what the Student’s least restrictive environment was or how the use of supplementary aids and services—such as 1:1 paraeducator support—could help the Student access a less restrictive environment.

Documents provided with the District’s response showed that opportunities listed on the Student’s IEP where the Student was supposed to be accessing the general education setting—including, at minimum, for physical education (PE) and library time—were regularly being provided to the Student in a special education setting instead. In its response, the District stated the Student’s IEP provided the Student with “access” to PE and library in the general education setting “when the Student’s behaviors and frustration levels allowed.” Further investigation revealed the Student had been “invited” to visit the general education setting less than five times

during the 2018-2019 school year. The District's response further stated that the Student's behaviors and choice, on multiple occasions, not to attend the general education setting, had resulted in the Student remaining in a special education setting. In addition to providing the Student access to the general education setting for PE and library, the Student's IEP stated that the Student required 1:1 paraeducator support in all general education settings. Thus, in order for the Student to truly have had access to the general education setting for PE and library as indicated in his IEP, it would have been necessary for 1:1 paraeducator support to have been designated by the District to the Student during the time of week when general education PE and library occurred. The documents provided with the District's response and interviews with staff during an onsite visit showed that this did not occur. Instead, 1:1 paraeducator support was arranged for the Student only after the Student had "earned" his general education time following demonstration of consistent behavior for a specified amount of time determined by the special education teacher, and after the Student had agreed to visit the general education setting when asked. Otherwise, the paraeducator was a shared paraeducator. Furthermore, because the paraeducator was being used by the District as shared adult support for 14 students, the Student's access to the general education setting for PE and library was also dependent upon the availability of the paraeducator support and dependent upon the needs of the other students in the Student's class, instead of on the needs of the Student as provided in his IEP. During interviews with OSPI, staff stated that the longer the Student remained out of the general education setting, the more the Student self-selected to remain in the special education setting.

Thus, OSPI concluded that had the District been providing the Student with the 1:1 paraeducator support, as stated in his IEP, the Student likely could have accessed the general education setting more often from March 30, 2018 through February 28, 2019—at least for PE and library, as indicated in his IEP. By not providing the 1:1 paraeducator support, the District is in violation of the IDEA's requirements regarding its obligation to both consider and ensure it is providing services in a student's least restrictive environment. Accordingly, the IEP team will be required to have a discussion at the IEP meeting regarding what is the Student's least restrictive environment and to include documentation of these considerations in the Student's IEP. The IEP team will then consider whether development of a plan for the Student to increase his time in the general education setting is appropriate, and if so, how the Student's 1:1 paraeducator and any other supports and services or revision of the Student's behavior plan will be utilized to assist with any increase in general education time.

IEP Accommodations: The Parent alleged that the District did not provide the Student with the accommodations in his IEP. Accommodations must be provided according to a student's IEP. Accommodations do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; rather, they provide equal access to learning and an equal opportunity to demonstrate what was learned.

A site visit was made to the Student's classroom on April 17, 2019, to determine whether the accommodations in the Student's IEP were being implemented, including the use of a visual schedule, headphones, heavy breaks built into the Student's day, extra breaks when frustration level escalates, information presented visually, a visual schedule, and reminders to stay on task.

During the site visit, the following accommodations were observed: a visual schedule, heavy breaks built into the Student's day, headphones provided to the Student, information presented visually, and reminders to stay on task. The Student has a list of visual reminders for what he can do when he gets frustrated ("When I am angry I can do"), which includes the option of taking a break. The Student's IEP was implemented regarding accommodations. No violation is found.

Speech (SDI) and Occupational Therapy: The Parent originally alleged that the District did not provide the Student with the related services in his IEP. Related services are services required to assist a student who is eligible for special education services to benefit from special education. Related services may include the provision of speech-language pathology and occupational therapy services. A school district is generally responsible for making alternative arrangements to provide the services set out in a student's IEP when other school-related activities make either the student or the service provider unavailable during the time the service is regularly scheduled. However, it is not obligated to do so when the student is unavailable for other reasons, as during absences from school. See Letter to Balkman, OSEP, 23 IDELR 646, April 10, 1995).

Here, the Student's IEP provided the Student with occupational therapy consultation services once a year for 90 minutes as a related service. The Student's IEP also provided the Student with communication (speech/language). However, the speech services the Student's IEP provided were not provided as a related service, but rather as specially designed instruction (SDI) in communication, to be provided by a speech-language pathologist for 30 minutes twice a week. OSPI investigated the issue of whether the Student received both occupational therapy as a related service and speech and language/communication as SDI.

