

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-07

PROCEDURAL HISTORY

On February 16, 2017, 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 February 17, 2017, 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 10, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on March 13, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On March 20 and 23, 2017, OSPI requested additional information from the District. The District provided that information on March 21 and 23, 2017. OSPI forwarded that information to the Parent on March 23, 2017.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District elementary school, and was eligible to receive special education and related services under the category of emotional behavior disability. On October 10, 2016, the Parent filed a due process hearing request. The Parent and District agreed to move the Student to an interim placement within the District for the duration of the due process hearing. As part of the agreement to change the Student's placement, the District was to ensure the Student had a 1:1 paraeducator to help prevent the Student's behavior from escalating and to prevent elopement. On January 9, 2017, the Parent expressed concern that the District was not providing the Student with a dedicated 1:1 paraeducator as set forth in the interim placement agreement. The District responded by providing affidavits that stated the 1:1 paraeducator was dedicated to the Student. However, during IEP meetings in January and February 2017, the District and the Parent repeatedly disagreed over the definition of a dedicated 1:1 paraeducator. The Parent argued that a dedicated 1:1 paraeducator should be working with the Student exclusively. The District acknowledged that the 1:1 paraeducator worked with other students, and was not always in the classroom with the Student, but maintained that it was providing a dedicated 1:1 paraeducator in compliance with the Student's IEP. The Parent alleged that the District failed to provide the Student with 1:1 paraeducator

support consistent with his IEP in place from December 5, 2016, when the Student began attending his interim placement, through February 16, 2017. The District denied the allegation.

ISSUES

1. Did the District provide paraeducator support consistent with the Student's individualized education program (IEP) from December 5, 2016, when the Student began attending his temporary placement, through February 16, 2017?

LEGAL STANDARDS

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student to advance appropriately toward attaining the annual IEP goals, to be involved and progress in the general curriculum in accordance with present levels of educational performance, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320; WAC 392-172A-03090. "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 35).

IEP Implementation: 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. It must also ensure it provides all services in a student's IEP consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

FINDINGS OF FACT

2015-2016 School Year

1. During the 2015-2016 school year, the Student attended first grade at a District elementary school.
2. In April 2016, the Student was referred for an initial special education evaluation due to concerns about the Student's increasingly unsafe behaviors, which included leaving his classroom without telling an adult, attempting to leave the school building, and running out into the parking lot.

3. In May 2016, the Student eloped from the school campus over fifty percent of the days he attended school.
4. The Student's initial evaluation was completed on June 2, 2016. Based on the results of the initial evaluation, the Student's evaluation group determined that the Student was eligible to receive special education services under the category of emotional behavioral disability. The evaluation report recommended that the Student receive specially designed instruction in the areas of social/emotional behavior, reading, writing, and math.
5. Also on June 2, 2016, the Student's individualized education program (IEP) team met to develop the Student's initial IEP. The June 2016 IEP provided for services in the areas of reading, math, writing, and social/emotional behavior. Under the "other" category, in the present levels of education performance, the Student's IEP read "1:1 Support justification," stating [in relevant part]:
 - Despite interventions, such as increased adult support in the classroom through regular check-ins by school staff (office staff, principal, school counselor, learning support teacher), the Student's behaviors continued to increase in intensity, including elopement from all settings, including the school campus multiple times, throwing objects at staff, hitting staff and destruction of school property.
 - In March, the school team met to develop a safety plan and additional interventions.
 - The Parent and school team have significant concerns about his ability to be safe without close adult proximity to ensure that he does not leave school and that staff are able to quickly respond to escalated behaviors.

The IEP provided for 675 minutes per week (135 minutes per day) of specially designed instruction in a special education setting. The Student's IEP also provided for "additional adult support" by a paraeducator for 135 minutes per day in the special education setting as a supplementary aid and service, which is the entire time the Student was scheduled to attend school. The IEP also stated the Student would receive services in a special education learning support setting in the fall of 2016-2017 with the following supports in place to increase the Student's ability to access the learning environment: half day scheduling and 1:1 staffing.

