SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 16-19

PROCEDURAL HISTORY

On March 24, 2016, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Vancouver School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student’s education.

On March 24, 2016, 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 25, 2016, OSPI received the District’s response to the complaint and forwarded it to the Parent on April 26, 2016. OSPI invited the Parent to reply with any information she had that was inconsistent with the District’s information.

On May 19, 2016, OSPI conducted a site visit at the District.

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

OVERVIEW

During the 2014-2015 school year, the Student attended first grade at a District elementary school and was eligible for special education services under the category of emotional behavioral disability. The Student’s individualized education program (IEP) included five annual behavioral goals, provided for 1250 minutes per week of specially designed instruction for behavior, provided by a special education teacher in the special education setting. This service level represented placement in a self-contained classroom. At the end of the 2014-2015 school year, the Student’s behavior had notably improved, and the Student’s IEP team continued his placement in a self-contained classroom for the 2015-2016 school year. In February 2016, the Student had several behavioral incidents, including physically aggressive behaviors, prompting staff to direct the Student to sit in the classroom resolution room. The Parent asked for an IEP team meeting to consider changing the Student’s placement, the District held an IEP team meeting, and initiated a reevaluation for the Student. The Parent stopped sending the Student to school and alleged that the District did not follow procedures to develop and/or revise the Student’s IEP, implement the Student’s IEP, or determine an appropriate placement in the least restrictive environment. The District denied the allegations.

SCOPE OF INVESTIGATION

The investigation was limited to review of whether the allegations made in the complaint demonstrate a violation of Part B of the IDEA, its implementing federal regulations, or
corresponding state regulations. It did not extend to potential allegations of child abuse or to events outside of the one-year timeline. References to these events are included only to provide context to the issues under review.

ISSUES

1. Did the District follow procedures to develop and/or revise the Student’s individualized education program (IEP)?
2. Did the District follow procedures to implement the Student’s IEP?
3. Did the District follow procedures for determining the appropriate placement and least restrictive environment (LRE) for the Student?

LEGAL STANDARDS

IEP Development: The IEP meeting serves as a communication vehicle between parents and school personnel, and enables the IEP team to make informed decisions regarding the: student’s needs and appropriate goals; extent to which the student will be involved in the general education curriculum and participate in the general education environment, and state and district-wide assessments; and services needed to support that involvement and participation, and to achieve the agreed-upon IEP goals. 34 CFR §§300.321, 300.322, 300.324 and 300.328; WACs 392-172A-03095, 392-172A-03100, and 392-172A-03110.

The IEP team must consider the parents’ concerns and the information they provide regarding their student in developing, reviewing, and revising IEPs. The district is not required, however, to adopt all recommendations proposed by the parents. The team must work toward consensus on IEP content, but if team members are unable to reach consensus, it remains the district’s responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parents believes are necessary components of the student’s educational program. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).IEP

IEP Revision: A student’s IEP must be reviewed and revised periodically, but not less than annually, to address any lack of expected progress toward annual goals or in the general curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. In conducting its review of a student’s IEP, the IEP team must consider any special factors unique to the student. 34 CFR §300.324; WAC 392-172A-03110. If the parent obtains an IEE at public or private expense, the district must consider the results of the evaluation. 34 CFR §300.502; WAC 392-172A-05005(5).

Implementation: Each district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.
Least Restrictive Environment: A student’s IEP team has the responsibility to determine the student’s least restrictive environment (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). Less restrictive placements always have to be considered, but they do not always have to be tried. Seattle School District No. 1 v. B.S., 82 F.3d 1493, 1500 (9th Cir. 1996).

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. 34 CFR §300.116(e); WAC 392-172A-02060.

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. 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.
Restraint Device: Restraint device as defined in RCW 28A.600.485 means: A device used to assist in controlling a student including, but not limited to, metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons. This section shall not be construed as encouraging the use of these devices. A restraint device does not include a seat harness used to transport a student safely or other safety devices, including safety belts for wheelchairs, changing tables, booster seats, and other ambulatory or therapeutic devices when used for the purpose intended for the safety of a student. WAC 392-172A-01163.