Regarding the occupational therapy consultation as a related service, the Student's IEP requires the District to complete one 90-minute consultation before the end of the school year. The District has not yet completed the consultation, but is not found to be out of compliance because it still has time to complete the consultation before the end of the school year. No violation is found.

Regarding the speech/communication SDI, the service logs included with the District's response indicated that from September 14, 2018 through February 28, 2019, the Student was not provided instruction on five (5) days, or did not receive 150 minutes (2.5 hours) of instruction due to there being an assembly or field trip scheduled at the same time as scheduled instruction, a teacher having requested instruction not be provided, or due to the provider being absent. On five (5) days, the Student was absent. The District has not indicated any plans to make up the instruction and the provider logs did not show any effort to reschedule or make up missed SDI on days where a scheduling conflict resulted in the Student not receiving SDI.

The District is reminded that it is required to provide the Student with the SDI indicated in the Student's IEP, regardless of whether regularly scheduled SDI falls during the provision of another activity or when the provider may be absent. If this happens, the District needs to reschedule the Student's SDI or find another provider, not cancel the provision of the SDI.

The District will be required to provide compensatory specially designed instruction to the Student for the SDI in speech/communication that was not provided during the 2018-2019 school year as

a result of other school related activities making the Student or service provider otherwise unavailable. Additionally, the director of special education will be required to provide written guidance to District service providers on the requirement of making up scheduled specially designed instruction and services that are missed due to the reasons described above.

Implementation of FBA/BIP: The next issue is that the Parent alleged the District did not implement the Student's BIP from March 30, 2018 through February 28, 2019. When considering special factors unique to a student whose behavior impedes the learning of a student with a disability and/or the learning of others, the IEP team must consider the use of positive behavior interventions and supports, as well as other strategies, to address the student's behaviors. An FBA focuses on identifying the function or purpose behind a child's behavior. The results of the FBA help to inform the development of a BIP. A BIP is incorporated into the IEP if it is determined necessary by the IEP team for the student to receive a FAPE. Part of the analysis for whether an IEP has been implemented is the determination of whether the BIP has been followed regarding implementation of proactive positive behavior interventions and regarding responses to interventions following identified target behaviors and/or escalations of behaviors.

To determine whether the Student's FBA/BIP was implemented from March 30, 2018 through February 28, 2019, OSPI reviewed documentation of behavior incidents (including behavior reports, bus incident reports, isolation and restraint reports, and email communications between the Parent and District staff) from the following dates: September 25, 2018, October 10, 2018, October 26, 2018, December 7, 2018, December 20, 2018, January 15, 2019, January 16, 2019, January 26, 2019, February 1, 2019, February 11, 2019, and February 21, 2019. Almost half of the dates included behaviors that occurred while the Student was on the bus (October 10, 2018; October 26, 2018; December 20, 2018; January 15, 2019; February 1, 2019; February 11, 2019). An on-site interview was additionally completed on April 17, 2019, during which the Student was observed and the special education teacher and 1:1 paraeducator were interviewed regarding their understanding of the Student's BIP.

The Student's BIP includes a reinforcement plan that directs staff to use the following *positive behavior interventions*:

- Positive praise and reinforcement of appropriate interactions; and,
- Structured opportunities for social skills building and practice

The documents reviewed showed the Student's program offered built-in opportunities for positive praise, reinforcement of appropriate interactions, and structured opportunities for skill building and practice, and that these opportunities were regularly being implemented by the Student's special education teacher and classroom paraeducators. Positive behavior interventions included use of the "PBIS" class token and shop system, monthly behavior contest system, class-wide discussions about behavior and "size of my problem" discussions, individual discussions about making amends, and discussions about recovery following a behavior. Accordingly, the Student's BIP has been implemented by the special education teacher and paraeducators regarding the use of the positive behavior interventions it requires. No violation regarding the requirement that the District use positive behavior interventions.

If a *targeted undesired behavior* (e.g. screaming, hitting, kicking, throwing furniture, running out the classroom door, and refusal to transition) occurs, the Student's BIP instructs staff to:

- Ignore targeted behaviors as much as possible; and,
- Maintain safety.

In only one of the incidents (December 20, 2018) was a strategy of ignoring the behavior described. In an email to the Parent on December 20, 2018, the special education teacher wrote that he "let [Student] stew a bit and he eventually recovered." During interviews with the special education teacher and 1:1 paraeducator, when asked what strategies were used to address undesirable target behaviors, neither mentioned ignoring the behavior. The paraeducator and special education teacher mentioned providing a preferred activity, switching out a preferred provider, giving space, and several other strategies that may or may not have been successful, but were not included as part of the Student's BIP for addressing targeted undesired behaviors. Documentation from the behavior incidents reviewed showed that some of the strategies described involved talking to the Student directly about his behavior or attempting to discuss the Student's behavior when he was still engaging in a targeted or undesired behavior. This is contrary to what is required in the Student's BIP, which was based on findings in the FBA, which recognizes the Student's limited verbal and processing abilities when upset.