2016-2017 School Year

6. The District's 2016-17 school year began on August 31, 2016. At that time, the Student attend second grade at the same District elementary school on a reduced school day schedule, and his June 2016 IEP was in place.
7. On October 6, 2016, the Parent requested that the District pay for an independent educational evaluation (IEE) and the District agreed.

8. On October 10, 2016, the Parent filed a due process hearing request, alleging among other issues, that the District “failed to implement the Student’s June 2, 2016, IEP.” Subsequent to the Parent filing the due process hearing request, the Parent agreed to consider an interim placement for the Student at another District school for the duration of the due process hearing. The proposed interim placement was a District school for students with behavioral needs.
9. On December 1, 2016, the Parent toured what was to be the Student’s classroom at the proposed interim placement, and expressed concern about the Student’s potential safety after observing a door in the classroom that lead directly to the parking lot. Later that day, the Parent and her attorney met with the District assistant director of special education, District special education manager, and the District’s attorney to draft an interim placement agreement. The agreement addressed the time period the Student would attend the District interim placement pending the resolution of the due process hearing.
10. On December 2, 2016, the Parent’s attorney exchanged emails with the District’s attorney to finalize the interim placement agreement. Later that evening, the Parent’s attorney confirmed the Parent’s agreement.
11. The December 2, 2016, interim agreement stated, in relevant part:
 - The school District is recommending placement of the Student in a classroom with a door that can provide access to the parking lot. The Parent expressed strong concerns about the Student’s safety. She is concerned about his ability to run into the parking lot if placed in a classroom with a door facing the parking lot. The Parent agrees to try the recommended classroom provided this placement can be reviewed at the end of the first week to determine if it is a positive setting for the Student. In addition, the school District will communicate with the Parent, when the Parent picks up the Student, if the Student makes it outside of the building without authorization.
 - The Student will have a 1:1 para-educator. This is a permanent para-educator, not a rotating position. The person assigned is [surname omitted].
 - On December 5, 2016, the Parent will deliver the Student to the school office by 8:50 a.m. where he will be met by his 1:1 para-educator and/or the school mental health specialist.
 - The Student will begin his day with a preferred activity.
 - The attendance goal for the first two weeks [...] is for the Student to successfully attend school from 8:50 a.m. to 11:30 [a.m.]
 - The length of the Student’s day will be reviewed at the end of each subsequent two-week period. The principal, the Student’s teacher, and the Parent will confer and reach an agreement as to whether the length of the school day should be extended and if so, by how many minutes.

12. On December 5, 2016, the Student attended his first day at the District interim placement. The Student's classroom was staffed with a special education teacher, and two paraeducators, including the Student's dedicated 1:1 paraeducator.

13. From December 5, 2016 through February 13, 2017, the Student attended school from 8:50 a.m. until 11:30 a.m.¹. The Student's schedule stated:

- 8:50: Arrival - The Student is met in the lobby by mental health staff. The Student will engage in preferred activity for 15 minutes before joining the class. The Student's 1:1 paraeducator will meet him upon his arrival to the classroom.
- 9:05: Circle Time - The Student's 1:1 paraeducator joins him.
- 9:30: English Language Arts – The Student is taught in a small group by his 1:1 paraeducator at this time.
- 10:20: Break – Students play silent-ball in the classroom and receive a small snack. The Student's 1:1 paraeducator takes her 15-minute break at this time.
- 10:35: Math – The Student is taught in a small group by his 1:1 paraeducator at this time.
- 11:30: Lunch – The Student's 1:1 paraeducator is with him at this time.
- 12:00: P.E. – Monday/Wednesday, Art – Tuesday/Thursday. Student's 1:1 paraeducator is with him at this time.
- 12:30: Departure – Student is taken to the lobby by his teacher for pick up.

