

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-26**

### **PROCEDURAL HISTORY**

On March 17, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 19, 2018, 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 10, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on April 11, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On April 19, 2018, OSPI received additional information from the Parent and forwarded it to the District on April 20, 2018.

On April 23, 2018, the Parent requested an extension of time to submit her reply. On April 23, 2018, OSPI granted the Parent an extension of time until May 3, 2018, to submit her reply to this complaint.

On May 3, 2018, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On May 8, 2018, OSPI requested that the District provide additional documentation. OSPI received the requested documentation on May 9, 2018 and then forwarded to the Parent on May 10, 2018.

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

### **OVERVIEW**

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education and related services. The Student's individualized education program (IEP) in place at the beginning of the school year included an emergency response protocol. In October 2017, the Student's IEP was amended to provide the Student with more time in the general education setting. In January 2018, the District made changes to the Student's schedule, which did not align with his IEP, and in March 2018, failed to implement the IEP in regard to the Student's access to general education. Additionally, during the school year, the Student was restrained on five days, but some of the uses of restraint were not in alignment with

the Student's emergency response protocol and/or did not meet the conditions for the use and reporting of restraint required by WAC 392-172-02110.

The Parent alleged that the District failed to implement the Student's October 5, 2017 amendment to his IEP in the least restrictive environment. The Parent also alleged that the District failed to use isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 and failed to implement the Student's emergency response protocol during the 2017-2018 school year. The District admitted the allegations in part and denied the allegations in part.

### **ISSUES**

1. Did the District implement the Student's October 5, 2017 individualized education program (IEP) in the least restrictive environment?
2. Did the District use isolation and/or restraint consistent with the requirements of WAC 392-172A-02110 during the 2017-2018 school year?
3. Did the District implement the Student's emergency response protocol during the 2017-2018 school year?

### **LEGAL STANDARDS**

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and

(m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

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

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Least Restrictive Environment: School districts are required to establish and implement procedures that meet least restrictive environment (LRE) requirements. Those procedures must ensure that special education and related services are provided in a student's LRE, which to the maximum extent appropriate, should be in the general education environment with students who are nondisabled. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of her or his disability, the student cannot be satisfactorily educated in general classes with the use of supplementary aids and services. 34 CFR §300.114; WAC 392-172A-02050.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-

172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a).

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

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

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.

Isolation: Isolation as defined in RCW 28A.600.485 means: Restricting the student alone within a room or any other form of enclosure, from which the student may not leave. It does not include a student's voluntary use of a quiet space for self-calming, or temporary removal of a student from his or her regular instructional area to an unlocked area for purposes of carrying out an appropriate positive behavioral intervention plan. WAC 392-172A-01107.

Isolation Conditions: Isolation shall be used only when a student's behavior poses an imminent likelihood of serious harm. The use of isolation as defined by RCW 28A.600.485 is subject to each of the following conditions: the isolation must be discontinued as soon as the likelihood of serious harm has dissipated; the isolation enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy; the isolation enclosure shall permit continuous visual monitoring of the student from outside the enclosure; an adult responsible for supervising the student shall remain in visual or auditory range of the student at all times; either the student shall be capable of releasing himself or herself from the enclosure, or the student shall continuously remain within view of an adult responsible for supervising the student, and any staff member or other adults using isolation must be trained and certified by a qualified provider in the use of isolation, or otherwise available in the case of an emergency when trained personnel are not immediately available due to the unforeseeable nature of the emergency. School districts must follow the documentation and reporting requirements for any use of isolation consistent with RCW 28A.600.485. WAC 392-172A-02110.

Restraint: Restraint as defined in RCW 28A.600.485 means: Physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to participate in activities safely. WAC 392-172A-01162.

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

Follow-up and Reporting Requirements: 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.

## **FINDINGS OF FACT**

### **Background Facts**

1. During the 2016-2017 school year, the Student attended kindergarten at a District elementary school.
2. In February 2017, the District completed a "Positive Behavioral Intervention Plan" (PBIP) for the Student. The plan stated that a "Positive Behavioral Intervention Plan is designed for general education students requiring tier 2 intervention supports and who are not consistently responding to tier 1 (universal) interventions." The PBIP stated that the Student had difficulty with "transitions, raising his voice (yelling at times) in class, running errant during transitions, and not being able to adhere to redirection and replacement of negative behaviors with positives (at times)." The PBIP stated that the behaviors "to be taught and practiced" were: following directions, raising his hand, decreasing blurting outs or yells, maintaining a safe body, and appropriate physical interactions with both student/peers and adults.
3. In March 2017, the District completed an initial evaluation of the Student and his evaluation group determined he was eligible to receive special education services under the category of developmental delay.
4. On April 27, 2017, the Student's individualized education program (IEP) team developed the Student's initial IEP. The April 2017 IEP included annual goals in the areas of mathematics, reading, writing, and social/behavior. The IEP provided for the following specially designed instruction in a *special education setting*:
  - Math – 150 minutes weekly
  - Reading – 150 minutes weekly
  - Writing – 150 minutes weekly
  - Social/Behavior – 875 minutes weekly

The IEP also provided for the following specially designed instruction in a *general education setting*:

- Social/Behavior – 80 minutes weekly

The IEP stated that the Student attended school 1,750 minutes per week and would spend a total of 24.29% of his school week in a general education setting. The IEP stated:

[The Student] will not participate with non-disabled peers when receiving Specially Designed Instruction in Reading, Writing, Math, and Social/Behavior. [The Student] participates in the General Education Environment for choice time, lunch, and all recesses. [The Student] can participate in PE without adaptations. [The Student] can participate in all nonacademic and extracurricular activities with non-disabled peers.

The IEP provided the following accommodations and modifications to instruction throughout the school day:

- Access to visual daily schedule
- Break larger assignments into smaller parts
- Frequent checks for understanding
- Inform Student prior to transitions and/or change in routine
- Preferential seating
- Provide immediate feedback
- Shortened assignments
- Provide desktop list of tasks
- Utilize oral responses to assignment/tests
- Modify/repeat/model directions
- Provide individual/small group instruction
- Allow breaks (during work, between tasks, during testing, etc.)

The April 2017 IEP stated that the Student's behavior impeded his learning and the learning of others, and that he responded to specific positive feedback, break schedules, and clear expectations with reinforcement. The IEP also stated that the Student struggled with "following directions, sitting in his assigned area, following a schedule, transitions, eloping from the classroom, and keeping a safe body (hitting, kicking, using objects toward other students)." The April 2017 IEP did not include a behavioral intervention plan (BIP) and did not reference the Student's February 2017 PBIP.

5. Also on April 27, 2017, the District issued a prior written notice, proposing to initiate the Student's IEP. The notice stated that the IEP team had discussed "thoughtful planning for additional General Education time during his day and a need for an Emergency Response Protocol". The notice stated that the team planned to address these "issues during subsequent meetings". The District's documentation in this complaint does not show that additional IEP meetings occurred during the 2016-2017 school year.
6. On May 18, 2017, the Parent signed consent for an emergency response protocol to be included in the Student's April 2017 IEP. The May 2017 emergency response protocol stated:
  - Describe the emergency conditions under which isolation, restrained, or restraint device may be used:

Restraint or isolation is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, as defined by RCW 70.96B.010. If [the Student] engages in unsafe or physically aggressive behaviors (hitting, biting, punching, throwing objects) toward a peer or adults isolation may be used if the behavior is at and intensity (in duration and of great magnitude) that the team is unable to redirect or deescalate. Additionally, restraint (CPI children's control position) may be used if [the Student] is in imminent danger (climbing out of windows or running into the street) of harming himself or others.

- Specify the type of isolation, restraint, or restraint devices that may be used:  
The only restraint that should be used is a CPI children's control position or CPI transport position (two people) if verbal redirects and/or choices do not immediately stop the unsafe behavior. No restraint devices or other types of restraints may be used other than what is mentioned above. The only isolation that should be used is a classroom where the other students have vacated for safety reasons. Staff will supervise area and student. Classroom will not be locked. No isolation maybe use other than what is mentioned above.
- Specify the staff or contracted positions permitted to use isolation, restraint and/or restraint device with the student and the required training, updated annually for the staff or contracted positions permitted to use the isolation, restraint or restraint device:  
No personnel who are not CPI trained can be used for isolation and restraint.
- Specify any special precautions that must be taken in connection with the use of isolation, restraint, or restraint device:  
[The Student] will only be restrained or isolated to prevent elopement out of a window or into the street (less than a minute) or transported back into the building (less than 3 minutes). He will be reinforced for calming down and following directions. If necessary, a transport position can be used to support him to the isolation classroom. This will be used only in cases of severe and imminent danger or physically aggressive behaviors (eloping off campus toward the street, attempting to strike others with objects or throwing objects at others). Once compliance has been achieved, staff will reinforce heavily while getting him back to the original task, direction, or area.

The use of isolation, restraint, and/or a restraint device must be discontinued as soon as the likelihood of serious harm has dissipated.