The Student's BIP also includes a *de-escalation plan*, which provides that if target behaviors occur and the student is escalated, staff should:

- Reduce verbal commands;
- Clear students away; and,
- Give choices for a break space.

The documents reviewed and interviews with staff showed that staff were not reducing verbal commands once the Student was becoming escalated. On the contrary, documents showed staff tended to continue to increase verbal commands with the Student and described efforts to verbally converse with the Student about his behaviors and/or what he needed to do. Calling the counselor in to speak with the Student was also commonly observed. In documents reviewed regarding the Student's behaviors once the Student was escalated, the following interventions were described by staff:

- "I spoke to him about how to act like a 5th grader and [about] responsibility"
- "I have tried avoidance, calm voice, tough love, and even just begging him to please understand how his actions impact the other students, let alone myself. But it is a process he needs to be able to follow directions and requests consistently to be able to partake [. . .]"
- "I have tried every warning I can think of and he won't listen to me."

Interviews with the special education teacher and paraeducator showed the special education teacher and staff met daily to discuss the Student and his behaviors, and that the staff kept daily behavior tracking logs on the Student's behaviors. However, the information on the behavior tracking sheets did not reflect the behaviors or the interventions mentioned in the Student's BIP. Additionally, interviews with staff showed there was some confusion over what behavior interventions were part of the Student's BIP and what informal interventions were commonly being used with the Student.

The District is also in violation of the BIP's requirement that data be collected on the BIP weekly. The District is reminded that data collection on behavior tracking sheets is not the same as data collection on the BIP, as the interventions on the Student's BIP are different than the strategies and items listed on the behavior tracking sheets used for all students in the class.

The District has proposed to have its Board Certified Behavior Analyst (BCBA) review and revise the Student's BIP in response to a restraint of the Student that occurred on February 21, 2019. OSPI is adopting the District's proposal because it addresses the violations found here. In addition, at the required IEP meeting, the IEP team will be required to review the revised BIP and who is responsible for collecting data on the BIP.

Issue 2: Use of restraints – The second issue is whether the District used restraint and/or isolation consistent with the requirements of WAC 392-172A-02110 from March 30, 2018 through February 28, 2019. The Parent alleged that the Student was inappropriately restrained on January 25, 2019 and February 21, 2019. While completing the investigation, OSPI discovered an unsigned report from a February 1, 2019 restraint incident, of which the Parent said she was not aware occurred.

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

Incident 1: January 25, 2019 – On January 25, 2019, a child's control position was used for five seconds by the Student's special education teacher to stop the Student from imminent self-harming behavior (hitting his head). The use of restraint for five seconds to stop the Student from engaging in self-harm behavior was initially appropriate because the likelihood of serious harm was imminent considering the Student was currently hitting his head. Interviews with staff confirmed that there was concern the Student could cause more serious injury if staff did not restrain the Student to prevent the Student from continuing to hit his head. However, according to the restraint report, the Student's self-harming behaviors ceased within five seconds of starting the restraint. Once the self-harming behaviors ceased, the harm was no longer imminent. According to the restraint report, once the Student's self-injurious behaviors ceased, the Student was escorted to the gym. This escort was performed in violation of WAC 392-172A-01092. Unlike the first restraint where the Student was actively engaging in self-injurious behaviors, there was no imminent likelihood of serious harm at the point the escort commenced and accordingly a restraint was not necessary at that point.

The restraint report shows that follow-up included reviewing the incident with the Student and the Parent, reviewing the incident with staff and building administrator as soon as possible, and

submitting a written report within two business days to the District office. Reporting procedures were followed. However, because the District was out of compliance for using an escort when there was no longer an "imminent likelihood of serious harm" as defined in RCW 70.96B.010, training will be required on what constitutes imminent likelihood of serious harm and what constitutes a restraint under WAC 392-172A-02110.

