

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-49

PROCEDURAL HISTORY

On March 30, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Peninsula School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 1, 2020, 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 April 16, 2020, the District requested an extension of time to respond to this complaint. OSPI granted the extension and requested the District respond by April 30, 2020.

On April 30, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on May 4, 2020. OSPI invited the Parent to reply.

On May 11, 2020, the Parent requested an extension of time to reply to the District's response. OSPI granted the extension and requested the Parent reply by May 22, 2020.

On May 18, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On May 19 and 21, 2020, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent on May 21, 2020.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on March 31, 2019. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

Additionally, in her reply to the District's response to this complaint, the Parent raised allegations of discrimination. OSPI does not have authority to investigate disability discrimination through the special education citizen complaint process. Allegations of discrimination can be directed to the Department of Education Office for Civil Rights.

ISSUES

1. Did the District follow restraint and isolation procedures under WAC 392-172A-02110 during the 2019-2020 school year?

2. Did the District follow procedures for determining the Student's placement in the least restrictive environment, including the consideration of potential harmful effects and the use of supplemental aids and services during the 2019-2020 school year?
3. Did the District follow procedures in amending the Student's individualized education program (IEP) to provide a free appropriate public education (FAPE), including positive behavior supports?
4. Did the District consider the need to a conduct a new functional behavioral assessment (FBA) of the Student?
5. Did the District follow the required timelines for conducting a reevaluation of the Student?
6. Did the District provide the Parent with special education progress reports?

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.

Isolation: Isolation as defined in 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. It 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. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a

qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation 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.

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

Follow-up and Reporting Requirements: School districts must follow the documentation and reporting requirements for any use of isolation or restraint consistent with RCW 28A.600.485. WAC 392-172A-02110. Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include: reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and the appropriateness of the response; and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents.

Any school employee, resource officer, or school security officer who uses isolation or restraint on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report must include, at a minimum, the following information: the date and time of the incident; the name and job title of the individual who administered the restraint or isolation; a description of the activity that led to the restraint or isolation; the type of restraint or isolation used on the student, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. RCW 28A.600.485.

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

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

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

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same

opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Parent Participation in Determining Placement: Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement. 34 CFR §300.501; WAC 392-172A-05001.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a free appropriate public education (FAPE). The BIP, 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.

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

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "without undue delay and within a reasonable period of time;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Reevaluation Timeline: Reevaluations shall be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03015.

Progress Reporting: IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

Background: 2018-2019 School Year

1. During the 2018-2019 school year, the Student was in kindergarten, attended his neighborhood District elementary school (school 1), and was eligible for special education services under the category developmental delay.
2. On November 29, 2018, a functional behavioral assessment (FBA) was completed for the Student.¹ The FBA collected data on the Student’s elopements from class, compliance, negative peer interactions, and office discipline referrals. The FBA documented prior interventions, such as a 1:1 paraeducator, structured sensory breaks, motivating schedule, check-in/check-out program, token economy, reward plan, assigned seat, social skills instruction, occupational therapy, and speech and language therapy. The FBA listed target behaviors as “engaging in a response matching directions provided by staff.” The FBA noted that behaviors generally occurred during academic time, non-preferred tasks, and highly stimulating activities, and that behavior occurred across all settings but most frequently in the general education environment (and less frequently during preferred activities and when he has 1:1 support). The FBA posited that the Student engaged in behaviors to escape the classroom or non-preferred activity, to gain control, and to gain staff and peer attention. The FBA also provided recommendations for the development of a behavioral intervention plan (BIP).
3. On March 11, 2019, the Parent filled out a “Health and Developmental History” for the Student. In the form, the Parent noted the Student received support from a paraeducator, and the Parent listed she had concerns regarding the Student’s behavior or emotional health, including: “behavioral, aggression, cognitive, attitude towards peers and teachers.” The Parent further wrote:

[Student] appears to need a smaller environment to adapt more fully to increased situations at school, his aggression with peers and others has worsened over time and continual need of maximum support suggests a change of placement may be necessary to be more successful. We also are concerned about his cognitive abilities being hindered in the gen-ed environment because he seems to always be in ‘fight-or-flight’ mode we are concerned he will always be too triggered [to] learn anything. His attention problems are also a

¹ The Parent, in her complaint, stated the FBA did not collect baseline data and was not completed by a board certified behavioral analyst (BCBA). This FBA was completed outside of the one-year complaint timeline, and therefore, OSPI is not investigating allegations related to the sufficiency or appropriateness of the November 2018 FBA. However, OSPI notes that there is no requirement that a BCBA conduct an FBA.

concern. We hope that a change of placement will enable him to build these necessary skills that his peers seem to have and get him back to gen-ed when possible.

The Complaint Investigation Timeline Began on March 31, 2019

4. On May 6, 2019, the Student's evaluation group met and discussed the reevaluation. The evaluation report noted the reevaluation was requested due to the Student's behavioral difficulties and the Parent's request to change the Student's placement. The report noted that "due to behavioral difficulties in school, parents opted to reduce his school day and [Student] attends in the morning only." The evaluation group determined the Student continued to be eligible for special education services under the category developmental delay and the evaluation report noted the recommendations that the Student continue to receive specially designed instruction in motor, social emotional/behavioral, cognitive, and communication.

The evaluation report included information from the "Health and Developmental History" form the Parent completed and noted the Parent stated "[Student] appears to need a smaller environment to adapt more fully to increased situations at school, his aggression with peers and others has worsened over time and continual need of maximum support suggests a change of placement may be necessary to be more successful."

Significant findings from the assessments conducted as part of the evaluation included:

- Student continued to display aggressive behaviors, had difficulty sustaining attention, and was easily upset or frustrated;
- Student shows delayed intellectual ability;
- Student needs specially designed instruction in communication, including articulation and pragmatic/social language skills (although, it was challenging to assess the Student as he "often times refused to participate in the evaluation process"); and,
- Student's overall fine motor skills are "slightly below age expectations."

The prior written notice, dated May 6, 2019, recorded that the team was "considering a change of placement to best meet [Student's] educational needs. Parents will visit the self-contained programs in the district. The [individualized education program (IEP)] team will reconvene soon to discuss recommendations and implement a new educational plan."

5. In her complaint, the Parent stated the information from the "Health and Developmental History" form included in the evaluation, "should be interpreted to mean that we wanted [Student] to have a paraprofessional, which wasn't codified in his IEP and possibly pull out support in a resource setting to learn appropriate behavior."² The Parent stated:

While we were concerned with his current placement, it was because we felt he was not getting the appropriate support to make meaningful progress. We were getting called to pick up our son from school on a regular basis...we...ultimately started sending him to school for only half the day. This was a mistake on our part. He was not receiving

² According to the documentation provided by the District, at this time, the Student was receiving 1:1 paraeducator support and a "continuum of interventions and resources were provided in the general education and special education, resource room settings."

appropriate support to make meaningful progress...which resulted in a denial of a Free and Appropriate Education (FAPE).

6. On May 14, 2019, the Student's IEP team met and developed a new IEP for the Student following the May 2019 reevaluation. In the team considerations section, the Parent shared the Student's strengths and noted their concerns with the Student's placement—"Parents] have shared that they feel he needs a smaller setting and retention." The IEP listed the supports and positive behavior interventions utilized (e.g., earning choice time, 1:1 support, transition warnings, visual schedule and timer, breaks, alternative assignments, social skills instruction, social stories, BIP, and transition toy).

The IEP included the following annual goals with progress reporting provided at the trimester:

- **Speech and Language (Articulation):** "When given materials/pictures [Student] will produce target sounds /L/ in all positions of words in short phrases improving speech articulation production from 0% accuracy to 80% accuracy as measured by [speech language pathologist (SLP)] therapy data and observation."
- **Pragmatic Language:** "When given pictures, videos, scenarios [Student] will identify facial expressions/gestures/body language improving pragmatic skills from 0/10 opportunities to 8/10 opportunities as measured by therapy data and observations."
- **Pragmatic Language:** "When given small group language situations, [Student] will demonstrate whole body listening when cued by adult improving whole body listening skills from 0/10 opportunities to 8/10 opportunities as measured by SLP data and observations."
- **Fine Motor (Pre-Writing):** "When given verbal prompt [Student] will apply mastery of diagonal oblique lines to form an X and a closed triangle improving visual motor skills from unable to copy isolated diagonal oblique lines descending from right or left to draw an X and a Triangle without gaps or overlaps as measured by observation and [occupational therapist (OT)] data."
- **Fine Motor (Handwriting):** "When given verbal prompt [Student] will write upper case manuscript letters improving visual motor skills from copies 6/26 with correct stroke sequence to writes 26 upper case with correct stroke sequence as measured by observation and OT data."
- **Cognitive:** "When given a verbal prompt [Student] will identify all upper case letters of the alphabet improving letter identification from 5 out of 26 letters to 26 out of 26 letters as measured by informal assessments."
- **Cognitive (Letter Sounds):** "When given a visual presentation of upper case letters [Student] will produce the sound improving letter sound knowledge from 2 out of 32 sounds to 26 out of 32 sounds as measured by informal assessments."
- **Cognitive (Number Sense):** "When given a visual or oral presentation of numbers 1-10 [Student] will use 1:1 correspondence to make a group to match the number presented improving number sense from 2 out of 10 to 10 out of 10 as measured by informal observation."
- **Cognitive (Number Identification):** "When given a visual presentation of numbers 1-10 [Student] will identify the number improving number identification from 2 out of 10 to 10 out of 10 as measured by informal assessment."
- **Social/Emotional/Behavioral:** "When given a behavior contract and unpreferred tasks [Student] will follow directions improving compliance from an average of 68% to an average of 80% as measured by observation."
- **Emotional Regulation:** "When given an undesirable task [Student] will request or take an appropriate break improving emotional regulation from 0 out of 5 opportunities to 4 out of 5 opportunities as measured by observation, daily behavior logs."

- **Emotional Regulation:** "When given a transition to a less desirable task [Student] will decrease the intensity of emotional outbursts (yelling, crying, aggression, tantrums) from high intensity to low intensity (saying no, taking a break, refusal) improving emotion regulation from 4 high intensity outbursts in 5 opportunities to to [sic] 1 high intensity outburst in 5 opportunities as measured by observation, Daily behavior logs."

The IEP included several accommodations and modifications, and provided the Student with the following specially designed instruction and related services, in the special education setting from June 22, 2019 through May 5, 2020:

- Communication (related service): 15 minutes a month (provided by a speech language pathologist (SLP))
- Cognitive: 150 minutes a day (provided by a special education teacher)
- Communication: 30 minutes, three times a month (provided by an SLP)
- Social Emotional/Behavioral: 90 minutes a day (provided by a special education teacher)
- Motor: 90 minutes a month (provided by an occupational therapist (OT))

The IEP stated the Student would spend 1,238.75 minutes in the special education setting per week and 28.23% of his time in the general education setting. The IEP noted the Student would receive services in the "District Teaching Responsibility, Academics, and Communication (TRAC) social/emotional/behavior program"³ (program). The IEP indicated the Student required "a highly structured program, small group setting with staff trained in de-escalation strategies and access intensive social/emotional/behavioral supports." The IEP also indicated the goal was to gradually increase the Student's time in the general education setting.

The "placement options for [least restrictive environment] LRE" table noted the other placement options (40%-79% and 80%-100% in a general education setting) were rejected because "academic benefit cannot be satisfactorily achieved," "non-academic benefit cannot be satisfactorily achieved," and due to the "effect student will have on teacher and other students."

7. The May 22, 2019 prior written notice documented that the team "considered services in the resource program at [Student's] home school, but determined that he [sic] needs are best met in a smaller more structured setting with intensive social/emotional/behavioral supports." The prior written notice summarized that the Student "struggled to make expected growth towards many of his goals despite various interventions, an increase in services, and decrease in his daily schedule."
8. Regarding the proposed placement, the District stated, in its response to this complaint, that "based on reevaluation results, data collected over the course of the 18-19 school year, and [P]arent request for placement in a behavior program, the IEP team determined that a change of placement was necessary." The District noted the Student's target behaviors did not significantly or consistently decrease and "unsafe behaviors continued, resulting in inconsistent success in the general education environment." The District stated that based on

³ According to documentation in the complaint, the program had six other students who ranged in ages from 10-11 years old and were at the fourth or fifth grade level.

the Student's unique needs and "where he would have the greatest opportunity to receive the level of special education, related services and programming required given the nature of the recommendations in the reevaluation and services agreed upon in the IEP," the team determined the Student would be placed in the program located at another elementary school in the District (school 2). The District stated the "full IEP team agreed on this placement."

The District further emphasized in additional information provided that, "the team, including parents, agreed that services provided in a resource room model at the [S]tudent's neighborhood school did not meet (and were not sufficiently meeting during his kindergarten year) the student's needs and more substantial and [intensive] programming was required."

9. At the end of June 2019, the Student's IEP team met again to "introduce and discuss the [program] that [Student] will be joining at the beginning of the year." According to the prior written notice, dated June 20, 2019, the team described:

a typical daily schedule to include gen ed time, specialist, movement breaks, [program] classroom schedule, individual schedules, para support, class size, time in general education is dependent on the student success, daily reports, weekly counseling sessions with [program counselor], walked through a typical day for a 1st grader, transitioning into the school year, and transportation.

According to the notice, the team also "explained the use of the sensory room and reviewed restraint and isolation as indicated in his [emergency response protocol]."

