

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-08

PROCEDURAL HISTORY

On January 25, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the guardian and grandparent (Complainant) of a student (Student) attending the Renton School District (District). The Complainant 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 January 28, 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 1, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On March 4, 2019, the OSPI complaint investigator interviewed the Complainant by phone.

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

ISSUES

1. Did the District follow procedures for using and reporting restraint in accordance with WAC 392-172A-02110?
2. Did the District implement the Student's individualized education program (IEP) during the behavior incident on October 24, 2018?

LEGAL STANDARDS

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

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.

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. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

FINDINGS OF FACT

Background

1. During the 2017-2018 school year, the Student attended a District preschool program and was eligible to receive special education services under the category of developmental delay.
2. On April 4, 2018, the District conducted an annual review of and developed the Student's new annual individualized education program (IEP). The April 2018 IEP stated the Student had delays in the areas of cognitive skills, adaptive behavior, social/emotional skills,

communication, and motor skills. The IEP team determined the Student's behavior did not impede his learning or that of others.

The April 2018 IEP included annual goals in the following areas: reading, math, written language, social/emotional, adaptive behavior, communication, and fine motor. One of the adaptive behavior goals read as follows: "By 4/3/19, when given classroom dismissal routines, [Student] will independently put on his jacket and backpack improving self-help skills from 0/4 opportunities weekly over 2 consecutive weeks as measured by classroom data collection and observation."

The April 2018 IEP included transportation as a related service and the following four accommodations:

- Frequent repetitions and direct modeling
- Pair with a student who can model appropriate skills
- Visuals of learning expectations and classroom rules
- Wait/processing time

The Student's IEP addressed two periods of time: the first period provided the following special education and related services from April 4, 2018 to June 20, 2018 in the special education classroom:

- Fine motor: 60 minutes, one time per week (provided by an occupational therapist)
- Communication: 30 minutes, 2 times per week (provided by a speech/language pathologist)
- Adaptive behavior: 20 minutes, 4 times per week (provided by a special education teacher)
- Social/emotional: 20 minutes, 4 times per week (provided by a special education teacher)
- Cognitive: 40 minutes, 4 times per week (provided by a special education teacher)

At this period of time, the Student was attending school 600 minutes per week.

From June 21, 2018 to April 4, 2019, the Student's IEP provided for the following special education in the special education classroom:

- Fine motor: 30 minutes, 1 time a week (provided by an occupational therapist)
- Communication: 30 minutes, 2 times per week (provided by a speech/language pathologist)
- Adaptive behavior: 45 minutes, 5 times per week (provided by a special education teacher)
- Social/emotional: 40 minutes, 5 times per week (provided by a special education teacher)
- Cognitive: 80 minutes, 5 times per week (provided by a special education teacher)

The Student's IEP provided school for a total of 1,760 minutes per week. All special education services continued to be provided in the special education classroom, but participation in the general education setting increased to 48% of the school week.

The IEP included the following language, "Parent Notification Procedures: The district has a procedure for notifying parents regarding the use of restraint or isolation. A copy of the district's procedure is attached to this IEP."¹

¹ OSPI notes that a copy of the District's procedure regarding the use of restraint or isolation was not found attached to the Student's IEP, nor was a copy provided to OSPI as part of the District's response.

3. On the same day of the IEP meeting, the District provided the Complainant with prior written notice.
4. On June 11, 2018, the District completed progress monitoring on the Student's IEP goals and provided the Complainant with progress reporting. Regarding the Student's adaptive behavior goal of putting on his jacket and backpack, the report described the Student's progress as an "Emerging skill demonstrated but may not achieve annual goal within the duration of the IEP."

