

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-149

PROCEDURAL HISTORY

On December 6, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 8, 2022, 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 December 23, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on December 27, 2022. OSPI invited the Parent to reply.

On December 28, 2022, OSPI interviewed the Parent.

On January 10, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On February 2, 2023, the Parent provided additional information. OSPI forward that information to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 7, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow proper restraint and isolation procedures with the Student following an incident on December 7, 2021, at the Student's placement at [REDACTED], including using restraint and isolation only when there was an imminent likelihood of serious harm, and following all reporting, documentation, and other requirements in WAC 321-172A-02110?
2. Did the District follow procedures to respond to the Parent's requests for records regarding the December 7, 2021 incident, including videos, per WAC 392-172A-05190?

LEGAL STANDARDS

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.

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

Likelihood of Serious Harm: Likelihood of serious harm as defined in RCW 70.96B.010 means: (1) A substantial risk that: (a) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide, or inflict physical harm on oneself; (b) Physical harm will be inflicted by a person upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or (c) Physical harm will be inflicted by a person upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or (2) The person has threatened the physical safety of another and has a history of one or more violent acts. WAC 392-172A-01109.

Follow-up and Reporting Requirements: 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. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language. RCW 28A.600.485.

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

Education Records: Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99. WAC 392-172A-05180. Under FERPA, "education records" means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR §99.3.

FINDINGS OF FACT

Background

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of intellectual disability and was in elementary school.

2. During the 2021–2022, the Student’s placement was at a nonpublic agency (NPA), which he had attended since April 2021.
3. Regarding the Student, the District stated that:

A primary focus for the Student at school has been maintaining physical safety for himself and staff members. When transitioning to non-preferred activities, the Student sometimes demonstrates [REDACTED]. Accordingly, the District has proposed several emergency response protocols (ERP) at the Student’s IEP meetings throughout his time with the District, which would allow the IEP team (including participation from [NPA]) to plan more thoroughly for the use of isolation and restraint when an imminent likelihood of serious harm is present. However, the Parent chose not to provide written consent to include an ERP in Student’s IEP during the 2021-2022 school year...Although the District could not adopt an ERP without parental consent, all IEPs created by the District include specific goals to decrease physical aggression, and the IEP in effect during the 2021-2022 school year required [NPA] staff working with the Student to receive ‘Handle With Care’ de-escalation and restraint training.
4. Regarding its contract with the NPA, the contract included the following as NPA duties:
 - “Fully comply with all substantive and procedural requirements and limitations imposed upon public school districts by any state or federal constitution, statutory, or administrative code provisions respecting any action or inaction that directly or indirectly affects or could affect a student or his/her parent(s), or their property.”
 - “Respond to reasonable requests by the District for any documentation.”

The District further stated:

Pursuant to this agreement, the District expected [NPA] to promptly send student records such as report cards and restraint and isolation (R&I) reports to the District. However, the District had difficulties communicating with [NPA] regarding the Student throughout the 2021-2022 school year...[NPA] failed to send report cards, R&I reports, and other documentation on a regular basis, despite the District’s numerous requests for this information both via email and through phone contacts by the District.

Complaint Investigation Timeline Begins December 7, 2021

5. On December 7, 2021, incidents occurred during which the Student was restrained and isolated.
6. According to the NPA’s “Student Action Form” documenting the incident, the incident occurred on December 7, 2021 and included a “seclusion” from 9:07 to 9:12 am (five minutes), and although a box was also checked for “physical escort,” no time or duration was listed. The report form indicated the behavior preceding the isolation included “disruptive behaviors”, “verbal abuse of staff”, “threat”, and “assault.” The description of the incident was as follows:

Student...was directed to walk or run up and down the hall and take a break. Student...postured attempted to scratch, then spit at staff. Staff [educational associate] attempted to put student...into...approved hold. Student...hit staff [educational associate] in the face and grabbed her hair. Staff [educational associate 2] put Student...into...approved one person hold at 9:07 AM. Student...was then escorted to the

[quiet room] and staff shut the door. When student...showed a safe and calm body. Staff [educational associate 2] opened the door at 9:12 AM.