Summer 2019

10. On August 13, 2019, the Student was diagnosed with autism by a private provider.

2019-2020 School Year

11. During the 2019-2020 school year, the Student was in first grade, attended the program at school 2 and was eligible for special education services under the category developmental delay. The Student's May 2019 IEP remained in place.
12. The District's 2019-2020 school year began on August 28, 2019.
13. On August 29, 2019, the Student was restrained and isolated for 27 minutes by three paraeducators after the Student "became noticeably agitated after passing by a large group of students" and "began swatting and biting at staff." The Student was escorted to the sensory room, where a "mat was partially placed over the door. [Student] remained in the isolation room until he demonstrated he had a calm body." The restraint and isolation reporting form noted the date of the incident and report, the staff involved, the duration, precipitating events, type of restraint and isolation, whether any injury occurred (here there was no injury), and verbal contact (voicemail) with the Parent. The form also noted a recommendation for avoiding similar incidents in future: "Choose alternate option for returning to class to avoid contact with an unexpected large group of students."

The "Parent Notification of Student Restraint and/or Isolation" form included the date of incident, date of written notification, and date and time a verbal attempt was made to reach the Parent. The form also included a description of the incident, which stated: "While walking back to the [program] class, [Student] became noticeably agitated when passing by a large group of general education students...he began swatting and aggressively biting at staff." The notification documented the duration of the restraint and isolation, and stated "once [Student] demonstrated that he had a calm/safe body isolation was removed. He continued to demonstrate a calm body by playing a card game with staff."⁴

14. The District's documentation also included several "Team Debriefing Forms," which appeared to often be used to debrief multiple incidents throughout the year. The form had space to record what went well, what did not go well, and what could be done better, as well as actions to be taken, target completion date, and person responsible. For example, following the August 29, 2019 incident, the form noted:

- **What went well?** "We are learning his behaviors and patterns. He does respond to sensory tools. We were able to bring him back to [sic]."
- **What did not go well?** "He became agitated in a crowd of students. He ran from us & threw rocks."
- **What could we do better next time?** "Avoid crowds, and over stimulation. Preteach calming strategies. Escort back to class instead of offering a lap while escalated."

15. Regarding restraint and isolation, the District stated in its response that it followed restraint and isolation procedures regarding restraining and isolating students and staff training. The District provided documentation that District staff who worked with the Student all had current Right Response advanced certification. The District admitted that it did not "strictly" comply with some of the documentation and reporting requirements and proposed corrective actions to address the errors identified. These errors included:

- Restraint and isolation report forms not being routinely provided to the District office;
- Not all reports documented notifying the Parent within 24 hours; although, the special education teacher reported calling or leaving a voicemail following each incident;
- The parent notification form is typically sent home within 5 business days; however, some are missing, and the District cannot guarantee the form was sent for each and every incident; and,
- While staff debriefing was completed, not all forms "consistently document who was responsible for implementing an intervention, target date, etc." and not all debriefing forms were consistently provided to the District office.

In additional information provided by the District, it clarified that the Parent received a copy of the "Parent Notification of Student Restraint and/or Isolation" form and that the "Restraint and Isolation Reporting Forms are for internal [use], and are not sent home." In addition, the District clarified that the "team debriefing forms" are for staff internal use and are not intended to be sent home to parents.

⁴ In general, the restraint and isolation reporting form and parent notification form all contained spaces for the same standard elements. The District, in its response, noted that certain documentation and reporting requirements were inconsistently completed. For brevity, the standard elements of the reporting form will not be detailed for every subsequent incident of restraint or isolation discussed in this complaint.

The District stated that staff reviewed each incident in order to determine additional supports and interventions, and that "staff were encouraged to meet weekly...to debrief and discuss incidents and revisit behavior management strategies and positive behavior supports for individual students and within the [program] classroom." The District also stated, specific to the Student, that while "recommendations for avoiding future similar incidents" were addressed on the restraint and isolation reporting form and incidents were discussed and noted on the "Team Debriefing Form," a "reduction in incidents did not occur between September 2019 – March 2020 and, in some cases, multiple incidents occurred within the period of one school-day." The District stated, "efforts to avoid future similar incidents did not decrease incidents over the course of the school year."

16. On September 3, 2019, the school psychologist emailed staff working with the Student (SLP, OT, paraeducator, behavior specialist, and special education teacher) about collaborating on "effective visual strategies" for supporting the Student, such as a first-then board.
17. On September 10, 2019, the Parent emailed the special education teacher regarding the Student's behavior and consequences. The email included some strategies the Parent used at home (e.g., rewards, requesting a break and spot to "get his yells out," and "peeling off his mean body...[and] only take his nice body to school.")
18. On September 13, 2019, the special education teacher responded to the Parent's September 10 email, stating, "not allowing the 'mean' has worked really well...[Student] has had a pretty good day and every day is adjusting more and more." The teacher also noted the Student had learned some inappropriate language and described what they were doing at school to address it (e.g., not reacting, telling the Student the language was not appropriate).
19. On September 21, 2019, the Parent emailed the special education teacher, requesting an IEP meeting because she had concerns about the Student's placement.
20. On September 27, 2019, the Parent emailed the Student's special education teacher documentation related to the Student's August 2019 autism diagnosis, which included recommendations for applied behavioral analysis (ABA) therapy, speech-language pathology, and occupational therapy. The special education teacher forwarded the documentation to the District's school psychologist.
21. On September 30, 2019, the Student's IEP team met. According to the notes taken by the school psychologist at the meeting, the Parent shared concerns about the Student's placement, including that the Parent was seeing "spikes in behavior, and language," that the Student is very impressionable, and that the Student's behaviors were not intentional but instead sensory seeking and impulsive. The Parent shared the Student's autism diagnosis and wanted a change in placement in light of the diagnosis. The behavior specialist and District's special education director (director) shared ideas for additional supports (e.g., a quiet place for the Student, more frequently rotating schedule, occupational therapy room, more breaks, sensory station with headphones and music, less stimulation, more deep pressure activities, visual schedule used with more fidelity, touch math, library time, etc.). The Student's special

education teacher also shared information about the Student's progress related to learning letters, counting, and sight words, and stated the Student was deescalating faster. The psychologist recommended they conduct a file review evaluation.

According to the prior written notice, dated October 1, 2019, the team met due to "increased escalations at home and increased frequency of profanity use since the school year started." At this meeting, the team determined a reevaluation should be conducted, in part due to the Student's autism spectrum disorder diagnosis. The notice indicted the team discussed "what alternate placements could be considered to best meet [Student's] needs and also discussed retaining [Student] back to Kindergarten." The notice recorded that the team rejected changing the placement or retaining the Student, and instead would conduct a reevaluation and "implement [Student's] behavior plan with additional Autism diagnosis supports to see if [Student] can make progress when the BIP is implemented with fidelity."

22. According to the District's response, while not recorded in the school psychologist's notes, at this meeting, the team did discuss whether there was a need for an updated FBA.⁵ According to the Parent's reply, she requested an FBA during the September 30, 2020 meeting. According to the District, the team determined that a new FBA was not necessary, based on the conversations at the meeting, as the function of the Student's behavior—"to escape non-preferred tasks and gain control"—had not changed. The District stated, "the consensus of the team was that developing an effective BIP and implementing with fidelity across settings would most appropriately address the Student's behavior, positive behavior supports, and replacement behaviors."

23. In September 2019, the Student was restrained and isolated on the following dates:

- September 10: The Student was restrained for 1 minute and isolated for 58 minutes after becoming escalated, being given the opportunity to deescalate by walking outside, and then "he threw rocks at staff. He was escorted/walked back to class...he continued to not follow directions and lost recess time. He then began throwing books at staff and was escorted to the sensory room. [Student] was restrained by one [right response] trained para and guided to the sensory room. A mat was placed halfway over the door entrance. Once he showed he had a calm body and could follow directions, the mat was removed from the sensory room." The report noted in future, staff would "pre-teach classroom behavior expectations and continue to encourage the importance of following directions, as well as keeping a safe/calm body." The Parent was notified verbally and in writing.
- September 16: The Student was restrained for 3 minutes and isolated for 26 minutes after he failed to follow directions in the library and "running, moving the furniture and pulling cushions. He was told he would lose some of his recess time. He began screaming...He then began hitting and throwing books at staff and was escorted to the sensory room." The report noted in future, staff would "pre-teach behavioral expectations for library time. Pre-select some book choices for [Student] ahead of time. Recommend a more structured library session." The Parent was notified verbally and in writing.

⁵ The District's response stated the school psychologist, OT, and SLP were interviewed as part of its response to this complaint and all recalled discussing the need for an FBA at the September 30, 2019 meeting.

- September 17: The Student was restrained for 1 minute and isolated for 75 minutes after he "headed to the sensory room" on arrival at school and "became escalated...throwing pillows, charging and scratching at para...[Student] was escorted to the sensory and a mat was placed over half of the doorway. After 12 minutes, the mat was removed; however, he continued to throw classroom items at staff and was escorted back to the sensory room. Once he showed signs of having a calm body, he was given a snack, along with an exit coloring activity to complete." The report noted in future, staff would provide a "breakfast snack upon arrival to the classroom, along with reteaching classroom expectations." The Parent was notified in writing.
- September 19: The Student was restrained for isolated for 35 minutes after he yelled inappropriate words, became escalated, climbed on a table and "started hitting and kicking at staff, and was escorted to the sensory room...He remained isolated until he was able to demonstrate he had a calm/safe body. He demonstrated he was calm by having a snack, counting to 20 with a para and having a discussion with [program counselor] about his favorite colors." Later, the Student was isolated for another 10 minutes after "screaming profanity, throwing classroom items at staff as well as kicking/hitting at staff...while in the sensory room, [the OT] arrived and was able to assist in de-escalation." The report noted in future, staff would "[re-teach] classroom behavioral expectation." The Parent was notified verbally and in writing.
- September 20: The Student was restrained for 1 minute and isolated for 34 minutes after he became elevated, hit a paraeducator with classroom items and fists, yelled at staff, climbed on a desk, charged at staff and "was escorted to the sensory room...once he began showing signs with his body language that he was becoming calm, he was provided with a snack, a stretching activity as well as a coloring activity." The Student was later restrained for 1 minute and isolated for 8 minutes after he "used a stool inappropriately and became angry when the stool was removed. He began hitting and kicking staff despite staff attempts to block." The report noted in future, staff would "determine a way to adjust morning routine to prevent similar escalations" and "reteach classroom expectations and use of classroom equipment." The Parent was notified verbally and in writing.
- September 22: The Student was restrained for 1 minute and isolated for 46 minutes after becoming escalated after learning he missed recesses due to an earlier "restraint/isolation" and began throwing items and kicking staff. The report noted in future, staff would "pre-teaching/re-teaching classroom behavioral expectations." The Parent was notified verbally.⁶
- September 23: The Student was restrained for 1 minute and isolated for 28 minutes after he tried to "bite at a para's arm" and "started to kick at staff and was escorted to the classroom. Once in the classroom, he began throwing books and kicking at staff...[Student] was escorted to the sensory room. Worked on calming strategies. [Student] was given a snack as well as an exit coloring activity. Once he demonstrated a calm body, he re-entered the classroom." The Student was later restrained for 1 minute and isolated for 12 more minutes after recess when he "came in...yelling inappropriate words and tried to break open the computer cart. He grabbed math shapes, began hitting and kicking staff;" and later restrained another minute and isolated 18 minutes after climbing on a desk and "while on the desk, his legs, feet were in other student's faces and he was then escorted to the sensory room. He then attempted to hit para in the face." Finally, the Student was further restrained for a minute and isolated for 13 additional minutes after he "started running around the classroom and throwing items at staff."

⁶ The September 22, 2019 "Restraint and Isolation – Reporting Form" was provided in the Parent's complaint, but not in the District's response. There is no report for the earlier incident referenced in the report and there is no corresponding Parent notification form.

The report noted in future, staff would “[pre-teach] classroom behavioral expectations and coping strategies.” The Parent was notified verbally and in writing.⁷

- September 25: The Student was restrained for 2 minutes and isolated for 13 minutes after he charged at a paraeducator and “started to try to hit her and was escorted back to the classroom. Once in the class, he started hitting staff and throwing his shoes at them.” The report noted in future, staff would “re-teach expectations for following directions, as well as the importance of having a calm safe body.” The Parent was notified verbally and in writing.
- September 26: The Student was restrained for 15 minutes after he began hitting and scratching a paraeducator and “was held in a cross arm position by one Para. Para sat with [Student] in the restraint until he was able to show a calm body. Para counted with [Student] to 10.” The report noted in future, staff would “reteach the proper uses of the bathroom.” The Parent was notified verbally and in writing.
- September 30: The Student was restrained for 1 minute and isolated for 76 minutes after he became agitated, started yelling, running around, and scratching the paraeducator. The report noted in future, staff would “discuss breaks and work on teaching him to work with others.” The Parent was notified verbally and in writing.

24. On October 2, 2019, the Parent signed consent to reevaluate the Student. The Parent stated in her complaint that the consent form was “later forged to include a handwritten note under my signature stating that the consent form was ‘rec’d 10/8/19.’”

25. On October 3, 2019, the program counselor emailed the Parents and stated the Student had an “awesome day” and that they “started using his new picture schedule with him and he bought into the new system right away! He likes moving the star to the current activity he’s doing an putting down a thumbs-up when he’s completed a task.” The school psychologist sent pictures of the schedule and the Student’s “new zone” that was set up in the classroom.

The District’s response included attached photos, which included the Student’s “zone”—an area with walls on three sides and open on the fourth (one wall appeared to be a partial height, moveable wall), a stool, desk, supplies for the Student, and a visual-picture schedule.

26. On October 7, 2019, the school psychologist emailed the Parent regarding the reevaluation consent form and stated, “If you let me know when you’re sending consent back I will make sure to check his backpack.”

The Parent responded that she signed “a consent and sent it back.” Several minutes later, the Parent emailed again and stated she found the consent form “a few minutes ago, look for it in his bag tomorrow.”