14. On December 7, 2016, the Parent's attorney emailed the District's attorney and stated, "The Parent would like to meet the 1:1 para. The Student still says he does not have one. Can the para meet the Student when he arrives tomorrow and introduce herself to the Parent and the Student at the same time? That seems like the easiest way to clear this up to me." The District's attorney responded via email and stated, "The principal was already working with the mother to schedule an introduction to the para-educator. The introduction will take place tomorrow, Thursday, when the Student is picked up from school, barring any weather related school closures. If the introduction does not take place tomorrow because of school cancellation, it will occur on Friday when the Parent picks up the Student. The principal plans to make the introduction at pick up to avoid any potential of disrupting the Student's routine at the beginning of the day. In his professional opinion [...] this is the best time to make the introduction."

¹ This schedule includes the Student's activities from 11:30 – 12:30, which took effect on February 14, 2017.

15. On December 12, 2016, the Parent wrote in the home/school communication log, "Good morning. [Student] was telling me there was yelling in class and slamming doors. The noise is bothering him. Thanks." The next day, the special education teacher wrote in the home/school communication log, "Thank you for letting me know. [Student] has access to noise cancelling headphones as well as several other plans he can access in the classroom if/when he is bothered by noise."
16. The District was on break from December 19, 2016 through January 2, 2017.
17. On January 9, 2017, the Parent's attorney sent a letter to the District, which stated the Parent's ongoing concern the District was not providing the Student with a dedicated 1:1 paraeducator as stated in the interim placement agreement. The letter stated the Parent's concerns were based on the Student's insistence that he did not have a dedicated paraeducator, and that when the classroom aide met the Parent briefly in December, the Student insisted this individual was a general support person within the classroom, and not his dedicated paraeducator. The letter then asked the District to prepare affidavits from the principal, special education teacher, and paraeducator at the District interim school to affirm the identity and job scope of the Student's dedicated 1:1 paraeducator, and that this individual was already in place.
18. On January 10, 2017, the Student's private board certificated behavior analyst (BCBA) observed the Student in his classroom at the interim placement from 9:30 to 10:30 a.m. When she arrived, she observed one teacher and two paraeducators in the classroom. She observed the Student's participation in a small group activity with at least two other students, led by the Student's assigned 1:1 paraeducator. When the small group activity ended, the BCBA observed that the Student left the group, and went to the computers while his 1:1 paraeducator remained at the table, and worked with the next student(s) who came to her for group learning time.
19. On January 18, 2017, a District attorney responded to the January 9 letter written by the Parent's attorney. The District's letter included affidavits from the principal and paraeducator that stated the name of the 1:1 paraeducator assigned to the Student and affirmed that this paraeducator began serving as the Student's dedicated 1:1 paraeducator on December 5, 2016.
20. On January 23, 2017, the Student was restrained by staff at the interim placement. The incident report stated that school staff used physical restraint with the Student for less than 1 minute as an escort, and that school staff contacted the Parent. The incident report also stated:
 - 9:10: Staff went to retrieve the Student from mental health office. The Student wandered around gym. Staff talked to the Student and gave time. The Student opened front door with handicap access button.
 - 9:13: The Student was escorted by staff to classroom.

The report was signed by the Student's designated 1:1 paraeducator.

21. On January 24, 2017, the Student was restrained and isolated at the interim placement. The District's incident report indicated that school staff had used physical restraint with the Student for less than 1 minute as an escort, and that the Student had been isolated for 19 minutes. The incident report stated:

- 8:55: The Student was prompted numerous times to go with mental health staff for a preferred activity.
- 8:56: The Student refused to comply. He was escorted by two staff to the break room.
- 9:15: The Student successfully completed the 5 minute request and returned to his seat quietly and calmly.²

Additionally, under the "choices provided" section, the incident report stated, "Student was initially offered the use of the sensory stage – he refused." Under "Student plan" the incident report stated, "Student was offered a plan after 5 minutes with back against wall." Under the sensory tools section the incident report stated the stage was offered. The report also stated that staff present at the debriefing included the Student's special education teacher and his designated paraeducator.

