

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-33

PROCEDURAL HISTORY

On April 30, 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 Kelso 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 May 2, 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 May 23, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on May 24, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 13, 2019, the OSPI complaint investigator conducted an interview with the Parent.

On June 14, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the June 15, 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 interview.

ISSUES

1. Did the District follow restraint procedures during the incidents involving the Student on December 14 and December 20, 2018?
2. Did the District implement the behavioral intervention plan (BIP) during the incidents on December 14 and December 20, 2018?

LEGAL STANDARDS

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

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic

device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

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

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.

Emergency Response Protocols: If the parent and the school district determine that a student requires advanced educational planning, the parent and the district may develop emergency response protocols to be used in the case of emergencies that pose an imminent likelihood of serious harm, as defined in this section. Emergency response protocols, if developed, must be incorporated into a student's individualized education program (IEP). Emergency response protocols shall not be used as a substitute for the systematic use of a behavioral intervention plan that is designed to change, replace, modify, or eliminate a targeted behavior. Emergency response protocols are subject to the conditions and limitations as follows: a) the student's parent provides consent, as defined in WAC 392-172A-01040, in advance, to the emergency response protocols to be adopted; b) the emergency response protocols specify the emergency conditions under which isolation, restraint, or restraint devices, if any, may be used; the type of isolation, restraint, and/or restraint devices, if any, may be used; and the staff members or contracted positions permitted to use isolation, restraint, or restraint devices with the student, updated annually, and identify any required training associated with the use of isolation, restraint, or restraint devices for each staff member or contracted position; c) and any other special precautions that must be taken. WAC 392-172A-02105.

Positive Behavioral Interventions: 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 behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (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 .

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of other health impairment.

2. On April 19, 2018, the District held a meeting to conduct an annual review of the Student's individualized education program (IEP) and develop a new IEP. The IEP's present level of educational performance stated the Student was placed in the program because of his behavior. When given an undesirable task, the Student would become aggressive and threaten his classmates. The Student demonstrated behaviors, such as pushing over chairs, slamming his fist on the desk, and yelling, which disrupted classmates' learning. The Student experienced ten major and four minor behavior referrals during the 2017-2018 school year. Academically, the Student was unable to memorize basic addition and subtraction facts and he was reading at the 3.3 grade level. Regarding fine motor skills, the Student had difficulty with tying his shoes and copying words.

The IEP included annual goals in the areas of math, reading, and behavior. The Student's IEP included the following accommodations and modifications to be provided in the specified setting:

- Allow breaks (general/special education setting)
- Allowed to type lengthy assignments (general/special education setting)
- Extended time (general/special education setting)
- Extra time on assignments or tests (general/special education setting)
- Preferential seating (classroom)
- Separate Setting: Student is tested in setting different from that made available for most students (special testing site)

The IEP provided the following specially designed instruction to be implemented from April 24, 2018 to April 18, 2019:

- Occupational therapy: 30 minutes, 2 times monthly (provided by an occupational therapist)
- Math: 30 minutes, 5 times a week (provided by an instructional assistant)
- Reading: 30 minutes, 5 times a week (provided by an instructional assistant)
- Behavior: 30 minutes, 5 times a week (provided by a special education teacher)
- Fine Motor: 30 minutes, 5 times a week (provided by an occupational therapist)

The Student's IEP included special transportation and a parent notification that stated, "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."

The IEP stated the Student's behavior impeded his learning or the learning of others. The IEP stated, "When [Student] is in escalation students must clear the room for their safety. Behavioral concerns are addressed in the IEP through goals, behavior plan, and service minutes." The IEP included a "positive behavior support plan." (See Appendix A.) In addition, the IEP provided an "Emergency Response Protocol Addendum to the IEP," which was agreed upon by the Parent. The protocol listed the following conditions in which isolation, restraint, or a restraint device may be used:

Any use of isolation and or restraint shall be used when [Student's] behavior poses an imminent likelihood of serious harm. These conditions include:

Isolation – [Student] may be escorted to a time out space. The time out space is lit, visible to staff from inside or outside and temperature controlled.