⁷ On September 23, 2019, the Parent’s notification form listed two additional isolation incidents where the Student was isolated for an additional 23 and 24 minutes. There were no corresponding “Restraint and Isolation – Reporting Forms” for those two isolations. The Parent’s notification form also indicated the Student was “given exit activities and de-escalation strategies, but he remained elevated throughout the day until mom picked him up at 1:45 for an appointment.”

27. On October 8, 2019, the District received the consent form for the reevaluation. The consent form noted the reevaluation would address a review of existing data, social emotional/behavioral, math, writing, medical-physical, reading, and communication.

In additional information, the District explained that "as a standard practice we ask all of our staff to document (...most handwrite the date on the consent form) on the returned consent form the date on which the District receives consent from the parent, and therefore, the pertinent timeline begins."

Regarding this consent form, the school psychologist stated she received the consent form on October 8, 2019, after it was sent with the Student in his backpack. The school psychologist stated she always notes "the date when I receive the form [consent] because that would start my timeline for 35 school days to complete assessments, since I don't start testing procedures until I obtain consent."

28. On October 9, 2019, the Student's father emailed the program counselor, in response to an email about scheduling a fall conference, that the Student's "zone" in the classroom was too confining and that it was not surprising the Student was trying to "scale the wall." The Student's father asked if the "barrier [could] get moved back a little so his cubby isn't so small? Perhaps it would enhance his chances for a more successful day."

The counselor responded she moved the "space divider back to enhance his space" and sent a picture.

29. In October 2019, the Student was restrained and isolated on the following dates:

- October 1: The Student was restrained for 8 minutes and isolated for 26 minutes after he became escalated and "stated kicking and hitting para and was...escorted to the sensory room, where he remained for 25 minutes. Due to the need of another student, he was escorted out of the sensory room and restrained by a para in a seated hold position for 8 minutes." Later, the Student was restrained for a further 12 minutes when the Student "threw a toy at para...hit and kick para." The report noted in future, staff would "re-teach appropriate classroom behaviors and expectations" and "remove all toys." The Parent was notified verbally and in writing.
- October 7: The Student was restrained for 1 minute and isolated for 7 minutes after he was "climbing on tables, hitting staff, and trying to hit another student...escorted by two [right response] trained paraeducators to the sensory room. He remained in isolation for 7 minutes until he demonstrated a calm/safe body by completing an exit coloring activity." The report noted in future, staff would "re-teach classroom behavioral expectations." The Parent was notified verbally and in writing.
- October 8: The Student was restrained for 2 minutes and isolated for 14 minutes after he was "climbing on desks and trying to hit staff...he whipped a staff member in the head with a mouse cord." Later, the Student "wasn't being safe with the chromebook – chromebook was removed and he started hitting and kicking staff" and was isolated for a further 17 minutes. Additionally, the Student was also restrained for 9 minutes after he was "standing on the table, which was preventing the class from starting social skills. He started screaming and not having a safe body." The report noted in future, staff would "re-teach classroom behavioral expectations" and

"re-teach expectations on using the chromebook appropriately/safety." The Parent was notified verbally and in writing.

- October 9: There were incidents "intermittent throughout the day" where the Student was restrained and isolated after the Student "became physically aggressive, hitting, kicking, throwing things at staff and students, yelling at a peer and climbing on furniture throughout the day...the classroom was evacuated, [Student] was given space and time to deescalate, but multiple times during the day was held until he was safe from harming staff or self." The report noted under recommendations for future that the Student was "in process of reevaluation." The Parent was notified verbally and in writing.
- October 10: The Student was restrained and isolated for 12 minutes after he ran out of the classroom, refused to go back inside, and "was escorted back to class. Once in the room, he was demonstrating unsafe choices and was escorted to the sensory room." The Parent was notified verbally and in writing.⁸
- October 17: The Student was restrained for 2 minutes and isolated for 39 minutes after he "began kicking and hitting staff...[and] once inside the classroom, he was quickly escorted to the sensory room" after he was "escorted to the classroom" because he went into the counselor's room and interrupted a session upon arriving at school. The report noted in future, staff would "continue to teach/encourage safe choices and the need to follow school/classroom directions/rules."⁹ The Parent was notified verbally and in writing.
- October 18: The Student was restrained for 7 minutes after he escalated and "started running around the classroom, climbing on tables, throwing objects and hitting staff." The Student was "escorted to the sensory room and was held in a seated hold position on the floor." The report noted in future, staff would "continue to re-teach classroom behavioral expectations and encourage appropriate coping strategies." The Parent was notified verbally.¹⁰
- October 21: The Student was restrained for 7 minutes after he became escalated and "He started going around the classroom, kicking and hitting peers and staff." The Parent was notified verbally and in writing.¹¹
- October 25: The Student was restrained for 4 minutes and isolated for 40 minutes after he "arrived at school in an escalated state" and "began running around, then started kicking, hitting and throwing items at staff and peers...Student was directed to be in safe areas but was prevented from leaving the classroom when he tried to enter teach room. Was held by arms when scratches could not be deflected. [Student] was released and held several times." The

⁸ For the October 10, 2019 incident, the District's response only included the "Parent Notification" form, but no corresponding "Restraint and Isolation – Reporting Form." The Parent's complaint included the "Reporting Form."

⁹ On October 17, 2019, the version of the incident on the Parent's notification form is slightly different than the incident description on the restraint and isolation reporting form. The Parent's notification stated, "[Student] arrived to school late and began provoking another student. When staff tried to redirect him, he began to get physical, scratching and hitting staff, and continuing to crawl under furniture to get to the other student. He was redirected multiple times, but kept this behavior cycle." The notification also stated, the Student "grew more escalated while in isolation. He was restrained then taken through the de-escalation process."

¹⁰ For the October 18, 2019 incident, there is no corresponding "Parent Notification" form.

¹¹ For the October 21, 2019 incident, the District's response only included the "Parent Notification" form, but no corresponding "Restraint and Isolation – Reporting Form."

report noted, under the recommendations for future: "not sure what happened on the bus, but dad said he may still be feeling unwell and has a hard time during illnesses." The Parent was notified verbally and in writing.¹² The "Parent Notification" form indicated that the school called the Parent and she decided to pick the Student up early. According to the Parent's complaint, she was asked to pick the Student up and take him home.

30. On November 11, 2019, the District was closed for Veterans Day.

31. On November 22, 2019, the District's first trimester ended.

32. Also, on November 22, 2019, the District entered progress reporting related to the Student's progress on his May 2019 IEP goals. The progress reporting documented the following:

- Speech & Language – Articulation: "Not been provided Instruction on this goal." The Student "has been working towards his pragmatic goals as his transition to a new school and new program has taken some time for him to adjust. He also does not participate in gen-ed class settings so he does not hear peer modeling appropriate speech at this time. Additionally /l/ is developmentally appropriate at this time, so SLP will indirectly address moving forward..."
- Pragmatic Language: "Sufficient Progress." "New evaluation information will be changing this goal, but when [Student] is working towards this goal within therapy sessions and is willing to participate in structured activities, he is able to identify facial expressions with 70% accuracy, gestures with 30% accuracy, and body language with 60% accuracy dependent upon the level of difficulty and his attention to task."
- Pragmatic Language: "Mastered this annual goal." "When behavior is focused to task, [Student] is able to independently show whole body listening. His behavioral/social emotional goals will more closely target this goal moving forward and SLP will be adjusting goals based on more recent updated testing/present levels at upcoming IEP meeting."
- Fine Motor/Pre-Writing: "Sufficient Progress." Student "is improving in his awareness of errors when forming diagonal lines and is able to independently correct his formation when given a vague cue...His consistency with diagonal lines is improving, though he has not mastered this when it comes to forming various letters."
- Fine Motor/Handwriting: "Sufficient Progress." Student "has improved his letter formation and is currently writing 16/26 letters correctly! More complex letters like 'R' and 'S' are challenging for him, but we will continue to work on his fine motor control and coordination to increase his legibility when writing."
- Cognitive: "Emerging Skill." Student "currently can identify 20 of 26 uppercase letters. He still struggles with D, I, J, P, Q, and U."
- Cognitive Letter Sounds: "Emerging Skill." Student "currently demonstrates letter sound recognition with the letters A, H, K, S, T and X. He shows inconsistent mastery of these sounds, but knows many songs that have the sounds associated with letters, and does well when he sings these songs."
- Cognitive Number Sense: "Sufficient Progress." "When Student is motivated to work he can identify how many objects are in a group for the numbers 1-10. He has a difficult time after attempting to make more than one group, so fluency in this goal is needed, but he can do it with adult prompting."
- Cognitive Number Identification: "Mastered." Student "can consistently identify the numbers 1-10 and is able to inconsistently identify the numbers 11-20."

¹² The Parent notification form stated the Student was restrained and isolated for 60 minutes total.

- Social Emotional/Behavioral: "Sufficient Progress." Student "works best with a consistent, visual schedule where he works 10 or 15 minutes, with a 10 or 15 minutes break after working for the scheduled time. He also has the option of a shorter 'work break.' He works towards earning a 'thumbs up' for each activity on his schedule, and can earn a daily activity of choice if he earns his target number of thumbs up. [Student] has met this goal when working independently with adult support. He struggles with compliance and following directions during small group work. During these times he struggles to follow many directions and easily becomes escalated."
- Emotional Regulation: "Sufficient Progress." Student "has responded well to a very structured schedule with breaks built in after 10 or 15 minutes of work. He also has a visual timer to help him stay on task. He will take a break approximately 3 out of 5 opportunities, when prompted by an adult. He usually does not request breaks. [Student] struggles when he feels like taking a break will cause him to miss out on something that is happening in class, but will usually take a break when working independently with adult support."
- Emotional Regulation: "Sufficient Progress." Student "is making good progress on this goal, and has decreased intensity and duration of outbursts to zero to two instances per day."

33. According to the District's response, the District's procedure for progress reports is that special education case managers are required to send their progress reports to the District office at the identified date at the end of each trimester. The student services staff then check to ensure each student with an IEP, on each case manager's caseload, has a progress report. Then, the District office mails the progress reports home via US mail.

For this Student, the District provided a copy of the case manager's case load in November (and similar documentation for the March 2020 progress reports provided later), with a "check mark" by the Student's name, indicating progress reports were created and mailed home.

34. In the Parent's complaint, she stated she did not receive the Student's progress report until she requested the Student's educational records in March 2020.¹³

35. On November 26, 2019, the Student's evaluation group met and agreed the evaluation indicated the Student was eligible for special education services under the category autism. The evaluation report stated the reevaluation was initiated, in part, to "consider changing [the Student's] eligibility category, considering if his IEP and placement continue to be appropriate, and if he is in need of any additional services/supports." The IEP noted a file review was conducted (including reviewing the May 2019 evaluation) and that new testing in adaptive and communication was conducted, as well as gathering updated social/emotional/behavioral and academic data. Further, the group reviewed the Student's recent private autism evaluation and diagnosis. The evaluation report noted the recommendations for specially designed instruction in reading, math, written language, and adaptive behavior, social emotional/behavioral, fine motor, and communication.

¹³ In both the Parent's complaint and reply to the District's response, the Parent focused on the fact that she did not receive a progress report as of January 23, 2020, the end of the first semester. The Parent stated, "we requested the progress report and received it on March 11, 2020"—referring to the November 2019 progress report. In her reply, the Parent further stated, "the District did not provide the Parent with the special education progress reports for the end of the first semester, January 23, 2020...the Parent never received the 1/23/2020 progress report."

The evaluation report included updated daily behavior data, which indicated a variety of challenging behaviors, including yelling unkind words, climbing on desks, threatening others, throwing items, inappropriate language, and physical aggression. The evaluation noted the Student had difficulties with "self-regulation, social/play skills, aggression, hyperactivity, appropriate tone of voice and words, following routines, and following directions." According to the District, the need for a new BIP was discussed at the evaluation meeting.

36. In additional information provided by the District, the District stated the November 2019 reevaluation "confirmed this finding [from the May 2019 reevaluation that the Student required more substantial and intensive programming] and resulted in the corresponding IEP."
37. At the evaluation meeting, the District stated the need to review the Student's IEP was discussed and the question of whether the program was the appropriate placement for the Student was raised. The District noted a "life skills" program placement was discussed, but that "based on the extent of the Student's social/emotional and behavioral needs, concerns in meeting the Student's needs in this setting were discussed and further consideration was postponed until an IEP meeting could be schedule to revise the Student's IEP."
38. The Parent, in her complaint, stated the evaluation documented that the Student's "challenging behavior increased as the school year progressed," but that she seemed to be the only one that was concerned that the Student's "behavior had gotten worse (new violent behaviors that we have never seen before) in the...program."
39. According to the "contact attempt report," the Parent requested they hold the IEP meeting in January 2020, "due to the holiday school closures" and the meeting was scheduled for January 30, 2020.
40. In her complaint and reply, the Parent stated the Student's FBA was not updated "after continuous isolations and restraint incidents...even after we voiced continual concern about there not being a plan in place."
41. In November 2019, the Student was restrained and isolated on the following dates:
 - November 7: The Student was isolated for 17 minutes after he was "screaming and chasing [another] student around [program] room...escorted [Student] to zone until he calmed down." The report noted in future staff would "continue working with [Student] on how to interact w/ students in appropriate way or work in zone only." The Parent notification form stated the Student was "kept from leaving his zone by body proximity after being walked to zone...When [Student] calmed enough to stay in his zone and quit screaming, he was given a coloring sheet, then lunch." The Parent was notified verbally and in writing.
 - November 20: The Student was restrained and isolated for 26 minutes after he "ran during break" and "was brought back into [program] room to try & regulate. Began to threaten to kill...paras...Keep Student in zone, then offered to let him go climb in sensory room, became more escalated after call to mom was made due to threats of killing paras & bodily harm. Nothing was working to calm him down." The report noted in future, staff would "Continue to teach Student ways to cope to change." The Parent was notified verbally and in writing.