The report form stated there were no injuries to the Student or staff. The report form further indicated:

- The incident was processed with the Student with a staff member and the Student provided a written or verbal apology.
- The Parent was notified on December 7, 2021 at 8:30 am via phone.
- The incident was reported by educational associate 2 on December 8, 2021 at 1:29 pm.
- Two other staff were witnesses the [educational associate] and teacher...

7. According to the NPA's "Student Action Form" documenting the second incident, the incident occurred on December 7, 2021 and included a restraint from 2:15 to 2:16 and a "seclusion" from 2:16 to 2:20 (four minutes). The report form indicated that the behavior preceding the restraint and isolation included "verbal abuse of staff", "threat", and "assault." The description of the incident was as follows:

Staff...and [Student] were walking to the front lobby. Student...began hitting and attempting to scratch staff...Student...began to scratch and claw at staff...and staff...began to work on deescalating and providing the student with a safe space to take a break. Student...began kicking staff...and walking towards them as they gave space. Staff...escorted student...to the quiet room. Student...began showing safe body after only 4 minutes and was able to take deep breaths with staff...Student...was able to work with staff...on showing safe body for the rest of the day.

The report form stated there were no injuries to the Student or staff. The report further indicated:

- The incident was processed with the Student with a staff member.
- The Parent was notified on December 8, 2021 at 8:30 am via phone.
- The incident was reported by the school supervisor on December 7, 2021 at 3:30 am.
- One other staff person was a witness.
- The report form was reviewed by [staff].

8. According to the Parent's complaint, when the Student came home from school on December 7, 2021, the Student "share with me that his arm hurt." The Parent stated she was "concerned because the last time he said that he had significant bruising from school and I had not been notified." The Parent stated she "checked his arms and saw numerous bruises." (The Parent provided photos in the complaint, showing what appeared to be fingerprint/handprint shaped bruises on the Student's upper arm.)
9. The Parent alleged in her complaint that the District failed to timely notify her of the incident, did not follow reporting procedures, failed to report that the Student had been injured, and improperly isolated and restrained the Student.

In her reply to the District's response, the Parent further stated that the District was required to "review the Dec. 7 incident with me to address 'the appropriateness of the response'" and that the emails from the District following in the incident show "the district thought [NPA's]

response was inappropriate but chose not to tell me about it, preventing me from making fully informed decisions about my son's education."

10. On December 7, 2021, the Parent emailed the District's special services education specialist (education specialist) photos of the Student with bruises on his arms. The email subject line read "Bruising 12.07" and included several photos with no accompanying written email message.

The District stated in its response that the email did not indicate how or when the Student sustained the bruises and the District had not receive any notice from the NPA regarding an incident.

The education specialist spoke with the Parent on December 7, 2021.

11. According to the Parent, a video of the incident shows NPA staff kicking the Student and forcing him into an isolation room. The Parent also stated that in the video, you could see a staff member "hiding, jumping out, and tackling the Student."¹

12. On December 8, 2021, the Parent emailed the NPA supervisor and requested a call regarding the incident. The NPA supervisor responded, and the Parent requested a call "once you know who was involved with handling [Student] yesterday" and asked to see a copy of the documentation. The Parent stated, "I was not called or notified yet."

13. Also, on December 8, 2021, the NPA supervisor emailed the Parent the incident report, and the Parent requested the incident report be updated to reflect that the Student was injured. The Parent also stated that she did not want anyone putting hands on the Student.

The NPA supervisor responded that they would update the incident report and send it to the Parent.

The Parent stated she did not receive an updated report.

14. Additionally, on December 8, 2021, the District education specialist spoke with the NPA supervisor about the December 7 incident at his weekly meeting with NPA staff. The education specialist requested that the NPA supervisor send the District the restraint and isolation report from the incident.