7. The District's 2016-2017 school year ended in June 2017.

### **2017-2018 School Year**

8. The District's 2017-2018 school year began on September 6, 2017. The Student continued to attend the same District elementary school and his April 2017 IEP continued to be in place.
9. The Student's educational placement was a part-time special education social-emotional learning (SEL) program, which was taught by a special education teacher with assistance from two instructional assistants (IAs) (paraeducator 1 and paraeducator 2). The Student's placement also included spending portions of his school day with his assigned first grade general education class.



10. Also on September 6, 2017, the Student's special education teacher asked the Parent to sign consent for the District to conduct a functional behavioral assessment (FBA) for the Student. The Parent denied the request and asked that an IEP meeting be scheduled.
11. On September 7-11, 2017, the Parent exchanged emails with District staff members. The emails are summarized below.
- September 7 – The Parent emailed the District behavioral program specialist (behavioral specialist) and two other staff members with a question regarding the implementation of the Student's IEP. The Parent expressed concern that the Student's special education teacher had said that the Student had to earn his time in the general education setting, which was not what was stated in the Student's IEP or had been discussed by the IEP team as an option. The Parent stated that the special education teacher was not allowing the Student to access his general education time. The Parent also expressed concern that the special education teacher had greeted her on September 6, asking the Parent to sign consent for an FBA, which the Parent felt was not a way to engage families, especially when the Student had only been in the classroom for five minutes. The Parent expressed that she did not want the Student in an environment where he would be targeted before even sitting in a desk. The Parent also stated that the FBA was supposed to occur in October 2016 and then again April 2017, but had never occurred.
  - September 7 – The behavioral specialist responded that she would speak with the special education teacher to ensure she was following the IEP, and about engaging families.
  - September 8 – The behavioral specialist responded again, stating that she had clarified the need to follow the Student's IEP with the special education teacher and the teacher would be revising any schedule for the Student that was contrary to his IEP beginning that day. The behavioral specialist had also discussed with the teacher the need to schedule an IEP meeting to discuss any changes in services. The behavioral specialist stated that she understood there was an expectation of a monthly meeting, but this had not been documented in a previous prior written notice and the special education teacher had not been aware of a team plan around meetings. The special education teacher was willing to meet monthly, and the behavioral specialist stated that it could be discussed if the monthly meetings would be IEP meetings or check-in meetings. The behavioral specialist also stated that the prior written notice from the last IEP meeting, did not indicate the initiation of an "FBA/BIP", and stated that she knew the Student had a number of behavior plans last year, but those did not translate to an "official FBA/BIP". The behavioral specialist stated that if the Parent was open to it, the behavioral specialist thought it would be beneficial to initiate an "FBA/BIP" soon in order to "create a support plan around a specific behavior that may be a barrier" to the Student's education and ensure a BIP that was "implemented across school environments". The behavioral specialist stated that she had an intern who was experienced in creating "FBA/BIPs" and could help with the process for the Student. Additionally, the behavioral specialist stated that she had asked the special education teacher to provide the instructional assistants who worked with the Student, with a copy of the Student's May 2017 emergency response protocol.
  - September 8 – The Parent replied that she had signed consent for an FBA on two different occasions during the 2016-2017 school year, but the FBA had not occurred. The Parent was unsure why. The Parent stated that prior to signing the Student's April 2017 IEP, there was an understanding that there would be a monthly IEP meeting due to her concerns about the special education program the Student was in. The Parent stated that the IEP meetings would need to

continue, as past plans had not been executed and/or followed. The Parent then expressed additional concerns about the Student having to earn his time in the general education setting, and expressed that a meeting needed to occur if there were any revisions or changes to a plan for the Student and that she needed to agree. The Parent expressed that she wanted the Student to have a positive experience with school that year and that so far he had. The Parent hoped that by the end of the school year, the IEP team would be discussing the Student spending the majority of his school day in a general education setting for the 2018-2019 school year. The Parent asked if the Student could meet with a mental health provider to address his anger, aggression, and grief. The Parent also asked that the District provide dates and times to hold an IEP meeting to discuss the Student's schedule, data that had been collected so far, and next steps going forward. The Parent provided information about when she was available to meet.

- September 9 – The behavioral specialist responded that the District would be in touch about scheduling an IEP meeting, and also asked the elementary school principal, who was included on the email, if the elementary school partnered with a community organization to offer mental health services.
- September 11 – The principal replied that the elementary school was partnering with a community organization to offer mental health services and agreed to look into the process to get the Student connected with the organization.
- September 11 – The Parent responded, asking that the District provide possible dates for an IEP meeting and also provide the most updated copy of the Student's IEP. A meeting was later scheduled for September 14, 2017.

12. Also on September 11, 2017, the Student was restrained four times during an approximately twenty-minute time period by his special education teacher and another teacher. The District's "Isolation and Restraint Incident" report (incident report) from September 11 stated:

An adult asked [the Student] to walk down the hallway with him to confirm with a teacher that he was going with his Gen Ed class to PE. [The Student] responded by putting his hands on the adult giving the direction, and lunged at him. The adult asked [the Student] to show a safe body in the classroom and then walk with him down the hallway. [The Student] responded by knocking over furniture, boxes of curriculum, and ripping posters in the hallway. [The Student] was unresponsive to adult directions to show a safe body. During this time, [the Student] continued to kick and bite staff members and endanger himself.

After 10 minutes of escalation, two team members placed [the Student] in transport hold and brought him into the classroom. During this time, [the Student] continued to kick and bite staff members and endanger himself by throwing furniture. He was given reminders that he had to show a safe body or be put into restraint. After 3 minutes of safe body reminders, he continued to hit, kick, punch, and attempt to bite staff. He was put into a CPI Team Control Position 3-4 minutes. When he began to show a safe body, team members took him out of this position with reminders to show a safe body or he would be put in hold again.

After 3 minutes, he began pinching, kicking, and biting staff members and throwing classroom furniture. He was reminded one more time that if he did not show a safe body,

he would be put in a hold. When grabbing, punching, kicking, and attempting to bite, he was put into a second hold with a one minute warning beforehand. He was held for 3-4 minutes in the CPI Team Control Position. Staff members released him and asked him to show a safe body.

[The Student] kicked, bit, and scratched at team members for 3 minutes. Staff warned [the Student] that he needed to show a safe body or staff would put him into a hold position. Staff gave a 1 minute warning that he would be put in a hold when he continued to show an unsafe body. Staff placed [the Student] in CPI Team Control Position for 3-4 minutes and told him that he would release him when he showed a safe body. After 3-4 minutes [the Student] showed a safe body by sitting down. He walked over to the projector and started playing with it. He was able to talk calmly to a staff member and keep a safe body with a staff member near him.

It is unclear from the District's documentation in this complaint, when the September 11 incident report was provided to the Parent.

13. On September 12, 2017, the Parent emailed a District program specialist, asking for a copy of the Student's IEP. In response, the program specialist attached a copy of the Student's IEP. The Parent replied, expressing concern about the Student's percentage of time in general education stated on the IEP (24.29%), believing the copy of the IEP she had previously signed reflected a higher percentage of time (39%). The program specialist responded that this could be discussed at the upcoming September 14 IEP meeting.
14. On September 13, 2017, the Parent emailed the school principal, expressing concern about the confusion regarding the amount of time the Student would spend in the general education and the Student having to earn time in general education. The Parent also expressed that she was unsure if the services in the SEL program would address the Student's behaviors and wanted to discuss a private agency working with the Student, with the IEP team.
15. On September 14, 2017, the Student's IEP team, including the Parent, met to discuss the Student's participation in general education and the Parent's other concerns. According to the District's September 11, 2017 prior written notice<sup>1</sup>, at the meeting, the Parent stated that the copy of the Student's current IEP, which she had received on September 12, was not the copy that she had previously signed in the spring of 2017, as the copy she had signed stated the Student would spend over 40% of his school week in a general education setting. The Parent expressed that she was dissatisfied that the Student had not been receiving services according to his IEP. The IEP team was unable to reach any conclusions at the meeting regarding the issue with the IEP and agreed to meet again at a later time to discuss how to move forward. The prior written notice also stated that the District members of the IEP team recommended that an FBA be completed to help collect behavioral data on how to best support the Student in both the special education and general education setting. The Parent

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<sup>1</sup> It is assumed the date of the prior written notice is incorrect and should reflect a date of September 14, 2017 or later.

did not give consent for the FBA and did not provide a reason for denying consent. Additionally, the prior written notice stated that the Student had “several physical incidents during the first weeks of school that have impeded his ability to participate and have also impeded his learning and the learning of others.”