FINDINGS OF FACT

Background Facts

1. During the 2014-2015 school year, the Student attended first grade at a District elementary school and was eligible for special education services under the category of emotional behavioral disability.

2. The Student’s initial evaluation was completed on March 27, 2014, when the Student attended kindergarten at a District elementary school. The evaluation report stated that the Student’s academics skills were an area of strength, and he was performing at or above grade level for English language arts. The report also noted the Student was outgoing, artistic, and enjoyed participating. The report included a teacher assessment and a parent assessment of the Student’s behaviors.¹ The Student’s teacher’s assessment indicated the Student had clinically significant scores for nine out of fifteen behavioral areas assessed.² The Parent’s assessment indicated the Student had clinically significant scores for one area, and was within the at-risk range for four out of the sixteen behavioral areas assessed.³ The evaluation report noted that the school had previously used several behavioral interventions for the Student, but the Student’s deficits in social/emotional/behavioral skills continued to negatively impact his ability to meet classroom expectations, and recommended that the Student receive specially designed instruction in the area of social/emotional/behavioral skills.

3. On June 9, 2014, the District reevaluated the Student based on concerns that the Student needed more support for behavior, and to obtain more current information about the Student’s behavior. The reevaluation report stated the Student’s individualized education program (IEP) had been revised twice since the Student’s initial evaluation report, once to add specialized transportation, and once to add additional service time for specially designed instruction for behavioral skills. The

¹ Although similar, the teacher assessment form and the parent assessment form are not identical.

² The behavioral areas the Student’s teacher assessed as clinically significant included: externalizing problems, internalizing problems, behavioral symptoms index, hyperactivity, aggression, anxiety, depression, atypicality, and withdrawal.

³ The behavioral area the Parent assessed as clinically significant was withdrawal; the behavioral area the Parent assessed as at-risk included: externalizing problems, hyperactivity, depression, and behavioral symptoms index.
report noted that the Student had received a private diagnosis of generalized anxiety disorder, and had started attending private counseling. Additionally, the report stated that the Student attended two counseling groups at school.

4. On June 18, 2014, the Student’s IEP team, including the Parent, developed the Student’s annual IEP. This was the IEP in effect for the Student at the beginning of the 2014-2015 school year. The present levels of performance stated that the Student had experienced 34 major behavioral incidents during the 2013-2014 school year, resulting in 7 out-of-school suspensions, and several of those incidents involved defiance and physical aggression. The Student’s IEP included five annual behavioral goals, including interacting appropriately, respecting the space of others, transitioning appropriately, beginning tasks independently, and working quietly. The Student’s goals were to improve in each of the five behavioral areas from 0/5 or 1/5 observed instances to 4/5 observed instances, with progress reported each trimester. The Student’s IEP provided for 1250 minutes per week of specially designed instruction for behavior, provided by a special education teacher in the special education setting. According to the service matrix, this level of service represented that the Student would spend 28.57% of his time in the general education setting. The IEP stated that as the Student’s behavior continued to improve, he would have additional opportunity to participate in general education classes.

5. September 3, 2014 was the first day of the 2014-2015 school year and the Student began attending first grade at a different District elementary school than he had attended for kindergarten, based on his placement in a self-contained classroom. A special education teacher and three paraeducators supported the Student’s self-contained classroom, which served about ten students who needed instruction and support for the area of emotional/behavioral skills. The Student’s classroom included a voluntary quiet space, where students could choose to go for self-calming and included sensory equipment. The Student’s classroom also included a resolution room, which was about four feet by four feet in dimension with carpeted walls and floor, a tall ventilated ceiling, and a locking door with a Plexiglas window. The general classroom protocol for both the voluntary quiet place and the resolution room included that a student would sit or stand with his or her back against the wall with a calm body for two minutes, and then that student would exit and resume participation in the classroom.

6. On March 25, 2015, the Student had a behavioral incident as he got off of the school bus in the morning. According to the behavioral report, the Student hit, kicked, and pushed peers, prompting staff to direct the Student to the classroom resolution room, where he remained for thirteen minutes. According to the report, the door to the resolution room was not secured, and staff contacted the Parent after school that day.