15. On December 10, 2021, the education specialist emailed the NPA supervisor regarding the incident report and provided the relevant provision of the regulations regarding restraints.

¹ OSPI received copies of the video footage from the Parent and reviewed. The video of the first incident does show a staff person standing in a doorway facing away from the hallway, then turning and then coming at the Student to restrain him as he ran down the hallway. The staff person restrained the Student from above and this motion pushed the Student to the floor.

The District stated that it did not receive a copy of the restraint and isolation report.

16. On December 13, 2021, the Student's IEP team met and developed his IEP. The IEP indicated the Student continued to be enrolled at the NPA. The IEP meeting was attended by the District educational specialist, the District occupational therapist, the Parent, the NPA special education teacher, and the District speech language pathologist.

The IEP included goals, specially designed instruction, and related services in behavior, adaptive, math, reading, writing, communication, gross motor skills, social skills, and fine motor skills. The Student's behavior and social skills goals targeted following directions/compliance during non-preferred activities/interactions and decreasing physical aggression as a behavioral response.

The ERP box on the IEP was marked "Yes."

The prior written notice documenting the meeting indicated the IEP was reviewed and would implement a new IEP, ERP, ESY, and BIP for the Student as a "new IEP needed to be written to keep [Student's] IEP reflective of his current placement, present levels of performance, and his educational/behavioral needs."

17. The District's documentation included a draft behavioral intervention plan (BIP), dated December 13, 2021. In her reply to the District's response, the Parent stated the draft BIP was never adopted.
18. On February 14, 2022, the educational specialist emailed the NPA supervisor twice regarding the restraint and isolation reports and requested the NPA share "copies of all incident reports for [Student] for this full school year."

The education specialist stated he wanted to follow up on NPA policy on several issues, including incident reporting and resent the December 10, 2021 email regarding proper restraint and isolation practices, including an additional reminder that the full name of each person involved in restraint and isolation incidents must be included in reports.

The District stated it received no response to these emails and that the education specialist continued to follow up verbally and via email numerous times over the subsequent months regarding the incident reports and compliance with restraint and isolation requirements.

19. The Parent stated in an interview that the NPA did retrain staff following some of her concerns, but then there were additional incidents of restraint in March and April 2022.

The Parent stated that after this, the District proposed holding a meeting to create a program for the Student in the District.

20. On June 8, 2022, the Student's IEP team met. According to the prior written notice, the team proposed to initiate a placement and provide services in the District at the beginning of the

2022–2023 school year and noted that the NPA “setting [was] no longer necessary or appropriate to meet [Student’s] needs.”

21. On June 10 2022, the NPA sent the education specialist reports for two incidents with the Student that occurred on June 9, 2022.

The District stated that by then, the “decision had already been made to remove the Student from [NPA].”

22. According to the District’s response, following the incident on December 7, 2021, the District made “repeated attempts to obtain documentation of the incident and to ensure that [NPA] was in compliance” with applicable regulations. The District stated the NPA was nonresponsive.

The District stated that it “became concerned by [NPA’s] lack of transparency regarding the Student, which it viewed as a breach of the contract. Accordingly, the District terminated the contract and worked with the Parent via the IEP team process to remove the Student from [NPA].”

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23. On October 26, 2022, the Parent requested video footage “of my son’s incidents for the duration of his time at [NPA]” from the NPA. Subsequently, the Parent and NPA communicated via email regarding the request. On November 1, 2022, the NPA let the Parent know she could arrange a time to come and review the video footage of the December 7, 2021 incident. The NPA stated:

Please let us know when you’re available to view this video footage from 12/7/21. It will have to be after school dismissal, but if convenient for you, I recommend the afternoon of Tuesday 11/8 (after 2:30pm) or Wednesday 11/9 (after 12:30 pm).