22. On the morning of January 30, 2017, the Parent dropped the Student off at school twenty minutes late, at 9:10 am, according to the Parent, due to traffic and dropping her other children off at their schools. According to the Parent's complaint, the Parent did not see the Student's 1:1 paraeducator when she dropped the Student off in the front entryway of the school after signing him in. The Parent stated the Student was upset about the morning routine change, but was not escalated when she left him. Shortly thereafter, the Student sustained a bump/bruise on his head while in the school foyer. The District's accident report from January 30 stated the Student sustained the bump/bruise when he "reached down to pick up a toy and bumped his forehead on the table corner." The accident report also stated the District principal and the Student's 1:1 paraeducator were present at the time of the accident, and that the Student was provided ice. The school nurse then contacted the Parent regarding the Student's injury. According to the Parent's complaint, the nurse called the Parent and told her to pick up the Student because he needed to be taken to urgent care. When the Parent arrived, the nurse reportedly told her the Student never made it to the classroom that day because he had been refusing to transition into the classroom. As a result, District staff kept the Student in the front entrance area of the school, which involved blocking him from the doors by restraining him. The nurse also reportedly stated the Student grew more upset after

² The report states that the Student successfully completed the five minute request to sit with his back against the wall, however the report indicates the Student was in the "break room" for a total of 19 minutes.

being restrained, and that was when he hit his head. The Parent then took the Student to the urgent care where he was diagnosed with a mild concussion. The Student reportedly told the Parent that he was very upset because District staff had “put hands on him.”³

23. Later on January 30, 2017, the principal, a District behavior specialist, the Student’s special education teacher, Parent, the Student’s private BCBA, assistant director of special education services, a District attorney, and the Parent’s attorney attended a previously scheduled IEP meeting to discuss the length of the Student’s school day. During the IEP meeting, the Parent indicated the “incident” that morning occurred because the Student struggled with transitions, and was not offered his preferred activity, as per his amended IEP. Based on an audio recording of the meeting the following occurred:

- The IEP team based their decisions on data compiled from the Student’s attendance for 13 out of 21 school days since his placement began at the interim school on December 5, 2016.
- The Parent’s attorney inquired about any incidents of restraint and isolation during the 13 days the Student had attended the interim school and the District replied that the Student had been restrained twice (January 23 and 24) and isolated once (January 24).⁴ The Parent’s attorney asked if the Parent had approved the District’s use of restraint and isolation and the Parent indicated she had asked that the Student never be restrained or isolated.
- The team discussed the Student’s daily schedule. The Parent’s attorney stated the amended IEP said the Student would be met by his 1:1 paraeducator and/or mental health specialist at the beginning of each day, and wanted to know why the District was not involving the 1:1 paraeducator to help with transitions. The principal responded that he assigned the mental health specialist to meet the Student in the morning because he wanted the most qualified person to help the Student with transitions. The Parent asked why the 1:1 paraeducator was not involved in the morning transition and stated transitions were part of what the 1:1 paraeducator was for. The principal replied that the District wanted independence for students and did not use 1:1 paraeducators during transitions; they were available to students in class. The Parent stated that is not a dedicated 1:1 paraeducator and the principal stated the Student’s paraeducator was dedicated.
- The Parent stated she and the District defined “dedicated” differently. The Parent stated that she wanted a 1:1 paraeducator who knew the Student, so she could

³ The Student’s attendance record indicates that the Student was tardy on January 30, 2017, but does not show an absence.