16. Later on September 14, 2017, the school principal emailed the Parent and the special education teacher, stating that she had spoken with the Parent about communicating about the Student’s school day. The principal stated that they had agreed that the special education teacher would send a daily email at the end of the school day regarding the Student’s day, and that a time had been designated for the Parent to call the teacher during the school day if needed. The principal also stated that the Parent had offered that calling her proactively, if the Student began to escalate, could often be helpful in de-escalating the Student. The principal stated that this was a strategy that could be tried in the future if that type of situation arose. The District’s documentation in this complaint showed that starting on September 14, the special education teacher regularly emailed the Parent about the Student’s school day.
17. On September 15, 2017, the Parent emailed two District special education program specialists, the behavioral specialist, the school principal, and the special education teacher, asking to hold another IEP meeting prior to October 1, 2017 to discuss the issues with the amount of time the Student was spending in general education. In response, an IEP meeting was later scheduled for September 27, 2017.
18. On September 16, 2017, the special education teacher emailed the Parent about the Student’s school day and also attached a copy of the SEL program classroom handbook. The handbook outlined the class rules, behavior point system, procedures for students taking a break, and the social/emotional curricula used in the classroom.
19. On September 17, 2017, the Parent filed SECC 17-64, alleging that the Student’s IEP was not being implemented as written, as the Student was not participating in a general education setting per the IEP, and that accommodations were not being provided to the Student.
20. On September 18, 2017, the special education teacher emailed the Parent and provided a copy of the class schedule that was being implemented. The teacher stated that the Student’s IEP provided for 24.29% of his school day in a general education setting, which was 94 minutes, and that the Student was receiving 110 minutes per day in a general education setting, 70 minutes of which were with his first grade class. The teacher also stated that the Student attended general education PE twice a week, which accounted for an additional 60 minutes per week, and that she was scheduling time for an IA to attend general education music and art with the Student. Additionally, the teacher stated that she was taking the Parent’s concerns about how the class point system could make each individual student most successful into consideration. The teacher sent another email later that day, showing the Student attended music class that day.

21. On September 21, 2017, the special education teacher emailed the Parent with an update about the Student's schedule. The special education teacher was coordinating with the Student's general education teacher to change the times the Student attended the first grade general education class.
22. On September 27, 2017, the Student's IEP team, including the Parent, held an IEP meeting. According to the District's October 2, 2017 prior written notice, the IEP team discussed the amount of time the Student spent in the general education setting, reinforcers, and "a plan to make his environment less restrictive in accordance with increasing success in behavioral goals." The District requested that the Parent provide consent for the District to conduct an FBA of the Student, but the Parent refused, asking to have "general data" kept for six weeks and that an FBA occur as a last resort if the general data did not show progress. The IEP team agreed to amend the Student's IEP to clarify the time he was currently spending in the general education setting (32%) and to increase the time to allow for participation in an additional general education activity.
23. On October 1, 2017, the special education teacher emailed the Parent, asking if the Parent was available to sign the IEP amendment before or after school that week. The teacher stated that the IEP now included an additional 30 minutes of general education time. The teacher later sent a second email, asking if the Parent still wanted the Student to participate in counseling services provided by the community organization. The Parent responded that she wanted to have the Student participate in the counseling services. Later that day, the special education teacher replied, asking that the Parent provide a copy of the Student's February 2017 PBIP, so that staff could start to implement it. The Parent forwarded the teacher a copy of the PBIP later that evening.
24. The Student was absent October 2 and 3, 2017, due to illness.
25. Based on the documentation in this complaint, on October 5, 2017, the special education teacher and the Parent spoke via phone regarding the proposed amendment to the Student's IEP. The teacher then revised the proposed amendment and emailed a copy to the Parent for her review on October 6, 2017. The Parent responded on October 7, agreeing to the amendment.
26. The October 5, 2017 amendment to the Student's April 2017 IEP provided for the following specially designed instruction in a *special education setting*:
  - Math – 375 minutes weekly
  - Reading – 225 minutes weekly
  - Reading – 250 minutes weekly
  - Writing (concurrent) – 250 minutes weekly
  - Social/Behavior – 175 minutes weekly

The IEP also provided for the following specially designed instruction in a *general education setting*:

- Social/Behavior – 625 minutes weekly

The amended IEP stated that the Student would attend school 1,775 minutes<sup>2</sup> per week and spend 42.25% of his school week in a general education setting. The IEP stated:

[The Student] will not participate with non-disabled peers when receiving Specially Designed Instruction in Reading, Writing, Math, and Social/Behavior. [The Student] participates in the General Education Environment for choice time, lunch, and all recesses. [The Student] can participate in PE without adaptations. [The Student] can participate in all nonacademic and extracurricular activities with non-disabled peers.

The amended IEP also provided for additional classroom support from an IA 300 minutes weekly in a general education setting. The amended IEP did not include a BIP, but the May 18, 2017 emergency response protocol continued to be in place.

27. The District has early release on Wednesdays; therefore, the Student attended school for 6.5 hours per day on Monday, Tuesday, Thursday, and Friday, and 5.25 hours on Wednesdays, which is a total of 1,875 minutes per week. Time spent at lunch (in this case, 20 minutes per day) is not included in the total amount of time stated on an IEP.
28. On Sunday, October 8, 2017, the special education teacher emailed a staff member at the community organization that provided counseling services at the elementary school and attached a copy of the referral form completed by the Parent.
29. Also on Sunday, October 8, 2017, the special education teacher emailed paraeducator 1 and paraeducator 2 regarding the Student's scheduled time in general education. The teacher asked that paraeducator 2 support the Student during his special classes (PE, music, and art) from 11:55 a.m. – 12:25 p.m., and that paraeducator 1 support the Student in the first grade classroom from 1:40 p.m. to dismissal (2:25 p.m.). The teacher also stated that she was waiting to hear back from the Student's first grade teacher regarding the class's academic schedule before the Student joined the class from 10-10:30 a.m.
30. On October 19, 2017, the special education teacher emailed the Parent regarding the Student's school day. The teacher stated:

[The Student] followed direction in yoga, kept voice level zero with reminders, stayed in the class the whole time, responded well to positive praise from staff – got lots of compliments from the teacher. He left the classroom and was looking into [the first grade class's] door during morning meeting, but got back on track and completed math work. The morning was positive overall. He went to music with a sub-IA and got a 1 – I need to check with the IA what specifically he was doing. He left [the first grade classroom's] end of the day recess because it was inside (he wanted to go out with room 2). It took several reminders about his points for him to decide to go back. He made a picture for me today and played really well with classmates during choice time.
31. Later on October 19, 2017, the Parent emailed the special education teacher, the school principal, and a special education program specialist, stating that she was concerned about

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<sup>2</sup> It is unclear from the District's documentation why the length of the school week changed from 1,750 minutes during the 2016-2017 school year to 1,775 minutes during the 2017-2018 school year.

the fragmented communication she was receiving about the Student's school day. The Parent stated that the Student had been coming home explaining that he was throwing chairs and getting into fights with other children, but this information was not being communicated to her by the school. The Parent stated that it appeared that the Student's behaviors were escalating and she was concerned as to why this was. The Parent stated that there needed to be a solution with regard to the information that she was receiving. In response, the special education teacher stated that between October 18 and October 19, there was a moment when the Student threw chairs in the classroom because he did not want to do a reflection for holding a chair over his head. The teacher stated that this lasted 1-2 minutes, and after this, the Student did reflect. The teacher also stated that as far as fights, she could recall one moment when the Student was going verbally back and forth with another student, both yelling in frustration and yelling at each other for yelling. The teacher said the Student had not been in any type of physical fight in the SEL program classroom or his first grade classroom. The teacher stated that she could clarify more the next day and they could discuss what specific behavior support staff could focus on going forward.

32. On October 23, 2017, the special education teacher emailed the Parent regarding the Parent's concerns about the Student's escalating behavior, and asked if the Parent wanted immediate notification if he was unsafe during any point in the day. The teacher then provided information about the Student's behavior the prior school week. The teacher stated that the Student was doing well at requesting breaks and following through with reflections when he was unsafe. The teacher also stated that the focus of the instruction for the Student was "according to his PBIP: raising his hand/voice level [and] safe body". The teacher said that she would try to frame her emails around these areas of instruction and would make an effort to send his point sheet more immediately along with the daily email.
33. On October 25, 2017, the special education teacher emailed the Parent and the SEL program paraeducators. The teacher stated that she and the Parent had met with the Student after school that day about his behavior, and had made a plan to add movement breaks into the Student's schedule, coordinate around consequences, and make more clear notes on the Student's point sheet. The teacher then elaborated on these three topics.
34. On November 6, 2017, OSPI issued a decision in SECC 17-64, finding in relevant part that the District failed to allow the Student access to a general education setting on two days due to the SEL program's behavior intervention policy. The District admitted that the Student did not have access to the general education setting on September 6 and 7, 2017.
35. Based on the documentation in this complaint, on November 7, 2017, the Parent and the special education teacher met for a check-in about the Student.
36. On November 17, 2017, the Student became escalated when he was directed to return to the SEL program classroom, per his schedule, instead of going to recess with his first grade class. Based on the documentation in this complaint, after the incident, the special education teacher sent the Parent a text message regarding what had occurred. The documentation also indicated that the Parent and the special education teacher spoke by phone.