2018-2019 School Year

5. During the 2018-2019 school year, the Student attended a District Kindergarten classroom and was eligible to receive special education services under the category of developmental delay.
6. The District's 2018-2019 school year began on August 29, 2018.
7. On October 24, 2018, the complaint alleged that ten minutes before school started, the Complainant accompanied the Student to school and was holding the Student's backpack. The Student's teacher took the backpack from the Complainant and gave it to the Student, prompting the Student to put the backpack on. According to the Complainant, the Student was not able to put on his backpack, so when the Complainant attempted to assist the Student, the teacher blocked the Complainant's path and "grabbed" the Student's arm, insisting he put on the backpack without help.
8. The complaint alleged that the act of grabbing the Student was tantamount to restraint as defined in WAC 392-172A-01162.
9. On November 6, 2018, the District provided another special education report of the Student's progress towards the annual goal for putting on his jacket and backpack. The progress report described his progress as "Sufficient progress being made to achieve annual goal within duration of IEP." The progress report stated that as of "November 2018 [Student] is able to independently put his backpack across his shoulder."
10. On January 25, 2019, OSPI received this complaint.
11. In response to the complaint, the District provided the following sworn declarations, dated February 28, 2019, from the school principal, the Student's kindergarten teacher, and the classroom paraeducator:
 - **School Principal:** The principal declared that on October 24, 2018, the Complainant reported the incident to her. The principal interviewed the Complainant, the kindergarten teacher, and the paraeducator who was supervising students at the time of the incident. The principal stated that the teacher denied "she touched the Student or that she blocked [Complainant] from the Student. The principal also stated that the paraeducator did not observe the teacher putting her hands on the Student. Based on her investigation, the principal determined that the teacher did not "isolate or restrain the Student on October 24, 2018."

- **Kindergarten Teacher:** The teacher stated that on October 24, 2018, she saw the Complainant holding the Student's backpack before school started. She approached the Complainant and had a "discussion regarding the Student's backpack and his ability to put on his own backpack. I raised the issue because the Student's IEP contains a goal related to his ability to put on his own backpack." The teacher stated that although there was a disagreement, "at no point during our conversation did I grab or put hands on the Student nor did I block [Complainant] from the Student. In addition, I never restrained or isolated the Student." The teacher also stated she was a trained behavior analyst and understood that restraint should only be used in "exceptional circumstances and in accordance with appropriate behavior plans and response protocols." On the date of the incident, there was no behavior incident that required the use of restraint.
- **Classroom Paraeducator:** The paraeducator stated in her declaration that, on October 24, 2018, while she was outside supervising students, she overheard the teacher and Complainant speaking. The paraeducator stated, "At no point during my observation of their discussion did I see [teacher] grab or put hands on the Student, or otherwise restrain or isolate him."

CONCLUSIONS

Issue 1: Restraint Procedures – The Complainant alleged that the District failed to follow restraint procedures by failing to report the alleged incident on October 24, 2018 as a restraint. Restraint means physical intervention or force used to control a student. Restraint shall be used only when a student's behavior poses an imminent likelihood of serious harm. Any restraint must be reported to the building administrator as soon as possible and the parent be notified within twenty-four hours of the incident. A written report must be developed and submitted to the district office within two business days, the same written report must be sent as soon as practical but postmarked no later than five business days after the restraint or isolation occurred.

Here, the Complainant alleged that the teacher "grabbed" the Student by the arm and that this constituted a restraint. The District provided sworn declarations that the teacher did not touch the Student and therefore, no restraint occurred (thus, the follow-up and reporting requirements did not apply). While there are conflicting accounts of the incident, multiple involved staff state they did not observe the teacher "grabbing" the Student. Based on the staff statements, there is insufficient evidence to support a violation. Further, even if the teacher grabbed or touched the Student, there is insufficient evidence that the teacher grabbing or touching the Student would have amounted to a restraint. Based on accounts of what occurred, the teacher was attempting to prompt the Student to put on his own backpack in line with his IEP goal, not using physical force or intervention to control the Student nor restraint him to limit movement and freedom. No violation is found.

Issue 2: IEP Implementation – The Complainant alleged that the Student's IEP was not implemented based on the October 24, 2018 incident. A district is required to implement a student's IEP as written.

Here, one of the Student's annual IEP goals was for the Student to put on his backpack independently. On October 24, 2018, while the Student was being accompanied by the Complainant, the teacher verbally prompted the Student to put on his backpack. The Complainant

insisted that the Student was unable to put on his backpack. The teacher's prompt was consistent with the Student's annual goal for putting on his backpack independently. Additionally, the Complainant provided no other information or concerns about the Student's IEP being implemented and it is not clear from the documentation in the complaint what element of the Student's IEP the Complainant believed was not implemented on October 24, 2018. OSPI finds that the Student's IEP was implemented and finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of March, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)