Restraint – the student may be restrained, using a Right Response or CPI technique by trained staff, in the event that they exhibit spontaneous behaviors that pose an imminent likelihood of serious harm to self, others, or property. For example, throwing furniture, hitting, kicking, and possibly other unsafe behavior such as trying to walk or run away from school.

The protocol stated, “Restraint-when/if the student’s behavior escalates to the point where it poses imminent likelihood of serious harm to themselves, others, and/or property a Right Response or CPI restraint will be used...”

2018-2019 School Year

3. During the 2018-2019 school year, the Student was in fourth grade and attended a District elementary school, and continued to be eligible to receive special education services under the category of other health impairment.
4. On August 16, 2018, the 2018-2019 school year began in the District.
5. Beginning on October 8, 2018 and through April 22, 2019, the District kept a “Daily Point Sheet” that addressed the following areas: kind, safe, responsible, respectful, and follow directions. The sheet followed the Student’s school schedule and rated the Student’s behavior on a 0-1-2 scale.
6. During the 2018-2019 school year, there were twenty-three behavioral incidents reports for the Student, most of which involved isolation.
7. On December 12, 2018, according to an incident report, a behavior incident occurred with the Student in the computer lab. The incident report stated the Student was “screaming/yelling,” “hitting/punches,” and “pushing.” The attempted and successful redirects included a break, the quiet room, change in staff, redirected back to work, and change in activity. The interventions included verbal redirect, visual redirect, gesture, and clearing the room. The protective physical interventions included “repelling technique,” “protection,” and “escort.” Isolation was used to address the Student’s behavior. The documentation did not indicate that the District reviewed the incident with the Parent and the Student, although the Parent called the principal about her concern regarding the kind of restraints that were being used. There was no documentation that the incident was reviewed with the staff who administered the restraint and/or isolation. The incident report provided no recommendations for changing the resources to the Student to avoid similar incidents.
8. In addition, a note in the daily point sheet form, dated the same day, stated the Student had refused to go to his reading group and “he destroyed the room. He flipped chairs and tables, threw pillows, knocked over books and learning supplies, yelled at staff and tried to hit staff.”
9. On December 14, 2018, the first incident of the day occurred in the classroom, according to the incident report. While the Student was engaged in seated work, the Student demonstrated the following behaviors: screaming/yelling; hitting/punching; kicking; crying; and self-talking. The attempted redirects included a walk, quiet room, bathroom, and a sensory activity and the

interventions included a verbal redirect, clearing the room, leaving the Student alone, and quiet room. No protective physical interventions were involved. The form stated isolation was used to address the Student's behavior. The District provided no documentation that a review of the incident with the Parent, the Student, and District staff involved in the incident occurred and the District's response to the complaint was silent on the issue. No recommendations were provided to avoid similar incidents.

The second incident of the day occurred again in the classroom. The form stated the Student screamed/yelled and hit/punched. The attempted redirects included the following: a break; the quiet room; reduced demands; a change in staff; leaving him alone; and, a change in setting. The staff provided the following interventions: verbal redirect; clearing the room; left alone; and protective physical interventions. The form indicated that repelling techniques were used and the Student was isolated. No documentation was provided that the District reviewed the incident with the Parent and Student and the staff involved in the restraint and/or isolation. The incident report provided no recommendations to change the nature of the resources to the Student or staff to avoid similar incidents.

10. On December 14, 2018, according to the complaint, a teacher gave the Student a "wedgie" in an attempt to restrain the Student.¹ The complaint stated:

...The first incident was by a male teacher who threatened to [Student] a 'wedgie' if he didn't get up from the computer. He ended up transporting [Student] from the computer room to the Wolf Den² while the teacher had one hand on his shirt and the other hand grabbing his basketball shorts and (traditional/white stretch material) underpants. This caused distress to [Student's] genitals and he was yelling the whole time that 'you are hurting my balls...'³

11. The District stated in its response to the complaint that the December 12, 2018 incident more coincided with the alleged facts in the complaint than the December 14, 2018 incident. The District's response stated:

...On [December 12, 2018], Student was in the school's computer lab for a social group. He escalated when staff asked him to join the other students for the group activity. An instructional assistant radioed the main classroom for assistance. A room clear was implemented, leaving Student in the computer lab with one instructional assistant.