⁴ There was some debate during the meeting because the District stated staff escorted the Student, instead of using the term restraint. When the Parent’s attorney asked if the District was doing, “hands on restraint” when escorting the Student, the District replied, “Yes.” When asked to describe the escort, the special education teacher stated, “An escort is when a student has been given many opportunities to move on their own, there’s a safety component...that they refuse to do so, so staff, usually two people, hold the student on either side and help them walk to an alternate location for safety.”

identify when the Student was escalating and offer services, such as headphones, to prevent an outburst. The Parent stated that the Student was only eight years old and on the “spectrum,” so he could not be relied upon to know what he needed or how to ask for support.

- The Parent relayed that the Student had told her he did not know the name of his assigned 1:1 paraeducator and that she only helped him with reading.
- The special education teacher stated that the 1:1 paraeducator picked the Student up after his time with the mental health specialist and got him unpacked in classroom, at which point the Student joined circle time with other students. The special education teacher stated the Student did not typically need help, but if he did, his 1:1 paraeducator helped him. The special education teacher also stated that the Student regularly worked with his paraeducator during reading group. The Student joined the class for snack time.⁵ The Student worked with his paraeducator to complete his math work in the afternoon, after which she helped him pack up and fill out his behavior chart.
- The Parent asked directly whether the 1:1 paraeducator was working with other students in the class. The special education teacher answered yes the Student’s paraeducator talks to and helps other students. The Parent indicated that she had observed the paraeducator helping other students in the morning during drop off when the Parent felt she should be with Student.
- The Parent stated that due to the lack of support for the Student during transitioning the Student refused to go to school because of the [other student] screaming. The principal stated that the 1:1 paraeducator offered the Student headphones for noise and the Student refused, which, the principal stated, he interpreted as the Student self-regulating. The Parent stated that if the 1:1 paraeducator knew the Student, she would recognize that a loud student would cause the Student to escalate and could provide him with more support than providing headphones.
- The Parent stated she wanted the 1:1 paraeducator to participate in the morning transition routine instead of the mental health specialist for a consistent routine for the Student. The principal stated that the Student had a dedicated 1:1 paraeducator, and that the District was addressing the Student’s transitioning issues with support from the mental health specialist when the Student arrived at school, and then the 1:1 paraeducator helped with transitioning the Student into his classroom.
- The Parent’s attorney stated that restraints/escorts caused the Student’s behavior to escalate (known from prior school records) and the Parent felt any incidence of restraint could be avoided if his paraeducator was with him during transitions. The principal acknowledged that he now understood that using hands on restraint/escort was never ok with Parent and that the District, “Won’t do that now”. The Parent stated blocking a door instead of restraining would be easier if the Student had his dedicated 1:1 during transitions. The Parent stated the Student had issues with transitioning and she did not see the value of the mental health specialist when

⁵ The Student’s schedule indicates this is when the Student’s dedicated paraeducator takes her 15 minute break.

training the 1:1 paraeducator to handle transitions would be more consistent. The Parent asked if the 1:1 paraeducator was trained to deal with transitions. The principal replied, "She's trained to do the job." The Parent asked again if the 1:1 could be involved in the morning transition and the principal said no, he was keeping the mental health specialist in that position and that the Student liked her. The Parent stated she could not see how this helped the Student get into a routine, and the principal stated there was already a routine in place, the Student was with his paraeducator 90% of his day, the other 10% was during transitions, and if the Student was still struggling, the principal stated, the team should consider exterior factors that could have caused the Student to be upset, like something different going on at home. The Parent stated that the Student's incident on the morning of January 30, 2017, was because he did not get to do his preferred activity and the 1:1 paraeducator was still not part of the transition. The principal said no again to the paraeducator participating in transitions.

- The IEP team decided to observe the Student for two more weeks before deciding whether to extend his school day.

24. On February 6, 7, and 8, 2017, the Student's 1:1 paraeducator was absent due to illness. According to the District's response to this complaint, during that time, another paraeducator in the Student's classroom was assigned to the Student, and another paraeducator in the building was assigned to the Student's classroom to provide support.