- November 25: The Student was isolated for 7 minutes because he was "hitting para – not showing safe body or safe hands." The report noted in future, staff would "give Student pre-warning of expectations." The Parent was notified verbally and in writing.

42. On December 4, 2019, the Student's father emailed the special education teacher, stating he and the Parent were "concerned about [Student's] bad language when upset...it has been an ongoing challenge." The Student's father stated they were trying to use replacement words as an incentive for not using inappropriate language.

The special education teacher responded they would track frequency at school and remind the Student to use a replacement word.

The Student's father replied, after school, stating the Student had reported another student was "breaking into his zone and using the F word. [Student] is worried that he is going to kill him." The father stated he was not sure what the solution was, but the Student was upset.

43. On December 5, 2019, the Parent emailed the special education teacher, stating the Student was worried about school and "cried for an hour with worry" that night. The Parent stated it was impacting his "ability to sleep and find a calm body. He's afraid to ride the bus tomorrow..."

44. In December 2019, the Student was isolated and restrained on the following dates:

- December 3: The Student was restrained for 1 minute and isolated for 3 minutes after he became escalated and began "hitting & kicking at staff and refused to get on the bus...2 person escort to and from bus by the upper arms. He was released to the classroom." The report noted in future, staff would "re-teach expectations to earn his craft." The Parent was notified verbally and in writing. The Parent noted in her complaint that she was asked to come pick the Student up.
- December 9: The Student was restrained for 2 minutes and isolated for "29/8" minutes¹⁴ after he "continued to behave aggressively towards another student & antagonize...[Student] was escorted to class, he chose to use the sensory room and asked to close the mat. He then became aggressive towards staff & was placed in isolation." The report noted in future, staff would "re-teach social expectations & how to get others to play with him." The Parent was notified verbally and in writing.
- December 18: The Student was restrained for 1 minute and isolated for 14 minutes after he came in from the playground escalated and after a sensory break, he "resumed attempts to physically engage peers. Climbing furniture. Hitting and kicking staff." The report stated, "Restraint used to keep staff & students safe, and to escort student to sensory room. Isolation used for safety during de-escalation." The Parent was notified verbally on December 20 and in writing on December 19, 2019.
- December 20: The Student was isolated for 10 minutes because he was "hitting para, screaming, climbing, being unsafe...Isolation started in zone then moved to sensory room until he was able to calm down." The report noted, under recommendations for future, that the Student "needs

¹⁴ The Parent notification form for the December 9, 2019 incident listed a different amount of time, broke into two incidents: 3 minutes of restraint and then 3 minutes of restraint and 11 minutes of isolation, for 17 minutes total.

structured time, avoid excitement of day before winter break." The Parent was notified verbally and in writing.

45. The District was on break from December 23, 2019 through January 3, 2020.
46. On January 6, 2020, the special education teacher emailed the Parents regarding the upcoming IEP meeting. The teacher asked if they had any additional input.

The Student's father responded, stating their concerns were unchanged and that they wanted to "see increased integration with the general Ed so he can see what's expected for his age in a classroom setting and hopefully develop friendships outside of the [program]."

47. The District's first semester ended on January 23, 2020.
48. On January 29, 2020, the Student's IEP team met. According to the prior written notice, dated January 30, 2020, the IEP team discussed the IEP, Student's strengths, and Parent's concerns. The team proposed continuing the meeting until February 13, 2020. According to the notice, the team "discussed and tabled [issues] includ[ing] moving [Student] to Kindergarten, having [Student] attend his neighborhood school in first grade next year, moving [Student] to a different setting." The notice documented that, before making a decision, the team "needed time to look at and possibly perform additional evaluations, collaborate with general education staff and transportation," and that the team would "focus on identifying areas to support [Student's] opportunities to join his gen ed class in order to build skills and gather data to support decisions for the 2019-2020 placement."

The District stated a new IEP was not developed at the January 29, 2020 meeting and the team agreed to meet again on February 13, 2020, to "develop a new IEP and further discuss special education, related services, and placement."

49. The Parent stated, in her complaint, that she never received a prior written notice following the January 29, 2020 meeting.
50. On January 29, 2020, following the meeting, the special education teacher emailed the District's director and characterized the meeting as a meeting to share concerns before the "actual IEP meeting," scheduled for February 13, 2020. The special education teacher also noted in her email that she was "getting mixed messages about the phone calls" and that she tried "not to call too often, but mom has said in the past that she wanted to know if he is escalated. I never tell her that she needs to come and get [Student], but she often chooses to come and get him."
51. In January 2020, the Student was isolated and restrained on the following dates:
 - January 8: The Student was restrained for 1 minute and isolated for 14 minutes after he became upset, hit, and kicked staff. The report documented the Student "was isolated in his zone until he began hitting staff over the mat. He was held by one [right response] trained staff until escorted to the sensory room." The report noted in future staff would "reteach expectations to earn his end of day craft." The Parent was notified verbally and in writing. The Parent's

notification form indicated that “because it was the end of the day and [Student] could not get emotions to de-escalate, mom picked him up and calmed him.”

- January 9: The Student was restrained for 2 minutes and isolated for 4 minutes after he “was asked to leave the group lesson due to being disruptive” and “in the hall he began hitting & kicking staff.” Later, the Student was isolated for 10 minutes because he “wanted to enter room w/ [counselor] to antagonize student, when not allowed to he became violent. Hitting, kicking, biting [sic], & throwing shoes.” The report noted in future, staff would “preteach social skills expectations” and “continue to work with Student to enter room calmly and respectfully.” The Parent was notified verbally and in writing.
- January 17: The Student was restrained for 2 minutes and isolated for 24 minutes after he attempted a “physical altercation” with a peer and “threw various items at staff and ran for bus loop fencing...Restraint used to escort student...to sensory room. Isolation used to maintain safety of staff and student during escalation & de-escalation.” The report noted in future, staff would “cross train other staff so [Student] isn’t escalated with new people.” The Parent was notified verbally.¹⁵
- January 21: The Student was restrained for 2 minutes and isolated for 26 minutes after he began “attacking; hitting & grabbing other students, he was asked to take a running break, instead he ran from staff...[Student] was escorted into the sensory room...he remained until calm for 2 min & counted to 20 w/ para.” Later, the Student was restrained for an additional 5 minutes after trying to “hit a peer at parent pick up, then continued trying to attack peer.” The report noted in future, staff would “preteach special expectations & how to make friends.” The Parent was notified verbally and in writing.
- January 22: The Student was restrained for 3 minutes and isolated for 56 minutes after he threw music instruments and ran from the classroom. The report stated the Student was isolated “until he was calm enough to return to his zone.” The reported noted in future, staff would “continue to teach student to not throw things in class.” The Parent was notified verbally and in writing.¹⁶
- January 23: The Student was restrained for 1 minute and isolated for 27 minutes after he became “uncontrollable running around tech room, ran into tech room bathroom. Called to remove Student from tech to [program] room...2 person [right response] escort to [program room]. Room was clear so we were just going to let him do his thing to calm down. He began to throw things at us paras whiteboard eraser & wobble chair.” The report noted in future, staff would “continue to teach Student how to work through emotions correctly.” The Parent was notified verbally and in writing.¹⁷
- January 27: The Student was restrained for 5 minutes and isolated for 21 minutes after he became escalated and “began threatening para to throw rocks [at] them, then threw [stuffed animal] at another student, threw chair [at] para then kicked para.” The Student was later restrained for a further 3 minutes and isolated for 77 minutes after he “punched para in the

¹⁵ The District’s response did not contain a “Parent Notification” form for the January 17, 2020 incident. The Parent’s complaint did include the Parent notification form.

¹⁶ The January 22, 2020 “Restraint and Isolation – Reporting Form” was provided in the Parent’s complaint, but not in the District’s response.

¹⁷ Regarding the January 23, 2020 incident, the Parent Notification form contained different information than the “Restraint and Isolation Reporting Form,” noting the Student was restrained and isolated twice: once for 22 minutes and a second time for 24 minutes. The Parent Notification indicated the Student threw chairs and hit, kicked, and bit staff.

face [twice] then attacked another student" and "recommend he take a break, advise an alternate activity." The report noted in future, staff would "preteach/reteach classroom expectations & social interactions." The Parent was notified verbally and in writing.

- January 28: The Student was restrained for 10 minutes and isolated for 12 minutes when he began to hit and kick a paraeducator following escalation. Later, the Student was restrained for a further 17, 1, 1, and 10 minutes in four separate incidents, and the Student was isolated for 22, 3, 18, and 10 minutes in four separate incidents. During the subsequent incidents, the Student hit and kicked a paraeducator; failed to bounce a ball appropriately; hit, kicked, and scratched after refusing to work (two separate times); and, attempted to elope in a high traffic area during parent pick up time. The report noted in future staff, would "continue to help student with dealing with emotions," "continue to teach Student proper ways to handle emotions," "continue to teach Student expectations of how to use property," provide "reminders to stay on track and ignore others, reteach classroom expectations," "preteach/discuss classwork expectations," and "wait in classroom longer until parents arrive to pick-up."¹⁸
- January 29: The Student was restrained for a total of 6 minutes and isolated for a total of 52 minutes in four different incidents¹⁹, which included the following behaviors: "throwing things, hitting at staff w/umbrella, kicking, attack other students despite staff intervention, throwing chairs...2 wobble stools and a regular student chair." The report noted in future, staff would "preteach morning routine, expectations," "work on alternate ideas for distraction, and class work incentives," and "closer staff proximity, redirection & distraction ideas." The Parent was notified verbally and in writing.
- January 30: The Student was restrained for 30 seconds and isolated for 15 minutes. The report stated the counselor "asked [Student] to take a 5 min break in his zone...[Isolated] in zone w/ mat until he was able to have safe body." The report noted in future staff would "have a plan to remove [Student] before he escalates." The Parent Notification form indicated the Student "was asked to take a five minute break during social skills which escalated into physical aggression," and indicated the Student was restrained and isolated for a total of 18 minutes. The Parent was notified verbally and in writing.

52. On February 10, 2020, the program counselor emailed the general education teacher about setting the Student up with a "gen-ed peer" for a "friendly peer model," where the peer would meet with the Student and counselor once a week for a 30-minute small group. The general education teacher responded that she had a couple ideas.

53. On February 13, 2020, the Student's IEP team met and amended the Student's IEP. The team considerations portion of the IEP recorded the Parent's concerns with the Student's increased use of inappropriate language and request that the Student be integrated with general education peers that model typical age appropriate behaviors. The Parents also reported the Student stated he does not feel safe at school, he is afraid to ride the bus, and that he "is starting to feel paranoid" at school. The Parent expressed concern that there did not "seem to

¹⁸ The January 28, 2020 "Restraint and Isolation – Reporting Form" was provided in the Parent's complaint, but not in the District's response. There is no indication on the forms that the Parent was notified either verbally or in writing.

¹⁹ According to the Parent Notification form for the January 29, 2020 incidents, the Student was restrained and isolated for a total of 130 minutes.

be behavior improvement in his daily trackers and he is often restrained and isolated." The IEP also noted the Student had an emergency response protocol (ERP)²⁰ that "was developed as an additional level of support, as [Student] has needed to be physically restrained/isolated this school year for his safety and the safety of those around him."

The IEP included updated present levels of performance and the following annual goals, with progress reporting to be provided at the trimester:

- **Social Emotional/Behavioral:** "When given an unstructured setting such as lunch or recess [Student] will independently initiate a peer interaction and ask them to play improving social/emotional behavior skills from 0/5 times measured over three consecutive trials to 4/5 times measured over three consecutive trials as measured by teacher recorded data of observed student behavior."
- **Social Emotional/Behavioral:** "When given an opportunity to engage in play with a peer [Student] will maintain a positive play interaction including using safe hands and feet and a calm voice for 5 or more minutes improving social/emotional behavior from 0/5 opportunities on three consecutive trials to 4/5 opportunities on three consecutive trials as measured by teacher recorded data of student behavior."
- **Adaptive Behavior:** "When given an academic task that causes [Student] to become frustrated [Student] will self-advocate for his needs and request a break improving adaptive behavior skills from 0/5 opportunities measured on three consecutive trials to 4/5 opportunities measured on three consecutive trials as measured by teacher recorded data of student behavior."
- **Adaptive Behavior:** "When give a point in the daily schedule that requires a change of activity or location [Student] will successfully transition by complying with the adult request with two or fewer prompts improving adaptive behavior skills from 1/5 transitions on three consecutive measurements to 4/5 transitions on three consecutive measurements as measured by teacher recorded data of student behavior."
- **Math:** "When given a set of mixed practice single digit addition and subtraction problems with sums and differences within 20 [Student] will correctly solve the problems improving mathematic calculation from 1/10 correct on three consecutive trials to 8/10 correct on three consecutive trials as measured by teacher recorded data of student work samples."
- **Reading:** "When given a set of 5 consonant-vowel-consonant (CVC) words [Student] will segment and provide the sounds for each letter in the word improving basic reading skills from 0/5 opportunities measured over three consecutive data points to 4/5 opportunities measured over three consecutive data points as measured by teacher recorded data of daily student performance."
- **Reading:** "When given a set of the first 20 Frye's Irregular words [Student] will read the word with automaticity and accuracy improving reading skills from 3/20 words correct to 18/20 works correct as measured by teacher recorded data of daily student performance."
- **Written Language:** "When given less than 3 verbal cues for dictated letters [Student] will recall the letter from memory and write it without a model improving written expression skills from writing 14/26 letters on three consecutive trials to writing 26/26 letters on three consecutive trials as measured by teacher recorded data of written performance."