Two instructional assistants arrived from the main classroom to assist with Student. Each staff member held Student by one arm. One staff member grabbed the waist band of the Student's pants and pulled up. The two staff members escorted Student to his classroom in this manner. During the escort, Student was propelled forward and compelled to walk by the hold on his waistband, and it is possible this use of force would have given him a "wedgie."

¹ A "wedgie" is the act of forcibly pulling a person's underwear from the back.

² The Wolf Den is used as a quiet place for the Student.

³ On January 11, 2019, in reference to a different incident, the District contact sheet stated the Student reported that his genitals "hurt." However, there was no allegation of a "wedgie."

In a subsequent interview with the investigator, the Parent stated she agreed that the incident more likely happened on December 12, 2018. The Parent stated she was informed of the incident on December 15, 2018, by the Student's private therapist with whom the Student had talked about the incident. The Parent stated she did receive a copy of the incident report but the Parent stated there was no follow up from the District about the incident until she called the Principal on December 20, 2018 about the restraint.

12. On December 17, 2018, the special education teacher emailed the special education director, stating that the Student's "Wise team" was to meet with staff on December 18, 2018.⁴ The email stated, "I have been told this is an informal meeting and Mom will not be present..."
13. On December 18, 2018, the Student's therapist emailed the principal, requesting a phone call rather than a meeting. The documentation indicates that the meeting was canceled.
14. On December 20, 2018, the principal emailed the therapist possible dates to meet.
15. On December 20, 2018, the Student was involved in a behavioral incident in the classroom. The incident report stated the Student engaged in screaming/yelling, pushing, and grabbing. The form stated the attempts to redirect the behavior were a break, the quiet room, reduced demands, a change in staff, and leaving the Student alone. The following interventions were used with the Student: verbal redirection; visual redirection; gesturing; being left alone; and quiet room. The form stated avoidance technique were used as a protective physical intervention and the District isolated the Student to address his behavior. The daily point sheet stated, "...Didn't go reading groups. Chose to throw things, dump pencils and markers. Threatened staff." There was no documentation that the incident was reviewed with the staff who administered the restraint and/or isolation and the incident report provided no recommendations for changing resources to the Student.

In the complaint, the Parent alleged that the Student was given a "wedgie" during the incident. The Parent stated the Student told the Parent he was at his desk when the instructional assistant stood behind the Student and pulled up his underwear. He yelled and the instructional assistant released his underwear and he was taken to a "quiet room." The complaint stated, "...[Student] felt his underwear being grabbed onto and twisted and pulled up. [Student] yelled as loud as he could, 'do not give me a wedgie,' and the teacher responded by telling him he needed to stop misbehaving and go to the quiet room...I learned about that incident because [Student] told me about it that same afternoon when he got home." The Parent alleged that the District failed to follow the positive behavior support plan. In an interview with the investigator, the Parent was asked "what parts of the plan did the District fail to implement?" The Parent replied: "limited communication during behavior incidents."

16. Later on December 20, 2018, according to the Parent, she called the principal about her agreement for the District to use "short holds" but not "wedgies."

⁴ WISE or Wrap Around Intensive Services is a program that provides mental health services to students.

On the same day, the school principal emailed the special education teacher and stated:
[Parent] called at 4:00 this afternoon and was concerned [program] staff was using the 'repel technique' without permission. She said during [Student's] IEP meeting, she reluctantly signed consent for us to do 'short holds.' She said she has two recent incident reports, one dated 12/14, and the second, 12/20. Both events resulted in 'short holds.' She no longer wants 'any wedgies through the school.' I told her I would call her back tomorrow.