25. On February 8, 2017, the Parent told the special education teacher, via the home/school communication log, "[Student] is having a very hard time with the noise in class. Please help him with that. Thanks."

26. On February 13, 2017, the Student's IEP team, including the Parent, met again to review additional data, and determine whether the Student was able to attend a longer school day. The IEP team agreed the Student was ready to attend school from 8:50 a.m. until 12:30 p.m., which added lunch and an extracurricular period to his school day. The IEP team agreed the Student's new schedule would begin on February 14, 2017.

27. Also during the IEP meeting, the Parent stated that she wanted to discuss the Student's 1:1 paraeducator support. The Parent stated that the Student had been upset at pick up that day due to a student yelling in class, and that a dedicated 1:1 paraeducator should be addressing loud noises with the Student by picking up on his body language before he escalated. The Parent asked if the Student's 1:1 paraeducator was doing this. The Parent also expressed concern that the Student was still saying his 1:1 paraeducator worked with other students, and that if this was the case, the Student's assigned paraeducator was not a 1:1 dedicated paraeducator. According to a tape recording of the February 13 IEP meeting, in response to the Parent's concerns, the following conversation occurred:

- Principal: “Well, as I said before, he has a dedicated 1:1 in the classroom, he’s going to have experiences in that classroom and we are going to continue to help and support him through those times. So, he does have a dedicated 1:1.”
- Parent: “But if she’s working with other students then I don’t understand how we can say that.”
- Principal: “Again, I don’t know what to tell you, I have somebody for him, working with him in the class.”
- Parent: “But he has to be the one to access her when he needs her?”
- Principal: “That’s not what I’m saying, I’m saying he has someone there for him, and so she’s working specifically with his needs...”

The Parent then stated that she came into school early on February 13, 2017, and observed the Student’s 1:1 paraeducator taking a group of three students to lunch while the Student was still in class. The Parent restated her position that if the paraeducator is a dedicated 1:1 she could not be working with other students. The Parent then stated she was not trying to be difficult and that she wanted to make sure the team was being honest with each other about what a 1:1 paraeducator was because the District admitted in the January 30 meeting that the 1:1 was working with other students and the Parent had observed the 1:1 working with other students while Student was in his class.

- Principal: “Well, I can tell you again that he has that support that he needs in the classroom and he has somebody there with him to support him with the specific needs that need to be addressed at the time.”
- Parent: “But when she is helping with other students...we’ve at least admitted that much, that she does work with other students, so...”
- Parent Attorney: “If [surname omitted] isn’t in the classroom, who’s working with Student?”
- Special Education Teacher: “Me. He is my student. So he has somebody with him at all times, you know, and I need to have a relationship with him. He’s with her almost all of the time, she’s meeting all of his needs, asking him what would help him, doing all of his academics with him, so I find it important to spend time with him myself.”
- Parent: “So if another child escalates in the classroom is she going to the Student, or is she helping maintain and decrease that behavior?”
- Special Education Teacher: “She’s there for Student first and foremost, that is her job.”
- Parent: “I guess this would be a more direct question, if another child escalates in the classroom has she helped with that child escalating...Have you guys used her to help with another child when that child was escalating?”

- Special Education Teacher: “[Surname omitted] is an adult in the classroom so the other students know her, and the other students look to the three of us for guidance, but she’s there for Student first and foremost in any situation that arises.”

The principal concluded the meeting and stated the team had confirmed the date of the next meeting, decided to increase the Student’s school day by an hour, and expressed that he hoped the Student would soon be attending a full day.

28. On February 14, 2017, the Parent told the special education teacher, via the home/school communication log, “[Student] was upset about another kid yelling in class.”