²⁰ The District's response to this complaint included an "Emergency Response Protocol" document that was unsigned. OSPI notes that an ERP requires written parent consent. See WAC 392-172A-02105. However, the absence of a signed ERP does not prevent a district from appropriately using restraint or isolation when there is an imminent likelihood of serious harm; further, a signed ERP does not excuse the improper use of restraint or isolation.

- **Communication:** "When given explicit instructions via social story, and/or structured social/pragmatic language activity [Student] will provide appropriate responses to given social scenarios independently improving social communication from verbal, visual, and field of two choices to respond to open ended social scenario questions to independently responding to open ended social scenario questions with 80% accuracy as measured by SLP session data across 3 or more sessions."
- **Fine Motor:** "When give a visual model to copy [Student] will write lowercase letters improving letter formation and stroke direction for legibility from 5/26 accurately to 24/26 accuracy as measured by work samples every grading period."

The IEP provided the Student with several accommodations and modifications, and yearly training in de-escalation strategies as a support for school personnel. The IEP provided the Student with the following specially designed instruction in the special education setting:

- Fine Motor: 30 minutes, 3 times a month (provided by an OT)
- Communication: 30 minutes, 3 times a month (provided by an SLP)
- Math: 30 minutes, 5 times a week (provided by a special education teacher)
- Reading: 30 minutes, 1 time daily (provided by a special education teacher)
- Written Language: 30 minutes, 5 times a week (provided by a special education teacher)
- Social Emotional/Behavioral: 160 minutes, daily (provided by a special education teacher)
- Adaptive Behavior: 60 minutes, 5 times a week (provided by a special education teacher)

The IEP also provided the Student with transportation and 1,740 minutes a week of paraeducator support. The IEP noted the Student would spend 1,595 per week in a special education setting and would spend 8.3% of his time in a general education setting. The IEP continued to note the Student required a "highly structured program, small group setting with staff trained in de-escalation strategies and access to intensive social/emotional/behavioral supports."

54. According to the prior written notice, dated February 13, 2020, the team updated the Student's IEP to support his "current level of need in all academic areas as well as adaptive behavior, social emotional behavior, communication, and fine motor" based on the Student's recent reevaluation. The prior written notice also documented that the team "discussed the most appropriate classroom placement for [Student] based on his current levels" and determined the "program would be the most appropriate placement for [Student] at this time," despite noting the Parent's "concern over the classroom placement." The notice recorded that the team discussed but rejected "the option to change placement. At this time, [Student's] daily behavior performance is not conducive to a general education setting based on the number of physical aggressions and verbal outburst he is exhibiting daily."

The prior written notice summarized that the team discussed adding additional supports for the Student during transportation, "tightening [Student's] schedule to include a strong use of clocks as a visual support," and "moving his highly preferred reward to a time that is not immediately at the end of the day to eliminate escalations that prevent him from getting on the bus to go home." Further, the team determined they would revisit and review the Student's behavioral data to determine if a change of placement should occur to best meet the Student's needs for the 2020-2021 school year.

55. Also, on February 13, 2020, the Student's IEP team reviewed and updated his BIP. The BIP noted the Student's strengths and that the Student "acknowledges his behavior and is able to empathize feelings in social stories and real-life situations if he is calm." The BIP included data from the 2018 FBA, behavior logs, staff observation, and noted the Student continued to need 1:1 paraeducator support, had an "individualized schedule with built in sensory and large motor breaks and a work/break ratio of 10 minutes on an assigned task with 10 minutes of a choice break...He is also given the option of taking a 5 minute calm break at any time he becomes frustrated." The BIP noted the Student responded well to a more structured system, with "him earning his reward (...typically a craft) at the end of the day for earning the predetermined number of 'thumbs up'..." However, the BIP stated that after winter break, the Student "has struggled to maintain emotional regulation. Aggression and eloping have increased, especially when he does not earn his choice reward at the end of the day."

The BIP targeted the following behaviors:

- Aggression: "Physical aggression toward peers and staff scratching, pinching, kicking, hitting, and throwing objects at staff;"
- Inappropriate Language: "[Student] yells curse words and social unacceptable comments when escalated

The BIP described contributing factors, triggers, intervention strategies, skills to be taught as replacement behaviors, consequence strategies, reinforcement and response plans, de-escalation plans, and data collection.

56. According to the Parent's complaint, she disagreed with the BIP because it was created without having completed an updated FBA conducted by a BCBA. The Parent also disagreed substantively, stating, "[Student] can never feel successful in this type of program. At 6-years-old, [Student] should feel successful throughout his day, but instead he's being isolated and restrained...and then punished because he doesn't understand the compliance requests being made of him."

57. In her complaint, the Parent asserted that when comparing the Student's kindergarten IEP goals with the current (February 13, 2020) IEP goals, "ALL OF THEM are exactly the same, and he's still not making progress on many goals...His IEP was not reasonably calculated to ensure he made meaningful progress" (emphasis in original).

58. According to the Parent, following the February 13, 2020 IEP meeting, the "final amended IEP that we received only contained one communication IEP goal, and two fine motor IEP goals...the minute matrix...is also missing many of his service providers and states that [Student] is included in general education for 97.14% of his day. Nowhere on this document does it state that it's a draft." The Parent stated the prior written notice did not approve or reject the request to change the Student's placement.

According to the District's response, at the meeting, the Parents were provided a draft copy of the IEP and notes were taken based on the input by the team during the meeting.²¹ The director took notes and provided them to the Student's special education teacher in order to update the IEP following the meeting.

According to the District, the special education teacher updated the Student's IEP following the February 13, 2020 meeting; however, it was discovered later that the final copy of the IEP was not sent to the Parent. The District stated the IEP meeting occurred just prior to mid-winter break and following break, the special education teacher did not return to her position at school 2. The District stated it sent a final copy of the February 2020 IEP in March, following the Parent's educational records request.

59. On February 28, 2020, the District let families in the program know the special education teacher had accepted another teaching position for the remainder of the school year. The email noted that a substitute teacher would fill the position and that the program would continue to have support from the District special education coordinator and behavior specialist, program counselor, school psychologist, and paraeducators.

60. In February 2020, the Student was isolated and restrained on the following dates according to the District's documentation:

- February 3: The Student was restrained for 30 seconds and isolated for 13 minutes after he "left his zone" and "began hitting other student." The report noted in future, staff would "re-teach classroom & social expectations." The Parent was notified verbally and in writing.
- February 4: The Student was restrained for 4 minutes and isolated for 8 minutes after he "became increasingly escalated at Parent pick-up, began hitting para, then escorted to counselors office & began throwing things" and "was restrained until semi-calm. Remained in isolation until Dad picked up." The Student was restrained a second time for 1 minute and isolated for 3 minutes after hitting other students. The report noted in future, staff would "have Parents come to the classroom to pick-up." The Parent was notified verbally and in writing.
- February 6: The Student was isolated for 50 minutes after he became escalated and started hitting and kicking, and "was isolated in his zone until calm enough to go into [occupational therapy]." The report noted in future, staff would "discuss expectations to attend social skills ahead of time." The Parent was notified verbally and in writing.

61. The Parent's complaint also stated the Student was isolated and/or restrained on additional dates in February 2020. The Parent's complaint included reporting and parent notification forms for these dates that were not included in the District's response. The Student's behaviors were similar to previous incidents (e.g., hitting, throwing items, kicking, scratching, eloping, etc.). The Student was restrained and isolated for the following amounts of time:

²¹ The District's response contained a copy of this draft IEP with notes. The draft IEP included handwritten notes that were incorporated into the final IEP, three draft annual goals (one in communication and two in fine motor), an incomplete services matrix with notes regarding additional services, and a percentage of time in general education listed as 97.41%. Based on all the documentation in this investigation, what the Parent stated in her complaint was an incomplete "final amended IEP," was the draft copy of the IEP received at the meeting.

- February 7: Restrained 3 minutes, isolated 20 minutes;
- February 11: Restrained 2 minutes, restrained 2 minutes, isolated 10 minutes;²²
- February 12: Restrained 2 minutes;
- February 13: Restrained 3 minutes, isolated 39 minutes;
- February 14: Restrained 2 minutes, isolated 18 minutes; and,
- February 28: Restrained 2 minutes, isolated 17 minutes.

The various reports also noted the following recommendations for future, among similar recommendations provided previously (e.g., reteach expectations):

- "Give [Student] a separate recess time."
- "Take [Student] late to science."
- "Continue to teach [Student] that other kids are joining. Try non-verbal cues for [Student] to stop when he's not following directions. Instill time out when rules are broken."

According to the calculations in the Parent's complaint, the Student was restrained and isolated for 45 hours and 25.8 minutes over the course of the 2019-2020 school year.

62. On March 2, 2020, the Parents sent a letter to the school 2 principal, requesting a change of placement. The Parents also requested evidence of the time the Student spent in general education and expressed concern about the "sensory room being used to isolate our son."
63. On March 5, 2020, the Parent emailed the principal and program counselor, requesting an IEP meeting. The Parent also stated she had sent a letter by certified mail and would like a response in writing from the school.

The principal responded that she received the letter and forwarded it to the director and the District's student services executive director (executive director), and that she was meeting with the executive director to discuss.

64. On March 7, 2020, the principal emailed the Parent and stated the director would be reaching out to schedule a meeting. The principal also noted that, "in the meantime, [general education teacher, program counselor, and school psychologist] have a plan for [Student] to participate in gen. ed. with [general education teacher's] 1st grade class. The plan includes checking in each day with [general education teacher] in the morning and joining the class for read aloud in the afternoon."
65. Also, on March 7, 2020, the Parent emailed the principal and requested a copy of the Student's educational records, including his most recent evaluation, IEP, FBA, BIP, and restraint and isolation reports.

²² The Parent notification form for the February 11, 2020 incident indicated the Student was restrained and/or isolated for a total of 104 minutes over 6 incidents. There is only documentation of two of the incidents.

66. On March 9, 2020, the school psychologist responded to the Parent's March 7, 2020 email, stating she was working on getting an IEP meeting set up and would send home "written notice that we have received your letter."
67. On March 10, 2020, the District provided the Parent with a prior written notice, documenting receipt of the Parent's March 2, 2020 letter and email from the Parent, dated March 7, 2020, requesting an IEP meeting to discuss a change of placement. The notice indicated a meeting was scheduled for March 11, 2020. The notice further stated:
The IEP team met with you on 1/29/20 and 2/13/20 to update [Student's] IEP and [BIP]. At that time you requested consideration for a change in placement for next school year and expressed a desire for [Student] to participate in the general education setting more. It was shared that in order to change a student's placement an evaluation would first be completed. It was agreed that in order to better assess [Student's] needs for next school year a reevaluation would occur in the spring with an IEP meeting to follow. The team also discussed possible times of day to begin integration into the general education and a plan moving forward.
68. Also, on March 10, 2020, the Parent sent the District superintendent an email, repeating their request for a change in placement and restating their concerns regarding the use of isolation and restraint. The Parent also requested an independent educational evaluation (IEE).
69. Also, on March 10, 2020, the District emailed the Parent copies of the requested educational records for the Student.
70. Later, on March 10, 2020, the Parent emailed the Student's IEP team a "parent input form" and a letter from one of the Student's private providers. The Parent also requested a copy of the Student's progress reports. The parent input form included the following requests:
- Move the Student to his neighborhood elementary school in general education with supports;
 - Create and implement a transition plan to ensure a smooth transition to the new placement;
 - A slow start to the new placement ("possibly half days with maximum support when at school");
 - An FBA conducted by a BCBA once in the new general education placement;
 - An IEE in all areas (academic, social/emotional behavioral, adaptive, fine motor, and communication);
 - That the Student be retained a year; and,
 - Several additional accommodations and supports, including paraeducator support throughout the school day.

The form also repeated concerns regarding the Student's current IEP, placement, and the restraint and isolation. The Parents stated they were concerned that the Student's "IEP has less support than last year's IEP, even though the evaluation found that he's still eligible...his IEP is not reasonably calculated to provide our son with meaningful benefit or a...FAPE." The Parents stated, "Challenging behaviors are not only a manifestation of [Student's] disability, but a result of a lack of appropriate IEP goals, behavior and communication supports, as well as supplementary aids and services" and explained that they had "been asked several times to leave work to come and de-escalate our son from what teachers' deem challenging behaviors."

The Parents also expressed concern that the IEP was incomplete and inaccurate (e.g., the service matrix and missing goals).

The Parent provided the District with a letter from the Student's doctor, which stated, in part:

On reviewing the reports from his mother, it is evident that [Student] is having struggles with the current program and education plan at school. The repeated use of restraints or seclusion for discipline and safety can have a negative impact on his emotional and psychological wellbeing. I request that the school will revise his IEP evaluation and consider a different approach to education and discipline for [Student] to ensure his success and happiness in future.

71. On March 11, 2020, the Student's IEP team met to further discuss the Parent's concerns and request for a change of placement. The District stated the Parent "again requested a change of placement to the Student's neighborhood school to a general education classroom with significantly more of the Student's day spent in the general education environment with the support of a paraeducator." The District further stated, in its response, that:

It was discussed that the reevaluation from November 2019 and IEP and BIP developed in February 2020 indicate the need for services and placement of the type of which are provided in the [program] and the type, intensity, frequency and duration of the services and supports needed by the Student could not be adequately implemented at the [S]tudent's neighborhood school as evidenced during the Student's kindergarten year and resulting in a change of placement in August 2019.