Timeline Begins on March 25, 2015

6. On March 25, 2015, the Student had a behavioral incident as he got off of the school bus in the morning. According to the behavioral report, the Student hit, kicked, and pushed peers, prompting staff to direct the Student to the classroom resolution room, where he remained for thirteen minutes. According to the report, the door to the resolution room was not secured, and staff contacted the Parent after school that day.
7. On March 26, 2015, the Student had another behavioral incident as he got off of the school bus in the morning. According to the behavioral report, the Student hit, kicked, and pushed peers, prompting staff to direct him to the classroom resolution room, where he remained for twelve minutes with the door secured. The report indicated that staff contacted the Parent that same day.

8. On March 30, 2015, the Student had a behavioral incident after becoming annoyed with another student. According to the behavioral report, the Student hit, kicked, and scratched peers, prompting staff to direct him to the classroom resolution room for twenty-five minutes with the door secured. The report indicated that staff contacted the Parent after school that day.

9. On May 28, 2015, the Student had a behavioral incident when he was not allowed to go into another student’s area. According to the behavioral report, the Student pushed a peer, prompting staff to direct him to the classroom resolution room for nine minutes with the door secured. The report indicated that staff contacted the Parent after school that day.

10. On June 5, 2015, the Student’s IEP team, including the Parent, developed the Student’s annual IEP. This was the IEP in effect for the Student at the beginning of the 2015-2016 school year. The present levels of performance stated that the Student’s behavior had improved, and he had started to participate in a general education first grade class for an hour in the mornings. The Student’s IEP continued to include five annual behavioral goals; to interact appropriately, respect the space of others, transition appropriately, begin tasks independently, and work quietly. The measurement for the Student’s annual goals were to improve for each respective behavioral goal from 72%, 50%, 75%, 73%, and 75% to 90%, 70%, 90%, 90%, and 90% with progress reported each trimester. The Student’s IEP provided for 1500 minutes per week of specially designed instruction for behavior, provided by a special education teacher in the special education setting. According to the service matrix, this level of service represented that the Student would spend 14.29% of his time in the general education setting. The IEP stated that the Student would continue to be placed in a self-contained classroom and his opportunities to participate in the general education classroom would depend on his behavior.

11. On May 26, 2015, the District provided the Parent with prior written notice, stating that the Student’s IEP team had reviewed his IEP and his behavioral intervention plan (BIP), and had updated both documents. Another prior written notice dated the same date, stated that the Student’s behaviors had improved to the point that he no longer needed an aversive intervention plan.

12. June 16, 2015 was the last day of the 2014-2015 school year.

13. September 2, 2015 was the first day of the 2015-2016 school year, and the Student began attending second grade in the same self-contained classroom at the same District elementary school. However, the District had altered the latch on the classroom resolution room door so that while the door could be closed it could not
be locked. The Student’s classroom provided parents with a daily report sheet, which was sent home with students, and reviewed students’ performance throughout the day.

14. On October 16, 2015, the Student’s daily report sheet stated that the Student pushed a desk into another student, and later became upset and pushed a desk over. The report stated that the Student was in the classroom resolution room for eleven minutes, but does not specify which behavior prompted the use of the resolution room.

15. On October 19, 2015, the Student’s daily report sheet stated that the Student became upset when he did not get to use the toy he wanted at recess. The report stated the Student screamed, kicked, and banged his head, resulting in thirteen minutes in the classroom resolution room.

16. On October 27, 2015, the Student’s daily report sheet stated the Student threw food and then threw his tray at another student during lunch, resulting in twenty minutes in the classroom resolution room.

17. On October 30, 2015, the Student’s daily report sheet stated that the Student elbowed staff, resulting in five minutes in the classroom resolution room. Later that day, the Student became upset in the afternoon and overturned a desk, resulting in twenty minutes in the classroom resolution room.