If those dates/times don’t work for you—let us know some alternative meeting times. You are welcome to come to the [NPA] campus, or we can set up Zoom meeting. Whatever you prefer.

Please be aware that you’re not allowed to record this video footage—only view it at this time.

(Emphasis in original.)

Emails indicated the Parent and NPA were working to schedule a time for the Parent to review the video. Additionally, a November 3, 2022 email from the NPA stated:

you had asked why we cannot simply give you a copy of the video footage. Although an easy solution, my understanding is that video footage is not technically part of a student’s records, and it is property of [NPA parent company]. Without a court order, it is something you are not entitled to, although as mentioned, we will certainly view the video footage with you on an arranged date/time.

24. On November 1, 2022, the Parent contacted the District and requested the Student's educational records, including "incident reports, restraint or isolation reports."

25. On November 3, 2022, the District emailed the Parent and requested the Parent clarify the timeframe of the response.

The Parent responded, clarifying that she was requesting emails from February 1, 2021 through the present and video footage from the December 7, 2021 restraint incident at the NPA.

26. On November 8, 2022, the Student's IEP team met to develop his annual IEP.

27. On November 14, 2022, the District emailed the Parent, confirming receipt of her request for Student educational records and public records, including video footage of the December 7, 2021 incident. The District stated that "[NPA] would hold any video footage from their facility. [District] does not have access to their video records."

28. Regarding the video records, the Parent argued in her reply to the District's response that she had a right to all educational records "used" by the District and that the District "used" all records maintained by the NPA, further stating:

The district had a contractual right and a legal obligation to obtain the records I requested from [NPA]. I made the request on Nov. 1 to prepare for an IEP meeting which the district scheduled for Nov. 14. Under WAC 392-172A-05190, the school district was required to comply with my request 'promptly and before any meeting regarding an individualized education program.' The district can't require me to get records directly from [NPA], or hide behind [NPA's] 'policy' to deny a copy of the video.

29. On November 18, 2022, the Parent stated she viewed video footage of the December 7, 2021 incident for the first time. The Parent stated:

I viewed staff hiding and jumping out pushing my son down in the hallway where he was subsequently manhandled and taken to the [seclusion] room. He was placed in isolation and the staff shut and locked the door and then proceeded to face the other direction. He was not watched while in isolation.

The second video I viewed for this incident was longer and demonstrated two staff sitting with my son. My son has always struggled with the end of the day. They sat him right by the front door and from the video I could see some back and forth conversation and then a staff member really got in my sons face. That staff then went and retrieved another staff and they aggressively took him to the seclusion room where staff kicked him to get and stay in the isolation room.

30. On November 29, 2022, the District provided the Parent with the Student's requested educational records.

31. In its response, the District noted that since August 2022, the Student has had 12 incidents of restraint and/or isolation, and that all incidents have been "properly handled and reported." The District stated that all "special education staff at the [Student's] school are Right Response

certified and trained to follow [restraint and isolation] regulations, including reporting and documentation requirements,” and that the District “continues to partner with Parent to address her concerns related to Student’s education, and Parent has expressed to the District that [restraint and isolation] reporting has improved.”

32. In her reply to the District’s response, the Parent stated:

The district blames [NPA] for these problems and denies any responsibility. But I don’t have any recourse against [NPA]. The laws make the school district responsible for what happens at [NPA]...The district kept [Student] at [NPA] for the rest of the school year even though, in the district’s own words, [NPA] was in breach of the contract.

CONCLUSIONS

Issue One: Restraint & Isolation – The Parent alleged the District failed to timely notify her of an incident involving restraint and isolation on December 7, 2021, did not follow reporting procedures, failed to report that the Student had been injured, and improperly isolated and restrained the Student. At the time of the incident, the Student’s placement was at a nonpublic agency (NPA).