29. On February 15, 2017, the Parent told the special education teacher, via the home/school communication log, “[Student] needs some type of headphones. He is having a really hard time with the noise level in the classroom. He has relayed to me yelling in the class by kids having a hard time.” The next day, the special education teacher wrote, “[Parent] – Thank you for your note. [Student] was offered noise-cancelling headphones numerous times yesterday. He did not accept them. We also offered headphones for his iPad – so he could hear a game or music. He did not accept. We will continue to extend these ideas and tools to support [Student].”

30. The Parent filed this complaint on February 16, 2017.

CONCLUSIONS

The District failed to provide the Student with 1:1 paraeducator support consistent with his IEP in place from December 5, 2016 through February 16, 2017. On December 2, 2016, the Parent and District amended the Student’s June 2016 IEP, via the interim placement agreement, to provide for 1:1 paraeducator support. Specifically, the interim agreement stated the District would provide a “1:1 paraeducator.” The definition of a 1:1 dedicated paraeducator specifies that a single person is assigned exclusively to the student during the school day to assist in implementing the student’s IEP. OSPI has previously stated, in SECC 15-73, that it is not appropriate for a designated 1:1 aide in a student’s IEP to be assigned to provide support to other students. While the District’s documentation substantiates that it designated one person to act as the Student’s 1:1 paraeducator, the documentation does not substantiate that the 1:1 paraeducator worked exclusively with the Student as a dedicated 1:1 paraeducator. The Student stated repeatedly that his assigned paraeducator was working with other students in his classroom and the audio recording submitted in this complaint confirmed that although 1:1 support was available, the Student did not have a dedicated 1:1 paraeducator assigned to him. The Parent observed the assigned paraeducator, on more than one occasion, helping other students during the Student’s school hours. At the IEP meeting on January 30, the Parent asked the special education teacher whether the Student’s 1:1 paraeducator was working with other students in the class and the special education teacher answered “yes”. At the February 13, 2017 IEP meeting, the special education teacher’s statements revealed that when the Student’s 1:1 paraeducator was not in her

classroom there was no 1:1 paraeducator with the Student. Further, the Student's private BCBA observed the Student's assigned paraeducator leading a small group activity, which did not include the Student. The totality of this information substantiates that the District failed to provide the Student with the dedicated 1:1 paraeducator support identified in the interim placement agreement. However, it is noted that the District did not err in assigning the mental health specialist to meet with the Student at the beginning of his school day, as this was consistent with the interim agreement.

OSPI also noted, based on the documentation provided in this complaint, the District continued to use the term "dedicated 1:1 paraeducator," when it was clear the Parent's definition included the element of exclusivity and the District's definition did not.

CORRECTIVE ACTIONS

By or before **May 19, 2017, May 30, 2017, and September 18, 2017**, the District will provide documentation to OSPI that the following corrective actions have been completed.

STUDENT SPECIFIC:

By **May 19, 2017**, the District will hold an IEP meeting to develop the Student's annual IEP. The IEP will clearly state the services and accommodations the Student will receive, including any 1:1 paraeducator support or other staff support necessary to implement the IEP. By **May 30, 2017**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the annual IEP; and, 3) a copy of any related prior written notices.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), District special education administrators, and principals, which addresses the requirements for IEP development and implementation with a focus on the provision of specified paraeducator support. The guidance will discuss definitions and scope of job duties for all types of paraeducator support, including but not limited to: 1:1 additional adult support, and 1:1 paraeducator support. The District should also review the decisions in SECC 15-73, 15-82, and 16-87, which address the District's provision of paraeducator support. The guidance will include examples. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers.

By **May 19, 2017**, the District will submit a draft of the written guidance to OSPI. OSPI will approve the written guidance or provide comments by June 2, 2017, and provide additional dates for review if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, and principals with the written guidance by **September 18, 2017**. This 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.

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

It is recommended that the District review its policies and procedures for the use of restraint and isolation to ensure that staff are only using restraint and/or isolation when a student's behavior poses an imminent likelihood of serious harm.

Dated this ____ day of April, 2017

Douglas H. Gill, Ed. D.
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.)