18. On November 5, 2015, the Student’s daily report sheet stated that the Student pushed another student, then bit his teacher, resulting in ten minutes in the classroom resolution room. Shortly after returning to the classroom, the Student again bit, pushed, and grabbed his teacher, resulting in fifteen minutes in the classroom resolution room.

19. On November 9, 2015, the Student’s daily report sheet stated that the Student bit and kicked his teacher, resulting in nine minutes in the classroom resolution room. Later that day, the Student threw toys at other students, resulting in five minutes in the classroom resolution room.

20. On November 12, 2015, the classroom resolution room log stated that the Student kicked the teacher, resulting in sixteen minutes in the classroom resolution room. Also according to the classroom resolution room log, later that day, the student

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4 The District explained that it relied on daily report sheets to communicate with parents of use of the classroom resolution room because those reports were sent home to parents every school day in students’ backpacks.

5 The documentation includes a classroom resolution room log, which begins with this incident. However, the log information for this incident is erroneously dated as occurring on October 26, 2015. The District explained that the classroom began keeping this resolution room log while the District was updating its behavioral incident forms. This decision refers to information in the classroom resolution room log only when that information is not available in the Student’s daily report sheet.
again kicked the teacher, resulting in fifteen minutes in the classroom resolution room.6

21. On November 17, 2015, the Student’s daily report sheet stated the Student knocked over a chair and bit someone, without specifying whether the bite was to a staff member or another student, resulting in seven minutes in the classroom resolution room. Later that day, the Student grabbed another student, resulting in fifteen minutes in the classroom resolution room.

22. On November 18, 2015, the Student’s daily report sheet stated the Student kicked and hit another student, resulting in ten minutes in the resolution room.

23. On November 19, 2015, the Student’s daily report sheet stated the Student went to the resolution room on three separate occasions. First, the Student hit another student, resulting in ten minutes in the classroom resolution room. Later in the day, the Student pushed another Student, resulting in twenty minutes in the classroom resolution room, and later still, the Student pushed desks and chairs, knocking over a desk, resulting in fifteen minutes in the classroom resolution room.

24. On November 24, 2015, the Student’s daily report sheet stated the Student became unsafe, overturning desks, resulting in three minutes in the classroom resolution room.

25. On December 7, 2015, the Student’s daily report sheet stated that after the Student knocked over desks, chairs, and screamed, he took a break the classroom quiet area. However, the Student was being “unsafe” in the classroom quiet area, resulting in four minutes in the classroom resolution room.

26. On December 9, 2015, the Student’s daily report sheet stated the Student knocked over desks, bit his teacher, and started screaming, resulting in fifteen minutes in the classroom resolution room.

27. On December 11, 2015, the District provided the Parent with progress reporting for the Student’s annual IEP goals. The reporting indicated that the Student was making sufficient progress on all of his IEP goals to achieve the goals within the duration of the IEP. Regarding the Student’s first behavioral goal (interacting appropriately), the reporting stated that the Student was showing safe behaviors in 83% of observed opportunities, and was working on self-control and calming strategies to prevent observed hitting, kicking, biting, and throwing. Regarding the Student’s second behavioral goal (respecting the space of others), the reporting stated the Student had improved from 50% to 70% in observed opportunities. Regarding the Student’s third behavioral goal (transitioning appropriately), the reporting stated the Student was transitioning appropriately in 84% of observed opportunities. Regarding the Student’s fourth behavioral goal (beginning tasks independently), the reporting stated the Student was beginning and completing tasks in 83% of observed opportunities. Regarding the Student’s fifth behavioral goal

6 The documentation does not include the Student’s daily report sheet for this date.
(working quietly), the reporting stated the Student was working quietly in 81% of observed opportunities.

28. On December 15, 2015, the Student’s daily report sheet stated the Student kicked his teacher, resulting in six minutes in the classroom resolution room.7

29. December 18, 2015 was the last school day before winter vacation, and school resumed on January 4, 2016.

30. On January 11, 2016, the Student’s daily report sheet stated the Student went to the classroom resolution room based on an incident on the school bus that morning. The resolution room log, stated that the bus incident involved hitting other students with his backpack, resulting in eleven minutes in the classroom resolution room.