Imminent Likelihood of Harm & Incident Duration – Isolation or restraint may only be used when a student’s behavior poses an imminent likelihood of serious harm. Both must be discontinued as soon as the likelihood of serious harm has dissipated. 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.

On December 7, 2021, the Student was restrained and isolated in two separate incidents. The first, the Student was restrained and then isolated following disruptive behaviors, verbal abuse of staff, “threat”, and “assault.” This included attempting to scratch and spit, and hitting and grabbing the hair of a staff person after the staff person attempted to put the Student into a hold. The staff then put the Student into a hold and escorted the Student to the quiet room, after which the staff shut the door and did not open the door until the Student “showed a safe and calm body,” approximately five minutes later. The incident report did not include a duration for the restraint.

The second incident included a restraint and isolation for approximately five minutes total, following “verbal abuse of staff”, “threat”, and “assault.” The Student’s behavior was described as hitting and attempting to scratch staff, kicking staff, and walking toward staff as they gave him space. The report indicated the staff attempted to deescalate the Student and then escorted the Student to the “quiet room” where the Student “began showing safe body after only 4 minutes and was able to take deep breaths with staff.” The reported noted the Student worked with staff and showed a safe body for the rest of the day.

The Parent, after viewing video footage of the incident(s), stated that the video showed a staff member kicking the Student and forcing him into an isolation room and a staff member “hiding, jumping out, and tackling the Student.” The Parent stated and provided photographs showing the Student had bruises on his arms following the incidents of restraint and isolation. The Parent

expressed concern to the NPA and during the investigation that the restraint and isolation forms did not indicate the Student had been injured during the restraint, and the Parent requested the reports be updated. The NPA agreed to update the incident reports; however, the Parent stated she never received the updated report.

OSPI acknowledges that it is challenging to judge the imminent likelihood of serious harm from a restraint or isolation report—not having been present for the actual incidents. 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. Here, OSPI finds that restraints and isolations were improper for several reasons. First, based on the video, it is not clear staff followed procedures or that there was a true imminent likelihood of serious harm. This is supported by the fact that the Student was injured and had bruises on his arms, indicating more force than necessary was used. Second, while the overall duration of the incidents was short, the descriptions indicate the Student was isolated until he “showed a safe and calm body.” Both restraint and isolation must be discontinued as soon as the likelihood of serious harm has dissipated. It is important to note that having a safe/calm body or being fully deescalated is not necessarily the same as the likelihood of serious harm dissipating. Here, based on the documentation, it is not clear that the likelihood of serious harm was present for the full isolation. OSPI finds a violation.

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.

For both incidents, the report form indicated the incident was processed with the Student with a staff member, and the Student provided a written or verbal apology.

For the first incident, while the report form did indicate that the Parent was called, OSPI finds the report form is inaccurate on this point. The report indicated the incident occurred at 9:07 am but that the Parent was called at 8:30 am on the same day about the incident but before the incident occurred. Further, the Parent maintains that she was not called that day and did not find out about the restraint and isolation until the Student came home from school and said his arm hurt, and the Parent checked the Student’s arms and saw bruises. For the second incident, the Parent was notified the following day, December 8, 2021, at 8:30 am via phone; however, emails indicated that the Parent emailed the NPA supervisor and requested a call regarding the incident. The NPA supervisor responded, and the Parent requested a call “once you know who was involved with handling [Student] yesterday.”

Overall, the documentation only supports that the Parent was notified the following day after requesting a call and that there was no review of the incident to address the behavior that precipitated the restraint or isolation and the appropriateness of the response beyond just notification of the incident. OSPI finds a violation.

The Student’s IEP team met on December 13, 2021, which would have been an opportunity to discuss and debrief the restraint and isolation incidents, consider the appropriateness of the response, and consider whether any changes needed to be made to the IEP to address concerns

around restraint and isolation. There is no indication in the documentation that such a discussion occurred, despite the IEP team meeting and the fact that by then, the Parent, District, and NPA were all aware of the incidents. Unlike other areas, discussed below, where the District maintains that it attempted to ensure the NPA was following restraint and isolation procedures and that the NPA was nonresponsive, thus ultimately breaching its contract with the District; here, the District had an opportunity to ensure this requirement was carried. Thus, OSPI finds a violation as the District failed to ensure the incident was appropriately reviewed with the Parent.