72. Also, on March 11, 2020, the Parent's advocate emailed the director and stated the family was requesting an IEE from several different providers in the areas of social/emotional behavioral, an FBA, cognitive and adaptive assessments, communication, and fine motor.

73. The District's second trimester ended on March 12, 2020.

74. Also, on March 12, 2020, the District entered progress reporting related to the Student's February 2020 IEP goals. No progress was reported for any of the goals and each included the statement: "There has been an insufficient amount of time to provide instruction and collect data since the IEP meeting date (less than three weeks due to mid-winter break and student attendance). Please see IEP dated 2/13/202 [sic] for present levels of performance."

75. Regarding the March 2020 progress reporting, the District stated, in its response, that "due to COVID 19 and staff being prohibited from buildings, [reports were sent] slightly after the end of second trimester."

76. The District stated the special education teacher sent home daily data sheets to the Parent, which provided "a measure of daily progress toward social/emotional/behavioral and academic expectations." The data sheets included information on how many reminders the Student needed related to classroom goals ("Be Safe: Calm/Safe Body; Be Respectful: Use Kind Words; Be Responsible: Follow Directions; [and] Quality Work") and personal goals (e.g., nice language, ignore negatives, hands to self, follow schedule, ask for breaks, etc.); and, included spaces for notes on activities, instruction, behaviors, etc. for throughout the day. In late

November, the format of the data sheet changed to include a space to note morning and afternoon "strengths & positives" and "challenges & opportunities."

77. On March 20, 2020, the District provide the Parent with prior written notice, granting the IEE request.

78. On March 24, 2020, the Parent emailed the executive director and stated the March 20, 2020 prior written notice "failed to detail all of the requests we made in writing at the March 11, 2020 IEP meeting." The Parent requested a prior written notice that reflected "a response to our requests and reasons for either approving or denying our requests." The Parents reattached their "Parent Input Form," which they previously provided on March 10, 2020. The Parents further stated:

The IEP team was not in agreement about our request for a change of placement for our son. [Student] refuses to return to [school 2]. After continually being restrained and secluded and placed in a classroom without his age-appropriate peers, he has been left traumatized. He told us 'I don't want to go to school because they will just put me in that scary room.' We requested that he be moved to his neighborhood school with supports. He is not receiving appropriate supports in his IEP, which is leading to unplanned and unsafe restraints and seclusions and a denial of a FAPE...

[Director], stated she would not approve a change of placement until an evaluation had been completed. We argued that the school had already completed an evaluation in November 2019 when we first put in writing our concerns with the [program]...We also requested for an IEE for the evaluation. We request that the [prior written notice] reflect this refusal to change [Student's] placement...

Furthermore, we requested specific concerns to be copied and pasted into our son's IEP, as well as the addition of new accommodations and supports for staff. None of these requests was added to [executive director's prior written notice], and we haven't seen an amended version of the IEP. In fact, until we requested [Student's] full educational record on March 11, 2020, we hadn't received any IEP progress reports for this reporting period or an accurate IEP...

The IEP team on March 11th made clear that the restraints and seclusions were not working for [Student]. The [psychologist]...stated that 'transitioning [Student] into general education was a goal for us.' The team supposedly just started testing this plan by sending [Student] to a general education classroom for a few minutes a week...

We are requesting that our written requests and concerns be reflected in the amended IEP and [prior written notice] for March 11, 2020. We are requesting that this letter be added to his official educational record, and that we receive a response by Friday, March 27, 2020.

79. In the Parent's reply to the District's response, the Parent objected to the District's assertion that an evaluation was required prior to a change in placement. The Parent stated the State special education regulations do not required an "IEP team to conduct a 3rd reevaluation in less than a year to provide the Parent an answer to their continued request for a change of placement." The Parent stated the "current evaluation showed that problem behaviors were

actually increasing," but also disagreed with the evaluation, stating "the evaluation also did not include a FBA from a BCBA."

80. The District explained, in additional information, that the placement change requested by the Parent in March 2020 was a change to the Student's neighborhood school with placement in a general education classroom, with resource room support. The District stated, "this would be a material change in placement and would substantially decrease the amount and type of special education services provided and, additionally, may have resulted in potential harm to the [S]tudent, other student's [sic] and staff due to the nature of the [S]tudent's physically aggressive behavior as previously evidenced at [previous school] prior to his transition to [the program]."
81. According to the Parent's complaint, at the March 11, 2020 IEP meeting, "other than the IEE, our requests were verbally refused." The Parent stated, "the staff...agreed that isolation and restraints needed to end, and that he should spend more time in general education. The staff stated that the [program] was undergoing significant changes for next school year, but we heard the same excuse last spring when they proposed putting [Student] in the program." The Parent further stated, "none of these verbal admissions were put in a [prior written notice]."
82. On March 27, 2020, the executive director emailed the Parents and stated the District agreed to the provider selected for the comprehensive IEE. The executive director also shared with the Parents that the provider (as well as most other providers) had paused evaluations due to the COVID-19 restrictions.
83. On March 30, 2020, OSPI received and opened the Parent's request for a special education complaint.
84. On March 31, 2020, the District prepared and emailed the Parents a prior written notice regarding the March 11, 2020 meeting, and documenting that it was proposing to conduct a reevaluation to determine whether to change the Student's placement and that the District was "declining to [sic] parent's request to change placement without reevaluation." The prior written notice went on to summarize the following reasons for its proposed course of action:
The team met to discuss parents' concerns regarding programming and placement and review [the] document they shared on 3/11/20 which included a request for evaluation, placement change to home school, restraint/isolation, access to general education, education with same age peers, retention in 1st grade for the 2020-2021 school year. The meeting began by reviewing part of the 'parent input' form provided by the family. [The director] shared that we would not recommend a change of placement without a reevaluation. She offered...to complete a comprehensive reevaluation and include a BCBA in the FBA. She provided a list of IEE providers approved by the district but they could provide their own providers to the district for consideration. The family's Advocate...shared their belief that the IEP team could recommend a placement change outside of the evaluation process. [The school psychologist] read/reviewed the technical assistance paper #5 regarding change of placement. That document requires reevaluation before a 'substantial or material' alteration to a student's educational program. The change proposed by parents meet this standard.

The notice documented that the Parent also proposed the team “copy and paste a paragraph to the IEP reflecting their concerns.” Further, it documented that the Parent requested the District change the Student’s placement to homeschool with the provision of itinerant services. The District explained that homeschooling could neither be accepted nor rejected by an IEP team as it was a parent choice, and noted “to date the District has not received any paperwork to initiate home schooling.” The prior written notice further documented:

The IEP met on 2/13/20 to craft an IEP, the team could not determine a finalized copy had been sent to parent as that was the last day for the previous teacher. The district Behavior Specialist and Coordinator met with the [program] team on 3/10/20 to retool [sic] the staff regarding restraint and isolation. [The director] also suggested the team could develop an ERP which strictly defines strategies to address [the Student’s] behavior as well as response (suggested no use of isolation or restraint). [The director] shared changes that are happening in the program which include a new teacher...additional support from Peer EBD consultants, gaining an additional classroom space, planned move to [another District elementary school] in the fall with primary and intermediate classrooms for the [program]. The school psych and [program] counselor shared the steps that were being taken to provide more opportunities for [Student] to integrate with his peers which included 1-1 counseling with [program counselor] regarding strategies, choice breaks, identified schedule in Gen Ed class, running club and sensory breaks within the day. [The director] also shared options for parents if they choose not to return to [school 2] (as requested by family) which included homeschool declaration w/ ala carte services, revocation of services or due process. Discussed additional changes to programming that could be offered such as expanded workspace, workspace in gen ed, revising the BIP, revising the ERP.

The school based team suggested considerations including making updates to current placement to address parent concerns including showing parents any updates to location and schedule, etc. District is also willing to complete comprehensive [reevaluation] including contracting with a BCBA for the FBA. The various changes/improvements to the current IEP/placement were rejected by parents because they are refusing to return the student to school in the current placement under any circumstances. The District remains willing to discuss these changes. Parents declined this as well as offer of support. They are considering homeschool while waiting for an IEE.

85. On April 1, 2020, the Parent emailed the director, executive director, and superintendent regarding the March 31, 2020 prior written notice. The Parent clarified she was not homeschooling the Student and emphasized that she was requesting a change in placement because the Student refused to return to school 2. The Parent also emphasized that she had been voicing these concerns since “the third week of school and multiple occasions thereafter” and that the November 2019 reevaluation report indicated the Student’s “behavior was actually increasing in the [program].” The Parent further stated the prior written notice did not address all of her requests, for example, the request for a paraeducator.²³

²³ OSPI notes the Student’s February 13, 2020 IEP included paraeducator support throughout the school day; thus, as the District had already accepted this request and added it to the IEP, the District was not obligated to address it in the prior written notice. Although, it could have been helpful to clarify to the Parent that this support was already being provided.

86. Regarding placement, the District stated in its response that there were significant social/emotional and behavioral incidents throughout the year and the team “considered, on a regular basis, changes to the Student’s schedule, positive behavior supports, 1:1 paraeducator support in the general education environment and across school-settings and considered harmful effects of the placement.” The District stated that throughout the IEP and BIP development, the team “discussed positive behavior interventions, supports, and daily schedules in order to assist the student to be successful in the least restrictive environment.”

The District also stated, in additional information, that upon completion of the IEE, the District “will consider IEE results, as pertinent to further IEP team discussion regarding placement” and would be “willing to further discuss through a mediated IEP meeting.”

87. Regarding restraint and isolation, the District acknowledged it did not fully follow restraint and isolation procedures and proposed the following corrective actions:

- Review and revise restraint and isolation forms and accompanying documents;
- Review restraint and isolation documentation and reporting procedures with staff;
- Conduct training for District building administrators regarding restraint and isolation, including practices, procedures, and restraint and isolation conditions;
- The District will work with behavior program specialists and consultants to “implement changes to program configuration, structure, and philosophy” as “recommended in a PEER EBD program review requested by the District” as the program moves to a new location for the 2020-2021 school year;
- Annual right response training and ongoing training opportunities for staff in the program “in the use of positive behavior supports and proactive behavior interventions;” and,
- The District will develop a system to regularly review restraint and isolation reports “in order to identify patterns and respond.”

The District stated the paraeducators involved in the program are “currently participating in professional learning regarding de-escalation techniques, positive behavior supports, and the appropriate use of isolation and restraint.” The District also stated the District “is in a multi-year MTSS implementation and all schools are developing and implementing tiered positive behavior supports for students.”

CONCLUSIONS

Issue One – Restraint and Isolation: The Parent alleged the District improperly restrained and isolated the Student as a method of behavior management throughout the 2019-2020 school year.

Use of Restraint and Isolation: Imminent Likelihood of Serious Harm

Restraint or isolation may only be used when a student’s behavior poses an imminent likelihood of serious harm. Likelihood of serious harm means there is a substantial risk physical harm will be inflicted by a person on his or her own person, physical harm will be inflicted upon another person, or physical harm will be inflicted upon property. Isolation and restraint must be discontinued as soon as the likelihood of serious harm has dissipated.

Here, the Student was in the first grade and attended a behavior program (program) located at a District elementary school. The Student was restrained and isolated many times throughout the school year, for approximately 26 hours total—at minimum.²⁴ The Student was restrained for between 1 and 15 minutes and isolated for between 3 and 77 minutes. In general, the isolations tended to be longer in duration. There is documentation that the staff involved in the incidents were trained in Right Response.

The Student was restrained and isolated, according to the District's reporting forms, for a variety of behaviors, the potentially more serious being hitting, kicking, scratching, punching, throwing chairs/stools, and attempts to elope. It is possible that in some of these situations, there was truly an imminent likelihood of serious harm, for at least a brief period of time. However, there is also documentation of the Student being restrained and isolated in the absence of a likelihood of serious harm—throwing small items (e.g., stuffed animals), antagonizing peers (without documentation of physical aggression), climbing on a desk and having his feet in other student's faces, restrained because the sensory room was needed for another student, bouncing a ball inappropriately, and for vague reasons such as "demonstrating unsafe choices." Often, the Student exhibited several behaviors as part of an escalation and OSPI acknowledges it is challenging to judge the imminent likelihood of serious harm from a restraint/isolation report—not having been present for the actual incident. OSPI understands that during many of these incidents, staff are required to make a challenging judgment call for the safety of the Student, other students, and staff. However, overall, the documentation in this complaint indicates the District is overutilizing isolation—either using isolation when there is no imminent likelihood of serious harm or not ending an isolation when the harm has dissipated. OSPI reminds the District that the time to end isolation and restraint is as soon as the likelihood of serious harm has dissipated; this is *not* equivalent to waiting until a student has calmed. The majority of the restraint and isolation reports indicated the Student was kept in isolation until he demonstrated a "calm/safe body" or until calm. This meant that in several cases, the Student was isolated for an hour or more. Additionally, in many of the instances of throwing items or physical aggression, it is not clear that an imminent likelihood of harm remained after the Student was briefly restrained; thus, making the isolation unnecessary and improper. Again, a student being escalated is not always an imminent likelihood of harm, and a student may remain in an escalated state after an initial harm has passed.

Thus, OSPI finds a violation based on the District's overuse of restraint and isolation with this Student. OSPI finds isolation was used excessively and duration of isolation—if there was a valid initial likelihood of harm—was excessive as isolations were continued after the imminent likelihood of serious harm had passed. The District proposed training for building administrators on restraint and isolation practices, procedures, conditions, "Right Response," and positive/proactive behavior supports and interventions. The District further proposed developing

²⁴ It is difficult to determine the exact total of time the Student was isolated and restrained during the 2019-2020 school year. The Parent's complaint stated she believed the Student was restrained and isolated for a total of approximately 45 hours. Approximately 26 hours represents the amount of time for the incidents listed in this decision. However, there were incidents for which no duration was listed and incidents that had different amounts of time on the restraint and isolation report versus the parent notification form for the same incident.

a system to regularly review restraint and isolation reports in order to identify and respond to patterns. OSPI accepts these proposed corrective actions.