31. Also on January 11, 2016, a District safety training supervisor emailed the school principal, stating that the Student was having issues when getting off the school bus, and asking if the bus aide could try having the Student exit the bus last or make another adjustment.

32. On January 13, 2016, the resolution room log stated that the Student punched staff in the stomach, resulting in eight minutes in the classroom resolution room.8

33. On January 21, 2016, the school principal emailed the District safety training supervisor, stating that school staff had made some adjustments to how the bus aide supported students on the Student’s bus, and asking if the adjustments had helped.

34. On February 3, 2016, the Student’s daily report sheet stated the Student “threw a fit,” resulting in two minutes in the classroom resolution room.

35. On February 9, 2016, the Student’s daily report sheet stated that on the school bus that morning, the Student had jumped over the bus seats, threw his shoes, and kicked the driver, other students, and staff. The report stated that the Student spent nineteen minutes in the classroom resolution room upon his arrival at school.

36. On February 11, 2016, the Student’s daily report sheet stated that the Student pushed cabinets and was being unsafe, resulting in ten minutes in the classroom resolution room.

37. On February 12, 2016, the Student had a behavioral incident while riding the bus to school. According to the information report, the Student refused to sit in his seat, took off his shoes, ran around the bus, scratched a student, and hit a student with

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7 The classroom resolution log also notes that the Student picked up a chair and threw it before going to the classroom resolution room. However, this information was not in the daily report sheet that was provided to the Parent.

8 The Student’s daily report sheet does not include this information, but does state that the Student ripped up his daily report sheet before lunch and that the report sheet did not include information from the morning.

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his shoes. The Student’s daily report sheet stated his violent behavior on the bus resulted in five minutes in the classroom resolution room when he arrived at school. About an hour after rejoining his classroom, the Student punched his teacher in the face, resulting in twenty-five minutes in the classroom resolution room. The District suspended the Student from school for two days, effective immediately, and the school principal telephoned the Parent who came to school and took the Student home.

38. On February 18, 2016, the Student’s daily report sheet stated that the Student kicked, but does not specify who or what the Student kicked, resulting in five minutes in the classroom resolution room.

39. On February 19, 2016, the Parent emailed the school principal, the Student’s special education teacher, and the District special services manager, asking for an IEP team meeting to change the Student’s placement. The District special services manager replied on February 22, 2016, stating she would schedule an IEP team meeting as soon as possible.

40. On February 24, 2016, the District scheduled the Student’s IEP team meeting for March 3, 2016, and invited the Parent, who replied she could attend on that date.

41. Also on February 24, 2016, the Student’s daily report sheet stated the Student became upset, screaming and hitting his head against a wall, causing staff to worry that the Student would injure himself, resulting in fifteen minutes in the classroom resolution room.

42. On February 29, 2016, the Student had a behavioral incident involving knocking over a desk, hitting the wall with his feet and his head, and staff believed the situation was dangerous to other students. According to the report, the Student’s behavior resulted in his being in the classroom resolution room for twenty minutes. The report stated that staff contacted the Parent via the Student’s daily report sheet. However, the Student’s daily report sheet did not include any information about the Student’s use of the classroom resolution room, but it did state that the Student became very upset during writing.

43. On March 1, 2016, the Student had yet another behavioral incident on the school bus. According to the report from his school bus driver, the Student called another student names and spat at the other student, trying to kick her, and stating he would kill her. Upon the bus’s arrival at school, the Student hit the other student, and the bus driver kept the Student in the back of the bus until the other student got off the bus safely.

44. On March 2, 2016, the Student’s daily report sheet stated the Student became upset about recess, resulting fifteen minutes in the classroom resolution room.

45. Also on March 2, 2016, the District safety training supervisor emailed the school principal, suggesting the Student’s bus driver use a bus harness with the Student for safety during his bus ride. The District safety training supervisor asked the school
principal for his thoughts on using a bus harness with the Student, and asked if the Student’s IEP included this provision. The school principal forwarded the email to the Student’s special education teacher, the school psychologist, and the District special services manager, noting that the Student’s IEP team should discuss using a bus harness for the Student at his IEP team meeting the next day.