There was no documentation the incident was eventually reviewed with the Parent and the Student, or with District staff involved in the incident. No recommendation for changes was included in the incident report to avoid similar incidents.

17. According to the District's response to the complaint, on December 12, 2018, the District stated the instructional assistants had "genuine misconceptions about the use of the midsection clothing control technique." On instructional assistant "grabbed the waistband of the Student's pants and pulled up." The District acknowledged that school staff conducted an inappropriate midsection clothing control technique to prompt the Student to move forward. The District stated that restraint procedures were followed in the December 20, 2018 incident.
18. From December 24, 2018 through January 4, 2019, the District was on winter break.
19. On January 15, 2019, the principal, special education teacher, and the special education director met with the Parent, staff from WISE, and Youth and Family Link. The participants discussed the goal of trying to increase the Student's time in general education, but that the Student "feels comfortable" in a small group. The priority was for the Student to learn to control his emotions and setting a meeting to discuss the Parent's request for a one-to-one paraprofessional.
20. On January 28, 2019, the District's Right Response trainer provided additional training to the two instructional assistants on the correct Right Response technique to prompt a student to move forward. The District also reported the special education teacher and school administrators increased their supervision of the instructional assistants.
21. On February 6, 2019, the District held a meeting to amend the Student's IEP to address the Parent's request for a 1:1 paraprofessional for the Student. The District rejected the Parent's proposal because "the program that he is in has enough support that an adult is able to attend class with [Student] if it is needed or requested."
22. On April 18, 2019, the District convened the IEP team to review Student's IEP and update the positive behavior intervention plan, but the plan mostly remained unchanged. The District provided a blank prior written notice so it was unclear what IEP proposals or refusals were made.
23. On April 30, 2019, OSPI received this complaint from the Parent.

CONCLUSIONS

Issue 1 - Restraint Procedures: The Parent alleged that the District improperly restrained the Student when there was no imminent likelihood of serious harm and the restraint used was not implemented according to the emergency response protocol. The complaint alleged the staff used a “wedgie” as a restraint procedure.

Restraint, as defined in WAC 392-172A-01162 and 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. Isolation, as defined in WAC 392-172A-01107 and RCW 28A.600.485, means restricting the student alone within a room or any other form of enclosure, from which the student may not leave. Isolation does not include a student’s voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. *Restraint and isolation of a student, in absence of an imminent likelihood of serious harm, is against the law.* However, a district may use restraint or isolation when a student’s behavior poses an imminent likelihood of serious harm. Likelihood of serious harm, as defined in WAC 392-172A-01109, means that there is substantial risk that the person will inflict physical harm upon him or herself, another person, or the property of others. Once the likelihood of serious harm has dissipated, any use of restraint or isolation must be discontinued.

Imminent Harm

Here, the emergency response protocol from the Student’s April 19, 2018 IEP stated that if the Student’s behavior escalated to the point where it posed imminent likelihood of serious harm to themselves, others, and/or property, a Right Response or CPI restraint would be used. On December 12 and 20, 2018, the relevant dates in the complaint, the Student was restrained and/or isolated. The December 12, 2018 incident report on the Student’s behavior described the Student’s behavior as “screams/yells, hitting/punches, kicking, drops to floor, grabs.” The daily point sheet, dated December 12, 2018, specifically described the Student as having flipped chairs and tables, thrown pillows, knocked over books, and yelled at and tried to hit staff. According to the documentation, the instructional assistants intervened and escorted the Student, using an inappropriate technique, to isolation. The documentation provided by the incident report and daily point sheet indicated that hitting/punches, kicking, and property harm showed a likelihood of imminent harm that warranted restraint and/or isolation.

The incident report, dated December 20, 2018, stated the Student was “throwing things,” “making threats,” “pushing,” and “grabbing.” No other explanation was provided. Without further explanation, these behaviors were not likely to result in imminent harm. Regarding the incident report, there was the possibility that the incident report’s depiction of the incident was understated, along with this interpretation of the report, but no further description of the incident was provided except for the complaint, which described the Student’s behavior in much less salient terms. The documentation did not provide sufficient evidence that the Student’s behavior would likely result in imminent harm.