37. On November 18, 2017, the special education teacher emailed the Parent to provide more information about the incident on November 17, 2017. The teacher stated that from 10-10:40 a.m., the Student was usually in his general education first grade classroom and that on November 17, he went to the first grade classroom accompanied by paraeducator 2. The teacher also stated the following:

I could see for my classroom that he had difficulty getting into line and following directions after coming in from recess. [Paraeducator 2] was trailing [the Student] in line and [the Student] was redirected several times by [the first grade teacher] to be in line. [The Student] had trouble getting on task – [Paraeducator 2] came back out to [SEL program classroom] to tell me, I told him to restate expectations and set parameters about how it would affect his points. [The Student] sat for the Read Aloud and was focused the rest of the class. When transitioning at 10:50 (he is supposed to come back to my room to finish Reading skills and choice time at 10:40-11:20), [the first grade class] was going to recess and [the Student] wanted to go out with them. I heard [the Student] yelling in the hallway at 10:50, so I came outside. I saw him yelling, he slammed a table outside [the first grade teacher's] room in the hall. [Paraeducator 2] said "Go see [the special education teacher]", and [the Student] yelled. He went to another large table in the hallway and was repeatedly slamming it in the hallway as 1st grade was coming out, almost putting a hole in the wall. I intervened and said "[Student] think about your points, you need to show a safe body and walk to room 2". [Paraeducator 2] stepped in front of the table and said in a heightened tone "Go see [the special education teacher]", also holding the table so [the Student] could not slam it. [The Student] then started hitting [paraeducator 2] with his hands, grabbed his tie. [Paraeducator 2] then turn [the Student] around by the shoulders, and blocking his hands from hitting, and pushed [the Student] from his back towards room 2, not forcefully. [The Student] ran out from room 2 and kicked [paraeducator 2] in the knee. The entire escalation in the hallway happened over 1 minute's time. From there, he de-escalated in the classroom with me until recess at 11:20, completed a reflection and apology letter to [paraeducator 2] outside with me.

The teacher then asked if the Parent wanted to set up a meeting to revisit the Student's schedule, "behavior support plan", deescalation strategies, and IA support. The teacher also stated that she could assure the Parent that paraeducator 2 had the best intentions, and did not want the Student to get hurt, nor any students who were walking by in the hallway at the time. The teacher said that putting hands on the Student was not in his emergency response protocol, which has been visited with the staff in the SEL program, and that the staff tried to take every measure to protect the students. The teacher asked that the Parent let her know how she would like to move forward.

38. Later on November 18, 2017, the Parent replied, stating that the teacher's email was very different from the nature of the text message the teacher had sent the Parent on November 17, and the Parent was concerned about the teacher's accuracy in regard to what happened with the Student. The Parent stated that this was the fourth time that there had been a mix up with the Student's schedule, which in turn had ended up with the Student being escalated. The Parent stated that they had discussed on several occasions that the Student did not do well with transition or change, and stated that it was imperative that the adults executing his IEP and schedule were consistent and on the same page. The Parent expressed that the



Student was on an IEP for specific reasons with regard to his inability to control his social and emotional behaviors, which interrupt his learning. Additionally, the Parent stated that she was highly concerned about the teacher's email, as the Parent felt the teacher had written it in an attempt to protect the IA, when the teacher's text message had stated that what the IA did was not right. The Parent expressed concern that the teacher's email, text message, and phone call were contradictory. The Parent also expressed that she did not want the Student in a class where he was not progressing or where there was unreasonable force being used outside the parameters of the Student's emergency response protocol. The Parent stated that she was concerned about the amount of force that was being used with the Student, and expressed that the only force that should be used was a child hold when there was safety issue with regard to the Student hurting himself or others. The Parent said that a push was not a hold, and that pushing should not be allowed. The Parent also stated that the Student had reported that he was grabbed and pushed, which the teacher did not initially report to the Parent via text and/or the phone call. Further, the Parent stated that she would attend the upcoming parent/teacher conference and they could talk about the Student's schedule in detail, and the Parent wanted to be able to support the teacher and the IAs in the SEL program classroom at least three days per week. The Parent stated that she was able to come in the morning and stay until the Student's first recess. The Parent wanted to spend more time with the Student, and stated that his behavior was more likely than not spiraling because he did not see the Parent at night, due to her work schedule change. The Parent stated that she wanted to help in the classroom and volunteer. The Parent then reiterated her concern about what occurred on November 17, and stated that she was here to support the Student, as well as the school team.

39. The District had elementary school parent/teacher conferences November 20-22, 2017 and there was no school for elementary school students. The District was on break November 23 and 24, 2017.
40. Based on the documentation in this complaint, on November 21, 2017, the Parent and the special education teacher were scheduled to have a parent/teacher conference.
41. On December 1, 2017, the special education teacher emailed the Parent, stating that she had attached an incident report that she and paraeducator 1 and paraeducator 2 had completed regarding the restraint of the Student earlier that day. The teacher apologized for the stressful situation, and stated that it had been a difficult day in the SEL program because students who were not normally in the room were present due to field trips. The teacher asked that the Parent let her know if she wanted to talk about the incident or hold a meeting to clarify the procedures and plan for the Student.
42. The District's December 1 incident report stated:

At 12:05 [the Student] was in gym class with his homeroom 1<sup>st</sup> grade class which he usually attends with an [instructional assistant] IA according to his IEP. The IA, [paraeducator 1], had to step out to deal with another escalated student at the gym class door for a period of 5 minutes. At this time, [the Student] asked the gym teacher to get water. The gym teacher said he could not at that time. At 12:10 [the Student] left gym

class upset and walked into the hallway where two IA's, [paraeducator 1 and paraeducator 2], were present. The IAs tried to get the [S]tudent to go back to gym to talk it over with the gym teacher, but he refused and got aggressive with the teachers in his proximity. He started hitting and kicking [paraeducator 2], he was warned a hold may happen if he continued. The behavior continued. He was put in a child control hold. The [S]tudent was kicking while he was in the hold. [The Student] was released and asked to show a safe body by sitting on the couch in the hallway. [The Student] was given directions to be safe and he started hitting and kicking [paraeducator 1]. [The Student] was put in another hold after he was warned about being safe. He was transported to Room 2 to by [paraeducator 1] using Child's Control Position where he continued to be aggressive. He was released two times with the only expectation that he be safe, but he kept being aggressive towards adults and had to be put in a child control hold again when he was unsafe. By about 12:30 pm, he was able to calm down and was able to be safe.

The incident report also stated that the Student had been restrained between the time periods of 12:12-12:14 p.m., 12:14-12:16 p.m., 12:20-12:22 p.m., and 12:23-12:28 p.m. using the CPI Children's Control Position.

43. Later on December 1, 2017, the Parent responded to the special education teacher's email and included the school principal and two District special education program specialists. The Parent stated that after reviewing the incident report, it appeared the Student had been placed in multiple holds for one incident that possibility involved three adults. The Parent stated that this would not be the only response that is taken with the Student, especially by an IA who had "pushed" the Student in November. The Parent stated that a meeting would be held immediately and expressed concern that tactics were being used with the Student that were not in his emergency response protocol. The Parent stated that she was very concerned about the staff's inability to work with the Student when he was escalated, and expressed concern that once the Student was put in a hold and escalated, she was called to assist with calming him down. Additionally, the Parent stated that she was concerned about the Student being in the SEL program, because she was aware that no direct services were being offered to assist the Student. The Parent expressed that she wanted to know if once the IA identified that the Student was escalated in the hallway, if the Student was offered a break, and was reminded to breath and that the Parent would be informed about the behavior, which could impact him at home. The Parent stated that there were tactics to make the Student stop and think when he was escalated, and that simply saying if you do not have a safe body, I am going to put my hands on you, told the Student if he did not do what staff needed him to do, they would become physical in order to make the Student do so. The Parent expressed that the Student would continue to act out because this message was being sent to him, and that a better approach was needed. The Parent also stated that she hoped some additional clarification could be provided. The Parent stated that she felt like behaviorally, the Student was declining, and she was very concerned.
44. On December 4, 2017, the elementary school principal responded to the Parent's December 1 email and copied other District staff members. The principal thanked the group for providing information about what occurred on December 1, as well as suggesting that the IEP

team meet to review the Student's May 2017 emergency response protocol. The principal stated that she agreed that a meeting to get more clarity about the staff's response in the moment and to think more about what staff could do proactively to support the Student would be extremely helpful. The principal asked if the Parent could attend a meeting on December 7 or 8. The Parent later agreed to meet on December 8, 2017.