46. On March 3, 2016, the Student’s daily report sheet stated the Student tried to kick a staff member in the groin, resulting in twelve minutes in the classroom resolution room. Later that day, the Student cried and threw objects, including throwing his shoes, resulting in three minutes in the classroom resolution room.

47. Also on March 3, 2016, the Student’s IEP team, including the Parent, met to discuss the Parent’s concerns, specifically her request to change the Student’s placement back to a general education classroom, and provide him with a one-to-one aide. The District explained that a change of placement required a reevaluation, and proposed to reevaluate the Student in the areas of social/emotional, behavioral, academic, medical/physical, general education, cognitive, observation, and a review of existing information. The Parent provided consent on the same day, and the District tentatively scheduled the Student’s reevaluation results meeting for April 27, 2016.

48. On March 4, 2016, the Student’s special education teacher emailed the school psychologist, stating the Parent had given permission to add the provision of a bus harness, and asked if she needed to amend the Student’s IEP immediately to reflect that provision, or if she could wait and revise the Student’s IEP after his reevaluation was completed.

49. On March 9, 2016, the Student had a behavioral incident involving pushing a cabinet, kicking a wall, and hitting a window with his hands, prompting staff to worry he would injure himself. According to the report, the Student went to the classroom resolution room for fifteen minutes. The report stated that staff contacted the Parent via the Student’s daily report sheet. The Student’s daily report sheet stated the Student was out-of-control, throwing milk and hitting, resulting in five minutes in the resolution room. After school on March 9, 2016, the Parent emailed the Student’s special education teacher, asking how the Student did that day, stating that the Student told her he had asked “for his paper” several times, but then “gave up.”

50. On March 11, 2016, the Student’s special education teacher emailed the school principal, stating she had seen bruises on the Student’s lower back, side, and stomach area. The Student’s special education teacher stated that when she asked the Student about the bruises, he “shut down.” The Student’s special education teacher stated that she asked one of the paraeducators in the Student’s classroom to take the Student for a walk, and ask the Student about the bruises. The Student’s special education teacher stated that the paraeducator reported that the Student told her that his little sister sometimes hurt him, and his little sister was too little to do anything about it. The Student’s special education teacher stated that the
paraeducator asked the Student if he told the Parent about the situation, and the Student said that he could not.

51. On March 11, 2016, school staff filed a child protection service (CPS) report regarding the bruises on the Student.

52. On March 14, 2016, the Parent emailed several school and District staff, including the District special services manager, the school principal, and the school psychologist. The Parent stated that she viewed the CPS report as retaliation for her advocating for the Student. The Parent also stated that she believed the Student’s bruises were from the bus harness, which she was revoking permission for the District to use with the Student.

53. Also on March 14, 2016, the District special services manager emailed the District transportation department and the Student’s special education teacher, notifying them that staff should no longer use the bus safety harness with the Student, as the Parent had revoked consent.

54. On March 15, 2016, the Student’s daily report sheet stated the Student bent another’s student’s fingers, seeming as if he would break the other student’s fingers, resulting in six minutes in the classroom resolution room.

55. On March 16, 2016, the Student’s daily report sheet stated the Student hit a student with his backpack and threw a book at a student, resulting in five minutes in the classroom resolution room.

56. On March 17, 2016, the Parent visited the Student’s classroom. However, the Parent did not check in with the front office or provide advance notice that she wished to observe the Student in his classroom. When the school principal learned that the Parent was in the Student’s classroom, he asked her to leave and visit the Student’s classroom another time, when she had provided advance notice and checked in with the front office, as required by the school’s procedures.

57. Also on March 17, 2016, the school psychologist emailed the Parent to confirm a meeting date of April 21, 2016, to discuss the Student’s reevaluation results. The Parent confirmed the meeting date, and also asked if a family member could visit the Student’s classroom. The school psychologist forwarded the email to the school principal, who replied that the family member was welcome, but all visitors must follow District policy, including providing 24 hours’ advance notice, and holding a pre-conference and a post-conference. The school principal suggested the family member visit the next day, on March 18, 2016.