For this Student, he did miss a significant amount of time—at minimum, approximately 26 hours of instruction—because he was being restrained and isolated. Thus, compensatory services may be warranted. However, compensatory services must be considered in light of several factors. First, there is documentation that during some of the incidents, the District was attempting to implement de-escalation strategies and coach the Student. Thus, there is some evidence the Student was provided at least some instruction during those periods. Further, based on the Student's November 2019 progress reporting, he was making progress in some goal areas: sufficient progress in pragmatic language, fine motor/pre-writing, fine motor/handwriting, cognitive number sense, social emotional/behavioral, emotional regulation; and, had mastered his cognitive number identification and pragmatic language goal. The Student was at the emerging skill level on his cognitive and cognitive letter sounds goals and had not been provided instruction on his articulation goal. Overall, in November 2019, the Student was making sufficient progress or had mastered the majority of his goals. In March 2020, the Student's progress reporting—following the development of a new IEP in February 2020—reported he had not yet been provided a sufficient amount of instruction to collect data since the IEP meeting date (due to "mid-winter break and student attendance"); however, the February 2020 IEP present levels contained information on the Student's progress and updated goals, indicating the Student was generally making progress in his goal areas despite the restraints and isolations.

However, the documentation also indicates the Student's behaviors escalated throughout the year—at times escalated because of the restraints and isolations—and that the restraints and isolations were causing the Student to become resistant to attending school. Thus, considering the amount of time in isolation, the fact that the Student made some progress, and the fact that his behavior continued to escalate throughout the school year, the District will be required to provide some compensatory services—approximately 1/5 of the time missed due to restraint and isolation, or 5 hours. The District will provide the compensatory services in the areas of social/emotional and behavior.

Follow-Up Procedures

Review the Incident with Involved Staff: After an incident of restraint or isolation, a district is required to review the incident with the staff member(s) 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.

The documentation in this complaint indicates staff did debrief incidents of restraint and isolation. The District stated staff were encouraged to meet weekly to debrief and discuss incidents, revisit behavior management strategies, and discuss positive behavior supports. The documentation in this complaint included team debriefing forms. The District did acknowledge that while staff debriefing occurred, not all forms "consistently document who was responsible for implementing an intervention, target date, etc." and not all debriefing forms were consistently provided to the District office. Additionally, as some forms were used to capture the debriefs for several incidents,

it was not clear staff debriefed each incident and further, some incidents were debriefed—according to the form—several weeks after the incident occurred. OSPI notes that not debriefing the incidents in a timely manner may impact how the District is able to respond to the Student’s behaviors. Overall, it appears the District staff did debrief most of the restraint and isolation incidents. However, given the irregularities in the documentation, OSPI accepts the District’s proposal to conduct training.

Review the Incident with the Parent & Student: After an incident of restraint or isolation, a district is required to review 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.

There is no documentation in this complaint that the District had a regular practice of debriefing the incidents with the Parent and Student (in an age appropriate manner). While the Parent was notified of incidents, notification is not the same as debriefing the incident to discuss the behavior precipitating the incident and the appropriateness of the response. While the Parent did raise concerns regarding restraint and isolation throughout the year, and the documentation shows these concerns were discussed at IEP meetings, the requirement is to review each incident with the Parent and Student. Thus, OSPI finds the District in violation. The District will be required to address this requirement in training.

Reporting Procedures

Inform Administrator: After a restraint or isolation incident, the staff involved must inform the building administrator (or administrator’s designee) as soon as possible. Here, the restraint and isolation forms document that an administrator was consistently informed after an incident. On this requirement, OSPI finds not violation.

Verbal Notification of Parent: A district must make a reasonable effort to verbally notify the parent within 24 hours of a restraint or isolation. In this case, the District’s restraint and isolation reporting forms, and the special education teacher’s call log, indicates that in the majority of the restraint and isolation incidents, the District either called, left a voicemail, or spoke with the Parents in person to notify the Parent of the incident. The District did acknowledge that not every single report documented verbal notification of the Parent. Thus, OSPI finds a violation and the District will be required to address this in training.

Written Report to District: Within 2 business days, a written report must be submitted to the District. The written report must include, at a minimum: 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, including the duration; whether the student or staff was physically injured during the restraint or isolation incident and any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents.

The District’s written report had a space for all of the required elements. There were a few reports that occasionally had an element missing (e.g., a few did not include duration or recommendations for future). Additionally, the District’s documentation did not include a report for every incident

(the Parent supplied some reports that were not in the District's response, and there were some incidents no restraint and isolation report provided at all). Further, the District acknowledged the restraint and isolation reports were not routinely provided to the District office. Thus, OSPI finds a violation and the District will address this in training.

Written Report to Parent: Within 5 business days, written notification must be sent to the parent. OSPI has found that the "written notification" to parents is the same as the "written report" sent to the District—meaning, the written notification to the parent must include: 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; duration; whether the student or staff was physically injured during the incident, any medical care provided; and any recommendations for changing the nature or amount of resources available to the student and staff.

The District's parent notification form included the date of the incident, date of notification, date and time a verbal attempt was made to reach the Parent, and a description of the incident (events prior, type of restraint or isolation, and duration). The parent notification form did not include the name and title of the staff involved, whether injury occurred and medical provided, and recommendations for changing the nature or amount of resources available to the student and staff. Further, the documentation indicates, and the District acknowledged, that it could not guarantee a notification from was sent home for every incident. Thus, OSPI finds the District inconsistently provided the Parent written notification and that the written parent notification form does not contain all the required elements. The District is in violation and will be required to update its parent notification form and provide training.

Issue Two – Placement: The Parent alleged the District failed to properly respond to her requests to change the Student's placement during the 2019-2020 school year. The Parent alleged the District failed to consider the potential harmful effects of the placement and the use of supplemental aids and services in a less restrictive placement.

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs, based on the student's individualized education program (IEP) and least restrictive environment (LRE) requirements. The IEP team must consider the following factors when making a placement determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom.

Initial Placement in the Program

In the spring of 2019, following the Parent's request for a change in placement and a May 2019 reevaluation, the Student's IEP team determined it would change his placement to the "District

Teaching Responsibility, Academics, and Communication (TRAC) social/emotional/behavior program" (program) located at a District elementary school. This decision was based on the May 2019 evaluation, which recommended the Student continue to receive specially designed instruction in motor, social emotional/behavioral, cognitive, and communication. The evaluation also indicated the Student needed a smaller environment and increased support. The prior written notice, following the reevaluation meeting, summarized that the Student "struggled to make expected growth towards many of his goals despite various interventions, an increase in services, and decrease in his daily schedule." The May 2019 IEP listed supports and behavior interventions used and noted the Student required "a highly structured program, small group setting with staff trained in de-escalation strategies and access intensive social/emotional/behavioral supports." The "placement options for LRE" table noted the other placement options (40%-79% and 80%-100% in a general education setting) were rejected because "academic benefit cannot be satisfactorily achieved," "non-academic benefit cannot be satisfactorily achieved," and due to the "effect student will have on teacher and other students."

While it is clear the Parents *now* disagree with the Student's placement, the documentation indicates that the Parents did not disagree with the proposed placement in the spring of 2019. OSPI finds no violation regarding the initial placement in the program, as it was an IEP team decision—with Parent participation—based on the Student's needs and evaluation data.

Fall Reevaluation

On September 21, 2019, the Parent requested an IEP meeting as she had concerns about the Student's placement. On September 30, 2019, the Student's IEP team met and determined that because the Student had recently been diagnosed with autism and due to the Parent's concerns, a reevaluation was warranted. The prior written notice from the meeting notes that the team discussed alternate placements, but that prior to changing the Student's placement, the team would conduct a reevaluation.

On November 26, 2019, the Student's evaluation group met and discussed the reevaluation. The evaluation report documented the Student's behaviors and noted the Student had difficulty with "self-regulation, social/play skills, aggression, hyperactivity, appropriate tone of voice and words, following routines, and following directions." The team determined the Student's IEP and behavioral intervention plan (BIP) would need to be updated, and the District maintained the reevaluation "confirmed this finding [from the May 2019 reevaluation that the Student required more substantial and intensive programming]." The District stated the group discussed the question of whether the program was appropriate for the Student, discussed a "life skills" program placement, and discussed that the IEP team would need to further consider whether the placement was appropriate and what supports were needed. In her complaint, the Parent stated the evaluation documented that the Student's behaviors worsened throughout the year and that this was an indication that the program was causing the Student's behaviors, and not that the behaviors necessitated placement in the program.

Between the evaluation meeting on November 26, 2019 and the IEP meetings on January 29 and February 13, 2020, the Parent continued to express concerns with the program and the Student's

placement. On January 29, 2020, the Student's IEP team met and discussed the IEP, Student's strengths, and Parent's concerns. At the meeting on January 29, no decisions were made nor was the IEP updated, and the discussion was tabled until the team could meet again on February 13, 2020. On February 13, 2020, the Student's IEP team met, developed a new IEP and BIP for the Student, and did not change his placement. The documentation in the complaint does suggest the District was exploring and began providing the Student more opportunities for time in the general education setting following this meeting; however, this was not formally documented in the IEP. The IEP noted the Student continued to need a "highly structured program, small group setting with staff trained in de-escalation strategies and access to intensive social/emotional/behavioral supports." The prior written notice stated the team discussed and determined that the program was the "most appropriate classroom placement for [Student] based on his current levels," despite the Parent's "concern over the classroom placement." The notice recorded that the team discussed the option of changing the Student's placement, but "rejected the option to change placement. At this time, [Student's] daily behavior performance is not conducive to a general education setting based on the number of physical aggressions and verbal outburst he is exhibiting daily." However, the prior written notice also documented that the team planned to revisit and review the Student's behavioral data to determine if a change of placement should occur to best meet the Student's needs for the 2020-2021 school year.

Overall, the Student's IEP team followed the required procedures to address the Parent's request to change the Student's placement. The District conducted a reevaluation, held multiple IEP meetings to discuss the Parent's concern, developed a new IEP and BIP for the Student, and documented that the Student's placement would not be changed in a prior written notice. While the Parent may still disagree with the placement, disagreement does not necessarily mean the District failed to follow placement procedures. OSPI does note that the Parent's concerns regarding the program's impact on the Student's behavior and the impact of repeated restraint and isolation are valid, and OSPI strongly encourages the IEP team to carefully consider this information at the next IEP meeting following the completion of the independent educational evaluation (IEE). OSPI finds no violation regarding placement procedures following the November 2019 reevaluation.

Spring Request

In March 2020, the Parent continued to express concern about the program and request the Student's placement be changed back to his neighborhood school in general education with supports.

A reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and

extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements.

In response to the Parent's continued concerns and requests, the Student's IEP team met again on March 11, 2020. The District stated the IEP team discussed the November 2019 reevaluation, February 2020 IEP and BIP, and that the data indicated the Student needed "services and placement of the type which are provided in the [program]" and that "the type, intensity, frequency and duration of the services and supports needed by the Student could not be adequately implemented at the [S]tudent's neighborhood school as evidenced during the Student's kindergarten year and resulting in a change of placement in August 2019." Given the existing data, the District maintained that the Parent is requesting a significant change in placement and thus, another reevaluation would be needed to determine if the Student's needs and data support the proposed change. The District provided the Parent with prior written notice on March 31, 2020 that documented the request to change the Student's placement, the District's decision to not change the placement, and the District's proposal to conduct a reevaluation.

The Parent asserted that the IEP team is not in agreement regarding the change in placement, the IEP team "made clear that the restraints and isolation were not working," and staff supported transitioning the Student into general education. The Parent stated she disagreed with the District's position that another reevaluation was needed given that the Student had been evaluated in May and November of 2019. At the same time, the Parent requested an IEE as she disagreed with the current evaluation, including that the November 2019 reevaluation did not include an FBA.

While OSPI understands the Parent's frustration that another reevaluation is needed, OSPI cannot fault the District for proceeding this way. The Parent's request potentially represents a significant change in placement and the IEP team properly determined a reevaluation would be needed—especially given that the previous reevaluation (November 2019) supports the Student's current placement. As the Parent continues to disagree with the November reevaluation, the Parent requested an IEE and the District agreed. At this point, it would be premature for the District to change the Student's placement before the IEE is completed and considered. OSPI finds no violation regarding placement procedures in the spring of 2020.

OSPI does recommend, however, that when school facilities open and the Student returns to school, the Student's IEP team meet to discuss positive behavior supports and services, discontinuing the use of restraint and isolation, and other offers of support documented in the March 31, 2020 prior written notice. The District noted that upon completion of the IEE, the District "will consider IEE results, as pertinent to further IEP team discussion regarding placement" and would be "willing to further discuss through a mediated IEP meeting." OSPI again strongly recommends the IEP team consider the Parent's concerns that the program is increasing the Student's behaviors and how this impacts the placement decision.

Issue Three – IEP Amendment: The Parent alleged the District failed to properly amend the Student's IEP to provide a free appropriate public education (FAPE) and failed to appropriately address the Student's behaviors. After the annual IEP team meeting for a school year, changes to

the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP.

February 2020 IEP

The Parent stated that when comparing the Student's kindergarten IEP goals with the current (February 13, 2020) IEP goals, "ALL OF THEM are exactly the same, and he's still not making progress on many goals...His IEP was not reasonably calculated to ensure he made meaningful progress" (emphasis in original). Additionally, the Parent stated the February 2020 IEP failed to include goals in all areas, service minutes in all areas, and stated the Student would participate in the general education setting for approximately 97% of his day.