45. On December 5, 2017, the District issued progress reporting towards the Student's IEP goals. The progress reporting stated that the Student had met his social/behavior goals of complying with one-step directions 5/10 times, using calming strategies 5/10 times, and keeping hands, feet, and objects to self 10/10 times. The Student had also met both of his math goals. The progress reporting stated that the Student had made significant progress toward his social/behavior goal of remaining in a scheduled area across 4 activities. Additionally, the progress reporting stated that the Student made some progress toward one of his reading goals and one of his writing goals. The progress reporting noted that the Student had "not yet covered editing of his own writing this marking period" and therefore, the goal was "not applicable this grading period". The progress reporting did not include information about the Student's other reading goals.
46. Based on the documentation in this complaint, the agreed to December 8, 2017 IEP meeting was later rescheduled for December 12, 2017. However, due to staff and the Student being ill, the December 12, 2017 meeting was canceled. A new IEP meeting was later scheduled for January 11, 2018.
47. The District was on break December 18, 2017 through January 1, 2018.
48. On January 7, 2018, the special education teacher emailed the SEL program IAs with instructions and reminders regarding the SEL program. The teacher stated that the Student needed movement breaks while in the general education setting. Additionally, the teacher stated that when students were not doing what they were supposed to do, such as yelling for adult attention or were out of their seats, the teacher asked that the IAs try to silently redirect the students by, for example, using hand signals. The teacher also stated that the IAs should give students clear directions, and avoid giving students who were off task attention. The teacher said if there was blatant defiance, then staff should tell students to take a break, and the time it took the students to make a choice would be minutes subtracted from their recess or free time.
49. On January 10, 2018, the Student was restrained two times for one minute each. The District's January 10 incident report regarding an incident which occurred at beginning of the school day stated:

[The Student] was escalated in the hallway and attempting to throw chairs. [The special education teacher and paraeducator 2] encouraged him to breath and take a walking break. [The Student] yelled. Chairs were removed from the area and [the Student] laid down on the ground. His mother was then called. Other students were walking by and the area was unsafe. CPI Transport Position was used to transport [the Student] into Room 2 for a period of 1 minute. During this time, [the Student] was silent and crying.

He sat on a bean bag and was immediately released from the hold. He was able to talk about why he was upset and talk to his mother on the phone.

The District's January 10 incident report from later that day stated:

At 10:20 am during a reading period in his Gen Ed classroom, [the Student] left his assigned classroom (room 7) without permission. He was upset when he was assigned to a group which he did not prefer. He entered room 2 without permission. He began to throw books and chairs around the room. [A substitute IA (paraeducator 3)] attempted to verbally de-escalate. [The Student] entered the teacher's desk area and began to throw books and other items off the desk. [Paraeducator 3] got closer to [the Student] to direct him verbally to another area. [The Student] began to punch [paraeducator 3]. [Paraeducator 3] backed away and [the Student] continued to swing at him with his fists. At this point [paraeducator 3] attempted Children's Control Position in the Calm Zone, and attempted to have [the Student] sit on a bean bag. [The Student] was released and continued to punch and kick at [paraeducator 3]. [Paraeducator 3] continued to evade. [The Student] began to calm down and was able to apologize about five minutes later.

50. Later on January 10, 2018, the special education teacher emailed the Parent, informing her that the Student was placed in a hold two times that day due to unsafe behavior, and the teacher attached a copy of the January 10 incident reports. The teacher stated that prior to the events, the teacher knew the Student was tired and not in a good mood, which he had been of late, and that being said, staff had tried to support the Student with breaks. The teacher also stated that she knew it took the Student time to warm up to people, but that she had seen him working "very well" with paraeducator 3, and that paraeducator 3 followed the plans the staff had discussed and provided the Student with ample opportunities for break and lots of encouragement. The teacher said that after the events that day, the Student had stated that he still liked paraeducator 3 and like working with him. The teacher stated that paraeducator 3 had a lot of experience working in an SEL program as an IA and was interested in working with the Student. The teacher stated that the Student had seemed to be in a bad mood that day, and his decision making was not the best. The teacher had spoken with the Student about taking more breaks on days when he was tired. Additionally, the teacher stated that she thought the Student was afraid to be with paraeducator 3 when the Student escalated, because the Student was still not familiar with paraeducator 3, and this may be why the Student acted out physically in paraeducator 3's presence. The teacher stated that the Student had made "huge strides" since the beginning of the year and she admired how much hard work the Parent put into the Student.
51. According to the Parent's reply to the District's response to this complaint, the Student alleged that paraeducator 3 choked him on January 10, 2018.
52. On January 11, 2018, the Student's IEP team, including the Parent, held a meeting. The District's documentation in this complaint does not include meeting notes or a prior written notice associated with this meeting, so it is unclear exactly what decisions the IEP team reached at the meeting. However, based on a January 10, 2018 email, the IEP team planned to discuss the following: reasons for holding the meeting, the Parent's thoughts/concerns regarding the Student's current services, behavioral data, input from the general education

teacher, the Student's emergency response protocol and whether it was being followed and was appropriate to address the behaviors the team was seeing, de-escalation strategies currently used with the Student, changes that could be made to the Student's supports, increasing the Student's time in the general education setting, and next steps. Also based on the documentation in this complaint, the general education teacher was unable to attend the meeting, but provided written input regarding the Student's progress in the first grade class and increasing the Student's time in the first grade class. The general education teacher recommended increasing the Student's time in the general education setting incrementally, so the Student could experience success in the general education setting.

53. On January 12, 2018, the Parent signed consent for the District to conduct a functional behavioral assessment (FBA).

54. Also on January 12, 2018, the special education teacher emailed the District behavioral specialist and attached a completed referral for the District's "Behavior and Autism Intervention Team" (BAIT) to work with the Student and school staff. The special education teacher then sent a follow-up email on January 21, 2018, and later spoke with the behavioral specialist about the referral on January 22, 2018.

55. On January 21 and 22, 2018, the special education teacher exchanged emails with the Student's general education first grade teacher regarding changing the Student's schedule so that he would attend the first grade class from 11:40-11:55 a.m. each day, which would allow the Student to attend both recess and lunch with the first grade class. The first grade teacher agreed that this would be a good time to try with the Student. Based on the documentation in this complaint and information in this response, on approximately January 23, 2018, the special education teacher changed the Student's schedule so that he would spend approximately 1,145 minutes per week in a general education setting versus the 1,025 minutes stated on his IEP. The new schedule was as follows:

- 7:55 – 8:25 a.m. (30 minutes): Activity – General Education
- 8:25 – 8:45 a.m. (20 minutes): Social Skills – SEL Program
- 8:45 – 9:30 a.m. (45 minutes): Math – SEL Program
- 9:30 – 9:50 a.m. (20 minutes): Recess – General Education
- 9:50 – 11:00 a.m. (70 minutes): Reading/Writing – General Education
- 11:00 – 11:40 a.m. (40 minutes): Lunch/Recess – General Education
- 11:40 – 11:55 a.m. (15 minutes): Reading – General Education
- 11:55 a.m. – 12:25 p.m. (30 minutes): Specials: PE, Music, Art – General Education
- 12:25 – 1:30 p.m. (65 minutes): Reading – Special Education
- 1:30 – 2:25 p.m. (55 minutes): Community Circle, End of Day, End of Day Recess – General Education

56. On January 22, 2018, the special education teacher emailed the Parent regarding the Student's school day. The teacher also stated that she had spoken with the District behavioral specialist, who relayed that the District had thirty-five school days to conduct the FBA, and that the behavioral specialist and the school psychologist would assist the teacher in observing the Student. The behavioral specialist would come to observe the Student the

following week. The teacher explained that the IEP team could meet again in early March to review the results of the FBA and develop a plan and supports with the data. The teacher also discussed that she had spoken with the District behavioral specialist and the referral for BAIT may not be necessary, but if the IEP team decided that an FBA and IEP were not enough, then they would proceed with the BAIT referral process. In response, the Parent stated that she did not know the difference between the FBA and the BAIT. The Parent asked to get a meeting in March put on the calendar.