58. Also on March 17, 2016, the District provided the Parent with progress reporting for the Student’s annual IEP goals. The reporting indicated that the Student was making slow progress on one of his IEP goals, sufficient progress on two of his IEP goals, and had mastered two of his IEP goals. Regarding the Student’s first behavioral goal (interacting appropriately), the reporting stated that the Student was making slow progress, and his safe behaviors had decreased from 83% to 70% of
observed opportunities. The reporting stated the Student was showing a lack of self-control, but had improved his ability to calm himself. Regarding the Student’s second behavioral goal (respecting the space of others), the reporting stated the Student had mastered the goal. Regarding the Student’s third behavioral goal (transitioning appropriately), the reporting stated the Student was making sufficient progress and was transitioning appropriately in 90% of observed opportunities. Regarding the Student’s fourth behavioral goal (beginning tasks independently), the reporting stated the Student had mastered that goal and was beginning and completing tasks in 95% of observed opportunities. Regarding the Student’s fifth behavioral goal (working quietly), the reporting stated the Student was making sufficient progress and was working quietly in 85% of observed opportunities.

59. On March 22, 2016, school staff telephoned the Student’s home, to ask about the Student’s three unexcused absences. School staff spoke with the Student’s grandfather, who told school staff that the Student was no longer attending school because he was coming home with bruises.

60. On March 23, 2016, the school psychologist telephoned the Parent to remind her of upcoming reevaluation results meeting. The Parent stated that neither she nor the Student would attend the Student’s elementary school again, and she was not willing to meet there for the Student’s reevaluation results meeting. The school psychologist asked the Parent to contact the District special services manager with her concerns about the location of the meeting, but also told the Parent that she (the school psychologist) would be unable to complete the Student’s reevaluation if the Parent did not make the Student available. The Parent telephoned the District special services manager the same day, expressing that she did not want to meet at the Student’s current elementary school, and the District special services manager explained that the meeting needed to occur at that building because several members of the Student’s IEP team were located there.

61. On March 24, 2016, the Parent filed this complaint with OSPI.

62. On April 18, 2016, the District provided the Parent with prior written notice, proposing to change the Student’s location to another elementary school and also proposing to discontinue the Student’s in-process reevaluation. The notice stated that the District was proposing to change the Student’s location because the Parent had expressed that she would not send the Student to his current school. Additionally, the notice stated that the District was proposing to discontinue the Student’s reevaluation because the Parent had not been made the Student available.

CONCLUSIONS

1. The documentation substantiates that the District followed procedures to develop/revise the Student’s IEP. The IEP team must consider a parent’s concerns and information regarding in developing, reviewing, and revising IEPs. However, districts are not required to adopt all recommendations proposed by parents. Here, the
Parent attended the Student’s IEP team meetings, and participated in developing the Student’s IEPs in place at both the beginning of the 2014-2015 and 2015-2016 school years. In February 2016, when the Parent requested an IEP team meeting to revise the Student’s IEP, the District timely held an IEP team meeting, and initiated a reevaluation for the Student to have the information necessary to consider the Parent’s request for a change of placement.

2. The documentation also substantiates that the District followed procedures to implement the Student’s IEP. Although this citizen complaint decision highlights the Student’s daily report sheets for information about the Student’s time in the classroom resolution room, the daily report sheets include significant information about the Student’s participation in IEP services. Additionally, the Student’s progress reporting substantiates that the District provided the Student with the services in his IEP. In December 2015, the progress reporting for the Student’s annual IEP goals indicated that the Student was making sufficient progress on all of his IEP goals to achieve the goals within the duration of the IEP. In March, 2016, the progress reporting for the Student’s annual IEP goals indicated the Student was making slow progress on his goal for interacting appropriately, he was showing a lack of self-control and his safe behaviors had decreased, but the reporting also stated the Student had improved his ability to calm himself. At the same time, the Student had reportedly mastered his goals for respecting the space of others and for beginning tasks independently. Additionally, the progress reporting concluded that Student was making sufficient progress on his goals for transitioning appropriately and for working quietly to achieve those goals within the span of his IEP.