Most of the Parent's concerns regarding the February 2020 IEP appear to be based on the fact that the Parent was not provided a copy of the final version of the February 2020 IEP. The District stated that at the meeting, the Parents were provided a draft copy of the IEP and notes were taken based on the input by the team during the meeting. The director took notes and provided them to the Student's special education teacher in order to update the IEP following the meeting. However, the District acknowledged that, inadvertently, due to the special education teacher resigning her position shortly after this IEP meeting, the Parent was not provided a copy of the IEP until March 2020 following the Parent's educational records request. Per WAC 392-172A-03100, a district must provide a parent a copy of the student's IEP at no cost. Thus, OSPI finds the District in violation for failing to provide the Parent a copy of the IEP. However, the Parent has since been provided a copy of the IEP and thus, no further corrective action is required.

Further, upon review, OSPI identifies no errors with the substantive development of the Student's February 2020 IEP and the specific allegations the Parent makes. For example, the IEP contains updated present levels of performance and updated goals in all of the Student's services areas. The goals are not the same as the previous IEP and many are updated to reflect the progress the Student made in several areas. The Parent, at one point in her communications, raised a concern with goals being only compliance based. However, the February 2020 IEP goals move away from compliance-based behavior goals and focus on skills, such as self-advocacy, requesting breaks, managing transitions, peer interactions, and positive play. The February 2020 IEP documented the minutes of services the Student was scheduled to receive and accurately recorded the percentage of time he spent in the general education setting. Thus, apart from not providing the Parent a copy of the IEP and excluding behavior considerations (discussed below), OSPI finds no violation regarding the general development of the IEP.

Student's Behavior Needs

In developing, reviewing, and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive a FAPE. The BIP, 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); the positive behavioral

interventions and supports to reduce the pattern of behavior(s) 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).

Here, the Student's IEP team considered the use of positive behavior interventions, supports, and strategies. The Student's IEP included social/emotional behavioral and adaptive goals and the documentation indicated a variety of strategies and supports were used, such as a visual schedule and a first-then board. The documentation also indicates the Parent suggested strategies and the Student's special education teacher was receptive and tried strategies the Parent shared (e.g., "peeling of his mean body...[and] only take his nice body to school" and using replacement words for inappropriate language). Further, at IEP meetings, the team discussed various strategies and supports that could be used (e.g., September 30, 2019 meeting discussed "a quiet place for the Student, more frequently rotating schedule, occupational therapy room, more breaks, sensory station with headphones and music, less stimulation, more deep pressure activities, visual schedule used with more fidelity, touch math, and library time;" and the February 13, 2020 meeting discussed "tightening [Student's] schedule to include a strong use of clocks as a visual support," and "moving his highly preferred reward to a time that is not immediately at the end of the day to eliminate escalations that prevent him from getting on the bus to go home."). In general, the Student's IEP team did consider positive behavior interventions and addressed the Student's behavior in his IEP.

However, one area where the District should have updated the Student's educational program earlier was his BIP. The Parent began expressing concerns regarding the Student's behavior in September 2019 and in November 2019—following the reevaluation—the District discussed the Student's need for a new/updated BIP. However, the District did not update the Student's BIP until February 13, 2020—almost five months after the Parent began expressing concerns regarding the Student's behavior in the program. While the Parent disagrees with the BIP because it was created without having a board certified behavior analyst (BCBA) conduct a new FBA, OSPI notes there is no requirement to only develop a BIP following an FBA (although the data from an FBA often helps shape the BIP), and there is no requirement that a BCBA conduct an FBA.

The February 2020 BIP itself meets the requirements, identifies the Student's target behaviors, and provides strategies and supports to help the Student learn skills and replacement behaviors. The BIP noted the Student had struggled after winter break to "maintain emotional regulation...Aggression and eloping have increased." However, the restraint and isolation incidents indicate the Student had been struggling with behavior and emotional regulation prior to winter break. Additionally, based on the restraint and isolation report "recommendations" for future, it is not clear how well the strategies being used were working. For example, the majority of the reports stated some variation of, "in future the staff will pre-teach or reteach classroom expectations, behavior expectations." Some reports have other strategies and supports recommended; however, the repeated recommendation to reteach expectations implies that this strategy was not the most effective and that other strategies and supports—at minimum—should have been discussed.

Thus, given the delay between identifying the need for a new BIP and its development, and the fact that some of the documentation indicates that certain strategies and supports were not working, the IEP team should have developed a new BIP for the Student earlier. Thus, OSPI finds the District in violation for failing to properly address the Student's behavior with a BIP. The District will be required to address this in training. Given that a new BIP was developed for the Student in February 2020, no further Student specific corrective actions are necessary; although, OSPI recommends the District review the Student's BIP again, following the completion of the IEE.

Issue Four – Functional Behavioral Assessment (FBA): The Parent alleged the District failed to consider the need to conduct a new functional behavioral assessment (FBA) of the Student.

An FBA is often conducted when students exhibit patterns of challenging behaviors. An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a BIP that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP. An FBA is generally understood to be an individualized evaluation of a student, to assist in determining whether the student is, or continues to be, a student with a disability. The IDEA does not specify who is qualified to conduct an FBA, for example, there is no requirement that a BCBA, or any other specific individual, conduct an FBA.

Here, the Student had an FBA that was conducted in November 2018, which collected data and identified target behaviors. The FBA posited that the Student engaged in behaviors to escape the classroom or non-preferred activity, to gain control, and to gain staff and peer attention.

During an IEP meeting on September 30, 2019, the District's response and documentation indicate the team did consider and discuss the Parent's request for an updated FBA. According to the District, the team determined a new FBA was not necessary, based on the conversations at the meeting, as the function of the Student's behavior—"to escape non-preferred tasks and gain control"—had not changed. The District stated, "the consensus of the team was that developing an effective BIP and implementing with fidelity across settings would most appropriately address the Student's behavior, positive behavior supports, and replacement behaviors." Although, as noted above, it was several months before a new BIP was developed.

At this time, there is no indication the function of the Student's behavior had changed. However, the District did not document the Parent's request for an FBA nor the District's rejection of the request in a prior written notice. This is a violation, as a prior written notice should document any disagreement with a parent and should clearly describe what the district proposes or refuses to initiate. Without a prior written notice, it may not have been clear to the Parent the status of the request, which may have prevented the Parent from taking next steps sooner.

At this point, the Parent requested, and the District agreed to, an IEE, which included a request for evaluations in several areas, including an FBA. Thus, no further corrective actions are required as the IEE will include an FBA.

Issue Five – Evaluation Timeline: The Parent alleged the District failed to complete the evaluation within thirty-five school days of when she signed consent for the reevaluation on October 2, 2019.

Reevaluations shall be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent—in other words, the evaluation must be completed within thirty-five school days of the district’s *receipt* of signed consent. Here, the Parent signed consent on October 2, 2019. However, the District did not receive the signed consent until October 8, 2019, as evidenced by the school psychologist’s emails with the Parent and the District’s notation on the consent form that it was received “10/8/19.” Thus, the timeline for the evaluation began October 8, 2019 and the reevaluation was due by December 2, 2019—thirty-five school days from October 8. On November 26, 2019, the Student’s evaluation group met to finalize the reevaluation and discuss. The District completed the reevaluation within the required timeline and OSPI finds no violation.

Issue Six – Progress Reports: The Parent alleged she did not receive the Student’s progress reports. IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals.

Here, the Student’s IEPs required the District provide progress reporting at the trimester. This meant progress report was due around November 22, 2019 (end of trimester 1) and March 12, 2020 (end of trimester 2). On November 22, 2019, the District entered detailed progress reporting on the Student’s May 2019 IEP goals. On March 12, 2020, the District entered progress reporting for the Student’s February 2020 IEP goals; although, the progress reporting did not record progress for any of the Student’s goals, stating: “There has been an Insufficient amount of time to provide instruction and collect data since the IEP meeting date (less than three weeks due to mid-winter break and student attendance). Please see IEP dated 2/13/202 [sic] for present levels of performance.” While this is not ideal, as it does not actually provide information about the Student’s progress, it is reasonable considering the short amount of time since the development of the new IEP, mid-winter break, and the Student’s attendance.

The District stated its standard procedure is for special education case managers to send their progress reports to the District office at the identified date at the end of each trimester. The student services staff then checks to ensure each student with an IEP has a progress report, per case manager. Then, the District office mails the progress reports home via US mail. The District stated that this is what occurred for this Student, and the District’s documentation indicates the Student’s progress reports were received by the District’s student services staff and mailed.

The Parent stated she did not receive the progress reports until she made a request for the Student’s educational records in March 2020.²⁵ Thus, it appears the progress reports were mailed,

²⁵ The Parent, in her complaint and reply, also stated multiple times that she did not receive progress reporting at the end of the semester on January 23, 2020. However, the Student’s IEP required progress reporting at the *trimester*, not the semester. Thus, the District was not obligated to provide progress reporting in January 2020.

but not received. It is possible that the progress reports were not received due to an issue with the mail, which is outside the District's control.

While it is the District's responsibility to ensure that progress reports are provided, the Parent here did have multiple opportunities between when the progress reports were entered on November 22, 2019 and when she received them in March through the records request to discuss the Student's progress with the IEP team, and to let the IEP team know she never received progress reporting. The Student's IEP team met in November 2019 to review the reevaluation, and again in January and February 2020. Further, the special education teacher sent home daily data sheets, which provided some information on the Student's behaviors and progress (although, these sheets did not provide information on all of the Student's goal areas, so they are not a replacement for progress reporting). Finally, the Parent ultimately did receive copies of the progress reporting after requesting the Student's educational records in March 2020.

Overall, OSPI finds that the Parent received information about the Student's progress, had an opportunity to discuss the Student's progress at several meetings, and ultimately received—all be it delayed—the trimester 1 and 2 progress reporting. The District also documented that it has a process for providing progress reporting. Thus, OSPI finds no violation. However, OSPI strongly recommends the District touch base with the Parent and consider whether progress reports need to be sent via email or certified mail in future, to ensure progress reports are both sent and received.

CORRECTIVE ACTIONS

By or before **July 6, 2020, September 4, 2020, September 30, 2020,** and **November 6, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services: By **August 28, 2020,** the District will coordinate with the Parent to develop a schedule for a total of 5 hours of compensatory services in social emotional/behavior and adaptive. Services will occur in a one-on-one setting and instruction will occur outside of the District's school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **September 4, 2020.**

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. Regardless of any rescheduling, the services must be completed no later than **October 30, 2020.**

By or before **November 6, 2020,** the District must provide OSPI with documentation that it has completed compensatory services for the Student.

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

District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **November 6, 2020**.

DISTRICT SPECIFIC:

Restraint & Isolation Parent Written Notification: By **June 30, 2020**, the District will update its "Isolation and Restraint Parent Notification" to ensure that it aligns with the requirements of RCW 28A.600.485. OSPI recommends that the District use a single isolation and restraint written report form that is sent to both the District office and the family. However, the District can use two forms, as long as both contain all required elements. By **July 6, 2020**, the District will provide OSPI with a copy of the updated form. OSPI will approve the updated form or provide comments by July 20, 2020 and provide additional dates for review if needed.

Training: The District will work with OSPI's special education department and Program Supervisor Lee Collyer to develop and schedule a training that addresses the issues raised in this complaint. The training will address:

- Restraint and isolation practices, procedures, and conditions;
- Reducing the use of restraint and isolation;
- Reporting and documentation requirements (e.g., review incident with involved staff, review incident with parent and student, verbal notification of parent, written report to district and parent); and,
- Behavior intervention plans and positive/proactive behavior supports and interventions.

The following District staff will attend the training: District special education administrators, the principals at the school the TRAC program was located at during the 2019-2020 school year and the new school location for the 2020-2021 school year, and all staff (teachers, paraeducators, school psychologists, and related services providers) involved in the TRAC program in both locations.

By **September 30, 2020**, the District will submit documentation that all self-contained special education staff in the District participated in the training. Documentation will include 1) a sign-in sheet from the training, and 2) separate official human resources roster of all staff required to attend the training so OSPI can verify that all required staff participated in the training. *Note:* Due to the COVID-19 public health crisis and Governor's orders, this training may be conducted using distance technology *or* the District may wait and conduct the training in person, in the fall, depending on the status of school facility closures.

Restraint & Isolation Review: The District proposed developing a system to regularly review restraint and isolation reports in order to identify patterns and respond. By **July 6, 2020**, the District will provide OSPI with its draft plan for a system to review restraint and isolation reports. OSPI will review, provide feedback, and provide further dates for review if necessary.

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

Based on the documentation in this complaint, there are several areas that OSPI recommends the District address in an IEP meeting following the completion of the IEE. These include:

- Carefully consider the Parent's concern that the program itself and repeated restraint and isolation are impacting the Student's behavior and how this impacts the placement decision;
- Further discuss positive behavior supports and services, discontinuing the use of restraint and isolation, and other offers of support documented in the March 31, 2020 prior written notice;
- Student's placement in light of the IEE; and,
- Review the Student's BIP in light of the IEE.

OSPI notes the District stated it would be willing to discuss some of the above in a mediated or facilitated IEP meeting. OSPI strongly encourages the District and Parent to consider using a mediator or facilitator.

Additionally, as it appears the District did send, but the Parent did not receive, progress reporting, OSPI recommends the District touch base with the Parent and consider whether progress reports need to be sent via email in the future. Or, the District may want to consider using certified mail to ensure progress reports are both sent and received.

Dated this ____ day of May, 2020

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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