57. On January 26, 2018, the District behavioral specialist emailed the Parent to set up a phone call to discuss the FBA process due to the Parent's questions and concerns about the process. In response, the Parent restated her concerns about the process and stated that there was a "big" difference between the environment at school and the home. The Parent stated that she was concerned that assessments and evaluations were being completed but the services were not correcting the Student's behavioral deficiencies at school. The Parent stated that she understood that every day would not be perfect, but she wanted the Student's extreme behaviors to diminish in frequency and in magnitude. The Parent stated that she did not feel the SEL program was helping the Student and that she felt his escalations had been worse since he had been in the program. The Parent said the behavioral specialist's team had come last school year to observe the Student and plans were put together that were not really executed. The Parent stated that she thought the Student struggled with impulse control and his anger at school, but at home when there was a change or transition, the Student did not go through any of the behaviors he displayed at home. The Parent provided times she was available to speak with the behavioral specialist, and they later agreed to speak on January 30, 2018.
58. Based on the documentation in this complaint, the Parent and the special education teacher met on January 30, 2018, to discuss the Student's behavior and the Parent's concern that the Student was manipulating the staff when he did not get his way.
59. On February 1, 2018, the District behavioral specialist emailed the Parent, stating that she had observed in the Student's classroom that day, and wanted to get in one to two more observations before she and the Parent connected again. The behavioral specialist planned to observe the Student again early the next week, and was aiming to observe at different times of the day. The behavioral specialist asked the Parent for her perspective on the home-school communication process, and also for information about the strategies that were effective with supporting the Student at home.
60. In response, the Parent indicated that she did not fully understand the question regarding home-school communication, but provided information about the point sheet used to track the Student's behavior. The Parent stated that she thought staff should pick one goal behaviorally and one goal academically to work on and take it one day at a time. The Parent thought the Student became really frustrated when he did not understand something or when there were new concepts, and that the Student lacked confidence due to his experience in kindergarten. The Parent stated that there had not been a ton of collaborative planning

between herself and the school staff, but they were initially meeting with the Student twice a month, so he was aware they were all on the same page. The Parent thought this was somewhat effective. The Parent stated that she had explained to staff that if they started appearing to be “tired” of the Student and his behavior, then the behavior would escalate and potentially become harder to deal with. Additionally, the Parent stated that the Student thrived on trust, and if he knew whoever was working with him had a strong connection with the Parent, his respect and ability to follow directions fell into play. The Parent thought that there was tension between her and certain staff and that the Student was aware of this. The Parent thought more check-ins as a team would be beneficial, and stated that during the prior school year, the team met monthly. The Parent also thought meetings with the Student were effective, as the Parent was able to communicate the message from the school directly to the Student so there was no room for miscommunication. Further, the Parent stated that she felt like the Student’s behaviors were about power and control, as the Student was aware that the staff could not handle him most of the time and wanted them to call home so that he could get out of whatever work he was doing. The Parent stated that she did not have any behavioral issues at home with the Student, other than sibling spats, and that when she told the Student he had to do something, that was the end of the story, and he did it. The Parent stated that she had clear expectations and the Student knew he could not take any shortcuts. The Parent thought that the staff were becoming tired of the Student, and that she could sense this with one of the IAs who worked with the Student. The Parent stated that she hoped that the information helped and to let her know if additional information was needed. The behavioral specialist replied, thanking the Parent for the information.

61. On February 2, 2018, the special education teacher emailed the Parent and the first grade teacher, asking to schedule a quick check in with the Student and his teachers and to set clear expectations for him at school.
62. The District was on break February 19-23, 2018.
63. On March 3, 2018, the Parent emailed a District special education program specialist, the behavioral specialist, the school principal, and the special education teacher. The Parent stated that the Student’s annual IEP review needed to be scheduled in April 2018, and asked if the FBA results could also be presented at this meeting. The Parent suggested this combined meeting could take place prior to April 2018, and also stated a preferred day of the week to meet. The Parent also asked when the FBA would be completed and presented along with recommendations. The Parent stated that she would like a copy of the FBA prior to the scheduled meeting. Additionally, the Parent expressed concern about the level of scrutiny that was being utilized with the Student, especially in general education settings. The Parent stated that at every upcoming meeting, she would ask what the plan for the Student was to exit special education and have more time in general education. The Parent said that more of the Student’s behavioral incidents had occurred in the SEL program classroom than in his general education classes. The Parent expressed concern that the Student was singled out at times regarding his voice level and felt that there was a need for clarification and leniency around this. The Parent stated that the Student had been working very hard at being safe,

following directions, and focusing and completing work, often with little sleep due to the Parent's work schedule and the Student's early morning medical appointments. The Parent also expressed concern about some of the reactions and responses to the Student's behaviors, which she felt could be triggering at times. The Parent stated that she understood that safety was a priority, but also felt that a lot of the time, the Student had attention seeking behavior, looking for a reaction, which in turn reinforced the behavior they were trying to prevent. The Parent said that an example of this was evacuating the entire class, when the Student was scooting in his chair and kicking the air. The Parent said she could understand if the Student was throwing a chair, but scooting across the room was just attention seeking behavior. The Parent also stated that she felt that a lot of times, things could be prevented if the staff were aware of the triggers, such as the Student being tired. The Parent said that on March 2, the Student had informed the teacher he was really tired, and that staff could have offered the Student a rest instead of pushing him to complete work. The Parent stated that she working diligently to get a new work shift that would allow her to be home a night to provide more consistency and stability for the Student, and expressed that she felt the Student's medical issues were impacting the Student's behaviors, which she thought was reflected in his daily point sheets. The Parent said that she planned to advocate at the next IEP meeting for the Student to have more time in the general education setting. The Parent stated that the general education teacher had requested that the increase occur in increments, which the Parent was okay with, but she wanted the Student to have more general education time. The Parent wanted to see the Student attend more academic time in the first grade class. Further, the Parent stated that the Student needed to feel and know that he had a good team working with him, who would not turn their back on him regardless of the behaviors he displayed. The Parent said that the Student had made tremendous jumps in the past six months when compared to his kindergarten year.

64. In response, the special education teacher thanked the Parent for her input, stating that it was helpful to the team as they planned for the Student. The teacher stated that they could hold the annual IEP meeting early, and asked the behavioral specialist when she thought the FBA would be completed. Later, the principal responded, thanking the Parent for sharing her feedback and concerns, and that they would discuss these issues at the upcoming IEP meeting. The principal also stated that the issue could be discussed sooner if the Parent wanted.
65. The District's documentation in this complaint included a prior written notice, dated January 11, 2018, which stated that the IEP team agreed that the Student's FBA would be "postponed" and the team wanted to schedule the completion of the Student's FBA "with his IEP annual review meeting which [] must take place before April 26." It is assumed that the date of the prior written notice is in error. The January 11 notice also stated that the reason the team rejected the option of not postponing the FBA, was that the "team would not have adequate time to collected data from [the Student's] Special Education and General Education teachers, as well as data from his parent." The notice stated that the action would be initiated on March 8, 2018.



66. On March 12, 2018, the Student was restrained three times during a twenty-minute time period by the special education teacher and/or paraeducator 2. The District's March 12 incident report stated:

During the escalation cycle, [the Student] was restrained 3 times during a period of 20 minutes. [The Student] had been redirected by his General Education teacher and IA [paraeducator 4] during a writing period in his General Education classroom...for rolling on the carpet and yelling. [The Student] had kicked a desk in his General Education classroom and was asked to leave to a "buddy classroom". At this time, he left the room yelling loudly, tore posters down outside of his classroom, and began to push the IA [paraeducator 2] attempting to help him de-escalate. [The Student] continued to push [paraeducator 2]; he was given 1 minute of warnings to show a safe body and stop pushing or he would be placed in a hold. [The Student] continued. Two staff then restrained [the Student] using CPI transport position and released him in Room 2, his Special Education classroom in the break area void of furniture. He began to hit a wall with his fist and hurt himself. Staff gave him one minute of warnings to show a safe body – [the Student] was restrained when he continued to hit. After several minutes [the Student] was released in the break area and asked to sit on a bean bag. Again, [the Student] began to pound his fist into the wall with force. Staff gave one minute warnings to have a safe body or be restrained. Again [the Student] was restrained when he failed to respond. By 10:40, [the Student] was calm enough to sit down in the break area and talk to staff about what happened.

The incident report specified that the restraints occurred from 10:20-10:22 a.m., 10:27-10:35 a.m., and 10:36-10:40 a.m.

67. Later on March 12, 2018, the special education teacher emailed the Parent and attached a copy of the March 12 incident report. The teacher stated that she had spoken with the IA, paraeducator 4, who was with the Student at the time the incident began, and paraeducator 4 stated that when the Student went into the general education classroom, he immediately saw all the students were writing. As a result, the Student started to act out – throwing his point sheet and rolling on the carpet. The teacher stated that it seemed the Student knew there would be writing and that he needed a break more immediately, before he got to the point he got to that day. The teacher stated that this was something that could be talked about with the IAs and the first grade teacher. The teacher also stated that she was going to email the District behavioral specialist and the first grade teacher about meeting all together.

68. On March 14, 2018, the District issued progress reporting towards the Student's IEP goals. The progress reporting stated that the Student had met all of his social/behavior goals and math goals. The progress reporting stated that the Student made significant progress toward one of his reading goals and some progress toward the other reading goal and one of his writing goals. The progress reporting noted that the Student had "not yet covered editing of his own writing this marking period" and therefore, the goal was "not applicable this grading period".