Restraint and/or Isolation

The District acknowledged that the IEP that required Right Response techniques was not followed when the instructional assistants used an improper restraint. But the District stopped short of admitting they used “wedgies” on the Student during the December 2018 incidents. Although there was some evidence that the staff used “wedgies,” there was insufficient documentation to confirm it. Regardless, OSPI finds that the District used an improper restraint technique.

Review of the Incident

The District is required to review the incident with the Parent and Student, along with District staff who were involved in the incident. There was no evidence that the District reviewed the incidents with the Parent, Student, and the District staff that was involved with the incident, although the documentation showed that the Parent called the principal regarding her concern about the “wedgie,” in part. The incident report also showed that the District made no recommendations about changing the resources to the Student and staff to avoid similar incidents. Only one out of the twenty-three incidents reports had recommendations. The follow-up requirements are more than a perfunctory filling out a form and sending it to a parent. The intent is for a district to analyze each restraint and/or isolation in a timely manner with the parent, student, and the staff involved and as a result, make recommendations for the expressed purpose of eliminating or reducing the incidents of restraint and/or isolation in the future. Here, the District did take steps to ameliorate the problems by re-training in Right Response holds and increasing the supervision of the instruction assistants. However, the District failed to provide sufficient documentation that the restraint and/or isolation during the December 20, 2018 incident was warranted or would have been warranted had the restraint hold been conducted properly. Further, the District failed to provide sufficient documentation that the incidents were reviewed with the Parent, the Student, and District staff who were involved with the incidents, and neglected to address recommendations to avoid similar incidents. A violation is found. The violation will require additional training in restraint and/or isolation procedures.

Issue 2 – Implementation of the Positive Behavior Support Plan: The complaint alleged that the District failed to implement the positive behavior support plan rather than using restraint and/or isolation. A positive behavior support plan, or behavioral intervention plan, is a plan incorporated into a student’s IEP if determined necessary by the IEP team for the student to receive FAPE. Since the plan is part of a student’s IEP, the plan must be implemented as written.

Here, the Student’s IEP stated that because the Student’s behavior impeded his learning or the learning of others, the IEP team considered what positive behavioral interventions, strategies, and supports would be needed to address the behaviors. The IEP stated, “When [Student] is in escalation students must clear the classroom for their safety. Behavioral concerns are addressed in the IEP through goals, behavior plan, and service minutes.” In addition to an emergency response protocol, a positive behavior support plan was a part of the Student’s April 19, 2018 IEP. The plan identified the following behavior concerns: acting out verbally and physically; pushing over classroom furniture; yelling aggressively; and when upset, charging others; and acting out physically. The plan provided for the following strategies: setting event strategies; predictor

strategies; consequence strategies; and response routine. The response routine was “how all adults involved respond and interact with the student when the targeted behavior occurs.” The plan’s response routine provided the following interventions:

- Teacher will prompt him with a reminder about positive and negative outcomes.
- If [Student] displays unsafe behavior, teacher will call [classroom] for assistance for [Student] to leave general education classroom to take a break in [classroom].
- [Classroom] staff will use a visual cue, such as pointing to his point sheet or privilege he wants to keep and state his target behavior.
- [Classroom] will help [Student] use his tools for de-escalation.
- If [Student] is unsafe, staff will Right Response strategies to help [Student] de-escalate.