3. The documentation also substantiates that the District followed procedures for determining the appropriate placement and least restrictive environment for the Student. The Parent’s complaint centers on the June 2014 decision to move the Student from his neighborhood school, where his behavioral issues were becoming progressively more problematic, to another school that had a self-contained classroom. This decision is outside of the timeline for this complaint. However, when the timeline begins in March 2015, the Student’s behaviors had notably improved after being in the self-contained classroom environment. Districts are not required to educate a student with a disability in the school he or she would attend if nondisabled when that student’s IEP requires another arrangement based on the student’s needs. In February 2016, the Student’s ability to control his aggressive behaviors had regressed, the District properly responded to the Parent’s request to consider changing the Student’s placement by initiating a reevaluation of the Student. Placement decisions are individualized to a student’s needs, and must consider the evaluation data for an individual student, the options that present a reasonably high probability of assisting that student attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services. However, the District could not complete the Student’s reevaluation because the Parent did not make the Student available.

4. OSPI has identified another issue not initially included in the complaint: Did the District follow isolation procedures with the Student? The documentation does not
substantiate that the District followed isolation procedures with the Student. Districts may use isolation only when a student’s behavior poses an imminent likelihood of serious harm, and districts must discontinue the isolation as soon as the likelihood of serious harm has dissipated. Here, the documentation indicates that the District used the classroom resolution room on occasions where the Student’s behavior was problematic, but did not present an imminent likelihood of serious harm. Additionally, the Student sometimes remained in the classroom resolution room for twenty minutes, yet the documentation does not address whether the Student’s behavior remained at what could be characterized as an imminent likelihood of serious harm for that length of time. Although the District removed the latch from the door of the classroom resolution room at the beginning of the school year, isolation of the Student still occurred, albeit in an unlatched room, because the Student was directed to remain in the classroom resolution room, which was not the equivalent of an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. However, the District and the Parent began to take steps to remedy this situation in initiating a reevaluation to consider a change of placement for the Student. Unfortunately, that process ceased when the Parent refused to make the Student available to complete the reevaluation.

CORRECTIVE ACTION

By or before June 13, 2016, and September 30, 2016, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:
1. The District will seek the Parent’s consent to initiate a comprehensive reevaluation of the Student, including a functional behavioral analysis (FBA), involving the Student’s IEP team as currently constituted at the elementary school where the Student is currently enrolled and with meetings occurring at the elementary school where the Student is currently enrolled. If the Parent consents, the District will complete the reevaluation process, convene an IEP team meeting, and with the Parent’s input, develop an IEP for the Student, including a new BIP, and determine an appropriate placement for the Student.
   • By or before June 13, 2016, the District will provide OSPI with a copy of its proposal to reevaluate the Student.
   • By or before September 30, 2016, the District will provide OSPI with the: (1) a copy of any meeting invitations; (2) a copy of the evaluation report; (3) a copy of the Student’s IEP; and (4) a copy of any prior written notice.

DISTRICT SPECIFIC:
1. The District will ensure that all staff working in a District self-contained special education classroom receive training that addresses the requirements and procedures for maintaining data on behavioral incidents, reporting information to parents, and complying with the regulations governing the strictly limited use of isolation. The District’s use of the daily report sheet to communicate use of the classroom resolution room was not sufficient to fulfill the reporting requirements associated with the use of isolation, restraint or the use of restraint devices.
• By or before **June 13, 2016**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by June 20, 2016, and provide additional dates for review, if needed.

• By or before **September 30, 2016**, the District will submit documentation that staff participated in the training. This will include a sign-in sheet and a roster of who should have attended so OSPI can verify that staff participated.

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.

**NOTE:** The district may request an electronic version of the matrix by e-mailing Thinh Le at Thinh.Le@k12.wa.us.

**DISTRICT SPECIFIC:** None.

Dated this ____ day of May, 2016

Douglas H. Gill, Ed. D.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

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**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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