69. On March 15, 2018, the Parent came to pick up the Student early from school, around 1:30 p.m., and found that the Student was not with his first grade class, per his schedule, but was instead with the SEL program class in the school garden.
70. Later on March 15, 2018, the Parent emailed the special education teacher, the school principal, and a District special education program specialist, expressing that the Student was entitled to be in the general education setting as allotted in his IEP. The Parent stated that the Student's schedule had been provided to her to assist with the management of when the Student was in the special education setting and the general education setting. The Parent also stated that when she arrived at the school that day around 1:30 p.m., the Student was with his special education class and remained with them until the Parent asked the Student what time he was supposed to go to the general education class and he stated 1:30 p.m. The Parent said the Student then approached paraeducator 2 and said that he was supposed to go to the first grade class, and paraeducator 2 stated "oh well, then go". The Parent expressed concern that paraeducator 2's tone was unprofessional and nonchalant, as if paraeducator 2 did not care that the Student was not on his schedule. The Parent stated that regardless if the teacher was there or not, by law, the Student was supposed to be in the general education setting for a specific amount of minutes, and that besides not following the IEP, the Parent had made it known that the Student thrived off of a routine and consistency. The Parent stated that if adults could not execute or be accountable for their part in the plan or their behaviors, the Parent would not hold the Student accountable.
71. On March 16, 2018, the school principal responded to the Parent's March 16 email, stating that she had spoken with the first grade teacher and paraeducator 2 about what happened from their perspective. The principal relayed that due to a variance in the first grade class's schedule, they had gone to recess early, and therefore, were not in the first grade classroom during the Student's usual transition time. Also, the SEL program had multiple substitutes that day, and paraeducator 2 decided to keep the Student with the other SEL program students in the school garden, because it was not immediately clear to him where the first grade class was. The principal stated that she agreed with the Parent that consistency was a very important part of the Student's educational experience, and that even when there were variances in schedules, staff needed to stay in close communication to maintain as much consistency as possible. The principal had communicated this to the first grade teacher and paraeducator 2, and they had agreed to tighten communication in order to ensure consistency. The principal stated that it was the school's responsibility to make sure that the Student's schedule was followed, and that staff would continue to work hard to make that happened. The principal asked that the Parent let her know if she had questions.
72. Later on March 16, 2018, the Parent replied to the principal, stating that she felt that her point had not come across as clear as needed. The Parent expressed that there had been two issues on March 15 – the Student's schedule/IEP had not been followed and paraeducator 2's interaction with the Student. The Parent expressed that paraeducator 2 had acted unprofessionally. The Parent stated that she would be following up with this matter, as she was concerned about paraeducator 2's interaction with the Student, and stated that there

had been several incidents including last year when he triggered the Student with regards to his schedule not being followed, and shortly after followed an escalation.

73. In response, the behavioral specialist asked if the Parent wanted to address this at an upcoming March 20, 2018 meeting, which was scheduled to discuss a “response plan”. The behavioral specialist asked if the Parent wanted to prioritize addressing schedule and fidelity to the schedule. The Parent replied, stating that they could speak on March 19, if the behavioral specialist wanted, and expressed concern that the issues had occurred multiple times, no matter how much the IEP team had talked and created plans or agendas. The Parent stated that the Student’s schedule being followed was a priority with an emphasis on the minutes in general education, as well as respect and treating the Student with kindness. The Parent was unsure how the March 20 meeting would assist in this matter.
74. Also on March 16, 2018, the Parent emailed the special education teacher, asking for a copy of the isolation and restraint incident report from November 16, 2017.
75. On March 17, 2018, the Parent filed this citizen complaint.
76. On March 19, 2018, the school principal responded to the Parent’s March 16, 2018 email. The principal stated that she heard and understood the Parent’s concerns about paraeducator 2’s interactions with the Student and the Student’s schedule. The principal assured the Parent that she would follow up on both issues, and would continue to work to make sure the schedule was followed appropriately and that all interactions with students and families were professional and supportive. The principal asked that the Parent let her know if she wanted to discuss this or any ongoing concerns more in person or by phone, and thanked the Parent for her partnership in making sure the Student was getting everything he needed at school.
77. Also on March 19, 2018, the special education teacher responded to the Parent’s March 16 email regarding the November 16 restraint incident report. The teacher stated that there were only four incident reports for the Student – September 11, 2017, December 1, 2017, January 10, 2018, and March 12, 2018. The teacher asked if the Parent was referring to the December 1 incident report. The Parent replied that she was referring to the November 16 report. The teacher later stated that there was no November 2017 incident noted in the District’s computer system, and attached a copy of the December 1, 2017 report.
78. On March 21, 2018, the special education teacher and a District behavioral specialist intern exchanged emails about break cards for the Student to use when he needed to request a break.
79. On April 17, 2018, the District provided the Parent with a copy of an April 17, 2018 incident report regarding paraeducator 2 restraining the Student on November 17, 2017. The April 17 incident report stated:

Parent was notified by phone call 11/17 and email sent with Special Education teacher’s report of incident on Saturday 11/18/17. [The Student] was restrained and brought to his

Special education classroom to de-escalate following an incident that occurred in the hallway with an IA [paraeducator 2]. [The Student] had become frustrated when he learned that his 1st grade class was going outside to recess and he was directed to his special education class for (his schedule calls for this transition at 10:30). [The Student] began to walk into the hallway at 10:50 am and slammed a table into the wall outside of general education class. At 10:51 [the Student] and [paraeducator 2] were in the hallway; [the Student] was yelling and [paraeducator 2] directed him to “go see [the special education teacher]”, in his Special Education classroom. At this point, [the Student] forcefully slammed another table in the hallway into the wall. [Paraeducator 2] verbally directed [the Student] to go to his Special Education classroom. [The Student] became further frustrated and repeatedly slammed into the hallway (other students were walking by at this point) for about 1 minute. [Paraeducator 2] verbally directed [the Student] to go to [the] Special Education classroom and held the table to prevent [the Student] from slamming it. Special education teacher attempted to direct [the Student] into [the] special education classroom verbally to calm him down. At 10:52 am [the Student] started to hit [paraeducator 2] with his hands and grabbed [paraeducator 2's] tie. [Paraeducator 2] turned [the Student] around by the shoulders, blocking his hands from hitting, and pushed [the Student] from his back towards his Special Education classroom about 15 feet away. At 10:54 am, [the Student's] special education teacher held the door open and asked him to come inside to calm down, while [paraeducator 2] followed behind [the Student]. While entering the door, [the Student] then turned and kicked [paraeducator 2] in the knee. Staff used verbiage to allow [the Student] to de-escalate in his Special Education classroom until he was calm by 11:15 am.

80. On April 18, 2018, the Student's IEP team met to review the FBA and develop the Student's annual IEP, which included a BIP. The IEP team later met on May 9, 2018, to further discuss the annual IEP. The Student's new IEP stated that the Student would spend 70.14% of his school week in a general education setting. The IEP team agreed to hold another meeting to develop a new emergency response protocol for the Student.

## CONCLUSIONS

**Issue 1: IEP Implementation in the Least Restrictive Environment (LRE)** – The Parent alleged that the District failed to implement the Student's October 5, 2017 IEP in the least restrictive environment. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Additionally, special education and related services must be provided in a student's LRE, which to the maximum extent appropriate, should be in the general education environment with students who are nondisabled.

Here, the Student's October 5, 2017 IEP stated that the Student would spend 42.25% of his school week in a general education setting. While the Parent was concerned that the District did not implement the Student's IEP and schedule with fidelity in regard to the Student's access to the general education setting, the document in this complaint shows that for much of the school year, the Student actually spent far more time in a general education setting than provided for in his IEP. The District admitted in its response to this complaint, that in January 2018, the District unilaterally changed the Student's schedule to increase his time in the general education setting

by approximately 20%, and that it did not follow procedures for amending the Student's IEP before doing so. The District has proposed to provide staff at the elementary school with training around these issues. The change to the Student's schedule, while providing more access to the general education setting, resulted in the Student not receiving the specially designed instruction called for in his IEP. The impact on the Student's access to IEP services in a special education due to the change in schedule was as follows:

- Social Skills – IEP: 175 minutes per week vs. Schedule: 100 minutes per week
- Math – IEP: 375 minutes per week vs. Schedule: 225 minutes per week
- Reading – IEP: 475 minutes per week vs. Schedule: 305 minutes per week
- Writing – IEP: 250 minutes per week (concurrent) vs. Schedule: 0 minutes per week

However, it is also noted that despite the discrepancy between the IEP and schedule, the Student also received eighty-five (85) additional minutes of reading/writing instruction in a general education setting per week and received social/behavior instruction from an IA who was with the Student the majority of his time in a general education setting. Further, the Student met or made progress toward his IEP goals, with the exception of one of his writing goals, for which he received no instruction. The District will provide the Student with compensatory services in the area of writing.

Based on the October 5, 2017 amendment to the Student's IEP, the Student was to receive 250 minutes of writing services per week, which equates to 50 minutes per school day. From January 23, 2018, when the Student's schedule was changed, through March 17, 2018, the date the Parent filed this complaint, there were thirty-four (34) school days, and the Student was absent four (4) school days. Therefore, from January 23 through March 17, the Student should have received 1,500 minutes (25 hours) of writing instruction. Given the more intensive instruction that can be provided through 1:1 instruction, the District will provide the Student with one-half the amount of time, which is 12.5 hours of writing instruction.

**Issue 2: Isolation and Restraint** – The documentation in this complaint does not show that isolation was used with the Student.

Restraint is defined as physical intervention or force used to control a student, including the use of a restraint device to restrict a student's freedom of movement. Restraint shall only be used when a student's behavior poses an imminent likelihood of serious harm. The use of restraint 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.