The December 12, 2018 incident report stated that the following “attempted and successful redirects” and “intervention” were used:

- Break
- Quiet room
- Change in staff
- Redirected back to work
- Change in activity
- Verbal redirect
- Visual redirect
- Gesture
- Room clear

The December 20, 2018 incident report stated that the following “attempted and successful redirects” and “intervention” were used:

- Break
- Quiet Room
- Reduced demands
- Change in staff
- Left him alone
- Verbal redirect
- Visual redirect
- Gesture
- Left alone
- Quiet room

The Parent’s contention was that the behavior plan included limited communication with the Student during a behavior incident, which she felt did not occur in the December 2018 incidents. When comparing the behavior plan with the incident reports, some of the redirects and interventions were consistent with the behavior plan, but others, such as reduced demands and left alone, were not. However, the plan did not address limited communication as the Parent believed. The behavior plan also called for staff to help the Student to use his “tools” for de-escalation, but there was no indication in the incident reports that this intervention was used. These additional interventions might have been appropriate at the moment, or the incident reports may not have fully explained the connection between the behavior plan and the incident report. Whether implementing the behavior plan during the incidents of restraint and/or isolation was a failure to fully document or explain the interventions that were used during the incidents, or a failure to implement the behavior plan when restraint and/or isolation is involved, the District should consider both documentation and implementation equally important and necessary. A violation is found.

CORRECTIVE ACTIONS

By or before **August 9, 2019, August 16, 2019, and September 6, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **August 28, 2019**, the Student's IEP team will meet to address concerns regarding the Student's behaviors and the issues raised in this complaint. The IEP team will discuss and document discussion of, at a minimum, the following topics:

- The Student's behaviors and the pattern of restraint and/or isolation;
- Whether additional or different interventions, strategies, or supports are needed by the Student;
- Whether staff needs additional supports or training; and,
- Whether the IEP, behavior plan, and/or emergency response protocol need to be amended.

By **September 6, 2019**, the District will submit to OSPI: 1) a copy of the meeting invitation; 2) a copy of any prior written notices; 3) a copy of the agenda or topics discussed at the meeting; 4) a copy of the IEP and BIP, if amended; and, 5) any other related documents.

Documentation of Compliance

Beginning **the start of the 2019-2020 school year**, the District will provide OSPI with all restraint and/or isolation incident reports involving the Student until December 20, 2019, to ensure compliance is met and maintained.

DISTRICT SPECIFIC:

Training for Identified School

By **August 30, 2019**, the District, in consultation with the OSPI special education supervisor and ESD 112, will provide training on the issues identified in this complaint for all special education teaching and ESA staff, general education instructional staff, and administrative staff at the school identified in the complaint. The training should include, at a minimum:

- The requirements set out in WAC 392-172A-02110 and the incorporated RCWs;
- Imminent likelihood of serious harm;
- Reporting and follow-up procedures, including reviewing incidents with parent, student, and involved staff;
- District restraint and isolation policies; and,
- Procedures for implementing student IEPs and BIPs, including that all responsible staff must have access to the documents.

The training may be provided by District special education administrative staff working with the OSPI special education program supervisor and/or the ESD 112 staff.

By or before **August 9, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **August 16, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 23, 2019, and additional dates for review, if needed.

By **September 6, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

District Wide Training

The District will also consider training needs for the entire District related to restraint and isolation requirements and procedures, and determine whether additional training beyond the school identified in this complaint is needed to ensure all staff are aware of the changes to the report and the requirements.

By **August 28, 2019**, District special education leadership, in consultation with the OSPI special education supervisor and/or the ESD 112 staff, will meet and discuss the need for broader training in the District. This should include a consideration of all the schools in the District and the level of training need. Further training could include in-person training and/or written training (guidance).

By **September 6, 2019**, the District will provide OSPI with a list of District schools, what level training each school requires, and the proposed plan for training. The plan should include an explanation of how and why each determination was made for each school. The plan should include a proposed timeline for the training. OSPI will approve the training plan and provide comments by September 13, 2019, and additional dates for review, if needed.

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.

RECOMMENDATION

In the process of conducting the investigation, OSPI strongly recommends revising, as appropriate, the incident report form to facilitate a more thorough analysis of each incident, including more details about the activity that led up to the incident and what interventions were used. The form could also be expanded to include the documentation that the District reviewed the incident with the parent and student and the staff involved in the incident.

Dated this ____ day of June, 2019

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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.)