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 to discuss whether proper procedures were followed and what training or support the staff member needs to help the student avoid similar incidents. The report forms do not clearly indicate that the staff members involved reviewed and debriefed the incidents to discuss whether procedures were followed and importantly, what training or support the staff member needs to help the Student avoid similar incidents. The report forms include staff reporting the incidents, indicate the witnesses, and on one form indicate the report form itself was reviewed by a staff member. But there is no indication that involved staff debriefed the incident. Thus, OSPI finds a violation.

Inform Administrator – After a restraint or isolation incident, the staff involved must inform the building administrator (or designee) as soon as possible. The documentation does indicate that the incidents were reported to the NPA supervisor. On this point, OSPI finds no violation.

Written Report to District – Within two business days of an incident, 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 used, including the duration; whether the student or staff was physically injured during the 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.

An incident report was written during the required timeframe; however, the incident report did not contain all required elements. The reports were missing the name and job title of the individuals administering the restraint (instead initials were used), the restraints did not consistently have a duration noted (only the isolation included a duration), the reports did not indicate the Student was injured—and the NPA acknowledged the Student was injured and agreed to update the report based on the Parent’s request—and did not include recommendations for changing the nature or amount of resources available to the Student and staff members in order to avoid similar incidents. The District acknowledged that despite multiple efforts to obtain the reports on the part of the District, the NPA did not provide the District with the December 7, 2021 incident reports. Thus, OSPI finds a violation.

Verbal & Written Notification of Parent – A district must make a reasonable effort to verbally notify the parent within 24 hours of a restraint. Additionally, within five 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. As discussed above, the Parent was notified

of the incidents within 24 hours; however, the notification only came after she contacted the NPA to request a call about the incident. The Parent was also provided the incident reports, although the incident reports did not include all required information. Further, the NPA told the Parent it would update the incident reports and did not provide her updated reports. Therefore, OSPI finds a violation.

Corrective Action – As discussed above, OSPI finds several violations of the IDEA and state special education law associated with the December 7, 2021 incident. Overall, the District acknowledged there were issues with the restraint and isolation incidents and associated reporting, noting it “became concerned by [NPA’s] lack of transparency regarding the Student, which it viewed as a breach of the contract. Accordingly, the District terminated the contract and worked with the Parent via the IEP team process to remove the Student from [NPA].” The Parent stated that the District was denying responsibility, noting that “The laws make the school district responsible for what happens at [NPA]...The district kept [Student] at [NPA] for the rest of the school year even though, in the district’s own words, [NPA] was in breach of the contract.”

OSPI finds that the District took appropriate steps in relation to the violations identified here—it removed the Student from the placement and terminated the contract with the NPA. However, OSPI finds that there were points at which the District could have done more to ensure the NPA adhered to the regulations and provided the Student an appropriate education.² For example, the District indicated the specialist had a weekly meeting with NPA staff and the Student had an IEP meeting shortly after the incident at which the restraint and isolation incidents, the Student’s needs, and appropriateness of the placement could have been reviewed. Thus, OSPI finds the following an appropriate corrective action for the District in this situation: the District will hold an IEP meeting for the Student and determine whether he needs any restorative supports or services; the District will schedule and hold a technical assistance meeting with OSPI to review current students placed at NPAs and responsibilities under WAC 392-172A-04085; and depending on the review of students placed at NPAs, will hold IEP meetings for select students to review the appropriateness of their placements.

Issue Two: Access to Records – The Parent alleged the District was not responsive to her request for the Student’s special education records, primarily records and video footage of the December 7, 2021 restraint and isolation incident.

Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP or provision of a free appropriate public education (FAPE) to the student. The district must respond no more than 45 calendar days after the request.

Here, on November 1, 2022, the Parent requested the Student’s educational records, including “incident reports, restraint or isolation reports” and on November 3, 2022, the Parent clarified that

² See WAC 392-172A-04085 “Responsibility of the school district (outlining the responsibility of the school district placing a student at an NPA).”

she was requesting emails from February 1, 2021 through the present and video footage from the December 7, 2021 restraint incident at the NPA. The Student's IEP team met on November 8, 2022, to develop his annual IEP. On November 29, 2022, the District provided the Parent with the Student's requested educational records. The District did not provide the Parent with the video footage, stating that "[NPA] would hold any video footage from their facility. [District] does not have access to their video records." Ultimately, the Parent also contacted the NPA and requested the video footage and was able to view the video on November 18, 2022.

The question becomes whether the video held by the NPA was considered a student educational record that the District *should have had* and provided to the Parent.

Educational records can include video, and are records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. Here, there is no question that the video footage of the incident related to the Student, only whether the District should have had the video. Further, the NPA—the party acting on behalf of the District—maintained a copy of the video. Thus, OSPI finds that the video footage of the incident should have been considered part of this Student's educational record. While the Student attended the NPA and the District had a contract in place, the District should have been provided or obtained a copy of the video to maintain with the Student's educational record. It is not clear, though, that the District knew this video existed, and as discussed above, the District tried to obtain other records from the NPA and was not provided them, eventually finding this was a breach of contract and terminating their contract with the NPA.

When the Parent requested the video, the Student no longer attended the NPA, and the District did not have a contract with the NPA. While arguably the District should have had the video, at the time of the request, the District did not and was not maintaining this as the Student's education record. Thus, OSPI understands why the District stated it could not provide the Parent the record. However, the District was responsible for ensuring that the NPA followed regulations with respect to student records, which would include ensuring the District had access to the educational records of the students it was responsible for providing a FAPE. Thus, OSPI finds a violation as the District failed to ensure it had all educational records from the Student's time at the NPA. As described above, the District will be required to have a technical assistance meeting, which will also include reviewing obligations related to student records.

OSPI SUPERVISORY AUTHORITY

Additionally, OSPI notes that the information from this decision will be considered as part of OSPI's ongoing oversight and approval of the NPA at issue here, and will inform or result in a more targeted inquiry into the NPA per OSPI's authority under WAC 392-172A-04105.

CORRECTIVE ACTIONS

By or before **February 10, 2023** and **March 3, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **February 24, 2023**, the Student's IEP team will meet to discuss the Student's need for counseling or any restorative supports to address the trauma related to being restrained and isolated, and/or the IEP team will consider whether the Student needs any evaluation or assessment to determine such supports.

By or before **March 3, 2023**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the plan for additional supports, if determined appropriate; and d) any other relevant documentation.

DISTRICT SPECIFIC:

Technical Assistance Meeting & Placement Review

By or before **February 10, 2023**, the District will contact the OSPI complaint investigator to schedule a technical assistance meeting. The District will provide several options of its availability to facilitate scheduling and notify OSPI who from the District would be attending this meeting.

Prior to the meeting, the District will provide OSPI with a list of all current District students placed at an NPA, including student name, grade, eligibility category, and NPA they are attending. During the meeting, the District and OSPI will review current students placed at NPAs and the District's responsibilities under WAC 392-172A-04085, including but not limited to responsibilities around student educational records. Also, during the meeting, the District and OSPI will identify any students where there are concerns about the NPA placement.

Within a week of the meeting, OSPI will provide the District with any additional required actions and associated deadlines, including but not limited to scheduling IEP team meetings for select students to review the appropriateness of their NPA placements.

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.

Dated this 3rd day of February, 2023

Dr. Tania May
Assistant Superintendent of 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.)