The documentation in this complaint shows that the Student was restrained on five days from September 2017 through April 2018. Based on the District's January 10, 2018 incident report from the early morning, staff used a transport hold with the Student, even though the Student was laying down on the floor. While there may have been other students in the area, the

District's documentation does not show that there was imminent likelihood of the other students, or the Student being harmed, and therefore, the staff should not have restrained the Student. Additionally, the District admits in its response to this complaint that paraeducator 3 was not trained and certified in the use of restraints, when he restrained the Student in the late morning on January 10, 2018. While non-trained staff are permitted to use restraint in an emergency situation when no trained staff are available, the documentation in this complaint does not support that this was the case on January 10, 2018. The district will develop procedures to ensure that either all substitute instructional assistants/paraeducators who work with students with advanced behavioral needs are trained and certified in the use of restraint and isolation, or that a regular staff member who is trained and certified in the use of restraint and isolation is present at all times when a non-trained substitute is present.

Additionally, school districts must follow the documentation and reporting requirements for any use of restraint consistent with RCW 28A.600.485. Following the release of a student from the use of restraint, the school must review the incident with the student and the parent to address the behavior that precipitated the restraint and the appropriateness of the response, and review the incident with the staff member 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. Here, the District's documentation shows that the District appropriately contacted the Parent after each use of restraint and that meetings were also held to discuss some of the restraints. However, it is unclear from the District's documentation whether the incidents were reviewed with all staff members involved to discuss whether procedures were followed and what training and support the staff members might need to help the Student avoid similar situations, although it is noted that the District stated in its response to this complaint that this occurred.

RCW 28A.600.485 also requires that any school employee who uses restraint on a student 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; a description of the activity that led to the restraint; the type of restraint used on the student, including the duration; whether the student or staff was physically injured during the restraint 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. Here, the District did not submit a report regarding the November 17, 2017 incident to the District office in two business days. Additionally, the District's documentation does not include written reports from all staff involved in the restraint, but rather one summative report, which is inconsistent with RCW 28A.600.485 and WAC 392-172A-02110. Further, the District's reporting form does not include a section for staff to make recommendations for changing the nature or amount of resources available to the student and staff members in order to avoid similar incidents. It is noted, however, that staff had ongoing discussions with the Parent throughout the school year regarding the Student's behavior and ways to support him.

Additionally, RCW 28A.600.485 requires that the principal or principal's designee must make a reasonable effort to verbally inform the parent 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. Here, the documentation substantiates that the Parent was notified of the restraint incidents within twenty-four hours. However, the documentation is not clear as to when the Parent was provided a copy of the September 11, 2017 incident report. It is recommended that the District include a section in its incident report form to allow staff to document that a parent was contacted within twenty-four hours and when a parent was sent a copy of the incident report. The District admits that the Parent was not provided with a copy of the incident report regarding the November 17 restraint within five business days. The Parent did receive an email on November 18, with a detailed description of what occurred, and the District has since provided a copy of an incident report on April 17, 2018. However, it is noted that there is a discrepancy between the November 18 email and the April 17 report. The District needs to ensure that parents are provided with accurate information within required timelines. The District will review and revise its follow-up procedures for the use of restraint and isolation, including its incident report form, to ensure the procedures and the form align with the requirements in RCW 28A.600.485.

**Issue 3: Implementation of the Student's Emergency Response Protocol** – The Parent alleged that the District failed to implement the Student's emergency response protocol during the 2017-2018 school year. An emergency response protocol is part of an IEP, and therefore, school districts must ensure that an emergency response protocol is implemented as written. The Student's May 2017 emergency response protocol stated:

Restraint or isolation is permitted only when reasonably necessary to control spontaneous behavior that poses an imminent likelihood of serious harm, as defined by RCW 70.96B.010. If [the Student] engages in unsafe or physically aggressive behaviors (hitting, biting, punching, throwing objects) toward a peer or adults isolation may be used if the behavior is at and intensity (in duration and of great magnitude) that the team is unable to redirect or deescalate. Additionally, restraint (CPI children's control position) may be used if [the Student] is in imminent danger (climbing out of windows or running into the street) of harming himself or others.

The emergency response protocol also stated that only staff who were "CPI trained" could use restraint with the Student and that only "children's control position" or "CPI transport position" could be used with the Student. The District admitted in its complaint that on November 17, a staff member used an unauthorized restraint with the Student, by grabbing and pushing the Student. And, as discussed in issue no. 2, paraeducator 3 was not CPI trained when he used restraint with the Student. Also as discussed in issue no. 2, staff restrained the Student on January 10 when the Student's behavior did not pose an imminent likelihood of serious harm, which was in violation of state regulations, and was also contrary to what is stated in the Student's emergency response protocol.

It is also noted, that when an IEP team has determined that a student is in need of an emergency response protocol in order to receive a free appropriate public education (FAPE), the IEP team, with very few exceptions, should have first determined that the student was in need of a

behavioral intervention plan (BIP) in order to proactively address the types of serious behavioral outbursts that would lead to needing an emergency response protocol. Here, the District's documentation shows that District staff believed the Student needed a BIP, as evidenced by the request on the first day of school, and in the weeks that followed, for the Parent to provide consent for an FBA, and evidenced by the decision to start implementing the Student's February 2017 PBIP, which was created to address the Student's behavioral needs prior to the Student even being found eligible for special education, during the 2017-2018 school year. However, despite the awareness that the Student was in need of a BIP, the District, for reasons unclear, did not include a BIP in the Student's April 2017 IEP or the October 5, 2017 amendment to the IEP. This appears to be due in part to the mistaken belief that an FBA must be done prior to the creation of BIP. There is no requirement that an FBA be completed prior to developing a BIP. But, there is a requirement that an IEP include a BIP when an IEP team has determined that one is needed to address a student's behavior which impacts his ability to access learning. Additionally, if the District believed that an FBA needed to be completed prior to developing a BIP, it should have completed the FBA as part of the Student's March 2017 initial evaluation.

### **CORRECTIVE ACTIONS**

By or before **June 8, 2018, June 18, 2018, September 14, 2018, October 31, 2018, and December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By **June 8, 2018**, the District will provide a copy of: 1) the Student's BIP; 2) the new emergency response protocol; 3) the Student's class schedule which aligns with his April 2018 IEP; and, 4) any related meeting invitations, prior written notices, and other documentation. The District will also provide documentation that all school staff (teachers, IAs, etc.) who work with the Student have been provided a copy of, and reviewed, his BIP and emergency response protocol.
2. By **June 18, 2018**, the District will work with the Parent to develop a schedule to provide the Student with a total of 12.5 hours of compensatory services in the area of writing. The services will be provided outside of the District's regular school day. The services may be provided over the summer of 2018. The services must be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than December 14, 2018. The District will provide OSPI with documentation of the schedule by **June 18, 2018**.

The District must provide OSPI with documentation by **September 14, 2018 and October 31, 2018**, of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. No later than **December 21, 2018**,



the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **December 21, 2018**.

**DISTRICT SPECIFIC:**

1. The District will review and revise its follow-up procedures for the use of restraint and isolation, including its incident report form, to ensure the procedures and the form align with the requirements in RCW 28A.600.485. It is recommended that the District include a section in its incident report form to allow staff to document that a parent was contacted within twenty-four hours and when a parent was sent a copy of the incident report.

By **June 8, 2018**, the District will submit a draft of the procedures and the updated incident report form. OSPI will okay the procedures or provide comments by June 18, 2018 and provide additional dates for review, if needed. By **September 14, 2018**, the District will provide OSPI with documentation showing that all District school principals have reviewed and discuss the procedures and the updated incident report form with all certificated staff and instructional assistants assigned to work in their buildings. The documentation will include a roster of all principals.

2. The District will develop procedures to ensure that either all substitute instructional assistants/paraeducators who work with students with advanced behavioral needs are trained and certified in the use of restraint and isolation or that a regular staff member who is trained and certified in the use of restraint and isolation is present at all times when a non-trained substitute is present. The District will provide OSPI with a copy of the procedures by **June 8, 2018**.
3. OSPI accepts the District's proposal to provide all special education certificated staff, including educational staff associates (ESAs), and school administrators at the Student's elementary school training regarding: 1) placement decisions; 2) LRE; and, 3) IEP implementation. The training will also address: 4) IEP development in regard to addressing student behavior, including BIPs. The training will include examples.

By **June 8, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by June 18, 2018 and additional dates for review, if needed.

By **September 14, 2018**, the District will submit documentation that all required staff participate in the training. This will include a 1) sign-in sheet from the training and 2) a roster of all District special education certificated staff, educational staff associates (ESAs), and school administrators who work at the Student's elementary school, so OSPI can verify that

all required staff participated in the training. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. *If any of the staff are unable to participate, the District will hold a follow-up session(s) within the required timeframe.*

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 \_\_\_\_ day of May, 2018

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

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

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