Incident 2: February 1, 2019 – On February 1, 2019, the Student was restrained and the special education teacher emailed a restraint report to the parent as an attachment to an email with the subject line "Draft IEP." The Parent said she never opened it because she didn't know it was a restraint report and the email that included the attachment did not mention the Student had been restrained, although it described the behaviors leading up to the restraint. The restraint report was not signed. It further was not clear if a building administrator or building administrator designee was notified. The written restraint report was also not clear regarding when the restraint began and ended, and as such, did not make clear whether there was an imminent likelihood of serious harm, necessitating the use of the restraint throughout the entire duration of the time reported. Interviews with the special education teacher and 1:1 paraeducator, did, however, clarify that the restraint was performed to get the Student to stop hitting his own head and that the Student had already hit his head against a door at the time he was restrained. It accordingly appeared that initial restraint was appropriately initiated. However, because the District violated follow-up and reporting procedures, OSPI will be requiring District staff complete training on restraint follow-up and reporting requirements.

Incident 3: February 21, 2019 – On February 21, 2019, the Student was restrained. The District investigated the restraint and determined that while staff appropriately filled out an isolation/restraint form, the Student should not have been restrained because there was no likelihood of imminent harm at the time the restraint occurred. OSPI agrees with the District's conclusion. Although the Student was engaging in self-injurious behaviors prior to the restraint, at the time the restraint occurred, the Student was able to walk on his own and was no longer engaging in self-injurious behaviors. Accordingly, the restraint should not have occurred. However, because an escort was performed on the Student and because an escort is a restraint, District staff were correct in filling out a restraint form. A written report was submitted to the District within two days, but according to the District's investigation, the written report sent to the Parent took over a week to get arrive because it was "put in general mail." Accordingly, the District was in violation of the written reporting requirements under RCW 28A.600.485, which requires the written report to be provided to be postmarked to the Parents within five days, which did not occur. Additional inconsistencies in the verbal reporting of the incident to the Parent were raised by the Parent but were addressed at an IEP meeting on March 13, 2019, and incorporated into a revised incident report. OSPI acknowledges the District's efforts to remedy the Parent's concerns by filing a revised restraint report but finds the initial restraint and follow-up to be in violation and agrees with the District's recommendation that there be training at the program and District level as well as fidelity checks on individuals who have received training to make sure staff's understanding of what constitutes a "restraint" and "imminent harm" is in line with State regulations and procedures.

In each of the above incidents, restraint was used in response to the Student's self-injurious behaviors (usually head-banging). However, each of the restraint reports also stated that no one was injured, and that no medical attention was provided. Interviews with the school principal said that this is because the District does not have a school nurse employed full time at the school. However, if the Student is being restrained because of head-banging or other self-injurious behaviors, these injuries should be reported on the restraint form and staff should be following District procedures to assess students for injuries and to notify parents of potential injuries. OSPI's interview with staff revealed that staff were unsure regarding what procedures—if any—were in place to respond to injuries (reported by the Student or suspected) that may occur as a result of physical intervention. As a result of its findings following the investigation into the restraint that occurred on February 21, 2019, the District has instructed staff to complete a head injury form and follow the procedure if the Student's behavior warrants it.

While OSPI acknowledges that is a good first step, OSPI strongly recommends that the District develop a clear policy for responding to possible injuries, including but not limited to head injuries, and for notifying parents of any possible injuries, that may occur during the use of physical interventions, and that District notify staff of these policies.

CORRECTIVE ACTIONS

By or before **May 10, 2019, May 17, 2019, May 24, 2019, June 14, 2019, August 23, 2019, and August 30, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Revision of Student's Behavioral Intervention Plan (BIP): In response to its finding that the Student was inappropriately restrained on February 21, 2019, the District proposed the Student's BIP be revised with input from the District's Board Certified Behavior Analyst (BCBA) prior to the Student's scheduled May 2019 annual IEP meeting. In light of the District's finding on February 21, 2019 and other findings that the Student's BIP was not implemented when the Student exhibited a targeted behavior or was escalated, OSPI accepts the District's proposal which addresses the violation. Accordingly, by or before **May 24, 2019**, the District will utilize its BCBA to review the Student's BIP in light of this complaint and decision and to make revisions as necessary. It is strongly recommended that when revising the BIP the BCBA, consider the Student's need for targeted behavior interventions during transportation in addition to a school setting.

By **May 10, 2019**, the District will provide documentation to OSPI that it provided the BCBA who will be completing the revision of the Student's BIP a copy of the following documents 1) the Student's IEP; 2) the Student's FBA; 3) the Student's current BIP; and, 4) a copy of this decision.

Also by **May 10, 2019**, the District will additionally submit documentation that the BCBA communicated with the Parent to obtain the Parent's input regarding the development of the BIP. The Parent is strongly encouraged to provide the BCBA with any existing or updated outside evaluations she feels the BCBA should consider when developing the BIP.

By **June 14, 2019**, the District will submit an updated copy of the revised BIP to OSPI, along with the copy of the revised IEP from the required May 2019 IEP meeting (see below).

IEP Meeting: By or before **May 24, 2019**, the District will schedule an IEP meeting at a mutually agreeable time for the Parent, Student, and District. OSPI strongly recommends that the District utilize a Sound Options facilitator for this IEP meeting. The team will discuss the following topics—at a minimum—during the meeting:

1. The revised BIP, including who is responsible for collecting data on the BIP, what data will be collected, (including how often and by whom);
2. The level of 1:1 paraeducator support, setting of 1:1 paraeducator support, functions the 1:1 paraeducator will perform, what level of proximity the paraeducator needs to be to the Student (e.g. line of sight, attached at the hip, etc.);
3. What is the Student's least restrictive environment?
4. Whether FAPE for the Student requires the IEP team to develop a plan to increase the Student's time in the general education setting (and if so, what does this plan look like?);
5. Whether the Student requires additional supplemental supports and/or related services to enable him to access additional time in the general education setting;
6. The Student's present levels of performance and progress on annual goals;
7. Any existing or new medical and/or outside evaluations regarding the Student's disability and educational needs that the Parent would like the IEP team to consider when developing the IEP, including any neuropsychological evaluations; and,
8. Any additional accommodations or program modifications not currently on the IEP the Parent would like to be added.

By **June 14, 2019**, the District will submit: 1) a copy of the meeting invitation; 2) a copy of the amended IEP; 3) a copy of the revised BIP; 4) if a plan was developed to increase the Student's time in the general education setting, a copy of that plan; 5) a copy of any related prior written notices; 6) a copy of the agenda and notes on the topics discussed at the meeting; and, 7) any other related information.

Compensatory Instruction: By or before **May 17, 2019**, the District will work with the Parent to develop a schedule for delivering a total of 2.5 hours of specially designed instruction in the area of communication. Services will occur in a one-on-one setting and be provided by a speech and language pathologist. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. The District will provide OSPI with documentation of the schedule for services by or before **May 24, 2019**. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **August 27, 2019**.

The District must provide OSPI with documentation by **August 30, 2019** of the compensatory services provided to the Student. This documentation must include the dates, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round

trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation that it has fulfilled this requirement by **August 30, 2019**.

DISTRICT SPECIFIC:

Written Guidance: By **May 13, 2019**, the District will develop written guidance on the following three issues:

- (1) The conditions for the use of restraint under WAC 392-172A-02110, including, but not limited to (a) the definition of "imminent likelihood of serious harm"; (b) what is considered a "restraint"; and (c) the required follow-up and reporting procedures under RCW 28A.600.485. The guidance will include specific examples, including that a two-person escort is considered a restraint in Washington State. The guidance will be provided to the school principal and assistant principal, certificated special education staff, including educational staff associates (ESAs), certificated teachers, paraeducators, and school security or resource officers assigned to work at the elementary school identified in this complaint. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.
- (2) When and how providers must make up specially designed instruction or other services that are missed because school-related activities make either the student or the service provider unavailable during the time the service is regularly scheduled. The guidance will be provided to the school principal and assistant principal, special education staff, including educational staff associates (ESAs), and paraeducators at Student's school, at a minimum. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other special education service providers.
- (3) The use and assignment of paraeducators, with clarification of the use of terminology (i.e. "adult supervision" v. "1:1 paraeducator"), including how the terms should be documented in the IEP and PWN. The policy should be provided to all special education staff, including ESAs, and school administrators. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other special education service providers.

By **May 17, 2019**, the District will provide OSPI with a copy of the draft guidance. OSPI will approve the written guidance or provide comments by May 24, 2019 and provide additional dates for review if needed.

By **August 26, 2019**, the District will ensure that required staff receive the written guidance described above.

By **August 30, 2019**, the District will provide OSPI with documentation showing that it provided all required individuals with the two written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

Training: The District has developed and scheduled a two-day eight-hour training with OSPI's special education department that is scheduled to occur on August 19, 2019 and August 20, 2019. The training will focus on reducing the use of restraints. OSPI is adopting the training as a corrective action in this complaint as it addresses the violations found.

By **August 23, 2019**, the District will submit documentation that all self-contained special education staff in the District participated in the training. Documentation will include 1) a sign-in sheet from the training, 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 strongly recommends that the District develop a clear policy for responding to possible injuries, including but not limited to head injuries, and for notifying parents of any possible injuries, that may occur during the use of physical interventions, and that District notify staff of these policies.

Dated this ___ day of April, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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